



THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA (SPECIAL ISSUE)

Published under the Authority of His Excellency the Governor of the
Colony and Protectorate of Kenya.

Vol. XXXII.—No. 32.

NAIROBI, June 20, 1930.

Price 50 Cents.

Registered as a Newspaper at the G. P. O.

CONTENTS

	PAGE
Ordinance:—	
No. 24 of 1930—An Ordinance to make Provision Relating to Chattel Securities and the Transfer of Chattels	1309
Bills for Introduction into Legislative Council:—	
Govt. Notice No. 354—A Bill Relating to Bankruptcy	1331
,, „ „ 355—A Bill to Amend the Trout Protection Ordinance, 1928	1405
„ „ „ 356—A Bill to Regulate Deeds of Arrangement	1406
„ „ „ 357—A Bill to Consolidate and Amend the Law relating to the Detention, Removal and Treatment of Mentally Disordered and Defective Persons and to Make Provision as to Institutions in which such Persons may be Received, Detained and Treated	1415
„ „ „ 358—A Bill relating to the Registration of Trade Marks	1451
„ „ „ 359—A Bill to Give Effect to a Certain Convention on the Execution of Arbitral Awards and to Amend the Arbitration Ordinance	1469
„ „ „ 360—A Bill to Consolidate and Amend the Law relating to Prisons, to Provide for the Organisation, Discipline, Powers and Duties of the Prison Officers, and for matters incidental thereto	1475
„ „ „ 361—A Bill relating to the Sale of Goods	1495
„ „ „ 362—A Bill to Make Further Provision for the Administration of Justice and to Constitute Native Tribunals in the Colony	1511
„ „ „ 363—A Bill to Consolidate and Amend the Law relating to Collective Punishment	1520

Colony and Protectorate of Kenya.

AN ORDINANCE.

No. 24 OF 1930.

Assented to in His Majesty's name this thirteenth day of June, 1930.

EDWARD GRIGG,
Governor.

[13TH JUNE, 1930.] Date of assent.

An Ordinance to make Provision Relating to Chattel Securities and the Transfer of Chattels.

13th June, 1930.

Date of commencement.

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

1. This Ordinance may be cited as "the Chattels Short title. Transfer Ordinance, 1930."

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

"Chattels" means any movable property that can be completely transferred by delivery, and includes machinery, stock and the natural increase of stock as hereinafter mentioned, crops, and wool, but does not include—

- (a) title-deeds, choses-in-action, negotiable instruments;
- (b) shares and interests in the stock, funds, or securities of any Government or local authority;
- (c) shares and interests in the capital or property of any company or other corporate body; or
- (d) debentures and interest coupons issued by any Government, or local authority, or company, or other corporate body.

"Crops" means coffee berries, tea leaves, sisal leaves, sugar cane, cotton, hemp, hop, wheat, maize, wattle, barley, oat, and grass (whether for hay or for grain), and all cereal and root crops, fruit, and all other crops grown above or below the ground.

"Executed" means signed by the grantor or his attorney.

"Factory" or "workshop" means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article or part of any article.

"Grantee" means the party to an instrument to whom chattels therein referred to, or any interest therein, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation.

"Grantor" means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any interest therein, and includes his executors, administrators, and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation.

"Instrument" means any instrument given to secure the payment of money or the performance of some obligation and includes any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, or lease, and also the following :—

- (a) Inventories of chattels with receipt thereto attached.
- (b) Receipts for purchase-money of chattels.
- (c) Other assurances of chattels.
- (d) Declarations of trust without transfer.
- (e) Powers of attorney, authorities, or licences to take possession of chattels as security for any debt.
- (f) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred

"Instrument" does not include the following :—

- (a) Securities over, or leases of, fixtures (except "trade machinery" as hereinafter defined), when mortgaged or leased in any mortgage or lease of any freehold or leasehold interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building.
- (b) Assignments for the benefit of the creditors of the person making the same.
- (c) Transfers of or agreements to transfer instruments by way of security.
- (d) Transfers or assignments of any ship or vessel or any share thereof.
- (e) Transfers of chattels in the ordinary course of business of any trade or calling.
- (f) Debentures and interest coupons issued by any Government or local authority.
- (g) Bills of sale of chattels in any foreign parts, or at sea.
- (h) Bills of lading, warehouse-keepers' certificates, warrants, or orders for the delivery of chattels, entries in auctioneers' books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented.

(i) Debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body.

(j) Mortgages or charges granted or created by a company incorporated or registered under the Companies Ordinance.

Cap. 93.

(k) Hire-purchase agreements.

" Registrar " means the Registrar-General.

" Registration " means the filing of an instrument with schedule or inventories, or a true copy thereof, with the affidavit hereinafter mentioned.

" Schedule " includes inventory.

" Stock " includes any sheep, cattle, horses, pigs, poultry, and any other living animals.

" Trade machinery " means the machinery used in or attached to any factory or workshop as hereinbefore defined, but does not include—

- (a) the fixed motive powers, such as the waterwheels, and steam and other engines, and the steam boilers, donkey-engines, and other fixed appurtenances of the said motive powers;
- (b) the fixed power machinery (such as the shafts, wheels, drums, and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or
- (c) the pipes for steam, gas, and water.

3. (1) An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Ordinance so far as regards any chattels seized or taken under the power of distress :

Attornment or
agreement
giving power of
distress by way
of security to
be instrument
within meaning
of Ordinance.

Provided that where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits thereof, demises the said land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Ordinance.

(2) Machinery and plant used in connexion with the production, preparation or manufacture of agricultural products shall not by reason of being attached to buildings or land become part of the land, nor shall any estate or interest therein pass by virtue of such attachment.

REGISTRATION.

4. All persons shall be deemed to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Ordinance :

Registration of
instrument to
be notice.

Provided that if registration of such instrument is not renewed pursuant to the provisions of this Ordinance, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal is required by this Ordinance.

Mode of registration.

5. Registration of an instrument shall be effected by filing the same and all schedules indorsed thereon, annexed thereto, or referred to therein, or a true copy of such instrument and the schedules, and an affidavit in the form numbered (1) in the First Schedule hereto or to the like effect, in the office of the Registrar.

Limitation of time for registration

6. (1) The period within which an instrument may be registered is twenty-one days from the day on which it was executed :

Provided that when the time for registering an instrument expires on a day whereon the Registrar-General's office is closed, the registration shall be valid if made on the next following day on which such office is open.

(2) If there are more grantors than one, the date of execution of the instrument shall be deemed to be the date of the execution by the grantor who last executes the instrument.

(3) The day on which the instrument is executed shall not be included in the period for registration ; but the instrument may be registered on that day.

Register book and index to be kept

7. (1) The Registrar shall cause every instrument registered in his office under this Ordinance to be numbered, and shall mark on each such instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose in his office the particulars of the instrument registered according to the form numbered (2) in the First Schedule hereto.

(2) The Registrar shall also keep an index of the names of grantors and grantees of instruments, and shall refer therein to the entries in the register book of the instruments given by each such grantor.

(3) Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

Local registration of abstracts of instruments.

(4) Where the instrument describes the residence of the person making or giving the same to be in some place outside the province in which the registry is situate or where the instrument describes the chattels enumerated therein as being in some place outside such province, the Registrar shall forthwith and within three clear days after registration in the registry, and in accordance with the prescribed directions transmit an abstract in the prescribed form of the contents of such instrument to the provincial commissioner in whose province such places are situate, and if such places are in more provinces than one to each such provincial commissioner. Every abstract so transmitted shall be filed, kept, and indexed by the provincial commissioner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of instruments registered by the Registrar.

8. There shall be paid to the Registrar upon the registration of every instrument the fee of five shillings.

Fee on registration.

9. The Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Ordinance, or according to the form or effect required by this Ordinance or that the omission or misstatement in the register or in any affidavit of the name, residence, or occupation of any person, or of any other matter, was accidental or due to inadvertence, may order such omission or misstatement to be rectified by extending the time for such registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence, or occupation, on such terms and conditions as it thinks fit.

Time for registration may be extended, and mistakes in register corrected.

RENEWAL OF REGISTRATION.

10. (1) The registration of an instrument, whether executed before or after the coming into operation of this Ordinance shall, during the subsistence of such instrument, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration.

Registration to be renewed every five years.

(2) If not so renewed, the registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required.

(3) The registration of an instrument shall be renewed by filing in the office of the Registrar an affidavit in the form numbered (3) in the First Schedule hereto or to the like effect.

Mode of renewal.

(4) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and renumber the instrument originally registered in the said office, or the filed copy thereof, with a similar number, and mark thereon the date of renewal of registration, and shall enter particulars of the instrument in the register book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefor in the register book.

(5) There shall be paid to the Registrar upon the renewal of registration of any instrument the fee of five shillings.

Fee on renewal.

(6) The provisions of sub-section (4) of section 7 of this Ordinance shall apply *mutatis mutandis* to the renewal of the registration of any instrument.

SEARCHES AND OFFICE COPIES.

11. The register books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy thereof, may be searched and viewed by all persons during the office hours of the Registrar upon payment of a fee of two shillings for every search against any one person.

Register book and instruments may be searched and viewed.

12. Any person shall be entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy thereof registered as aforesaid, and an office copy of any affidavit filed under this Ordinance, on paying for the same at the rate of one shilling for every folio of one hundred words contained in such copy or extract; or if he makes such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify the same upon payment of a fee of ten shillings for each instrument or extract therefrom, and of fifty cents for every folio of one hundred words after the first ten folios.

Office copies may be had.

Unregistered
instruments to
be void in
certain cases.

EFFECT OF NON-REGISTRATION.

13. (1) Every instrument, unless registered in the manner hereinbefore provided, shall, upon the expiration of the time for registration, or if the time for registration is extended by the Supreme Court, then upon the expiration of such extended time, be deemed fraudulent and void as against—

- (a) the official receiver or trustee in bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument;
- (b) the assignee or trustee acting under any assignment for the benefit of the creditors of such person;
- (c) any person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such process was issued;

so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of such bankruptcy, or of the execution by the grantor of such assignment for the benefit of his creditors or of the execution of such process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given, as the case may be.

(2) So long as an instrument continues to be registered hereunder, the chattels comprised in that instrument shall not be deemed to be in the possession, order, or disposition of the grantor, within the meaning of the Bankruptcy Ordinance, 1925.

No. 1 of 1926.

Instrument not
registered
within time
limited not to
affect *bonâ fide*
purchaser for
value without
notice.

Instrument to
be attested.

Instrument to
take effect from
execution.

Instrument to
have inventory
of chattels.

14. No unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any *bonâ fide* purchaser or mortgagee for valuable consideration, or as against any person *bonâ fide* selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his business.

AS TO INSTRUMENTS GENERALLY.

15. Sealing shall not be essential to the validity of any instrument; but every execution of an instrument shall be attested by at least one witness, who shall add to his signature his residence and occupation.

16. Every instrument shall be deemed to be made on the day on which it is executed, and shall take effect from the time of its registration.

17. Every instrument shall contain or shall have endorsed thereon or annexed thereto, a schedule of the chattels comprised therein, and save as is otherwise expressly provided by this Ordinance, shall give a good title only to the chattels described in the said schedule, and shall be void as against the persons mentioned in sections 13 and 14 hereof in respect of any chattels not so described.

18. Save as is otherwise expressly provided by this Ordinance, an instrument shall be void as against the persons mentioned in sections 13 and 14 hereof in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument.

Instrument void where grantor not owner of chattels.

19. (1) If an instrument is made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration of trust shall for the purposes of this Ordinance be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall be void as against the persons mentioned in sections 13 and 14 hereof so far as regards the property in or right to the possession of any chattels comprised in or affected by such instrument.

Instrument subject to defeasance, etc., void in certain cases.

(2) In the case of a document securing the payment of the moneys or any part thereof payable by virtue of an instrument it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto, and the nature of the security are set forth in the instrument or in some schedule thereto.

20. Nothing in the three last preceding sections shall render an instrument void in respect of any of the following chattels, that is to say :—

- (a) Stock, wool, and crops.
- (b) Fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or on the schedule to, such instrument.

21. Nothing in this Ordinance shall be deemed to affect any law for the time being in force—

Saving of laws prescribing formalities as to execution of instruments or securing rights thereunder.

- (a) prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Ordinance ; or
- (b) conferring or securing any rights or claims under or in respect of any such instrument.

FORM OF INSTRUMENTS.

22. (1) Every instrument under this Ordinance may be in the form number (4) in the First Schedule hereto or to the like effect with such variations or modifications thereof and additions thereto as are expressed in the instrument.

Form of instrument by way of security.

(2) An instrument securing an account current continues in full force and effect notwithstanding that the grantor may from time to time be in credit on such account.

23. Where an instrument is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in such prior instrument, then if such subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, be void as against the persons mentioned in sections 13 and 14 hereof, unless it is proved to the Court having cognizance of the case that the subsequent instrument was *bona fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Ordinance.

Where successive securities are given over same chattels.

INSTRUMENTS COMPRISING STOCK.

How stock to
be described.

24. Where stock are comprised in any instrument they shall be described or referred to therein or in the schedule thereto by some brand or brands, earmark or earmarks, or other mark or marks upon them or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise the instrument shall be void as against the persons mentioned in sections 13 and 14 hereof, so far as regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described or mentioned in such instrument or schedule.

Stock to
include increase
of stock, etc.

25. An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by the last preceding section, but also the natural increase of such stock, and all stock of the class or classes described in the instrument, the property of the grantor, branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument or in the schedule thereto, or any land and premises used and worked as part of the first-mentioned land and premises, whether or not such stock be removed therefrom. The grantees shall have the same legal property and right in all stock which by force of this section are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule thereto.

ASSIGNMENT OF BOOK AND OTHER DEBTS.

Instrument
may comprise
book debts.

26. (1) Book or other debts shall be deemed to be chattels situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of six months next before the execution of the instrument.

(2) In every instrument comprising book or other debts each debt shall be deemed to be a separate chattel, and shall be described in the schedule thereto by setting forth the name of the debtor or firm of debtors and the amount of the debt, so far as is reasonably necessary to show by whom the debts are owing and every such instrument shall be void as against the persons mentioned in sections 13 and 14 of this Ordinance in respect of any debt not so described.

(3) Nothing in this section shall apply to any debt secured or charged on land.

(4) Nothing in this section shall apply to any floating security granted by a company registered under the Companies Ordinance, over the assets of such company, provided that such security is registered in the manner required by that Ordinance.

Cap. 93.

Assignments of
moneys
payable
to suppliers
of dairy
produce.

27. (1) Nothing in the last preceding section shall apply to any deed or agreement in writing purporting to assign to or to authorise the grantees to receive any moneys due at the date thereof or thereafter from time to time to become due to the grantor for or in respect of any milk, cream, or butterfat, supplied by such grantor to any butter, cheese or other factory for the manufacture of dairy products.

(2) Such a deed or agreement is not an instrument to which this Ordinance applies.

SECURITIES OVER CROPS.

28. An instrument may be granted over the crops described or referred to therein or in the schedule thereto then actually sown or growing or planted or to be sown or grown or planted in or upon the lands mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown or on any other land or premises, or whether the nature of the crop has been altered by a process of curing or manufacture.

Security may be given over crops.

29. No such instrument shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument :

Saving of rights of landlord or mortgagee.

Provided that no such instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

SECURITIES OVER WOOL.

30. An instrument may be granted over the wool of the next ensuing clip to be shorn from the sheep described or referred to therein, or in the schedule thereto, then depasturing upon the lands mentioned therein or in such schedule, and shall entitle the grantee thereof to the wool of such sheep, not only while growing but afterwards when shorn from the sheep, and wherever such wool may be.

Security may be given over wool.

31. No subsequent sale, mortgage, or other encumbrance of or affecting the sheep mentioned in any such instrument shall extinguish, suspend, impair, or prejudicially affect that instrument if duly registered, or the rights of the grantee thereof to the wool specified or referred to therein.

Wool securities not affected by sale, etc., of sheep.

32. The grantor of any instrument over sheep may, with the consent in writing of the grantee thereof, and so far as is authorised by such consent, but not otherwise, give to some third person a valid security on the next ensuing clip of the wool of such sheep.

Security may be given over wool of mortgaged sheep.

33. (1) If under any instrument comprising sheep, whether such instrument has been executed before or after the commencement of this Ordinance, the grantee thereof shall from time to time be entitled to require the grantor to execute and give to such grantee an instrument over the wool growing, or to grow, upon the sheep for the time being subject to such instrument, or be entitled to require the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument, then and in such case the grantee shall, during the subsistence of the registration of such first-mentioned instrument, be deemed, notwithstanding the provisions of section 30 hereof, to possess a lien or security over each clip in the same degree and manner as if an instrument in respect of the wool had been actually executed by the grantor and registered under this Ordinance, and such lien or security shall have the consequences mentioned in section 31 hereof.

Further provision as to security given over wool.

(2) In every instrument comprising sheep, executed after the commencement of this Ordinance, there shall be implied (unless such implication is expressly negatived) a covenant by the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of such instrument.

ENTRY OF SATISFACTION.

**Memorandum
of satisfaction
may be filed**

34. (1) In the case of an instrument, upon the production to the Registrar of a memorandum of satisfaction in the form numbered (5) in the First Schedule hereto or to the like effect, signed by the grantee thereof or his attorney, discharging the chattels comprised in such instrument or any specified part thereof from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and on production of such instrument and payment of a fee of five shillings, the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) The execution of such memorandum shall be attested by at least one witness, who shall add to his signature his residence and occupation, and shall be verified by the affidavit of that witness.

(3) The Registrar may, in his discretion, dispense with the production of the instrument on proof by affidavit to his satisfaction that the instrument has been destroyed, cannot be found, or cannot be produced.

**Effect of filing
such
memorandum.**

35. From and after the filing of any such memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee of the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption therein, but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

**Public Trustee
may sign
memorandum
in certain cases.**

36. Where the grantee of an instrument by way of security is absent from the Colony, and there is no person in the Colony authorised to discharge the same on his behalf at or after the date appointed for the payment of the moneys secured by such instrument, the Public Trustee may receive such moneys in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of such person, and upon the filing thereof such memorandum, signed by the Public Trustee, shall be as effectual as a memorandum signed by the person entitled to such moneys.

**Judge may
order
memorandum
to be filed.**

37. The Supreme Court may, upon application made for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument if it appears that the debt (if any) for which such instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order may be filed by the Registrar and entered in his book in like manner as if the same were a memorandum within the meaning of section 34 hereof.

SALES.

38. Chattels under this Ordinance or any part thereof may be sold along with or separately from land (if any) mortgaged to secure payment of the same moneys as are secured by any instrument under this Ordinance.

Sales by Registrar

SALE OF GRANTOR'S INTEREST.

39. (1) Where legal process issues against the chattels of a judgment-debtor for the execution of a judgment of any Court, and the said chattels, or any of them, are comprised in any instrument under this Ordinance, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title, and interest of the judgment-debtor in the same.

Grantor's interest in chattels may be sold in execution of judgment against him.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title, and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the said right, title, and interest, subject to payment of all moneys due under the instrument.

(4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title, and interest.

(5) If the grantee makes default herein, the purchaser may bring an action against him to recover the surplus, as money received to the use of the purchaser.

40. Nothing in the last preceding section shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process.

Not to affect interpleader process.

IMPLIED COVENANTS, ETC.

41. There shall be implied in every instrument the covenants for title on the part of the grantor set forth in the Second Schedule hereto, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

Covenants for title.

42. There shall be implied in every instrument the covenants, provisos, agreements, and powers set out in the Third Schedule hereto, or such of them as are applicable; and such implied covenants, provisos, agreements, and powers shall, subject to any modifications of the same expressed in the instrument, have the same effect as if the same were respectively set out therein at length.

Covenants, etc., implied in instruments.

43. Such of the expressions defined in section 2 hereof or in the Fourth Schedule hereto as are used in any instrument, or in any of the covenants, provisos, agreements, or powers implied therein by this Ordinance, shall, unless the contrary is expressed in such instrument, or unless manifestly inconsistent with the context, have the meanings given to the same in the

Meaning of abbreviated expressions.

said section 2 or Fourth Schedule, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out therein.

Covenants to
be several as
well as joint.

44. Where there are two or more grantors or two or more grantees of any instrument, then any covenants, conditions, provisos, agreements, and powers expressed in such instrument, or implied therein by this Ordinance, and imposing an obligation on such grantors or grantees, or enuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

Covenants to
bind executors.

45. Except in so far as the contrary intention appears, all covenants, conditions, provisos, agreements, and powers expressed in any instrument, or implied therein by this Ordinance, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements, and powers impose an obligation, and shall operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same enure.

Covenants may
be negatived
or varied.

46. All or any of the covenants, provisos, conditions, agreements, or powers set forth in the Second, Third and Fourth Schedules hereto may be negatived, modified, or altered, or others may be added to them, by express words in the instrument.

TRANSFERS OF INSTRUMENTS.

Form of
transfer of
instrument.

47. Every instrument may be transferred by a document in the form in the Fifth Schedule hereto or to the like effect, and every transferee, his executors, administrators, and assigns, shall, in respect of the instrument transferred, have the same rights, powers, and remedies, and be subject to the same obligations, as the transferor.

Registration of
transfers.

48. Transfers of instruments may be registered at any time after the execution thereof in like manner as instruments are registered; and, in case two or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case two or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

PENAL.

Attempt to
defraud
grantee.

49. Every grantor of an instrument under this Ordinance who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the same or attempts so to do, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to six months' imprisonment or to a fine not exceeding one hundred pounds or to both such fine and imprisonment.

50. The Bills of Sale Act, 1878, and the Bills of Sale ^{Repeal.}
Act, 1882, as applied to the Colony, and the Bills of Sale
Ordinance (Chapter 22 of the Revised Edition) are hereby *Cap. 22.*
repealed.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

(1) AFFIDAVIT ON REGISTRATION OF INSTRUMENT.

In the Supreme Court of Kenya. In the matter of the
Chattels Transfer
Ordinance, 1930.

I, [full name of deponent], of [place of residence or business], in the Colony of Kenya, [occupation], make oath and say as follows:—

1. The paper writing hereto annexed and marked "A" is a true copy of an instrument under the above-mentioned Ordinance, and of every schedule or inventory thereon endorsed or thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by [full name of grantor].

2. The said instrument was made and given by the said [full name of grantor] on the.....day of.....19....

3. I was present, and saw [full name of grantor] duly execute the said instrument on the.....day of.....19..., at [state place where instrument executed].

4. The said [full name of grantor] resides at [place of residence], and is [occupation].

(This may be varied to describe residence at date of instrument.)

5. The name subscribed to the said instrument as that of the witness attesting the due execution thereof by the said [name of grantor] is in the proper handwriting of me, this deponent.

6. I am [occupation] and reside at [place of residence].

..... E.F.

Sworn at.....the.....day of.....19....

Before me..... G.H.

N.B.—If the grantor is absent from Kenya and executes the instrument by attorney, it shall be sufficient if the deponent states his belief as to the present address of the grantor. In the case of a company the registered office should be stated instead of the place of residence.

Where the original instrument is filed, the first paragraph of this affidavit should be struck out, and the second and third paragraphs will require some alterations.

(2) REGISTER Book.

No	By whom given			To whom given			Nature and Date of Instrument.	Date and time of Registration.	Date of Renewal.	Satisfaction entered.
	Name	Residence.	Occupation.	Name	Residence.	Occupation.				

(3) AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT.

In the Supreme Court of Kenya.

In the matter of the
Chattels Transfer
Ordinance, 1930.

I, [full name of deponent], of [place of residence or business], in the Colony of Kenya, [occupation], make oath and say as follows:—

1. I am the grantee of the instrument registered under the above Ordinance, as No....., and made between [state names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit].

(If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, state such fact, and also state briefly how deponent has become acquainted with the facts deposited to.)

2. The said instrument was registered on the..... day of..... 19...

3. The registration of the said instrument was last renewed on the.....day of..... 19...
(This paragraph is inapplicable where registration of the instrument is being renewed for the first time.)

4. The said instrument is still subsisting, and in full force and effect.

..... C.D.

Sworn at.....this.....day of..... 19...

Before me..... G.H.

(4) INSTRUMENT.

A.B., of [state residence and occupation], being owner of the chattels mentioned in the schedule hereto [where a schedule is necessary], in consideration of the sum of £..... lent and advanced to him by C.D., of [state residence and occupation] [or, if consideration not an advance of money, state any other consideration for which mortgage given], does hereby

assign and transfer the same to the said C.D. by way of mortgage to secure the payment of the said sum of £..... on the.....day of..... 19..., with interest thereon in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of £..... per centum per annum by.....payments on the.....day of the months of.....and..... in each year. (Implied covenants, powers, and provisions may be varied or negatived).

In witness whereof A.B. has hereunto subscribed his name, this.....day of..... 19...

[Schedule.]

..... A.B.

Signed by the above-named A.B. in the presence of

..... E.F.

[Residence and occupation.]

(5) MEMORANDUM OF SATISFACTION.

I, C.D., hereby consent to a memorandum of satisfaction being written upon the instrument [*or registered copy of the instrument*] given for securing the sum of £....., bearing the date the.....day of..... 19... and made between.....and..... and registered on the.....day of..... 19... as No.under the Chattels Transfer Ordinance, 1930, the moneys for which such instrument was given as a security having been satisfied.

Dated this.....day of..... 19...

..... C.D.

(Grantee or Assignee.)

Witness E.F.

[Residence and occupation.]

SECOND SCHEDULE.

COVENANTS FOR TITLE.

1. That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned; and that they are free and clear from encumbrances other than such as are herein mentioned.

2. That the grantor will, at his own cost, do and execute all such acts, deeds, matters, and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee may from time to time be reasonably required.

THIRD SCHEDULE.

COVENANTS, PROVISOS AND POWERS IMPLIED IN INSTRUMENT.

1. That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the time herein mentioned, without any deduction whatever.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on his security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situate.

4. That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the like good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist with other chattels of a like nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

Provisos and Agreements Implied in Instruments.

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition, or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until execution is levied against the goods of the grantor and such execution is not stayed or satisfied within ten days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

Powers Implied in Instruments.

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenanted to be paid on the day on which the same ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions or agreements herein expressed or implied, and on the grantor's part to be observed and

performed, or if the grantor becomes bankrupt, or if at any time execution is levied against the goods of the grantor such execution is not stayed or satisfied within ten days, then and in such case the grantee, either personally or by his agent or servants may immediately thereupon or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell or dispose of same or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase money, or to buy in the said chattels or any part thereof at such auction, and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at such sale for any of the purchase money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges, and expenses of and incidental to such taking possession, sale, and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor.

Powers, Covenants, and Provisions to be Implied in Instruments over Stock.

8. That during the continuance of this security, the grantee, his agents, or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises whereon the stock for the time being subject to this security are depasturing, for the purpose of viewing the state and condition of the same; and that the grantor will upon receiving seven days previous notice in writing delivered to him personally or addressed to him through the ordinary course of post or otherwise at his last-known place of abode in the Colony, give, and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants, to view the same accordingly.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing, further encumber the stock for the time being subject to this security, or change the general quality, character, or description of the same or remove the

same or any part thereof from the said lands or premises, sell the same or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark, and mark with the brand, earmark, and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brands, earmarks, and marks herein specified.

And will not without the leave in writing of the grantee, brand, earmark, or mark, or permit to be branded, earmarked, or marked, any stock for the time being subject to this security with any brands, earmarks, or marks, other than the brands, earmarks, or marks herein specified.

And will at all times during the continuance of this security take, use, and adopt all due and proper means for keeping and maintaining all stock now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition : And will at all times during the continuance of this security pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock, and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in the said conduct and management : And will every year on demand by the grantee, render and deliver to him a return or account in writing setting forth the number, ages, and sexes of the stock for the time being subject to this security and the places where the same are depasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations, and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned : And that the grantor will, at his own cost and charges, do and execute all such deeds, matters, and things as may be necessary, or as the grantee may think proper, for the further, better, and more perfectly assigning and assuring to the grantee the stock, and increase of stock, and all and singular other the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisos, agreements, and declarations as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned : And will from time to time, and at all times during the continuance of this security, pay all and singular the fees and other outgoings and payments, and perform and observe all rules and regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable, or performable respectively : And

that in case the grantor fails or neglects to pay such fees and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that the grantor will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such payment as aforesaid, with interest for the same after the rate of eight pounds per centum per annum from the time or respective times when the same were advanced or paid: And that in the meantime, and until such sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal moneys secured by this instrument. That in case the grantee exercises any power of entry or taking possession vested in him hereunder, then he, or any person or persons appointed by him for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct, and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking, and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall, together with interest thereon after the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

Power to be Implied in Instruments over Crops.

11. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell the same in the Colony, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of the Colony, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in the Colony or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said crops, and all costs, mercantile, and other charges, and expenses incurred in and about the harvesting, sale, ship-

ment and carrying away of such crops, and the storage and freight thereof, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

Power to be Implied in Instrument over Wool.

12. If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the flock of sheep mentioned in this instrument, and the increase thereof, and all other sheep which if this instrument were an instrument by way of security over sheep would be included therein, shall be shorn either by the grantor, or by the grantee, at the option of the grantee, but in either case at the expense of the grantor, at the usual and proper season for so doing; and the wool of such sheep shall with all convenient speed be properly sorted and packed in good bales, marked with the proper brand of such wool, and shall be delivered by the grantor to the grantee or his order at the place of delivery herein mentioned (or, if no such place is mentioned in the instrument, at such place as the grantee directs); and the grantee may either sell the same in the Colony, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of the Colony, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said wool or by any sale or sales thereof, whether in the Colony or elsewhere, or by the act, neglect or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said wool, and all costs, mercantile, and other charges and expenses incurred in and about the shearing of the said sheep, and the packing, carrying away, sale and shipment of the said wool, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

FOURTH SCHEDULE.

MEANING OF ABBREVIATED EXPRESSIONS.

1. The words "upon demand" mean upon demand being made by notice in writing, signed by the person entitled to make the demand, or any agent or clerk or servant of such person, served upon the person upon whom the demand is to be made, either personally or by posting the same in a duly registered letter addressed to him at his usual or last-known place of abode in the Colony.

2. The words "further advances" mean such further sum or sums of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such sums as may become owing by the grantor to the grantee during the continuance of this security for goods supplied; for bills and notes discounted and paid, and for other loans, credits and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

3. The words "will, upon demand, pay the balance due upon the account current between them" mean that the grantor will, on demand, pay to the grantee the balance on the account current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances as defined by the Chattels Transfer Ordinance, 1930, and for interest, commission, and other lawful charges from the day of such demand being made till the actual payment thereof at the rate mentioned in this instrument without any deduction; and it is hereby declared and agreed that the said account-current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year (or, if no such days are mentioned in the instrument, then on the 31st day of March and the 30th day of September in each year), until the final balance of account is fully paid; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor to the grantee, notwithstanding that the current-account between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand as aforesaid, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

4. The words "will insure" mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature or kind capable of being insured against loss or damage by fire, such insurance to be effected in the name of the other party to this instrument and in some public insurance office to be approved of by him, and to be for the full amount herein specified (or, if no amount is specified then for the full insurable value of the said chattels); and will, at the request of the other party, hand over to and deposit with him the policy of every such insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under any such insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as the same extend, in making good such loss or damage (or, if the instrument is given by way of security, in discharging the moneys hereby secured, if such other party so elects):

Provided that, if default be made in the observance or performance of this covenant, such other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure such chattels, and may forthwith recover the costs and charges of such insurance

from the party liable to insure in like manner as if the same had been advanced by way of loan on the security of this instrument.

5. The words "will brand, earmark, and mark" mean that the party liable to brand, earmark, and mark, will keep all the stock subject to this security at all times while this instrument remains in force distinctly branded, earmarked and marked with the brands, earmarks and marks specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party hereto to enter upon any lands or premises where any stock subject to this security are and to take possession of the same, and brand, earmark and mark the same with the brands, earmarks, and marks specified in this instrument, with the right to use all branding, earmarking, marking, and other implements and plant requisite therefor, and all costs, charges, and expenses occasioned to him by so doing shall be recoverable from the party liable to brand, earmark, and mark as if the same had been advanced by way of loan as a further advance on the security of this instrument.

FIFTH SCHEDULE.

TRANSFER OF INSTRUMENT.

I, C.D., of [state residence and occupation of transferor], the grantee of the instrument registered in the office of the Registrar-General.....as No....., under the Chattels Transfer Ordinance, 1930, do in consideration of [state consideration], hereby transfer to X.Y., of [state residence and occupation of transferee] all my rights, title, estate and interest in and to the chattels comprised in the said instrument.

As witness my hand this.....day of.....19...
..... C.D.

Signed by the said C.D. in the presence of

..... E.F.
(Residence and occupation).

GOVERNMENT NOTICE No. 354.

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

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

A Bill relating to Bankruptcy.

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

PART I.

PRELIMINARY.

1. This Ordinance may be cited as "the Bankruptcy Short title. Ordinance, 1930."

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

5 "Affidavit" includes statutory declaration, affirmation and attestation on honour;

"Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

"Bailiff" means any person charged with the execution of any process;

"The court" means the court having jurisdiction in bankruptcy under this Ordinance;

15 "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Ordinance made provable in bankruptcy;

"Gazetted" means published in the Gazette;

"General rules" includes forms;

20 "Goods" includes all chattels personal;

"Local bank" means any bank in the Colony;

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

25 "Prescribed" means prescribed by general rules within the meaning of this Ordinance;

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

"Resolution" means ordinary resolution;

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

" Reciprocating court " means a court having jurisdiction in bankruptcy or insolvency in a reciprocating territory;

" Reciprocating territory " means any territory declared a reciprocating territory under section 147 of this Ordinance;

" Special resolution " means a resolution decided by a 5 majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

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

10

PART II.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Acts of bankruptcy.

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

15

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

(b) If in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his 20 property, or of any part thereof.

(c) If in the Colony or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other Ordinance be void as 25 a fraudulent preference if he were adjudged bankrupt.

(d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of the Colony, or being out of the Colony remains 30 out of the Colony, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.

(e) If execution against him has been levied by seizure of his goods in any civil proceeding in any court, 35 and the goods have been either sold or held by the bailiff for twenty-one days :

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such 40 summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days.

45

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

(g) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in the Colony, or, by leave of the court, elsewhere, a bankruptcy notice under this Ordinance, and he does not within seven days after service of the

50

5 notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained.

10 15 For the purposes of this paragraph and section 4 of this Ordinance, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.

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

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

- 25 (a) was personally present in the Colony; or
 (b) ordinarily resided or had a place of residence in the Colony; or
 (c) was carrying on business in the Colony, personally, or by means of an agent or manager; or
 (d) was a member of a firm or partnership which carried on business in the Colony,

30 and for the purposes of Part IX hereof includes a person against whom bankruptcy proceedings have been instituted in a reciprocating territory and who has property in this Colony.

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

- Provided that a bankruptcy notice—
- 45 (i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;
- (ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would

have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order.

Jurisdiction
to make
receiving
order.

Conditions on
which creditor
may petition.

Proceedings
and order on
creditor's
petition.

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

6. (1) A creditor shall not be entitled to present a 10 bankruptcy petition against a debtor unless—

- (a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to one 15 thousand shillings, and
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time, and
- (c) the act of bankruptcy on which the petition is grounded has occurred within three months before 20 the presentation of the petition, and
- (d) the debtor is domiciled in the Colony, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, or has carried on business, 25 in the Colony, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in the Colony by means of a partner or partners, or an agent or manager, 30

nor where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases 35 where he is prohibited from so doing by any law for the time being in force relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor. 45

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

(2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy and, if satisfied with the proof, may make a receiving order in pursuance of the petition. 50

(3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor 55

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

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

10 (5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to 15 the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

20 (6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in 25 which proceedings have been stayed as aforesaid.

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

8. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall 30 be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

Debtor's petition and order thereon.

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

35 9. (1) On the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any 40 remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

Effect of receiving order.

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

10. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation 50 of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to appoint interim receiver.

55 11. (1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the

Power to stay pending proceedings.

debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just. 5

(2) Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding. 10

Power to appoint special manager.

12. (1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver. 15

(2) The special manager shall give security and account 20 in such manner as the official receiver may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed. 25

Advertisement of receiving order.

13. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, the court by which the order is made, and the date of the petition, shall be gazetted, in the prescribed manner.

First meeting of creditors.

Proceedings Consequent on Order. 30

14. As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, 35 or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

Meetings to be governed by rules.

15. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the 40 first schedule to this Ordinance shall be observed.

Debtor's statement of affairs.

16. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. 45

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

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

- (ii) if the order is made on the petition of a creditor, within fourteen days from the date of the order; but the court may, in either case for special reasons, extend the time.
- 5 (3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.
- (4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public Examination of the Debtor.

17. (1) Where the court makes a receiving order, it shall, save as in this Ordinance provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.
- (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.
- 25 (3) The court may adjourn the examination from time to time.
- (4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.
- 30 (5) The official receiver shall take part in the examination of the debtor, and for the purpose may employ an advocate if he so desires.
- (6) If a trustee is appointed before the conclusion of the examination, he may take part therein.
- 35 (7) The court may put such questions to the debtor as it may think expedient.
- (8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Ordinance provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.
- 45 (9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.
- 50 (10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examina-

Public
examination
of debtor.

tion or directing that the debtor be examined on such terms, in such manner and at such place as to the court seems expedient.

Composition or Scheme of Arrangement.

Compositions
and schemes of
arrangement.

18. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed. 5

(2) In such case the official receiver shall hold a meeting 15 of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal, with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to 20 accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors. 20

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the 25 official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received 30 by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the court to 35 approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in 40 opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the 45 report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from the Colony.

(8) The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which 50 may be made by or on behalf of any creditor.

(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit 55 the general body of creditors, the court shall refuse to approve the proposal.

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

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

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

15 (13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor or provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him 20 as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

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

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

35 (16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee or by any 40 creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done, under or in pursuance of the composition or scheme.

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

50 (17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 27 and Part V of this Ordinance shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms, "bankruptcy," "bankrupt," and "order of adjudication" include respectively a composition or scheme of arrangement, 55 a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part III of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication" as in the last preceding sub-section. 5

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

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt. 10

Effect of composition or scheme.

19. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not 15 be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy.

20

Adjudication of bankruptcy where composition not accepted or approved.

20. (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting, or any adjournment thereof by ordinary resolution, resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not 25 approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor, or such further time as the court may allow, the court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his creditors, and 30 shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted in the prescribed manner, and the date of the order shall, for the 35 purposes of this Ordinance, be the date of the adjudication.

Appointment of trustee.

21. (1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the 40 property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty. 45

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

estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

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

5 (4) The official receiver may be appointed the trustee by the creditors and in such case there shall be no committee of inspection, but the official receiver may do with the permission of the court all things which may be done by a trustee with the permission of the committee of inspection.

10 (5) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal 15 of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the court, and thereupon the court shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

20 (6) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of 25 the person appointed by the court.

(7) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the 30 purpose of appointing a trustee.

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

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

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

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

50 (3) The committee of inspection shall meet at such times Meetings of as they shall from time to time appoint, and, failing such committee, appointment, at least once a month; and the trustee or

any member of the committee may also call a meeting of the committee as and when he thinks necessary.

Quorum.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. 5

Resignation of office.

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

Vacation of office.

(6) If a member of the committee becomes bankrupt or compounds or arranges with his creditors, or is absent from 10 five consecutive meetings of the committee, his office shall thereupon become vacant.

Removal.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the 15 meeting.

Filling a vacancy.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor, 20 or other person eligible as above, to fill the vacancy.

Continuing members may act.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is 25 for the time being less than five, the creditors may increase that number so that it do not exceed five.

If no committee court gives consent.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee 30 may be done or given by the court on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication.

23. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in 35 value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall 40 ensue as in the case of a composition or scheme accepted before adjudication.

If court approves.

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person 45 as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare.

Default, etc.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or

payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section all debts, provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

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

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

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

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

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

(a) If, after a bankruptcy notice has been issued under this Ordinance, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him.

Duties of debtor as to discovery and realisation of property.

To discover property.

To aid in realization.

Committal.

Arrest of debtor under certain circumstances.

After issue of bankruptcy notice.

After presentation of petition. (b) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy. 10

5

After service of petition. (c) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of one hundred shillings, without the leave of the official receiver or trustee. 15

15

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

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest is served with such bankruptcy notice. 20

20

Payment after arrest may be fraudulent preference. (2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences. 25

Re-direction of debtor's letters. 26. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding six months, as the court thinks fit, post letters, telegrams, cablegrams, and other postal articles, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed sent or delivered by the Postmaster General, or the officers acting under him, or by any other person in charge of the transmission and receipt of telegrams and cablegrams, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly. 30

30

27. (1) The court may on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his

40

possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. 45

45

In case of refusal. (2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such documents, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination. 50

50

Examination on oath. (3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property. 55

55

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

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

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

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

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

Provided that where the bankrupt has committed any offence under this Ordinance or any other offence connected with his bankruptcy, whether in the Colony or any reciprocating territory, or where in any case any of the facts hereinafter mentioned are proved to have occurred either in the Colony or any reciprocating territory the court shall either—

- (i) refuse the discharge; or
- (ii) suspend the discharge for such period as the Court thinks proper; or
- (iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or
- (iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any

balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts: 5

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit. 10 15

(3) The facts hereinbefore referred to are—

- (a) that the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible; 20
- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy; 25
- (c) that the bankrupt has continued to trade after knowing himself to be insolvent; 30
- (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of 35 being able to pay it;
- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
- (f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; 40
- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; 45
- (h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action; 50
- (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

- (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities;
- 5 (k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;
- (l) that the bankrupt has been guilty of any fraud or 10 fraudulent breach of trust.

(4) With a view to removing any legal disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without 15 any misconduct on his part, the court may, if it thinks fit, grant such certificate, but a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound 20 on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver 25 or the trustee shall be prima facie evidence of the amount of such liabilities.

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

(7) Notice of the appointment by the court of the day 30 for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court 35 may put such questions to the debtor and receive such evidence as it may think fit.

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

(9) A discharged bankrupt shall, notwithstanding his 40 discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of court; and the court may also, if 45 it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

- 29.** In either of the following cases, that is to say—
- 50 (i) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- 55 (ii) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money

Certificate that
bankruptcy
caused by
misfortune.

When are
assets 10s. in
the pound.

Report of
official
receiver.

Notice of
application
for discharge.

Duties of
discharged
bankrupt

Fraudulent
settlements

or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife); if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve 10 a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

5

**Effect of order
of discharge.**

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

(a) from any debt on a recognizance nor from any debt 15

with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against any law relating to any branch of the general revenue of the Colony, or at the suit of the bailiff or other public officer on a bail bond 20 entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Treasurer of the Colony certify in writing his consent to the bankrupt being discharged there- 25 from; or

(b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which 30 he was a party; or

(c) from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and 35 under such conditions as the court expressly orders in respect of such liability.

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

(3) An order of discharge shall be conclusive evidence of 40 the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before 45 his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the 50 nature of a surety for him.

**Power for
court to annul
adjudication
in certain
cases.**

31. (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any 55 person interested, by order annul the adjudication.

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

Effect of annulment.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted.

Advertisement of order.

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

Meaning of "payment in full."

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

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

Description of debts provable in bankruptcy.

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

Creditor with notice of act of bankruptcy.

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

What may be proved.

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

Estimate of uncertain debts.

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

Appeal from estimate.

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

If not capable of being fairly estimated.

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

Estimation before court.

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

Meaning of "liability."

(a) any compensation for work or labour done;

- (b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor; 5
- (c) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed 10 or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion. 15

**Mutual credit
and set-off.**

33. Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Ordinance and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what 20 is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be 25 entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him. 30

**Rules as to
proof of debts.**

34. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second schedule to this Ordinance, the rules in that schedule shall be observed. 35

**Priority of
debts.**

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

**One year's
rates and
taxes.**

(a) all Crown taxes and local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment; 40

Crown rents.

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

**Clerk or
servant's
wages.**

(c) all wages or salary, whether or not earned wholly or in part by way of commission, of any clerk or servant in respect of service rendered to the bankrupt during four months before the date of the receiving order, not exceeding two thousand shillings; 45

**Labourers'
wages.**

(d) all wages of any labourer or workman not exceeding one thousand shillings, whether payable for time or for piecework in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum 50

- at the end of the period of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order;
- (e) all sums of money deposited by natives with the bankrupt for safe custody, whether the bankrupt held himself out as a banker or not. Deposits by natives.
- (2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. They rank equally *inter se.*
- (3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith as far as the property of the debtor is sufficient to meet them. To be paid forthwith.
- (4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. First charge on distress.
- Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.
- (5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order. Insolvent estates of deceased persons.
- (6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. Application of joint and separate estates in partnership bankruptcies.
- (7) Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*. All other debts *pari passu.*
- (8) If there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date of the receiving order at the rate of six pounds per centum per annum on all debts proved in the bankruptcy. Surplus.
- (9) Nothing in this section shall prejudice the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor. Savings.
- 36.** (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt; the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bank. Preferential claim in case of apprenticeship.

rupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf; and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case. 5

Alternative power of trustee.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding 10 provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Landlord's power of distress in case of bankruptcy.

37. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon 15 the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and 20 shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available. 25

Postponement of husband's and wife's claims.

38. (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business, until all claims of the other creditors of his 30 wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of 35 any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money 40 or money's worth have been satisfied.

Property available for Payment of Debts.

Relation back to trustee's title.

39. (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor. 45 50 55

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

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

- 15 (1) Property held by the bankrupt on trust for any other person;
- 20 (2) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding three hundred shillings in the whole, except that in any case the court, having regard to the bankrupt's station in life, may in its discretion order that this allowance be increased to any value not exceeding eight hundred shillings in the whole:

25 But it shall comprise the following particulars :—

- 30 (a) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and
- 35 (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and
- 40 (c) all goods, being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

41. (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

55 (2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the

Description
of bankrupt's
property
divisible
amongst
creditors.

Provisions
as to second
bankruptcy.

subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 49 of this Ordinance) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be. 5

(3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order of the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be. 20

Effect of Bankruptcy on Antecedent and Other Transactions.

Restriction of rights of creditor under execution or attachment.

42. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act 25 of bankruptcy by the debtor. 30

(2) For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, 35 in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good 40 faith under a sale by the bailiff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Duties of bailiff as to goods taken in execution.

43. (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the 45 goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge. 50

(2) Where, under an execution in respect of a judgment for a sum exceeding four hundred shillings, the goods of a debtor are sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds 55.

of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor
 5 thereon or on any other petition of which the bailiff has notice, the bailiff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

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

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

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

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her
 45 marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested
 50 or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee
 55 in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy, under or in respect of the covenant or contract, but any such claim to dividend shall

Avoidance
of certain
settlements.

Covenants
in marriage
settlements
to settle after
acquired
property.

be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

Transfers and payments under such covenants.

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

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

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

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

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

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

30

Avoidance of general assignments of book debts unless registered.

45. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the law with respect to the registration of bills of sale shall apply accordingly:

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

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

45

50

Avoidance of preference in certain cases.

46. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person

55

in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged 5 bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person 10 making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(3) Where a receiving order is made against a judgment debtor in pursuance of section 99 of this Ordinance, this 15 section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

47. Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance 20 of certain settlements, assignments and preferences, nothing in this Ordinance shall invalidate, in the case of a bankruptcy—

- (a) any payment by the bankrupt to any of his creditors;
- (b) any payment or delivery to the bankrupt;
- 25 (c) any conveyance or assignment by the bankrupt for valuable consideration;
- (d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied 30 with, namely:—

- (i) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and
- 35 (ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

48. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person 45 claiming by assignment from him, shall, notwithstanding anything in this Ordinance, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation 50 of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise bona fide.

Receiving
order in lieu
of committal.

Protection of
bona fide
transactions
without notice.

Validity of
certain
payments to
bankrupt
and assignee.

Dealings with
undischarged
bankrupt.

49. (1) All transactions by a bankrupt with any person dealing with him bona fide and for value, in respect of property, whether movable or immovable, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee be valid against the trustee, and any estate or interest in such property which by virtue of this Ordinance is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. 5

For the purposes of this sub-section, the receipt of any 10 money, security or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the 15 bankrupt with such banker dealing with him for value.

Duties of
bankers.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform 20 the trustee in the bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month 25 from the date of giving the information no instructions have been received from the trustee or the official receiver.

Realization of Property.

Possession of
property by
trustee.

50. (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, 30 and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may, 35 on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, 40 the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to 45 have been duly assigned to the trustee.

(5) Subject to the provisions of this Ordinance with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all 50 money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

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

52. (1) Where a bankrupt is an officer of the army, navy or air force, or an officer or clerk or otherwise employed or engaged in the civil service of the Colony, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the head of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section, the court shall communicate with the head of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the head of the department to the terms of such payment.

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

(3) Nothing in this section shall take away or abridge any power of the Governor to dismiss a bankrupt.

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

45 54. (1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Ordinance, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

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

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

(4) The certificate of appointment of a trustee shall for all purposes of any law in force in any part of the Colony requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded 5 accordingly.

**Disclaimer
of onerous
property.**

55. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or 10 not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, 15 but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property :

Provided that, where any such property has not come to 20 the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

**Effect of
disclaimer.**

(2) The disclaimer shall operate to determine, as from 25 the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall 30 not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

**Disclaimer
of leases.**

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which 35 may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the 40 tenancy, as the court thinks just.

**Abandonment
of right of
disclaimer.**

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide 45 whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, 50 after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

**Rescission of
contracts.**

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject 55 to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of

the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

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

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

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
 25

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

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

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

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

Disclaimer
by official
receiver as
interim
trustee.

Proof for
damages.

Powers of trustee to deal with property.

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

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. 5

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the 10 money from all responsibility in respect of the application thereof.

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

(4) Exercise any powers, the capacity to exercise which 15 is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Ordinance.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner 20 as the bankrupt might have dealt with it.

Powers exercisable by trustee with permission of inspection.

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

(1) Carry on the business of the bankrupt, so far as may 25 be necessary for the beneficial winding up of the same.

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

(3) Employ an advocate or other agent to take any proceedings or do any business which may be sanctioned by 30 the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit. 35

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

(6) Refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, 40 certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on. 45

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

(8) Make such compromise or other arrangement as may 50 be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person.

- (9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- 5 The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.
- 10 **58.** The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct. Power to allow bankrupt to manage property.
- 15 **59.** The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court. Allowance to bankrupt for maintenance or service.
- 20 **60.** Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so. Right of trustee to inspect goods pawned, etc.
- 25 **61.** Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay. Limitation of trustee's powers in relation to copyright.
- 30 **62.** Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or others effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such Protection of official receiver and trustee from personal liability in certain cases.

property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

Distribution of Property.

5

Declaration
and distri-
bution of
dividends.

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

First
dividend.

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

Subsequent
dividends.

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

Notice of
intention to
declare.

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

Notice of
dividend.

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

Joint and
separate
dividends.

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

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

Provisions
for creditors
residing at a
distance, etc.

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

50

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

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

- 66.** Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed 5 to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.
- 10 **67.** (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a 15 creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.
- (2) In dealing with the proof of the debt, the following rules shall be observed :—
- 20 (a) Any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalization of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one.
- 25 (b) Any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realization of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.
- 30 (c) Where the debt due is secured and the security is realized after the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.
- 35 (d) Where the debt due is secured and the security is realized before the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.
- 40 (e) Where the debt due is secured and the security is realized before the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.
- 45 (f) Where the debt due is secured and the security is realized before the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

- 68.** (1) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he 50 shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

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

Interest on debts.

Rules to discover relation between principal and interest.

Final dividend.

(2) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons. 5

No action for dividend.

69. No action for dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application. 10

Right of bankrupt to surplus.

70. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy 15 petition.

Appointment of official receiver and deputy official receivers.

71. There shall be an official receiver of debtors' estates for the Colony and as many deputy official receivers as may be required from time to time who shall have jurisdiction in such areas as may be specified. The official receiver and the deputy official receivers shall be appointed, be removable by and be under the general authority and directions of the Governor and they shall also be officers of the court. A 25 deputy official receiver shall have the same powers, rights and duties within the area for which he is appointed as an official receiver under this Ordinance.

Status of official receiver.

72. (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the 30 administration of his estate.

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

(3) All provisions in this or any other Ordinance, 35 referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Ordinance otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities 40 for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Ordinance.

Duties of official receiver as regards the debtor's conduct.

73. As regards the debtor, it shall be the duty of the 45 official receiver—

(a) to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Ordinance or any 50 enactment repealed by this Ordinance, or which would justify the court in refusing, suspending or qualifying an order for his discharge;

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

- (c) to take such part as he may deem fit in the public examination of the debtor;
- (d) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Attorney General may direct.

74. (1) As regards the estate of a debtor, it shall be the duty of the official receiver—

- (a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
- (b) to authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors it appears necessary so to do;
- (c) to summon and preside at the first meeting of creditors;
- (d) to issue forms of proxy for use at the meetings of creditors;
- (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) to advertise the receiving order, the date of the creditors' first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) to act as trustee during any vacancy in the office of trustee.

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

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

PART V.

TRUSTEES IN BANKRUPTCY.

Official Name.

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

Appointment.

Power to appoint joint or successive trustees.

76. (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term "trustee," and shall be joint tenants of the property of the bankrupt. 5

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the court. 10

Proceedings in case of vacancy in office of trustee.

77. (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment. 15

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any 20 such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the court, and the court may appoint a trustee; but in such case the 25 creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee. 30

Control over Trustee.

Discretionary powers of trustee and control thereof.

78. (1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution 35 of the creditors at any general meeting or by the committee of inspection, and any direction so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection. 40

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days : 45

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct. 50

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy. 55

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

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

10 **80.** (1) The official receiver shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by ordinance, rules, or otherwise, with respect to the performance of his duties, or in the 15 event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as may be deemed expedient.

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

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

Remuneration and Costs.

30 **81.** (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized by the trustee, after deducting any sums paid to secured creditors out of 35 the proceeds of their securities, and the other part on the amount distributed in dividend.

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

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

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

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

Appeal to
court against
trustee.

Control of
official
receiver over
trustees.

Remuneration
of trustee.

or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any advocate, or other person that may be employed about a bankruptcy.

**Allowance
and taxation
of costs.**

82. (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Ordinance or rules thereunder to be performed by himself. 5

**Advocate
trustee.**

(2) Where the trustee is an advocate, he may contract that the remuneration for his services as trustee shall include 10 all professional services.

Taxation.

(3) All bills and charges of advocates, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the 15 trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The 20 sanction must be obtained before the employment, except in case of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

**Delivery of bill
for taxation.**

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before 25 declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after the receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any 30 claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

**Trustee to
furnish list of
creditors.**

83. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to 35 him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of fifty cents per folio of one hundred words, together with the cost of the postage thereof.

**Trustee to
furnish
statement of
accounts.**

84. It shall be lawful for any creditor, with the 40 concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon the receipt of such notice, furnish and transmit such 45 statement of the accounts :

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be 50 repaid to him out of the estate if the creditors or the court so direct.

**Books to be
kept by
trustee.**

85. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such

other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of court, personally or by his agent, inspect any such books.

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

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

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

Trustee not to pay into private account.

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

Payment of money into the prescribed bank.

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

30 Provided that—

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

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

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

(4) Subject to any general rules relating to small bankruptcies under section 116 of this Ordinance, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account. 5

(5) If a trustee at any time retains for more than ten days a sum exceeding one thousand shillings, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the court, and shall be liable to 15 pay any expenses occasioned by reason of his default.

**Investment
of surplus
funds.**

89. (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' 20 estates, the official receiver may place the same or any part thereof on fixed deposit with the prescribed bank.

(2) Whenever any money so placed on deposit is, in the opinion of the official receiver, required to answer any demands in respect of bankrupts' estates, the official receiver 25 shall thereupon withdraw such money from fixed deposit and repay the same to the credit of the cash balance of the Bankruptcy Estates Account.

(3) All interest accruing from any money so placed on deposit shall be paid by the official receiver to the credit of 30 a separate account entitled the Bankruptcy Contingency Fund at the prescribed bank. Where it appears that it is in the public interest to do so and that other funds are not available or properly chargeable the court may on the application of the official receiver authorise him to employ money in the 35 Bankruptcy Contingency Fund to defray the cost in whole or in part of any of the following :—

- (a) The prosecution of any debtor for any bankruptcy offences alleged to have been committed by him.
- (b) The institution of proceedings and the payment of 40 expenses of witnesses (if any) for the discovery or recovery of property belonging to any debtor.
- (c) The institution of proceedings to set aside an alleged fraudulent preference.
- (d) The employment of counsel in matters connected with 45 an estate which by reason of their difficulty or other good cause cannot be dealt with by the official receiver himself.
- (e) The employment of interpreters in cases where the court is unable to provide an interpreter. 50
- (f) The payment of expenses involved in arresting a debtor and bringing him before the court.
- (g) Any other expenditure which the court may deem fit.

The court may in its discretion order that the fund be reimbursed in whole or in part in the event of any money being recovered as a result of the expenditure so authorised.

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

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

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

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

Vacation of Office by Trustee.

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

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

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

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

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

Audit of
trustee's
accounts.

Release of
trustee.

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

Office of trustee vacated by insolvency.

92. If a receiving order is made against a trustee, he 5 shall thereby vacate his office of trustee.

Removal of trustee.

93. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, 10 appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the court is of opinion—

(a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under 15 this Ordinance; or

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

(c) that he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or 20

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

or where, in any other matter he has been removed from 25 office on the ground of misconduct, the court may remove him from his office.

PART VI.

CONSTITUTION, PROCEDURE AND POWERS OF COURT.

Jurisdiction.

30

Jurisdiction in bankruptcy.

94. The Court having jurisdiction in bankruptcy shall be the Supreme Court; provided that the Chief Justice may by order delegate all or any part of the jurisdiction of the Supreme Court in bankruptcy to any subordinate court, either generally or for the purpose of any particular case or class of 35 cases.

Judge may exercise his powers in chambers.

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

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

96. Where any moneys or funds have been received by 40 the official receiver under this Ordinance and the court makes an order declaring that any person is entitled to such moneys or funds, the official receiver shall make payment accordingly to that person.

General powers of the court.

97. (1) Subject to the provisions of this Ordinance, the 45 court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, which may arise in any case of bankruptcy coming within its cognizance, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice 50 or making a complete distribution of property in any such case.

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

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

- 15 (a) being appointed or acting as a justice of the peace;
 or
 (b) being elected to, or holding or exercising the office
 of mayor or municipal councillor, or a member of a
 township authority, school committee or road board.

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

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

- 25 (a) the adjudication of bankruptcy against him is annulled; or

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

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

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

Judgment Debtors.

40 **99.** Where application is made by a judgment creditor to the court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Ordinance, except **45** Part VIII thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Power to make receiving order in lieu of committal order.

50 *Appeals.*

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

Appeals in bankruptcy.

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

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

Procedure.

5

Discretionary power of court.

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

Adjournment.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose. 10

Amendment.

(3) The court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose. 15

Extension of time.

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

Evidence.

(5) Subject to general rules, the court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or, out of the Colony, by commission. 20

Consolidation of petitions.

102. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, 25 the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change carriage of proceedings.

103. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be 30 indebted in the amount required by this Ordinance in the case of the petitioning creditor.

Continuance of proceedings on death of debtor.

104. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued 35 as if he were alive.

Power to stay proceedings.

105. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think 40 just.

Power to present petition against one partner.

106. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others. 45

Power to dismiss petition against some respondents only.

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

Property of partners to be vested in same trustee.

108. Where a receiving order has been made on a bank- 50 ruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the

same partnership shall be filed with the first-mentioned petition, and, unless the court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned 5 member of the partnership, and the court may give such directions for consolidating the proceedings as it thinks just.

109. Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and 10 of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks 15 fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

110. Where a bankrupt is a contractor in respect of any 20 contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

111. Any two or more persons, being partners, or any 25 person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such 30 person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

112. The court of the Colony and all the officers thereof, shall, in all matters of bankruptcy, act in aid of and be auxiliary to every British court elsewhere having jurisdiction in bankruptcy or insolvency, and an order of the 35 court seeking aid, with a request to this court shall be deemed sufficient to enable this court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or this court could exercise in regard to similar matters within their respective jurisdiction, 40 save that to enable the official receiver of the Colony to act as the agent of an officer of a reciprocating court or to enable an officer of this court to seek the aid of an official receiver of a reciprocating court in the manner provided in Part IX of this Ordinance it shall not be necessary for this court or 45 any reciprocating court to make any order or send any request under this section.

113. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and, if the gaoler of any prison 50 refuses to receive any prisoner so committed, he shall on conviction be liable for every such refusal to a fine not exceeding two thousand shillings.

PART VII.

SUPPLEMENTAL PROVISIONS.

Application of Ordinance.

Married women.

114. (1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were feme-sole. 5

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid. 10

Exclusion of companies.

Cap. 93.

115. A receiving order shall not be made against any corporation or against any association or company registered under the Companies Ordinance or any enactment repealed by that Ordinance, and any legislation in substitution therefor. 15

Application of Ordinance in case of small estates.

116. Where a petition is presented by or against a debtor, if the court is satisfied, by affidavit or otherwise, or the official receiver reports to the court, that the property of the debtor is not likely to exceed in value six thousand shillings, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications :— 20

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

(2) There shall be no committee of inspection, but the official receiver may do, with the permission of the court, all things which may be done by the trustee with the permission of the committee of inspection. 30

(3) Such other modifications may be made in the provisions of this Ordinance as may be prescribed by general rules with the view of saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the debtor : 35

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made. 40

Administration in bankruptcy of estate of person dying insolvent.

The order.

117. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy. 45

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the 50

administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

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

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

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

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

(5) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

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

Effect of notice to legal personal representative of the presentation of the petition.

(7) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration. 5

Legal personal representative may present petition.

(8) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor, and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under sub-section (10) of this section. 10 15

"Creditor."

(9) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided. 20

Rules.

(10) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy. 25

General Rules.

25

Power to make general rules. No. 3 of 1924.

118. The Rules Committee under the Civil Procedure Ordinance, 1924, with the addition of the official receiver, with the concurrence of the Governor in Council, may make general rules for carrying into effect the objects of this Ordinance. 30

Fees and Salaries, etc.

Fees, etc.

119. The Chief Justice, with the concurrence of the Governor in Council, may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance. 35

Salaries and remuneration.

120. The Chief Justice, with the concurrence of the Governor in Council, shall direct whether any and what remuneration is to be allowed to any person (other than the official receiver or his staff) performing any duties under this Ordinance, and may vary, increase, or diminish such 40 remuneration, as he may think fit.

Evidence.

Gazette to be evidence.

121. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Ordinance shall be evidence of the facts stated in the notice. 45

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date. 50

Evidence of proceedings at meetings of creditors.

122. (1) A minute of proceedings at a meeting of creditors under this Ordinance, signed at the same or the next ensuing meeting, by a person describing himself as,

or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of 5 creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

123. Any petition or copy of a petition in bankruptcy, 10 any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance, shall, if it appears to be sealed with the seal of 15 the court or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

124. Subject to general rules, any affidavit to be used 20 in the court may be sworn before any person authorised to administer oaths in the court, or before a magistrate or a justice of the peace for the district where it is sworn, or in the case of a person residing out of the Colony, before any person qualified to administer oaths in the country where he resides (he being certified to be qualified as aforesaid by 25 a British minister or British consul, or by a notary public).

125. In the case of the death of the debtor or his wife, 30 or of a witness whose evidence has been received by the court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposited to.

126. A certificate of the court that a person has been appointed trustee under this Ordinance shall be conclusive 35 evidence of his appointment.

Miscellaneous.

127. (1) Where by this Ordinance any limited time from 40 or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken 45 at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the offices of the court are wholly closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where by this Ordinance the time limited for doing any act or thing is less than six days, a Sunday, public holiday and any other day on which the offices of the court are wholly closed shall be excluded in computing such time.

(3) Where by this Ordinance any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified. 5

Service of notices.

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

Formal defect not to invalidate proceedings.

129. (1) No proceeding in bankruptcy shall be in- 10 validated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court. 15

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

Exemption of deeds, etc., from stamp duty.

130. Every deed, conveyance, assignment or other 20 assurance relating solely to freehold or leasehold property, or to any mortgage charge or other incumbrance on, or any estate, right or interest in, any movable or immovable property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other 25 assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under 30 any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Ordinance.

For the purposes of this section "bankruptcy" shall include any proceeding under this Ordinance whether before or after adjudication and "bankrupt" shall include any 35 debtor proceeded against under this Ordinance.

Acting of corporations, partners, etc.

131. For all or any of the purposes of this Ordinance, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his guardian 40 or the appointed manager of his estate.

Certain provisions to bind Crown.

132. Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, 45 shall bind the Crown.

Unclaimed Funds or Dividends.

Unclaimed and undistributed dividends or funds under this Ordinance.

No. 1 of 1926.

133. (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Ordinance, or the Ordinance repealed by this Ordinance, has under his control 50 any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the **property**

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

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under the Deeds of Arrangement Ordinance, 1930, or under any legislation in substitution therefor, have remained or remain unclaimed or undistributed for six months after they become claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay them to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish such trustee or other person with a certificate or receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

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

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

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

(4) Where any unclaimed dividends or undistributed money paid into the Bankruptcy Estates Account in pursuance of this section shall have remained in that account for a period of two years, the official receiver shall transfer such money to the credit of the Bankruptcy Contingency Fund.

(5) Any person claiming to be entitled to any money paid in to the Bankruptcy Estates Account or the Bankruptcy Contingency Fund pursuant to this section, may apply to the official receiver for payment to him of the same, and the official receiver, if satisfied that the person claiming is so entitled, shall make an order for the payment to such person of the sum due. If the money claimed has been paid to the credit of the Bankruptcy Contingency Fund and the said fund is insufficient to meet the sum required to be paid, the deficiency shall be met by the Treasurer out of the Public Revenue.

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

PART VIII.

BANKRUPTCY OFFENCES.

Fraudulent debtors.

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

5

Non-discovery of property.

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

10

Non-delivery of property.

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

15

Non-delivery of books, etc.

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

20

Concealment of property.

(d) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property to the value of two hundred shillings or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud.

25

Removal of property.

(e) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of two hundred shillings or upwards.

30

Omission in statement of affairs.

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

Not informing trustee of false claim.

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

35

Preventing production of books, etc.

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

40

Destruction, etc., of books, etc.

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

45

False entries in books, etc.

(j) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the

50

55

making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

- 5 (k) If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs. Parting with, alteration, etc., of documents.
- 10 (l) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses. Accounting for property by fictitious losses, etc.
- 15 (m) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same. Obtaining property on credit by fraud.
- 20 (n) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud. Obtaining property on credit on pretence of carrying on business.
- 25 (o) If, within twelve months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 99 of this Ordinance, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud. Pawning property obtained on credit.
- 30 (p) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy. Obtaining consent of creditors by fraud.
- 35 (q) If he makes default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court is authorised to make an order.

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

(2) Any person guilty of an offence in the cases mentioned respectively in paragraphs (m), (n) and (o) of subsection (1) hereof shall be liable on conviction to imprisonment for any term not exceeding five years.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of sub-section (1) hereof, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a felony under section 295 of the Penal Code. 5 10

**Undischarged
bankrupt
obtaining
credit.**

135. Where a person who has been adjudged bankrupt or insolvent in the Colony or any reciprocating territory and has not obtained his discharge— 15

- (a) either alone or jointly with any other person obtains credit to the extent of one hundred shillings or upwards from any person without informing that person that he is an undischarged bankrupt; or 20
 - (b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under 25 which he was adjudicated bankrupt;
- he shall be guilty of an offence.

**Frauds by
bankrupts,
etc.**

136. (1) If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made— 30

- (a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud; or
 - (b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer 35 of, or charge on, his property; or
 - (c) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained 40 against him;
- he shall be guilty of an offence.

(2) For the purposes of paragraph (b) of this section it is hereby declared that if any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has 45 been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property he shall be deemed to have made a transfer of or charge on his property.

**Bankrupt
guilty of
gambling, etc.**

137. (1) Any person who has been adjudged bankrupt, 50 or in respect of whose estate a receiving order has been made, shall be guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date

of the receiving order any debts contracted in the course and for the purposes of such trade or business :—

- 5 (a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business ; or
- 10 (b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid ; or
- 15 (c) on being required by the official receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred :

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when 25 he entered into the speculations shall be taken into consideration.

- (2) A prosecution shall not be instituted against any person under this section except by order of the court.
- 30 (3) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of a receiving order.

138. (1) As from the expiration of a period of two years after the commencement of this Ordinance, any person who 35 has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of an offence, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept 40 proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept :

Bankrupt failing to keep proper accounts.

45 Provided that a person who has not kept or has not preserved books of account shall not be convicted of an offence under this section—

- 50 (a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or insolvent or made a composition or arrangement with his creditors in the Colony or any reciprocating territory five thousand shillings, or in any other case one thousand shillings ; or
- 55 (b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

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

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stock takings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified. 5 10

(4) Sub-sections (i), (j) and (k) of section 134 of this Ordinance shall, in their application to such books as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time mentioned in those sub-sections as the time prior to the presentation within which the acts or omissions specified in 20 those sub-sections constitute an offence. 15

(5) Where a receiving order is made against a person under section 99 of this Ordinance, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving 25 order.

Bankrupt absconding with property.

139. If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits the 30 Colony and takes with him, or attempts or makes preparation to quit the Colony and take with him, any part of his property to the amount of four hundred shillings or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty 35 of an offence.

False claim, etc.

140. If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any 40 material particular, he shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for a term not exceeding one year.

Order by court for prosecution on report of trustee.

141. Where an official receiver or trustee in a bankruptcy reports to the court that in his opinion a debtor who has 45 been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Ordinance, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted, and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence. 50

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

Criminal liability after discharge or composition.

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

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

(2) Proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof, 15 either by the official receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

144. In a charge for an offence under this Ordinance, 20 it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or 25 document of, the court acting under this Ordinance.

145. Where the court orders the prosecution of any person for any offence under this Ordinance or for any offence arising out of or connected with any bankruptcy proceedings, 30 it shall be the duty of the Attorney General to institute and carry on the prosecution :

Provided that, where the order of the court is made on the application of the official receiver and based on his report, the official receiver may institute the prosecution and carry on the proceedings, if or so long as those proceedings are 35 conducted before a subordinate court, unless in the course thereof circumstances arise which render it desirable that the remainder of the proceedings should be carried on by the Attorney General.

146. A statement or admission made by any person 40 in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence relating to frauds by agents, bankers, or factors.

Evidence as to frauds by agents.

45 PART IX.

PROVISIONS FOR RECIPROCITY WITH OTHER TERRITORIES.

147. Where the Governor is satisfied that the legislature of any territory, the court of which having jurisdiction in bankruptcy is subordinate to the Court of Appeal for Eastern 50 Africa, has enacted provisions for reciprocity in bankruptcy which in that territory have the like effect as the provisions contained in this Part of this Ordinance, he may by order declare such territory to be a reciprocating territory, and the court thereof having jurisdiction in bankruptcy, a reciprocating

Declaration of reciprocating territories and courts.

court for the purposes of this Ordinance, and as from the date of publication of such order in the Gazette the provisions of this Part of this Ordinance shall apply to all bankruptcy proceedings subsequently instituted in the declared territory against a debtor having property in this Colony.

5

**Local effect
of receiving
order, etc.,
made by
reciprocating
court against
debtor having
property in
the Colony.**

148. Where a receiving order or order of adjudication or any appointment of a special manager or interim receiver has been made in any reciprocating territory in bankruptcy proceedings against a debtor having property in the Colony, such order or appointment shall, subject to the other provisions 10 of this Part of this Ordinance, have the like effect as if it had been made in bankruptcy proceedings against the debtor in the Colony, and the debtor and his creditors shall be deemed to be in the same position and have the same rights and privileges, and be subject to the same disqualifications, 15 restrictions, obligations and liabilities in every respect as if such order or appointment had been made under this Ordinance.

**Vesting of
bankrupt's
local property
in trustee
appointed in
reciprocating
territory.**

149. Where an order of adjudication is made by a reciprocating court, the property of the bankrupt situated in 20 the Colony shall, by virtue of such order, vest in the person from time to time discharging the office of trustee of the property of the bankrupt in the reciprocating territory, in the same manner as if the order of adjudication and the 25 appointment of trustee had been made in the Colony, and the superintendence of such trustee shall continue to be exercised by the committee of inspection appointed in the reciprocating territory or if there be no such committee, by the reciprocating court.

**Local powers
of official
receiver, etc.,
appointed in
a reciprocating
territory.**

150. The official receiver, interim receiver, special 30 manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in the Colony shall, subject to the control of the court by which he is appointed, be solely responsible for conducting those proceedings, and managing the affairs of the debtor or 35 bankrupt within the Colony and for such purposes shall, each in his respective capacity, have the same powers, rights, duties, obligations and liabilities as if he had derived his authority under this Ordinance; and in any such proceedings where by this Ordinance a debtor, creditor or other person 40 interested is required to do any act at the direction of an official receiver, interim receiver, special manager or trustee, or is permitted by this Ordinance to move in any matter in connection with such proceedings, every such debtor, creditor or person interested shall do such act at the direction of, 45 and in all such matters treat and negotiate with or proceed against the official receiver, interim receiver, special manager or trustee as the case may be of the reciprocating territory, except in so far as any such official may have delegated his authority to the official receiver of the Colony as his agent 50 in the manner hereinafter provided.

**Local official
receiver to
act as agent
of official
receiver, etc.,
of recipro-
cating
territory.**

151. Every official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in the Colony may require the official receiver of the Colony 55 to act as his agent either in regard to any specific matter, or generally to take all such steps as may be lawful under this Ordinance for the discovery, seizure, protection, disclaimer or

realization of any property of the bankrupt situated within the Colony, and in such event it shall be the duty of the official receiver of the Colony to act accordingly.

152. (1) Every request to act as agent as aforesaid shall be made in the manner prescribed under this Ordinance, and shall be published as a notice in the Gazette, and upon such publication and without further formality or authority the official receiver shall, as regards the debtor or bankrupt and his property and creditors situated in the Colony and for the purposes for which he is authorised, have the same rights, powers and duties as are conferred under the provisions of this Ordinance upon an official receiver, interim receiver, special manager or trustee as the case may be. Provided that nothing herein contained shall be taken to confer on the official receiver any interest or title in any such property otherwise than as an agent as aforesaid.

(2) On the receipt of the prescribed request the official receiver shall file with the Registrar of the Supreme Court the original or a properly authenticated copy of the request, and upon such filing the court shall take judicial notice of the appointment as agent under the provisions of this Part of this Ordinance.

(3) Notwithstanding the provisions of sub-section (1) hereof, the court may, in any case in which it is made to appear to the court that immediate action is desirable, give the official receiver leave to commence discharging his duties as agent as aforesaid in any manner applicable to the circumstances, before the publication of the prescribed request, if upon the receipt of telegraphic or other information the court is satisfied that—

- (a) bankruptcy proceedings have been instituted in a reciprocating territory against a debtor having property in the Colony; and
- (b) the prescribed request for the official receiver to act has been signed and despatched; and further
- (c) that the official receiver has been indemnified against all costs, charges and expenses to be incurred by him.

Any provisional authority conferred on an official receiver by the court under this sub-section may be revoked, unless within such time as may in the circumstances seem reasonable, the prescribed request is filed in pursuance of sub-section (2) hereof.

(4) Unless the contrary intention appears, every request to act as agent sent to the official receiver of the Colony shall be deemed to permit him to delegate at his discretion the powers and duties vested in him as such agent to any deputy official receiver appointed in pursuance of this Ordinance.

153. It shall be the duty of the official receiver of the Colony to remit the proceeds of the realization of the property of the bankrupt and all other money of the estate coming into his hands as such agent as aforesaid, to the person for whom he is acting, after deducting such expenses as may have been properly incurred by him; and the distribution among the creditors of all such money shall be carried out in accordance with the law of the reciprocating territory in which the adjudication order was made.

Transmission
of proofs of
local debts.

154. Where a receiving order or an order of adjudication has been made in a reciprocating territory and the official receiver of the Colony is acting as agent in the manner hereinbefore provided, proofs of debts contracted by the debtor in the Colony may be filed with the local official receiver in the form prescribed by the law of such reciprocating territory, and in every such case it shall be his duty to receive, deal with and forward in the manner prescribed by the rules made under this Part of this Ordinance such proofs to the official receiver or trustee, as the case may be, of such reciprocating territory. 5

Power of
local court
to make
orders under
sections 11
and 25.

155. If on the application of the official receiver or any creditor or other person interested, it appears to the court that bankruptcy proceedings have been instituted in a reciprocating court against a debtor having property situated in the Colony, the court may, notwithstanding that no such proceedings have been instituted in the Colony, exercise as regards the person, property and affairs of the debtor all the powers conferred by sections 11 and 25 of this Ordinance as may in the circumstances be applicable. 15 20

Limitation
on powers of
local court
to entertain
proceedings.

156. Any order, warrant or search warrant made or issued by a reciprocating court shall be enforced by the court of the Colony in the same manner in all respects as if such order, warrant or search warrant had been made or issued by itself. 25

Local enforce-
ment of
warrants of
reciprocating
court.

157. Subject to the other provisions of this section a reciprocating court shall have sole jurisdiction in all matters in or arising out of any bankruptcy proceedings taken before such court against a debtor having property in the Colony, and no court in the Colony shall entertain any suit, application or other matter arising in or out of such proceedings except— 30

- (a) upon the institution of any proceedings by or against the local official receiver in respect of any matters within the scope of his authority in the capacity of agent as aforesaid; 35
- (b) in the case of any civil suit or proceedings within the ordinary civil jurisdiction of such court by or against the official receiver, interim receiver, trustee or special manager of or appointed in a reciprocating territory; 40
- (c) upon the institution of any proceedings affecting the property of the debtor or bankrupt situated in the Colony;
- (d) upon the receipt of a request to act in aid of or be auxiliary to such reciprocating court; 45
- (e) for the public examination of the debtor in regard only to his property situated within the Colony or his dealings with any person ordinarily resident or carrying on business in the Colony: Provided that such public examination shall not be held until the public examination before the reciprocating court shall have been concluded or adjourned *sine die*; 50
- (f) for the exercise of powers under Part VIII of this Ordinance in relation only to bankruptcy offences alleged to have been committed within the Colony; 55

(g) upon the institution of any proceedings for or arising out of the enforcement or execution of any order, warrant or search warrant made or issued by a reciprocating court; or

5 (h) upon an application for the exercise of the powers conferred on the court by sections 11, 25, 26 and 52 of this Ordinance.

158. (1) For the purposes of this section "concurrent bankruptcy proceedings" means bankruptcy or insolvency 10 proceedings instituted concurrently against the same debtor in any two or more reciprocating territories, one of which may or may not be in the Colony.

Where concurrent bankruptcy proceedings have been 15 instituted affecting property in the Colony, all such property shall vest in the trustee appointed in the territory where the order of adjudication first is made; but if two or more such orders bear the same date or if for any reason no such adjudication order is made then such property shall vest in 20 or be administered by the trustee or receiver of the territory where the receiving order first is made.

(2) In any case where concurrent bankruptcy proceedings have been instituted in the Colony and in pursuance of sub-sections (1) and (3) hereof the property of the debtor or bankrupt situated in the Colony vests in or is administered 25 by a trustee or receiver in a reciprocating territory, the court shall rescind its receiving order and annul its order of adjudication, if made, or dismiss the petition upon such terms, if any, as the court may think fit. The rescission of a receiving order or an annulment of adjudication under this 30 sub-section shall not invalidate any acts lawfully done by the receiver or trustee of the Colony or any other person lawfully acting under the authority of either of them.

(3) Notwithstanding the other provisions of this section in any case where concurrent bankruptcy proceedings have 35 been instituted in the Colony the court may, after such inquiry and reference to such reciprocating courts as it deems fit, order that the property of the debtor situated in the Colony shall vest in or be administered by a trustee or receiver in the Colony or in some reciprocating territory other than 40 that determined under the provisions of sub-section (1) hereof if, upon an application by the official receiver or any creditor or other person interested, it appears that a majority of the creditors in number and value are resident in the Colony or such other reciprocating territory, and that from the situation 45 of the property of the debtor or bankrupt or other causes his estate and effects may be more conveniently administered, managed and distributed in the Colony or such other reciprocating territory.

(4) The court shall not make an order under sub-section 50 (3) hereof unless it appears that a similar order has first been made by the reciprocating court of the territory wherein and according to the law of which the property of the debtor would have been administered under the provisions of sub-section (1) hereof but for such order.

Concurrent
bankruptcies.

Power of official receiver, etc., of this Colony to require an official receiver in a reciprocating territory to act as his agent.

159. (1) Where a receiving order or an order of adjudication is made in the Colony against a debtor or bankrupt having property situated in a reciprocating territory and where under the provisions of this Ordinance, the property of the debtor or bankrupt is administered by or vested in the official receiver or a trustee of or appointed in the Colony, it shall be the duty of such official receiver or trustee and any interim receiver or special manager appointed in pursuance of this Ordinance to take all such steps as may be lawful in any reciprocating territory for the proper administration of any property of the debtor or bankrupt situated in such territory, and at his discretion and without further authority to request in the prescribed manner any bankruptcy official in such territory empowered in that behalf, to act as his agent either generally or for any specific purpose, and to give such directions and to publish such notices and to do all such things in the reciprocating territory as may be lawful for the administration of the estate. Unless for any reason the contrary intention is expressed, every request sent to a bankruptcy official in a reciprocating territory requiring him to act as an agent as aforesaid shall contain a consent that he may assign the powers and duties vested in him as such agent to his deputy or any officer ordinarily authorised to act for him in the reciprocating territory.

(2) Where in any proceedings mentioned in the last preceding sub-section, the official receiver, interim receiver, special manager or trustee shall have completed and despatched to a reciprocating territory a request to a bankruptcy official therein to act as his agent as aforesaid and where the circumstances of the case so require, the court may, on the application of such official receiver, interim receiver, special manager or trustee and on an undertaking to indemnify against costs and charges being given, request the reciprocating court by telegram or otherwise to authorise the bankruptcy official of such court empowered in that behalf, to act as agent until such time as the prescribed request shall arrive in the ordinary course of post.

Power to make rules under this Part.

160. (1) The Chief Justice with the approval of the Governor in Council may make rules for the purpose of carrying into effect all or any of the objects of this Part of this Ordinance, and in addition and for such purpose, shall have power to make rules extending or varying the time limited under this Ordinance or any rules made under section 118 thereof for the doing of any act or taking any proceeding, in so far as such limitation of time affects persons ordinarily resident or carrying on business in a reciprocating territory who are or may be interested in any bankruptcy proceedings in the Colony against a debtor having property in such reciprocating territory: Provided that no rules made under the powers conferred by this sub-section shall come into force until the Chief Justice shall by notice in the Gazette declare himself satisfied that the rule-making authorities in all reciprocating territories have made rules having the like effect within their respective territories.

(2) Notwithstanding the provisions of sub-section (1) hereof, the court may in respect of any particular matter exercise its general powers of extension of time under section 101 (4) of this Ordinance, in favour of a person ordinarily residing or carrying on business in a reciprocating territory,

who is interested in bankruptcy proceedings instituted in the Colony against a debtor having property in such reciprocating territory.

PART X.

5

REPEAL.

161. (1) The Bankruptcy Ordinance, 1925, is hereby Repeal. No. 1 of 1926. repealed.

(2) The provisions of this Ordinance shall apply to and in respect of any bankruptcy proceedings instituted before 10 the commencement of this Ordinance only if and so far as the corresponding provisions of the law repealed by this Ordinance would have applied to or in respect of such proceedings if this Ordinance had not been passed and in all other respects the said repealed Ordinance shall continue to 15 govern the administration of estates adjudicated bankrupt before the commencement of this Ordinance.

162. Unless and until the Rules Committee or the Chief Justice shall make general rules and prescribe fees under the powers conferred in sections 118 and 119 of this Ordinance 20 the Bankruptcy Rules, 1927, made under the Ordinance repealed by this Ordinance, and the scale of fees prescribed under section 119 of the same Ordinance are declared to be in force in the Colony and shall be read with and considered as part of this Ordinance and it shall be lawful for the court to 25 construe the said Rules with such verbal alterations not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court, provided always that any such construction or alteration shall not be inconsistent with the 30 provisions of this Ordinance.

Bankruptcy
Rules, 1927,
applied.

THE FIRST SCHEDULE.

(Section 15.)

MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for First meeting of creditors. 35 a day not later than twenty-eight days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than six clear days' notice of the time and 40 place thereof in the Gazette.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's 45 statement of affairs, including the cause of his failure, and any observations thereon, which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

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

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

Subsequent meetings.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting. 5

10

Chairman.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint. 15

Voting.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting. 15

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. 20

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value his security has arisen from inadvertence. 25

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. 30

Trustee may redeem security.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per centum : Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up. 40

45

50

Firms.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat. 55

Power of chairman.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his

decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid 5 in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy. **Proxies.**
16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate or by any deputy official receiver, or, after the appointment 10 of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment or of any person authorised to administer oaths in the court.
- 15 17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person shall be printed or inserted in the body of any instrument of proxy before it is 20 so sent.
18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.
- 25 19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—
- (a) For or against any specific proposal for a composition or scheme of arrangement.

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

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

20. A proxy shall not be used unless it is deposited with 40 the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship 45 or receivership, except by the direction of a meeting of creditors, the court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection 50 or of the creditors to the contrary.

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

23. The chairman of a meeting may, with the consent **Adjournment.** of the meeting, adjourn the meeting from time to time and 55 from place to place.

24. A meeting shall not be competent to act for any **Quorum.** purpose, except the election of a chairman, the proving of

debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to such other day as the chairman may appoint, being not less than three nor more than twenty-one days later. 5

Minutes.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting. 10

**Proxy-holders
not to vote
on certain
resolutions.**

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself 20 as trustee he may use the said proxies and vote accordingly. 15

28. The vote of the trustee, or of his partner, clerk, advocate or advocate's clerk, either as creditor, or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or 25 conduct of the trustee.

THE SECOND SCHEDULE.

(Section 34.)

PROOF OF DEBTS.

Proof in Ordinary Cases.

30

**Proofs of
debts in
ordinary
cases.**

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

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt. 35

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge. 40

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers. 45

5. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors unless the court on application is satisfied that the omission has arisen from inadvertence, and in that case the court may allow the 50

affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the court may consider to be just.

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

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

8. A creditor proving his debt shall deduct therefrom 10 all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. Deduction of trade discounts.

Proof by Secured Creditors.

15 9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. Proof by secured creditors.

10 10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the 20 creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or 25 surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Assessment of security.

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

30 (b) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in 35 default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(c) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or 40 will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or 45 any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued. Creditor may call on trustee to redeem.

13. Where a creditor has so valued his security, he may 50 at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made bona fide on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made Amendment of assessment.

at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment. 5
10
15

15. If a creditor after having valued his security subsequently realize it, or if it is realized under the provisions of Rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation 20 made by the creditor. 20

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

17. Subject to the provisions of Rule 12, a creditor shall 25 in no case receive more than twenty shillings in the pound, and interest as provided by this Ordinance.

Proof in respect of distinct contracts.

Proof in Respect of Distinct Contracts.

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the 35 properties respectively liable on the contracts. 30
35

Rent and other periodical payments.

Periodical Payments.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of these periods, the persons entitled to the rent or 40 payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest where it is not agreed for.

Interest.

20. On any debt or sum certain, payable at a certain 45 time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum 50 was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

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

10 *Admission or Rejection of Proofs.*

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the 15 creditor the grounds of the rejection.

Admission
or rejection
of proofs.

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

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

Appeal.

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

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

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject 30 to the like appeal.

OBJECTS AND REASONS.

The Report of the Conference of Law Officers in 1926 contains the following recommendations regarding Bankruptcy Law :—

“ Two main points appear to arise for our consideration—

- (1) The adoption of a uniform Bankruptcy law;
- (2) The possibility of framing a scheme for adoption by each dependency under which the assets of a bankrupt, no matter where they may be situated in the dependencies, may be made available wherever the insolvency occurs.

As regards (1), we are strongly in favour of the adoption of uniform Bankruptcy legislation in the dependencies which we represent.

We have considered the Kenya Bankruptcy Ordinance, 1925, and recommend that it be accepted as a suitable model.

As regards (2), we recommend the introduction of reciprocal legislative provisions in each territory. Generally speaking, the object to be aimed at should be to secure that the assets of a bankrupt, no matter where they may be situated in reciprocating territories, should be made available for distribution among all the creditors of the bankrupt."

In the meantime, the Bankruptcy Act, 1926, had been passed in England. This Act materially amended the provisions of the Act of 1914, on which the Kenya Ordinance of 1925 was modelled, and it was considered advisable to take as a model the English law as contained in the Acts of 1914 and 1926 rather than the Kenya Ordinance.

Parts I to VIII of the Bill introduce several new provisions, of which the following are the most important:—

Clause 26.—The period during which correspondence addressed to a debtor may be readdressed to the official receiver or trustee is extended from three months to six months, and the provisions of the clause are made applicable to cablegrams, which are not under the control of the Postmaster General.

Clause 28.—The proviso to sub-clause (2) has been amended, and sub-clause (3) (h) has been added to conform with the English Act of 1926.

Clause 35.—Paragraph (e) introduces a new provision, giving priority to sums of money deposited by natives with a bankrupt for safe custody.

Clause 40.—The value of tools, wearing apparel, and bedding exempt from division among creditors is reduced from £40 to £15, with power to the court to exempt up to a value of £40, according to the bankrupt's station in life.

Clause 41.—Amended to conformity with the English Act of 1926.

Clause 41.—Power to appoint deputy official receivers is included.

Clause 89.—This clause contains, in sub-clause (3), a new provision for the establishment of a Bankruptcy Contingency Fund, the moneys in which may be used to defray the cost involved in any of the purposes set out in that sub-clause.

Clause 94.—The court charged with jurisdiction in bankruptcy matters is at present the Supreme Court. Power is given in this clause to delegate any of that jurisdiction to a subordinate court either generally or for the purpose of any particular case or class of cases.

Clause 112.—Section 112 of the Ordinance of 1925 is deleted as unnecessary, in view of the provisions of Part IX of the Bill. The section is replaced by a clause providing that the court shall act in aid of British courts in bankruptcy matters.

Clause 134.—Sub-clauses (2) and (3) are new, and introduce amendments of the law made in the English Act of 1926.

Clause 135.—Provision is made for bankruptcy in a reciprocating territory, and the amount of credit which may be obtained without disclosing the fact that one is an undischarged bankrupt is reduced from £10 to £5.

Clause 136.—Sub-clause (2) is added in conformity with the English Act of 1926.

Clause 138.—The provisions relating to the obligation to keep proper books of account are amended so as to distinguish between a first bankruptcy and a second or subsequent bankruptcy.

Part IX of the Bill introduces the principle of reciprocity in bankruptcy.

The provisions of that Part may be shortly summarised as follows :—

If the Governor is satisfied that any East African territory has similar provisions for reciprocity he may declare such territory to be a reciprocating territory. In that event notification of a bankruptcy is sent by the court making the receiving order to all other reciprocating territories, the official receiver in each territory acts, in respect of local assets and liabilities of the bankrupt, as agent of the court making the receiving order, and all assets wherever situate in reciprocating territories are made available to meet the claims of all creditors in such territories.

Similar legislation has already been enacted in Uganda and Tanganyika Territory, and if the Bill in its present form becomes law the three territories will, for bankruptcy purposes, be practically one territory.

Section 10 of the Principal Ordinance proposed to be replaced :—

**Fees payable
for licences.**

10. (1) The following Trout Fishing Licences may be granted by any licensing officer and the following fees shall be paid therefor, that is to say :—

<i>Visitor's Licences.</i>	Shs.	<i>Resident's Licences.</i>	Shs.
(a) Yearly 200	Yearly 25		
(b) Fortnightly ... 80	Fortnightly 10		
(c) Twenty-four hourly 25	Twenty-four hourly ... 3		
(2) (a) A Visitor's Yearly Licence shall be in force for one year from the date of issue ;			
(b) A Resident's Yearly Licence shall be in force up to and including the thirty-first day of December in the year of issue ;			
(c) A Fortnightly Licence shall be in force for fourteen consecutive days from and including the day on which it is dated to commence by the licensing officer ;			
(d) A Twenty-four Hourly Licence shall be in force for twenty-four consecutive hours from and including the hour of the day on which it is dated to commence by the licensing officer.			
(3) Any person holding a visitor's yearly licence and becoming a bona fide resident while the licence is in force shall be entitled to a refund of one hundred and seventy-five shillings.			
(4) A fortnightly licence may be converted during the year of its issue into a yearly licence on payment of the difference between the fees for fortnightly and yearly licences.			
(5) The Governor shall have power to remit the fee payable in respect of any licence under this Ordinance.			
(6) In the event of any licensee losing his licence he may apply to the licensing officer who issued such licence for the issue of a duplicate licence, and a fee of two shillings shall be charged by such licensing officer for the issue of such duplicate licence.			

GOVERNMENT NOTICE No. 355.

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

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

A Bill to Amend the Trout Protection Ordinance, 1928.

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

1. This Ordinance may be cited as "the Trout Protection (Amendment) Ordinance, 1930," and shall be read as one with the Trout Protection Ordinance, 1928, hereinafter referred to as "the Principal Ordinance".

5 2. Section 10 of the Principal Ordinance is hereby repealed and the following substituted therefor :—

" 10. (1) The following Trout Fishing Licences may be granted by any licensing officer and the following fees shall be paid therefor, that is to say :—

	<i>Visitor's Licences.</i>	<i>Resident's Licences.</i>	
			Shs.
10	(a) Yearly ... 100	Yearly ... 25	
	(b) Fortnightly ... 40	Fortnightly ... 10	
	(c) Twenty-four hourly 10	Twenty-four hourly ... 3	

(2) (a) A Visitor's Yearly Licence shall be in force for one year from the date of issue.

15 (b) A Resident's Yearly Licence shall be in force up to and including the thirty-first day of December in the year of issue.

(c) A Fortnightly Licence shall be in force for fourteen consecutive days from and including the day on which it is dated to commence by the licensing officer.

20 (d) A Twenty-four Hourly Licence shall be in force for twenty-four consecutive hours from and including the hour of the day on which it is dated to commence by the licensing officer.

25 Any person holding a visitor's yearly licence and becoming a bona fide resident while the licence is in force shall be entitled to a refund of seventy-five shillings.

(4) A fortnightly licence may be converted during the year of its issue into a yearly licence on payment of the difference between the fees for fortnightly and yearly licences.

(5) The Governor shall have power to remit the fee payable in respect of any licence under this Ordinance.

30 (6) In the event of any licensee losing his licence he may apply to the licensing officer who issued such licence for the issue of a duplicate licence, and a fee of two shillings shall be charged by such licensing officer for the issue of such duplicate licence."

OBJECTS AND REASONS.

40 It is considered desirable to reduce the fee payable by a visitor for a trout fishing licence, and the Bill achieves this object.

Short title.
Repeal and
replacement
of section 10 of
the Principal
Ordinance.

Fees payable
for licences.

GOVERNMENT NOTICE No. 356.

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

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

A Bill to Regulate Deeds of Arrangement.

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

Short title. 1. This Ordinance may be cited as "the Deeds of Arrangement Ordinance, 1930."

Interpretation. 2. (1) In this Ordinance, unless the context otherwise requires—

"creditors generally" includes all creditors who may assent to, or take the benefit of, a deed of arrangement; 5

"prescribed" means prescribed by rules made under this Ordinance;

"property" has the same meaning as in the Bankruptcy Ordinance, 1930. 10

(2) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

PART I.

APPLICATION OF ORDINANCE. 15

Deeds of arrangement to which Ordinance applies.

3. (1) A deed of arrangement to which this Ordinance applies shall include any instrument of the classes hereinafter mentioned whether under seal or not—

(a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally; 20

(b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors,

otherwise than in pursuance of the law for the time being in force relating to bankruptcy. 25

(2) The classes of instrument hereinbefore referred to are—

(a) an assignment of property;

(b) a deed of or agreement for a composition, 30

and in cases where creditors of the debtor obtain any control over his property or business—

(c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and 35

(e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts. 40

PART II.

AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH.

4. A deed of arrangement shall be void unless it is registered with the Registrar under this Ordinance within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of the municipality of Nairobi, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in Nairobi, if posted within one week after the execution thereof, and unless it bears such ordinary and *ad valorem* stamp as is provided by this Ordinance.

5. (1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the Supreme Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

- (2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be *prima facie* evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of subsection (1) of this section shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

- 30 (4) The trustee shall file with the Registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twenty-eight days after registration or within such extended time as the Supreme Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be *prima facie* evidence, of the fact declared.

- (5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding two hundred shillings shall be reckoned in the majority in value, but not in the majority in number.

PART III.

50 REGISTRATION OF DEEDS OF ARRANGEMENT.

6. The Registrar General shall be the Registrar for the purposes of this Ordinance.

Registrar for registration.

Mode of registration.

7. (1) The registration of a deed of arrangement under this Ordinance shall be effected in the following manner :—

A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the Registrar within seven clear days after the execution of the deed (in like manner as a bill of sale given by way of security for the payment of money is required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors. 15

(2) No deed shall be registered under this Ordinance unless the original of the deed, duly stamped with the proper stamp duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every two thousand shillings or fraction of two thousand shillings of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the Registrar at the time of such registration. 20

Form of register.

8. The Registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Ordinance, containing the following and any other prescribed particulars :—

- (a) the date of the deed ; 30
- (b) the name, address and description of the debtor, and the place or places where his business was carried on at the date of the execution of the deed, and the title of the firm or firms under which the debtor carried on business, and the name and address of the trustee (if any) under the deed ; 35
- (c) a short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder ;
- (d) the date of registration ; 40
- (e) the amount of property and liabilities included under the deed, as estimated by the debtor.

Rectification of register.

9. The Supreme Court upon being satisfied that the omission to register a deed of arrangement within the time required by this Ordinance or that the omission or misstatement of the name, residence or description of any person was accidental, or due to inadvertence or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence or description. 45 50

Time for registration.

10. Where the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open. 55

- 11.** Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and, subject to such regulations as may be prescribed, shall be entitled, at all reasonable times,
 5 to inspect, examine and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected :
 10 Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.
 15 **12.** (1) Where the place of business or residence of the debtor who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place within an area in respect of which a district registry of the Supreme Court has been established, the Registrar shall, within three
 20 clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit a copy of the deed to the district registrar of the area in which such place of business or residence is situate.
 (2) Every copy so transmitted shall be filed, kept and
 25 indexed by the district registrar in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms, as to payment or otherwise, as near as may be, as in the case of deeds registered under this
 30 Ordinance.

PART IV.

PROVISIONS AS TO TRUSTEES.

- 13.** (1) The trustee under a deed of arrangement shall, within fourteen days from the date on which the statutory
 35 declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the judge or registrar of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, in a sum equal to the estimated
 40 assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration to administer the deed properly and account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting
 45 convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security :

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the court having
 55 jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, on the application of any creditor and after hearing

Inspection of
register and
registered
deeds.

Local
registration
of copy of
deeds.

Security by
trustee.

such persons as it may think fit, may declare the deed of arrangement to be void, or may make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by the registrar to whom it was given and filed with the Registrar, shall be conclusive evidence of the fact. 5

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened 10 in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value 15 of such security, and creditors whose debts amount to sums not exceeding two hundred shillings shall be reckoned in the majority in value but not in the majority in number.

**Penalty on
trustee acting
when deed of
arrangement
void.**

14. If a trustee acts under a deed of arrangement—

- (a) after it has to his knowledge become void by reason 20 of non-compliance with any of the requirements of this Ordinance or any enactment repealed by this Ordinance; or
- (b) after he has failed to give security within the time and in the manner provided for by this Ordinance or 25 any enactment repealed by this Ordinance,

he shall be liable on conviction to a fine not exceeding one hundred shillings for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, 30 and the last day on which he is proved to have acted as trustee, unless he satisfies the court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate. 35

**Transmission
of accounts
to Official
Receiver.**

15. (1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Official Receiver in Bankruptcy for the Colony, or as he directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner. 40

(2) If any trustee fails to transmit such account, he shall be liable on conviction by a magistrate of the first class to a fine not exceeding one hundred shillings for each day during which the default continues, and the Supreme Court, for the purpose of enforcing the provisions of the last preceding sub-section, shall exercise, on the application of the Official Receiver, all the powers conferred on the court by sub-section (2) of section 97 of the Bankruptcy Ordinance, 1930, in cases of bankruptcy. 45

(3) The accounts transmitted to the Official Receiver in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the accounts shall, on payment of the prescribed fee, be furnished to the debtor, the creditors or any other persons interested. 50

(4) In this section the expression "trustee" shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression "prescribed" means prescribed by rules under 5 the Bankruptcy Ordinance, 1930.

16. Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally 10 wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, in his affidavit verifying his accounts transmitted to the Official Receiver, state whether or not he 15 has duly sent such statements, and the dates on which the statements were sent; and, if a trustee fails to comply with any of the provisions of this section, the Supreme Court may, for the purpose of enforcing those provisions, exercise, on the application of the Official Receiver, all the powers conferred on 20 the court by sub-section (2) of section 97 of the Bankruptcy Ordinance, 1930, in cases of bankruptcy.

17. (1) Where, in the course of administration of the estate 25 of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the Official Receiver, an application in writing is made to the Official Receiver by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the Official Receiver may cause the trustee's accounts to be audited, and 30 in such case all the provisions of the Bankruptcy Ordinance, 1930, relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications, apply to the audit of the trustee's accounts, and the Official Receiver 35 shall have power on the audit to require production of a certificate for the taxed costs of any advocate whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced.

40 (2) The Official Receiver may determine how and by what parties the costs, charges and expenses of and incidental to the audit (including any prescribed fees chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an 45 application for an audit require the applicants to give security for the costs of the audit.

18. At any time after the expiration of two years from the date of the registration of a deed of arrangement, the 50 court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be 55 paid into court or to the Official Receiver for the credit of the Bankruptcy Estates account, as the court shall deem fit.

Transmission
of accounts
to creditors.

Audit of
accounts.

Payment of
undistributed
moneys into
court.

Preferential payment to creditor an offence.

19. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of a misdemeanour.

5

Power to Supreme Court to appoint new trustee.

20. (1) The Supreme Court may, whenever it is expedient to appoint a new trustee under a deed of arrangement and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of such new trustee. In particular and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony or is a bankrupt.

10

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

20

Provisions for the protection of trustees under void deeds.

21. (1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the benefit of three or more creditors, by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Ordinance, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after the lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

25

(2) Where a receiving order is made against a debtor under section 99 of the Bankruptcy Ordinance, 1930, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

40

Notice to creditors of avoidance of deed.

22. When a deed of arrangement is void by virtue of this Ordinance for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by this Ordinance, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar, and, if he fails so to do, he shall be liable on conviction by a magistrate of the first class to a fine not exceeding four hundred shillings.

45

Payment of expenses incurred by trustees.

23. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Ordinance shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

55

24. The provisions of this part of this Ordinance, except such of those provisions—

- (a) as relate to the transmission of accounts to the Official Receiver of debtor's estate for the Colony;
- 5 (b) as provide for the protection of trustee under void deeds;
- (c) as require a notice to be given to creditors of avoidance of deeds;
- 10 (d) as provide for the payment of expenses incurred by trustees;

shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

PART V.

15 GENERAL.

25. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the Supreme Court.

26. (1) If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditors' assents with an intimation that the creditor will not after the expiration of one month from the service of 30 the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by him as an act of bankruptcy.

(2) Where such a deed of arrangement as aforesaid has become void by virtue of this Ordinance or any enactment repealed by this Ordinance, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

45 (3) Save as otherwise expressly provided by this Ordinance, nothing in this Ordinance shall be construed as repealing or shall affect any provision of the law for the time being in force in relation to bankruptcy or shall give validity to any deed or instrument which by law is an act of bankruptcy or 50 void or voidable.

27. Subject to the provisions of this Ordinance, and to Office copies any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Ordinance upon paying the prescribed fees, and any such copy or extract shall, in all courts and before all

arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon.

Fees.

28. There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any copies or extracts, or official searches made by the Registrar, such fees as may be from time to time prescribed; and nothing in this Ordinance contained shall make it obligatory on the Registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee. 10

Rules.

29. The Chief Justice, with the concurrence of the Governor, may make general rules for carrying into effect the objects of this Ordinance.

Deeds of
Arrangement
Rules applied.

30. Unless and until the Chief Justice shall make general rules under the powers conferred by section 29 of this 15 Ordinance, the Deeds of Arrangement Rules, 1915, made under section 28 of the Deeds of Arrangement Act (Imperial), 1914, are declared to be in force in the Colony, and shall be read and considered as part of this Ordinance, and it shall be lawful for the court to construe the said Rules with such 20 verbal alterations not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court; provided always that any such construction or alteration shall not be inconsistent with the provisions of this Ordinance.

OBJECTS AND REASONS.

As bankruptcy legislation is now being tightened up on the lines of the English Act of 1926, and particularly as the new Bankruptcy Bill contains provision for reciprocity with Tanganyika and Uganda and both of these territories have enacted Deeds of Arrangement Ordinances concurrently with their new bankruptcy legislation, it is considered desirable to enact similar legislation here.

2. The Bill provides a simple machinery whereby—

- (a) a debtor may have his affairs managed for the benefit of his creditors until their claims are discharged; or
- (b) an insolvent debtor may do the same thing for the benefit of any three or more of his creditors.

The stigma of bankruptcy is avoided, but the chances of fraud are obviated by full publicity.

GOVERNMENT NOTICE No. 357.

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

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

A Bill to Consolidate and Amend the Law relating to the Detention, Removal and Treatment of Mentally Disordered and Defective Persons and to Make Provision as to Institutions in which such Persons may be Received, Detained and Treated.

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

1. This Ordinance may be cited as "the Mental Disorders Ordinance, 1930," and shall come into operation upon such date as the Governor may by notice in the Gazette appoint. Short title and commencement.

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

"Child" means a person under the age of sixteen years : Provided that with the Commissioner's approval a person detained in any institution who is over the age of sixteen years 10 may be treated therein as a child up to an age which may be recommended by the Board, if any, established for such institution under Part VII ;

"Commissioner" means the Commissioner for Mental Hygiene ;

15 "Court" means the Supreme Court ;

"Institution" means any mental hospital or other place which has been or may hereafter be authorised by the Commissioner as an institution or place for the reception, detention and treatment of two or more persons suffering from mental 20 disorder or defect or in respect of which a licence is granted under this Ordinance ;

"Licensed institution" means an institution in respect of which a licence is issued under this Ordinance for the reception, detention and treatment of patients ;

25 "Magistrate" means a magistrate of the first or second class ;

"Medical officer" means a European medical officer in the service of the Government of the Colony, and, where there is no such European medical officer, means an assistant or 30 sub-assistant surgeon.

"Medical practitioner" means any medical practitioner duly registered under the Medical Practitioners and Dentists Ordinance ; Cap. 119.

35 "Physician superintendent" means the physician superintendent of a Government institution ;

"Police officer" means any member of the Police Force and includes an official headman appointed under the Native Authority Ordinance ; Cap. 129.

40 "Private patient" means any person detained as a mentally disordered or defective person by order under this Ordinance in any place other than an institution ;

"Registrar" means the Registrar of the Supreme Court and includes a Deputy Registrar;

"Superintendent" means the person in charge of an institution or other place, and includes a physician superintendent;

5

**Application of
Ordinance.**

3. (1) In addition to the persons in respect of whom provision is made therein, this Ordinance shall apply to every person who, at the commencement thereof, is legally detained in any institution or place of confinement recognised under any law repealed by this Ordinance, or under this Ordinance, 10 as an institution or place for the treatment of mentally disordered or defective persons.

(2) Every warrant or order for the detention of any such person issued prior to the commencement of this Ordinance and in force prior to such commencement shall be deemed to 15 have been legally issued and shall remain in force until set aside or varied under the provisions of this Ordinance.

**Mentally
disordered
or defective
person and
patient defined.**

4. (1) For the purposes of this Ordinance a mentally disordered or defective person shall mean any person who in consequence of mental disorder or disease or permanent defect 20 of reason or mind is incapable of managing himself or his affairs or is in consequence of such disorder or disease or defect a danger to himself or others, or who in consequence of such disorder or disease or defect requires supervision, treatment and control, or who if a child appears by reason of such defect 25 to be permanently incapable of receiving proper benefit from instruction in ordinary schools.

(2) Whenever the expression "patient" is used in this Ordinance it shall be deemed to be used in reference to a 30 mentally disordered or defective person or a person suspected of being or alleged to be mentally disordered or defective.

**Classification
of mentally
disordered
or defective
persons.**

5. For the purposes of this Ordinance and all proceedings thereunder, mentally disordered or defective persons may be divided into the following classes:—

Class I.—A person suffering from mental disorder, that 35 is to say, a person who, owing to some form of mental disorder, is incapable of managing himself or his affairs.

Class II.—A person mentally infirm, that is to say, a person who through mental infirmity arising from 40 age or the decay of his faculties is incapable of managing himself or his affairs.

Class III.—An idiot, that is to say, a person so deeply defective in mind as to be unable to guard himself against common physical dangers.

45

Class IV.—An imbecile, that is to say, a person in whose case there exists mental defect not amounting to idiocy and who, although capable of guarding himself against common dangers, is incapable of managing himself or his affairs, or, if he is a child, 50 of being taught to do so.

Class V.—A feeble-minded person, that is to say, a person in whose case there exists mental defect not amounting to imbecility so that he is incapable of competing on equal terms with his normal fellows or of managing himself and his affairs with ordinary prudence and who requires care, supervision and control for his own protection or for the protection of others, or, if he is a child, appears by reason of such defect to be permanently incapable of receiving proper benefit from instruction in ordinary schools.

Class VI.—A moral imbecile, that is to say, a person who displays some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.

Class VII.—An epileptic, that is to say, a person suffering from epilepsy who is a danger to himself or others or is incapable of managing himself or his affairs.

PART I.

RECEPTION OF PATIENTS.

20 **6.** Subject to the exceptions expressly provided by this Ordinance, no person shall be received or detained as a patient in any institution or other place, except under the authority of an order of a magistrate in accordance with this Ordinance or an order of the Court or a judge.

25 *Application for and Issue of Reception Order.*

27 **7.** (1) A reception order may be obtained on a written application made in the prescribed form and addressed to a magistrate, by any person not under the age of twenty-one years (hereinafter called "the applicant").

30 (2) Every such application shall contain a statement—

(a) of the grounds on which the applicant believes that the person in respect of whom the application is made (that is to say, the patient) is mentally disordered or defective; and

35 (b) of the degree by consanguinity or affinity in which the applicant is related to the patient, and, if he is not the husband or wife or other near relation, the reason why the application is made by the applicant instead of by the husband or wife or a near relation; and

40 (c) that the applicant has within the seven days preceding the day on which the application was signed personally seen the person in respect of whom the application is made.

45 (3) Every application shall be made or transmitted to the magistrate on the day on which it is signed, or within seven days thereafter.

Authority for
the detention
of patients.

Application
for reception
order.

(4) All statements contained in the application shall be verified by the affidavit or statutory declaration of the applicant, and notwithstanding anything to the contrary in any law relating thereto no fees or stamp duty shall be payable on such affidavit or statutory declaration.

5

(5) Any such application may be accompanied by a medical certificate in the prescribed form, bearing a date not earlier than seven days before the date of the application.

**Issue of
reception order
by magistrate.**

8. (1) On consideration of the application the magistrate may, in his discretion, examine the patient at the patient's place of abode or elsewhere and (whether or not he makes such examination) the magistrate shall call to his assistance two medical practitioners (of whom one shall, if practicable, be a medical officer) who are not prohibited by section 24 from signing a certificate; and such medical practitioners shall, either together or separately, examine the patient.

(2) If the services of two medical practitioners are not available or immediately available, the magistrate may accept the certificate of one medical practitioner.

(3) The magistrate may also summon as witnesses such persons as he thinks fit to give evidence touching the mental condition of the said patient.

(4) If, after such certificates or certificate have been given and after such further or other inquiry as the magistrate thinks necessary, he is satisfied that the patient is a mentally disordered or defective person, and—

- (a) is not under proper care, oversight or control; or
- (b) is cruelly treated or neglected by any relation or other person having the care or charge of him; or
- (c) is of suicidal tendency or in any way dangerous to himself or others; or
- (d) commits or attempts to commit any offence or has acted in a manner offensive to public decency; or
- (e) is an inebriate, that is to say, a person who habitually drinks, or uses any narcotic, to excess; or
- (f) is in receipt of relief or assistance from public or charitable funds at the time of giving birth to an illegitimate child or when pregnant of such child; or
- (g) if the person having care or control of the patient consents,

35

40

the magistrate may issue an order in the prescribed form (in this Ordinance called "a reception order") authorising the patient to be received and detained in an institution to be named in the order: Provided that in the case of a child falling under Class V of section 5, such child shall only be received in an institution in which separate accommodation for such children is provided and in which reasonable provision is made for their care and instruction.

(5) No such reception order shall be issued after the expiry of fourteen days from the date of the said medical certificates or certificate, or if those certificates (where there are two) do not bear the same date, then after the expiry of fourteen days from the date of the certificate bearing the earlier date.

50

(6) After the issue of a reception order the patient shall be removed to an institution as soon as possible, but, pending the removal of the patient to an institution, the magistrate may issue such order as he thinks fit for the care, control and 5 detention of the patient either at his home or place of abode or elsewhere.

(7) Notwithstanding anything in this section contained, the magistrate may, if he thinks fit, and if the certifying medical practitioner is not subject to the prohibitions contained 10 in section 24, accept the medical certificate (if any) accompanying the application as if the certifying medical practitioner had been duly called to his assistance under this section; and every certificate so accepted shall, for the purposes of this Ordinance, be deemed to have been given under this section 15 on the date of its acceptance.

(8) All proceedings in relation to the issue of a reception order shall be conducted *in camera*.

9. (1) Where there is no medical practitioner within a district the magistrate shall examine the patient and 20 hold an inquiry in any convenient place as to the state of his mind, and if it appears to the magistrate that the said patient is a proper subject for detention he may send such patient, together with a certified copy of the notes of the inquiry, to the magistrate of another district where there is 25 a medical practitioner, and it shall be lawful for the first-mentioned magistrate to order the detention of such patient for the period necessarily occupied in travelling from the one district to the other.

(2) The magistrate of the district to which the 30 patient is sent shall thereupon proceed as in any other case in which a patient is brought before him; and if such magistrate is satisfied that the person brought before him is not a mentally disordered or defective person such person shall be sent back or allowed to return to the district from which he came and 35 may be granted the necessary expenses therefor.

(3) All expenses which may be necessarily incurred in the sending of any patient from one district to another, or in connection with the lodging or subsistence of any patient, shall be paid out of the revenue of the Colony.

10. (1) Subject to the provisions of this section, a magistrate may, in any reception order issued by him in respect of any patient, direct that such patient shall be received and detained as a private patient in the dwelling of some householder and not in an institution.

(2) No reception order shall be issued authorising the reception and detention of a person as a private patient, unless the certifying medical practitioners or practitioner certify that it would be safe and convenient that the patient should be received and detained as a private patient instead of in an 50 institution.

(3) Before issuing any such order the magistrate or some person appointed by him shall examine the proposed householder, and shall satisfy himself, by such means as he thinks fit, that such householder is a proper person to have the charge 55 of the patient and that his dwelling and its surroundings are suitable for the reception, detention and treatment of the patient.

Examination
of patient
where no
medical
practitioner
in district.

Detention
under reception
order of
patients in
private care.

(4) The provisions of this Part as to the reception and detention of patients in an institution shall, so far as they are applicable and subject to the provisions of this Part, apply to the reception and detention of private patients.

(5) All Rules relating to the discharge, escape, transfer or death of patients shall apply to private patients. 5

(6) Every private patient shall, as often as is prescribed by Rule or as may be directed by the Commissioner, be visited by a medical practitioner approved of by the Commissioner.

Detention under reception order in an institution or other place.

11. (1) A reception order shall authorise the detention of 10 the person named therein for a period not exceeding six weeks.

(2) If the place named in the reception order is not an institution, the magistrate who has issued the order may, at any time during its continuance, authorise by endorsement thereof the removal of the patient named therein from the 15 place of detention specified therein to an institution.

(3) The magistrate shall, within twenty-four hours after the removal, send a written notification of that fact to the official *curator ad litem*, as defined in section 17.

(4) After the removal of a patient to an institution all 20 Rules as to discharge, transfer or death of patients shall apply to him.

(5) Notice of the discharge, transfer or death shall, within twenty-four hours thereafter, be given to the official *curator ad litem*. 25

Procedure in cases of urgency.

12. (1) In cases of urgency where it is expedient either for the welfare of a patient or for the public interest that such patient should be forthwith placed under care and treatment, an application (in this Ordinance called an "urgency application") may be made to the person in charge of an institution or other authorised place for his reception therein. An urgency application shall be in the prescribed form, verified by an affidavit or statutory declaration and shall contain the same particulars as are required by section 7 in the case of an 30 application for a reception order. Every urgency application shall be accompanied by one medical certificate in the prescribed form, together with a statement that the matter is one of urgency. If the certifying medical practitioner is prohibited from giving a certificate under section 24 then a further 35 medical certificate, in place of the one accompanying the urgency application, shall be obtained.

(2) If an urgency application is not signed by the husband or wife or by a relation of the patient, it shall contain a statement of the various reasons why it is not so signed and of the connection with the patient of the person signing the application, and the circumstances under which he signed it. 45

(3) No person shall sign an urgency application unless he is at least twenty-one years of age and has, within two days before the date of the application, personally seen the patient. 50

(4) Subject to the provisions of this section a patient may be received and detained under an urgency application if it appears from the medical certificate accompanying it that the certifying medical practitioner has personally examined the patient not more than seven days before his reception.

(5) The admission into an institution or other place of a patient on an urgency application shall forthwith be notified by the person in charge thereof to the magistrate of the district in which is situate that institution or other place. Such 5 magistrate shall thereupon, on production to him of a certified copy of the urgency application and the medical certificate, proceed in the same manner as if the application had been one made to him for the issue of a reception order.

(6) Upon the necessary inquiry by the magistrate he 10 may, if he thinks fit and if the certifying medical practitioner is not prohibited by section 24 from signing a certificate, accept the medical certificate accompanying the urgency application as if that medical practitioner had been duly called to the magistrate's assistance under sub-section (1) of section 8. 15 Every medical certificate so accepted shall, for the purposes of this Ordinance, be deemed to have been given under and to comply with the provisions of section 8.

(7) If, on the said inquiry, the magistrate refuses to issue 20 a reception order he shall forthwith give notice of his refusal to the person in charge of the institution or other place where the patient has been received and is detained, and after the receipt of that notice by the superintendent or person having charge of the patient, it shall not be lawful to continue to confine and detain the patient under this section.

25 (8) No person shall be detained, under the authority only of an urgency application, in any institution or other place for a period longer than ten days.

13. (1) Any police officer, if he has reason to believe that Duty of
any person not wandering at large is mentally disordered or
30 defective, and—
*police officer
in certain
cases.*

(a) is neglected or cruelly treated by any person having
the care or charge of him; or
(b) acts in a manner offensive to public decency; or
(c) is not under safe and proper supervision, care or
35 control,

shall forthwith make or cause application for a reception order (as provided by section 7) to be made to a magistrate in respect of that person.

(2) Any police officer, if he has reason to believe that a 40 person apparently mentally disordered or defective is—

(a) dangerous to himself or to others; or
(b) wandering at large and unable to take care of himself,

may apprehend and convey such person to an institution or 45 other place, and the officer in charge thereof shall receive, relieve and detain the person so conveyed thereto, call in forthwith the advice of a medical practitioner, and shall, as soon as possible, make application for a reception order in manner provided by section 7:

50 Provided that such person shall not be conveyed to or received in a prison unless he cannot be otherwise controlled and it is impossible to receive him immediately in an institution or other place.

(3) A person shall not, without the authority of the magistrate, be detained under this section for a period exceeding forty-eight hours.

(4) A person shall in no case be detained under this section for a period exceeding seven days except on the authority of a reception order issued in accordance with the provisions of section 8 unless a medical practitioner certifies that it is impossible to decide within that period whether such person is or is not mentally disordered or defective. If a medical practitioner so certifies, the magistrate may authorise the detention of such person for a further period, not exceeding seven days. 5

Magistrate may order the apprehension of persons wandering at large.

14. Any magistrate, upon sworn information that a 10 person, who is wandering at large and unable to take care of himself or is dangerous to others, is deemed to be mentally disordered or defective, may, by order, require a police officer to apprehend such person and bring him before the magistrate issuing the order, or before any magistrate having jurisdiction 15 where such person is to be examined, to be dealt with in accordance with this Part.

Magistrate may order apprehension of any patient in respect of whom an application is made for a reception order.

15. Every magistrate to whom any application is made for a reception order in respect of any person may, if he thinks fit, authorise, at any time before the reception order 20 has been made, any police officer to apprehend that person and bring him before such magistrate to be examined and to be dealt with in accordance with this Part.

Magistrate may give directions as to disposal of persons in custody.

16. (1) Whenever any person in respect of whom an application for a reception order has been made to a magistrate is brought before that magistrate under this Ordinance, the magistrate may make such order as he thinks fit for the care, control and detention of that person in any institution or other place, pending the determination of the application. 25

(2) Unless the magistrate is of opinion that there is 30 good reason therefor, no such order shall be made for the detention of any person in any prison.

Official Curator ad Litem.

Official curator ad litem.

17. The Attorney General shall be the official *curator ad litem* (in this Ordinance referred to as "the official *curator ad litem*") of any person detained under an order issued by a magistrate under this Ordinance or further detained under an order of the judge issued under section 20. 35

Magistrate to send copies of order, etc., to official curator ad litem.

18. (1) A magistrate issuing any reception order shall, without delay, transmit a copy thereof together with copies 40 of the application, depositions (if any) and medical reports upon which he acted in issuing the order and his own report to the official *curator ad litem*.

(2) When the patient has not been admitted to an institution the magistrate shall also, within ten days after 45 issuing the order, transmit as aforesaid the report of the medical officer, or such medical practitioner as may have been in attendance upon the patient, as to his mental condition during his detention. Such report shall be based upon an examination of the patient, made not less than two nor more 50 than ten days after the date of the reception order.

(3) The magistrate shall also make to the official *curator ad litem* such report (if any) as may be prescribed by Rules, and shall otherwise conform to the procedure prescribed by such Rules.

(4) Whenever a patient has been committed by a reception order to detention in an institution the superintendent thereof shall, within seven days after the patient's admission thereto, transmit to the official *curator ad litem* such medical report as is by sub-section (2) required to be made by the medical officer and transmitted by the magistrate.

(5) The magistrate shall report to the Commissioner the result of every application made under section 7 and transmit with such report a certified copy of the application and documents connected therewith.

(6) The superintendent shall transmit to the Commissioner a copy of any medical report made by him under this section.

19. The official *curator ad litem* shall forthwith upon the receipt of any such order, depositions and reports aforesaid examine them, and may, if he deems it necessary, require further reports, depositions and statements to be furnished.

Curator ad litem to transmit documents to registrar for submission to a judge.

As soon thereafter as possible he shall transmit the order with all such reports, depositions and statements to the registrar for the consideration of a judge in chambers under section 20.

Jurisdiction of the Court or a Judge thereof.

20. (1) A judge in chambers, upon consideration of a reception order, application, reports and any evidence of mental disorder or defect therein appearing submitted by the official *curator ad litem*, may—

Powers of judge on consideration of reception order and documents.

(a) if satisfied that an order for the further detention of the patient should be made forthwith, make such order accordingly, and for such period as he may deem necessary;

(b) direct that a summons be issued and served upon the patient and the official *curator ad litem*, to appear at a place to be therein named to show cause why the patient should not be declared a mentally disordered or defective person and his detention as such confirmed, or, if necessary, a *curator* specially appointed for the care of his person and for the care or administration of his property;

(c) direct that any summons or other process be issued and that the proceedings in the matter be continued, free of any stamp duty or court or other fees, and order that service of any process under this section be made in such manner as may seem expedient;

(d) direct that the patient be immediately discharged;

(e) then or at any subsequent time appoint a *curator bonis* for the temporary care or custody of any property of the patient and, where it appears to the judge desirable that temporary provision should be made for the maintenance or for other necessary purposes or requirements of the patient or any member of his family out of any cash or available securities belonging to him in the hands of his bankers or of any person, authorise any such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary, and give directions as to the application thereof for the patient's benefit or the relief of his family,

and generally give such directions as may appear necessary and proper.

(2) The registrar shall transmit any order made or direction given by a judge under paragraph (a) or paragraph (d) of sub-section (1) to the person who has charge of the patient and shall further transmit a copy of the order or direction to the Commissioner. 5

(3) All proceedings under this section with respect to a patient shall be conducted *in camera*. When an inquiry is held by a judge, and the person concerned is detained at an 10 institution, such inquiry shall, so far as in the circumstances is practicable, be held at the institution.

Patient may apply to the court for inquiry.

21. (1) Any person detained under the order of a magistrate under this Ordinance, or under a judge's further detention order made as aforesaid, may apply to the court, directly 15 or through the official *curator ad litem*, for an inquiry into the cause and grounds of his detention, and the court may make such order in the matter as it may deem fitting.

(2) Such inquiry if held when such person is detained at an institution shall, so far as in the circumstances is 20 practicable, be held at the institution.

Relative or friend of person, deemed to be a patient, may apply to the court for inquiry.

22. (1) Nothing in this Ordinance contained shall be construed as preventing the husband, wife or any other relation of any person alleged to be mentally disordered or defective or any friend of such person from applying directly 25 by petition to the court for an inquiry into such person's mental condition, whether a reception order has previously been granted or not, and the court may make such order in the matter as it may deem fitting.

(2) Such inquiry if held when such person is detained at 30 an institution, shall, so far as in the circumstances is practicable, be held at the institution.

Provisions as to Medical Certificates given under this Part.

Particulars to be contained in medical certificates.

23. Every medical practitioner giving a certificate under this Part shall, so far as he is able, in addition to the facts 35 indicating in respect of a patient's mental disorder or defect observed by him on the date of the certificate, state therein—

(a) any further facts indicating in respect of that patient's mental disorder or defect observed by the certifying medical practitioner on any other occasion, and the 40 approximate date of that occasion;

(b) any facts communicated to him by others indicating mental disorder or defect in respect of the patient, and the names and addresses of the persons who communicated those facts; 45

(c) the class as set forth in section 5 to which, in his opinion, the patient in respect of whom the certificate is given properly belongs;

(d) what in his opinion are the factors which caused the mental disorder or defect; 50

(e) whether in his opinion the patient is homicidal, suicidal or in any other way dangerous to himself or to others;

- 5
- (f) what treatment (if any) has been employed towards the patient in respect of his mental condition;
 - (g) what is the bodily health and condition of the patient with special reference to the presence or absence of communicable disease and recent injury.

24. (1) Except in the case described in sub-section (1) of section 12, a medical certificate shall not be given under this Part by—

- 10 (a) the applicant for the reception order;
 - (b) the superintendent, physician or assistant physician, or licensee of the institution into which the reception order (if issued) would authorise the patient to be received;
 - 15 (c) the householder of the dwelling into which the reception order (if issued) would authorise the patient to be received as a private patient;
 - 20 (d) the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner, principal or assistant of any of the persons mentioned in paragraphs (a), (b) or (c) of this sub-section or of the patient or the guardian or trustee of the patient;
 - 25 (e) the Commissioner, or a member of a board established under Part VII;
 - (f) any person by whom the reception order is issued.
- (2) A medical certificate shall not be given under this Part by the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, husband or wife, or the partner, principal or assistant of the other medical practitioner giving such certificate.

25. Every medical certificate given under this Part shall contain a statement that the certifying medical practitioner is not prohibited by this Ordinance from signing the certificate and that he is a duly registered medical practitioner.

Statement of
eligibility
to sign
certificate
to be stated
therein.

Miscellaneous Provisions as to Persons Detained or Certificates given or Orders made under this Part.

26. (1) At any time after a reception order has been issued for the detention of a patient or the court has declared a patient to be a mentally disordered or defective person, the Commissioner may, in the prescribed form, authorise the removal of such patient to some institution, hospital or other place, there to be detained until lawfully discharged or lawfully removed to some other institution, hospital or place.

Commissioner
may order
removal to
institution
of patient
detained or
declared
mentally
disordered or
defective.

(2) In the case of a patient dealt with under a reception order, if the order of removal aforesaid is issued prior to the grant of the judge's further detention order, notice of the issue of the order of removal shall forthwith be sent by the Commissioner to the official *curator ad litem*.

27. (1) When a patient is detained in an institution or other place, the superintendent or person in charge thereof shall transmit in the prescribed form, annually for the first three years and thereafter in the fifth year and then every five years, a report to the Commissioner as to the mental condition of that

Periodical
report on
mental
condition of
patient.

patient : Provided that, in the case of a patient who was a child at the date when the reception order in respect of him was made, a special report shall be made within three months after such patient attains the age of sixteen years.

(2) In each year in which under sub-section (1) the report is required to be transmitted it shall be transmitted in the month corresponding to that in which the patient was admitted. 5

(3) The Commissioner may, if not satisfied with such report, call for such further information as he may require or may himself visit and examine the patient as to his mental condition or instruct some other approved medical practitioner so to examine the patient. 10

(4) On consideration of such further information or reports, or after such visits, the Commissioner may order the discharge of the patient or may give such other directions as 15 he may think necessary.

**Amendment
of orders and
certificates.**

28. (1) If an application for a reception order or such order is, before or within one month after the reception of any patient, found to be in any respect incorrect or deficient, the magistrate who issued it, or his successor in office or a 20 magistrate lawfully acting for him or for his successor, may permit the application to be amended or may (as the case may be) amend the order.

(2) If a medical certificate given under this Part is found to be in any respect incorrect or deficient, it may, before the 25 reception of the person in respect of whom it is made or within one month thereafter and with the consent of the magistrate who issued the order or his successor in office or a magistrate lawfully acting for him or for his successor, be amended by the certifying medical practitioner. 30

(3) Every order and certificate amended under this section shall take effect as if the amendment had been contained therein when it was originally issued or signed, as the case may be.

PART II.

35

PROVISIONS RELATING TO MENTALLY DISORDERED OR DEFECTIVE PATIENTS UNDER DETENTION IN RESPECT OF CRIMINAL OFFENCES.

**Procedure
if found
mentally
disordered
or defective
prior to
inquiry or
trial.**

29. (1) If at any time before a person against whom criminal proceedings have been initiated for any criminal offence is brought before any Court or any magistrate for inquiry or trial, it shall appear to the police or prison officer or other custodian of such person that such person is mentally disordered or defective, such police or prison officer or other custodian shall without delay report the fact to the magistrate of the district in which such person is confined ; and such magistrate shall forthwith direct two medical practitioners, or one medical practitioner if two are not immediately available, to examine such person and to inquire into his mental condition, and after such examination the said medical practitioners or practitioner may certify in writing that he is mentally disordered or defective ; and if upon such certificates or certificate the magistrate is satisfied that such person is mentally disordered or defective, the magistrate shall by order direct such person to be kept in custody in some prison or some other suitable place pending the order of the Governor : 40 45 50 55 Provided that nothing in this section shall be construed as

prohibiting the abandonment of the criminal charge at the discretion of the judge or magistrate concerned and the adoption of the procedure specified in Part I of this Ordinance in those cases in which the criminal offence charged is not of a serious nature and the interests of justice will not suffer by the abandonment of the charge.

(2) When an order committing a person as aforesaid pending the order of the Governor has been issued, it shall be the duty of the officer in charge of the prison or other place to which such person has been committed to send a copy of such order forthwith to the Commissioner for transmission to the Governor.

(3) It shall be lawful for the Governor thereupon and from time to time to give such order for the safe custody of such person in such place and in such manner as the Governor may see fit.

30. The Governor may, subject to the provisions of this section, direct that a person confined in an institution under the provisions of the Criminal Procedure Code shall no longer be confined in an institution.

(2) No such direction shall be given in the case of person against whom criminal proceedings have been instituted for or who has been found to have committed the offence of murder or manslaughter, unless the Board (if any) established under Part VII has recommended that such person be discharged from the institution.

(3) On receipt of the Governor's direction the physician superintendent or other custodian of such person shall forthwith transmit a report as to the condition of such patient to the official *curator ad litem*, who shall without delay transmit the report together with such other documents as may be deemed necessary to the Registrar for submission to a judge in chambers.

(4) The judge may thereupon order the further detention of such person as a patient under Part I, or may make such other order in accordance with section 20 as he may think fit

(5) The order or warrant under which the patient was previously detained shall continue to operate as an authority for his detention pending the issue of an order by a judge under sub-section (4) of this section.

31. (1) Whenever it appears to an officer in charge of a prison that a convicted prisoner in his custody is mentally disordered or defective, he shall report the fact to the magistrate of the district in which such prisoner is confined.

(2) The magistrate, on receipt of such report, shall forthwith direct two medical practitioners (one of whom shall, if practicable, be the medical officer of the prison) to examine such prisoner and to inquire as to his mental condition.

(3) After such examination and inquiry, the said medical practitioners may certify in writing that he is mentally disordered or defective.

(4) Unless the prisoner is under sentence of death, the magistrate may, if the services of two medical practitioners are not available, direct one medical practitioner, who shall be, if practicable, the medical officer aforesaid, to carry out the examination and inquiry.

Provision for
prisoners
detained under
C.P.C.

Procedure
where
convicted
prisoners
found to be
mentally
disordered or
defective.

(5) This section and the following sections relating to convicted prisoners shall not apply to any prisoner sentenced to a period of imprisonment not exceeding two months. In any such case the magistrate shall forthwith proceed under Part I of this Ordinance, as if the prisoner was not a convicted prisoner. 5

*Cap. 39.
25 of 1925.*

Magistrate to order mentally disordered or defective prisoner to be confined.

(6) The provisions of this section shall apply *mutatis mutandis* to persons detained under the Reformatory Schools Ordinance and the Detention Camps Ordinance, 1925.

32. (1) When a convicted prisoner is certified as aforesaid to be mentally disordered or defective, the magistrate shall, by order under his hand, direct that such prisoner be kept in custody as a mentally disordered or defective prisoner in the prison in which he is detained. 10

(2) A magistrate issuing such order as aforesaid shall, without delay, transmit to the Governor a copy of the order, together with copies of the medical certificates upon which he acted in issuing the order, and of the criminal warrant under which the mentally disordered or defective prisoner was detained in the prison. 15 20

(3) Nothing in this section contained shall be construed as authorising the detention of a convicted prisoner in a prison after the expiry of the sentence of imprisonment passed upon him in respect of the conviction.

Governor to order removal of mentally disordered or defective prisoner to institution.

33. (1) When a convicted prisoner not under sentence of death is certified as aforesaid to be mentally disordered or defective, the Governor may, if he thinks fit, direct such prisoner to be removed to an institution to be by the Governor specified, and thereupon such prisoner shall be removed to and received in such institution, and, subject to the provisions of this Ordinance relating to discharge and otherwise, such prisoner shall be detained therein, or in any other institution to which he may be transferred as a mentally disordered or defective prisoner. 25 30

(2) When a convicted prisoner, under sentence of death, is certified as aforesaid to be mentally disordered or defective, the Governor shall direct such prisoner to be removed to an institution to be specified, and thereupon such prisoner shall be removed to and received in such institution or in any other institution to which he may be subsequently transferred by 40 order of the Governor. 35

Procedure on recovery of mentally disordered or defective prisoner.

34. The Governor may at any time, if it has been certified in writing by two medical practitioners or a Board established under Part VII that a mentally disordered or defective prisoner has recovered and it is no longer necessary to detain him in an institution, direct that such prisoner shall be returned to the prison from which he was removed, to undergo the unexpired portion of his sentence or to be dealt with according to law, as if no such warrant for his removal to an institution had been issued. 45 50

Procedure on expiry of sentence of mentally disordered or defective prisoner.

35. (1) A mentally disordered or defective prisoner shall, upon the expiry of the sentence of imprisonment to which he may be subject, cease to be a prisoner and the order or warrant under which he was previously detained shall continue to operate as an authority for his detention pending the issue 55 of the judge's order hereinafter mentioned.

(2) If one month before the expiry of his sentence of imprisonment such person is still mentally disordered or defective, the physician superintendent or other custodian of such mentally disordered or defective prisoner shall forthwith transmit a report as to his mental condition, with such other documents as may be deemed necessary, to the official *curator ad litem*, who shall without delay transmit such report and documents to the registrar for the consideration of a judge in chambers.

10 (3) The judge may thereupon order the further detention of the said person as a patient under Part I or make such other order in accordance with section 20 as the judge may think fit and such order shall have effect on and after the date of the expiry of the said sentence of imprisonment.

15 36. (1) The superintendent of an institution or other place in which a mentally disordered or defective prisoner is detained, shall make a report to the Governor as to the mental condition of the prisoner at such intervals as are prescribed in section 27.

20 (2) On receipt of such report and observations, if any, the Governor shall take into consideration the condition, history and circumstances of the prisoner for the purposes of determining whether he ought to be returned to a prison, discharged or otherwise dealt with in accordance with the provisions of 25 this Ordinance or the Criminal Procedure Code.

30 37. The Governor may, from time to time, order the transfer of any mentally disordered or defective prisoner detained in any institution or other place, to any other institution or other place, and such prisoner shall accordingly be received and detained in the institution or other place to which he is so transferred : Provided that in the case of prisoners detained under section 33 (2) the transfer shall not be made unless a Board established under Part VII has recommended such transfer.

35 38. The Governor may discharge any mentally disordered or defective prisoner absolutely, or conditionally, that is to say, on such conditions as to the duration of such discharge and otherwise as the Governor may think fit : Provided that no prisoner detained under section 33 (2) may be so discharged unless a Board established under Part VII has recommended such discharge.

40 39. Where a mentally disordered or defective prisoner is conditionally discharged in pursuance of this Ordinance—
45 (a) a report of his condition shall be made to the Commissioner by such persons and at such times and containing such particulars as may be required by the order of discharge or by Rule ; and

50 (b) if any of the conditions of such discharge appear to the Commissioner to have been broken, the Commissioner shall report that fact to the Governor for the Governor's orders and the Governor may revoke the conditional discharge and direct that such prisoner be taken into custody and removed to some institution or other place named in the order ; and he may

Periodical report on mental condition of mentally disordered or defective prisoner.

Governor may order transfer of mentally disordered or defective prisoner.

Discharge of mentally disordered or defective prisoner.

Conditional discharge of mentally disordered or defective prisoner.

thereupon be taken to, and shall be received and detained in such institution or place as if he had been removed thereto under the provisions of this Ordinance.

Saving of authority to Governor to make order under this Part.

40. Nothing in this Ordinance contained shall be construed as preventing the Governor, if he thinks fit, from issuing any order with respect to any person for whose safe custody the Governor is by law authorised to issue an order. 5

Saving of the Criminal Procedure Code.

41. Nothing in this Part contained shall be deemed to affect the provisions of the Criminal Procedure Code. 10

Conditions for reception of voluntary boarders in institutions.

42. The superintendent of an institution may, with the previous consent of the Commissioner (which consent shall only be given upon written application by the patient or in the case of a minor by the parent or other legal guardian), receive and lodge as a boarder, for a period not exceeding the period specified in the application, any person who is desirous of voluntarily submitting to treatment, but whose mental condition is not such as to justify the issue of a certificate of mental disorder or defect : 15 20

Provided that—

- (1) if such person or in the case of a minor the parent or other legal guardian makes a written application to the superintendent, the patient may be received as a boarder temporarily for a period not exceeding fourteen days, pending the receipt of the Commissioner's consent ; 25
- (2) every such boarder shall be produced, if required, to the Commissioner at his visits to the institution ; 30
- (3) no such boarder shall be detained for more than seven days after he has given to the superintendent written notice of his intention or desire to leave the institution, unless he is detained under an order made by a court or judge or magistrate, as provided by Part I 35 or by provisos (6) and (7) of this section ;
- (4) notices of admission, discharge and death, with respect to all such boarders, shall be made to the Commissioner in the forms prescribed ;
- (5) every such boarder shall be discharged at the expiry 40 of the period specified in the Commissioner's consent, unless a renewed application is made and the Commissioner's consent is again given ;
- (6) if, in the opinion of the Commissioner, the physician superintendent or medical attendant, a boarder shows 45 mental disorder or defect in a degree so sufficiently pronounced or sustained as to render it improper for him to reside in the institution under the provisions of this section, the superintendent or person in charge thereof shall communicate such opinion in writing (or by telegraph, if necessary) to some relation or friend of the boarder, if such a relation or friend is known to be within the Colony ; 50

- 5
- (7) if no such relation or friend is known to be within the Colony, or unless, within seven days after the despatch of the said communication, application for a reception order in respect of the boarder is made by that relation or friend to a magistrate exercising jurisdiction in the district in which the institution is situated, the superintendent or person having charge of the patient shall himself make application forthwith and may detain such boarder in the said institution pending the hearing of such application.
- 10

PART IV.

PATIENTS RESIDING IN PRIVATE DWELLINGS.

- 43.** (1) If a patient suffering from mental disorder or defect is residing in a private dwelling with relations or others, who receive no remuneration for his maintenance and care, and such disorder or defect has continued for a period of six months and is of such a nature as to require compulsory confinement in the dwelling, or restraint or coercion of any kind, the person who has charge of the patient shall give notice of those facts to the magistrate, and shall transmit to him a certificate, signed by at least one medical practitioner, as to the condition of the patient, and the reasons (if any) which render it desirable that the patient shall remain under private care. The magistrate shall transmit the certificate and reasons, together with his remarks thereon, to the Commissioner.
- Where no
remuneration
is paid for
maintenance
and care.
- 15
- 20
- 25

- (2) The Commissioner may, if satisfied as to the facts and the certificate, order that the patient be detained in the said dwelling for a further period not exceeding six months.
- 30
- (3) At the expiry of that further period, if the mental disorder or defect still continues, the necessary steps shall be taken by the person having charge of the patient to obtain a reception order under Part I.

- 44.** (1) On the authority of a certificate signed by two medical practitioners, subject to the provisions of sections 24 and 25 of this Ordinance, a patient may for payment be received to board and lodge and be taken charge of, in any private dwelling for a period not exceeding six months after his mental disorder or defect has become apparent.
- Where a
charge is made
for mainten-
ance and care.
- 35
- 40

- (2) Such certificate shall, within twenty-four hours after the admission of the patient to such private dwelling, be sent by the person receiving him to the magistrate, who shall send a copy thereof together with a report upon the case to the Commissioner.

- 45.** (3) No such patient shall be treated under this section for a longer period than that which may be specified by the Commissioner and in no case for a period exceeding six months unless the provisions of Part I relative to the issue of a reception order and a judge's further detention order have been complied with.

- (4) Except upon the authority of a licence issued under this Ordinance, no occupier or inmate of any private dwelling shall permit to reside therein or shall have under his care or charge therein more than one mentally disordered or defective person at one and the same time.

Visitation of patients detained under this Part.

45. (1) Any magistrate may, on receipt of any report or information that any patient of whom charge is being taken under this Part is wrongly or cruelly treated or neglected in any manner, visit such patient in the private dwelling where he is detained and may make such investigation and inquiry as may be found necessary, and thereafter the magistrate may take such proceedings under this Ordinance as he may consider expedient. 5

(2) The Governor in Council may prescribe the times at which patients of whom charge is being taken under this Part 10 may be visited otherwise than is provided in sub-section (1) and the persons by whom such other visits shall be made.

(3) The magistrate shall, after inspection by himself or by a medical practitioner to be appointed by him, report monthly to the Commissioner whether the dwelling in which a 15 patient is detained under this Part is suitable for the purpose, and the magistrate shall also report to the Commissioner whether the person in charge of such dwelling is a fit and proper person to have the care of the patient.

PART V.

20

LICENSED INSTITUTIONS.

Conditions of licence.

46. (1) On payment of such fee as the Governor in Council may prescribe, and subject to such provisions and conditions as he thinks fit, the Commissioner may, by writing under his hand, issue to any person, or to two or more persons 25 jointly, a licence to keep an institution for the reception and detention under this Ordinance of mentally disordered or defective persons or boarders.

(2) The particulars which shall be furnished by any applicant for such a licence shall be as prescribed by Rules. 30

(3) Every such licence shall specify the class or classes and the sexes of mentally disordered or defective persons that may be received in the institution, and also the number of persons of each sex who may be detained therein at any one time. Any further conditions which may be prescribed by 35 Rules shall be deemed to be incorporated in the licence, unless such conditions are varied by the Governor. The Governor may from time to time amend any such licence with respect to the number, sex and class of the persons that may be received and detained, or as to any of the conditions thereof. 40

(4) Any such licence may at any time be renewed by the Commissioner, or may, in consequence of a contravention by the licensee of any condition thereof or of any provision of this Ordinance, be revoked by the Commissioner.

(5) Every such institution may be visited at any time 45 by day or night by the Commissioner, or by any person delegated thereto by him, and every such visit shall be made without previous notice.

PART VI.

RECEPTION OF PATIENTS IN GENERAL HOSPITALS AND SIMILAR 50 INSTITUTIONS.

Circumstances under which patients may be received for treatment in general hospitals.

47. (1) The Commissioner may authorise any general hospital or similar institution to receive patients for temporary treatment.

(2) The medical practitioner or other person in charge of 55 such hospital or similar institution may receive for treatment any patient who may voluntarily present himself for treatment

or who may be brought to the hospital or similar institution by a responsible relative or friend or by an officer appointed to deal with such cases or by a person bearing a written statement by a medical practitioner to the effect that care and treatment in the hospital or similar institution is necessary for the patient's welfare.

(3) If the patient is unwilling to be treated and if, in the opinion of the medical practitioner in charge or in attendance, it is necessary for the public safety or the welfare of the patient that he should be detained, he may be so detained by the officer in charge of the hospital or similar institution who shall forthwith notify the magistrate of such detention.

(4) No such patient shall be detained in a general hospital or similar institution for a longer period than forty-eight hours without the written approval of the magistrate.

(5) The magistrate may approve of the detention of such a patient for a period not exceeding seven days : Provided that if the medical practitioner in charge or in attendance certifies that—

20 (a) the patient is a suitable case for treatment at a general hospital or similar institution ; and

(b) that the mental affliction is likely soon to yield to care and treatment or for any other reason it is for the patient's welfare that he should be further detained,

25 the magistrate may, having himself examined the patient or made such further inquiries as he thinks fit, give written approval to his detention for a further period not exceeding twenty-one days. The magistrate may, on a further medical certificate or examination of the patient or further inquiries 30 as aforesaid, give written approval of his detention for a further period not exceeding twenty-one days.

(6) No patient shall in any case be detained under this section for a period which in the aggregate exceeds forty-nine days.

35 **48.** If at the expiry of such period as aforesaid the patient is not recovered or will not remain voluntarily in the hospital or similar institution, he shall be discharged.

49. No patient in respect of whom a reception order or a judge's further detention order has been issued shall be detained in a general hospital or similar institution unless the medical practitioner in charge or in attendance certifies that the patient is a suitable case for treatment therein, regard being had to the interests of the hospital patients, and unless further the Commissioner consents to the detention.

45 **50.** Nothing in this Part contained shall be construed as preventing any action being taken in respect of any patient under any provision of any other Part of this Ordinance if it is necessary to take such action : Provided that, before such action is taken, such notice is given to a relation or friend of the patient by the officer in charge of the hospital or similar institution as is prescribed by section 42 in the case of voluntary boarders.

Saving as to
action under
other Parts.

PART VII.

COMMISSIONER AND BOARDS.

55 **51.** The Director of Medical and Sanitary Services shall be the Commissioner for Mental Hygiene, and shall exercise and perform all the powers, duties, or functions conferred or imposed by this Ordinance upon the Commissioner and such

Commissioner
for Mental
Hygiene.

further powers, duties and functions as may from time to time be assigned to him by the Governor. The Commissioner shall frame annually a report on mental hygiene, which shall be included in the Annual Report of the Medical Department submitted to the Legislative Council.

5

**Constitution
of Mental
Hospital
Boards.**

52. (1) The Governor may establish for any institution or other place a board to be styled the "Mental Hospital Board," consisting of three members. The appointment of those members shall be notified in the Gazette, and shall be for a period of one year from the date thereof. If any member of the Board shall be prevented by absence, or other cause, from acting, the Governor may appoint some other person to act in his place until he shall return, or be able to resume his functions. Of the members so appointed, where practicable, one shall be a medical practitioner, and one shall be an advocate of the Supreme Court. The Governor shall designate one member of the Board as chairman thereof.

(2) Every person appointed under sub-section (1) shall be eligible for reappointment at the expiry of his period of office or when a vacancy occurs upon the Board.

20

(3) A member of the Board shall vacate his office—

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

(b) if he is convicted of an offence and sentenced to imprisonment without the option of a fine;

25

(c) if he is absent from three consecutive ordinary meetings of the Board without the leave of the Board;

(d) if he gives one month's notice in writing to the Governor of his intention to resign office and his resignation is accepted by the Governor.

30

(4) In the event of the death, incapacity, or resignation of any member, the vacancy so caused shall be filled by the Governor by a person qualified as the vacating member was qualified and for a period which he would, but for his vacation of office, have continued in office.

35

(5) The members of the Board may receive remuneration according to a tariff to be prescribed by the Governor in Council.

**Visits of the
Board.**

53. (1) The Board shall visit each institution or other place in respect of which it has been appointed at least once in every two months, and shall visit every ward in such institution, give personal observation to every patient on the roll thereof, and afford every such patient an opportunity of making in person to the Board any representation he may wish to make.

40

(2) Every reasonable complaint or grievance made to the Board by a patient shall be investigated by it.

(3) Where a patient was a child at the date when the reception order in respect of him was made, his case shall be specially considered by the Board within three months after he attains the age of sixteen years.

45

**Reports by
the Board.**

54. The Board shall, from time to time, make to the Commissioner such suggestions and observations as it shall deem desirable, regarding the welfare of patients in the institution or other place, and shall in all cases report to the Commissioner the result of any visit of inspection made by it.

55

55. (1) The Board shall meet for the despatch of business whenever required, and due notice of every meeting shall be given by the chairman of the Board. At each meeting there shall be presented by the physician superintendent a report 5 showing—

- (a) the number of patients admitted since the date of the last meeting of the Board;
- (b) the number of patients discharged since such date;
- (c) the number of patients who have died since such date;
- 10 (d) the number of patients who have been transferred to any other institution or place since such date;
- (e) a return of the cases in which mechanical restraint has been imposed since such date;
- (f) a return of orders made since such date for the seclusion 15 of patients,

and the physician superintendent, if he so desires, may bring any matter to the notice of the Board affecting the interests of any patient.

(2) At every meeting of the Board the physician superintendent shall attend as an advisory member. 20

(3) Two members of the Board (exclusive of the advisory member) shall be a quorum.

56. (1) Minutes of the proceedings of each meeting shall be kept and regularly entered in a book kept for the purpose, 25 and shall be submitted to the next ordinary meeting, and, if passed thereat as correct, shall be confirmed by the signature of the member presiding thereat.

(2) Minutes so signed shall, without further proof, be evidence in all courts and places of the proceedings of the 30 meeting of which they purport to be minutes.

57. (1) The Board may, by resolution duly adopted and recorded after proper inquiry, discharge any patient (not being a mentally disordered or defective prisoner or a person detained under the provisions of the Criminal Procedure Code) detained 25 under lawful authority in an institution or other place, whether he is a recovered or unRecovered patient, and either conditionally or unconditionally as it may in its discretion determine.

(2) When any action taken by the Board under this 40 section is in conflict with the written report to the Board of the physician superintendent of the institution in which the patient is detained, the Board shall report to the Commissioner the reasons for its action.

(3) No such action in conflict with the written report of 45 the physician superintendent shall be taken by the Board unless it is unanimous.

58. The Board shall have no authority over the physician superintendent or any other officer at an institution.

Board not to have authority over institution officers.

PART VIII.

50 THE CARE AND ADMINISTRATION OF THE PROPERTY OF MENTALLY DISORDERED OR DEFECTIVE PERSONS.

59. (1) It shall be the duty of every magistrate who issues a reception order under this Ordinance forthwith to transmit notice of the order to the registrar.

Notice of reception orders to be sent to registrar.

Meetings of the Board.

Minutes of proceedings of Board.

Discharge by Board of patients from institutions. Cap. 7.

(2) Such magistrate shall immediately after the issue of a reception order make full inquiry as to the patient's property or estate, and at the conclusion of such inquiry he shall in every case transmit to the registrar a report as to the results thereof.

5

(3) Pending the orders of the judge under section 20 (1) (e) or the next succeeding section, the magistrate may, on the application of any interested person or when he himself shall deem it advisable, make such order or give such direction as he shall think fit for the temporary care, protection and 10 management of the patient's estate.

Appointment
of *curator* of
property of
patient and
conditions of
appointment.

60. (1) If on the application of the official *curator ad litem* or any interested person the court is satisfied that such person is incapable of managing his own affairs, it may appoint a *curator* for the care or administration of the property of any 15 person detained as or declared mentally disordered or defective, or of a person lawfully detained as a mentally disordered or defective prisoner, and may confer upon such *curator* authority to do any specified act, or exercise any specified power, or may confer a general authority to exercise on behalf of the patient, 20 until further order, all or any of such powers without further application to the court.

(2) When a patient detained by order of the court or a judge, but of whose property no *curator* has been appointed, possesses property the estimated value of which does not exceed eight hundred pounds in respect of the *corpus* thereof or fifty pounds per annum in respect of the income thereof, a judge in chambers or the registrar may appoint a *curator* of the property of the patient, with the powers mentioned in section 63 or such of them as in each case may seem necessary or 30 expedient.

25

(3) Subject to the provisions of section 59 (3) and until a *curator* has been appointed, the registrar shall have power to make the necessary disbursements from the patient's estate, 35 for the maintenance of the patient or his dependents.

(4) Every *curator* shall find security to the satisfaction of the registrar and unless the court otherwise orders such security shall be given at the expense of the estate.

(5) When an order has been made under the provisions 40 of this section appointing a *curator* for the care and administration of the property of a patient, a copy of the order shall forthwith be lodged with the registrar.

(6) The registrar shall issue to such *curator* a certificate that he has been so appointed and is authorised as such to 45 have the custody and administration of the patient's estate.

(7) When any patient for the care and administration of whose estate a *curator* has been appointed dies intestate, or when he has left a will but there is no executor or none willing to act, such *curator* shall continue the administration of the 50 estate of such patient and distribute the assets thereof as if he had been granted probate of the will or letters of administration of the estate.

(8) On the death of a *curator* the registrar shall have power to appoint a new *curator*.

61. (1) The powers, duties and functions of the registrar and the *curator* shall not cease until the patient is discharged as provided by this Ordinance or the Rules, and it appears from the notice of discharge that he is capable of managing his own affairs.

(2) A notice of the discharge of every patient shall, by the person who had charge of him, be sent to the registrar.

62. The Governor may, by notice in the Gazette, declare that as from the date and during a period (if any) fixed by the notice *curators* appointed by a court of law in any country specified in the notice shall be recognised as having the same powers and functions and as being subject to the same duties as curators appointed under this Part.

The registrar shall, subject to such special conditions as to security as he may in his discretion fix, recognise a *curator* appointed by such court of law.

63. The court may authorise and direct any *curator* appointed as aforesaid—

- (a) to sell any property belonging to the patient;
- (b) to make exchange or partition of any property belonging to the patient or in which he is interested, and give or receive any money for equality of exchange or partition;
- (c) to carry on or discontinue any trade or business of the patient;
- (d) to grant leases of any property of the patient;
- (e) to perform any contract relating to the property of the patient entered into by the patient before he became mentally disordered or defective;
- (f) to exercise any power or give any consent required for the exercise of any power where the power is vested in the patient for his own benefit, or the power is in the nature of a beneficial interest in the patient;
- (g) to raise money on mortgage of the patient's property for payment of his debts or payment of any debt or expenditure incurred for the patient's maintenance or otherwise for his benefit, or for payment of, or provision for, the expenses of his future maintenance;
- (h) to apply any money for or towards the maintenance or the benefit of the patient;
- (i) to expend money on the improvement of any property of the patient by way of building or otherwise;
- (j) to expend any moneys belonging to the patient in the maintenance, education or advancement of the husband or wife of the patient or of any relative of the patient or of any person wholly or partially dependent on the patient, or continue such other acts of bounty or charity exercised or promised to be exercised by the patient as the court having regard to the circumstances and the amount or value of the estate of the patient considers proper and reasonable;
- (k) to take any proceedings which may be necessary in the interests of the patient for the due and proper administration of his property;

Appointment
of *curator of
property*
without
appointment
of *curator of
person*.

Order in case
of partnership
if member
thereof
declared
mentally
disordered or
defective.

Court to
examine
patients, when
practicable, at
institution.

Definition of
"British
Dominion".

Procedure for
removal of
British
patients from
the Colony.

(1) to make such reports concerning the patient's estate to the court or to the registrar as the court or registrar deems fit.

64. When upon an inquiry the court is of opinion that the person to whom it relates is mentally disordered or defective so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the court may make such order as it thinks fit for the care or administration of the property of the said person including all proper provisions for his maintenance, but it shall not be necessary, unless the court thinks proper to do so, to make any order as to the custody of his person. 5 10

65. When any person being a member of a partnership is declared mentally disordered or defective by the court, the court may, by the same or by any subsequent order, dissolve 15 the partnership or make such order as in the circumstances may seem just.

66. When it is necessary for any court in connection with proceedings under this Part to examine a patient detained in an institution, the examination shall, as far as in the circumstances is practicable, take place at the institution. 20

PART IX.

REMOVAL OF PATIENTS FROM THE COLONY.

67. For the purposes of this Part the term "British dominion" includes any British colony or protectorate: 25 Provided that the Governor may by notice in the Gazette direct that the provisions of this Part shall also apply to any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, 30 or in any other part of His Majesty's dominions.

68. (1) When any patient in the Colony, who is a British subject and not being a native of the Colony, shall appear to the Governor, whether upon inquiry or not, that it is likely that his life will be endangered or his recovery hindered 35 by reason of there being no institution or other place in the Colony in which he can be properly detained or treated, or by reason of there not being any person in the Colony who can be properly made responsible for his safe keeping and treatment, or for any other cause, it shall be lawful for the Governor to order that such patient be removed in safe custody of such person or persons as the order shall specify to the United Kingdom, or to any British dominion or to any territory to which the provisions of this Part have been applied as herein-before provided : 40 45

Provided that the place to which the patient shall be removed shall, where possible, be the country from which the patient has, by birth or naturalisation, derived his British nationality :

And provided further that no order of removal of the patient shall be made unless prior consent for such removal has been obtained from the proper authorities in the United Kingdom or the British dominion or the territory concerned. 50

(2) The particulars mentioned in the First Schedule hereto shall, as far as possible, be set forth in the order of removal. 55

(3) A copy of any such order shall be forthwith transmitted to the official *curator ad litem*.

69. No appeal shall lie against the making of or refusal to make an order of removal under the provisions of this Part. No appeal against order of removal.

70. After the making of any such order of removal as is hereinbefore mentioned, a removal warrant shall, as soon as conveniently may be, be made out and signed and sealed by the Governor and shall be transmitted with every patient who is removed. Removal warrant.

Such removal warrant shall, as far as possible, contain the particulars mentioned in the First Schedule hereto, and shall be handed over with the patient to every person from time to time authorised to receive him into custody for the purpose of giving effect to the order of removal.

71. (1) When under this Part an order of removal of a patient from the Colony to the United Kingdom or any British dominion or to any territory has been made as hereinbefore provided, such patient shall be detained in such custody as shall be specified in the order, until a fit opportunity for his removal occurs, and then shall be conveyed in such manner as the order of removal shall specify or be put on board one of His Majesty's vessels of war, or on board some other British or other fit vessel, for removal to the United Kingdom or such British dominion or such territory as is mentioned in the order. Power to detain patient pending and during removal.

(2) The removal warrant of the Governor shall be sufficient authority to the person to whom it is directed or from time to time delivered for execution and to the commander or master of any such vessel as aforesaid, to receive and detain the patient therein mentioned, in the manner therein prescribed, and to remove and carry him to the place therein named, according to the warrant.

72. The cost of the removal of any patient under this Part and of his maintenance after removal and of his return, and of his being sent, in the event of discharge after recovery, to any place, shall be paid in such manner as may be arranged between the Government of the Colony and the proper authorities in the United Kingdom or the British dominion or the territory concerned, as the case may be: Provided that nothing in this Part contained shall affect any power to recover any of the expenses hereinbefore mentioned from the property of the patient or from any person legally liable to maintain such patient or otherwise. Cost of removal and maintenance.

73. (1) Where any patient, other than a British subject, is detained as a mentally disordered or defective person, and his family or friends desire that he should be removed to the country of which he is a subject, the Commissioner, upon application by any member of the family or by a friend of such patient, may inquire into the circumstances of the case and report thereon to the Governor. Removal of persons other than British subjects to their native countries.

(2) The Governor, if satisfied by such report that the patient to whom the report relates is not a British subject and is a mentally disordered or defective person, and that his removal is likely to be for his benefit, and that proper arrangements have been made for such removal and for his subsequent care and treatment, may, by warrant under seal, direct such patient to be delivered to the person named in the warrant for the purpose of his removal to the country of which he is a subject, and every warrant shall be obeyed by the person or authority under whose charge the patient is.

(3) A warrant under this section shall be sufficient authority to the master of any vessel to receive and detain the patient on board such vessel, and to convey him to his destination.

PART X.

5

ADMISSION OF PATIENTS FROM OTHER EAST AFRICAN TERRITORIES.

Admission into institutions in the Colony of patients from East African territories.

74. (1) The Governor may, on the application of the officer administering the Government of any East African territory, admit into any institution in the Colony for detention and treatment therein any mentally disordered or defective person legally detained in such territory under the provisions of any law relating to the detention and treatment of mentally disordered and defective persons for the time being in force in such territory.

10

(2) Every such person so admitted shall be accompanied by a warrant or other document duly authorising his detention in and removal from the said territory, and such warrant or other document shall be sufficient authority for his conveyance to, and reception and detention in, any institution in the Colony : Provided that any such person shall not be detained under the provisions of this section for a period longer than two months from the date of his admission.

15

(3) On the admission of such person into an institution, the superintendent of such institution shall forthwith forward the said warrant or other document, together with such certificates or statements in support of the facts on which it was issued, as may be received by him, to the Commissioner, who shall transmit the same to the official *curator ad litem* for submission to a judge in chambers, and thereafter the provisions of this Ordinance shall apply as if such person were a person in respect of whom a reception order had been issued in accordance with the provisions of this Ordinance.

20

(4) For the purposes of this Part "East African territory" means any territory in East Africa to which the Governor may, by notice in the Gazette, declare the provisions of this Part to apply.

25

30

35

PART XI.

OFFENCES AND PENALTIES.

Detaining patients except under provisions of Ordinance.

75. (1) Every person who, except under the provisions of this Ordinance, receives or detains a patient in an institution, or for payment takes charge of, receives to board and lodge, or detains a patient, shall be guilty of an offence.

40

(2) The superintendent of a licensed institution shall be guilty of an offence if he receives, detains, or suffers to remain in that institution a greater number or a different class or sex of persons than he is authorised to receive or detain therein by the terms of the licence.

45

False statements, entries and wilful obstruction.

76. Any person who—

(a) wilfully makes any misstatement of any material fact in any petition, application, statement of particulars, report or reception order under this Ordinance;

50

(b) wilfully makes a misstatement of any material fact in any medical certificate or other certificate or in any statement or report of bodily or mental condition under this Ordinance;

(c) knowingly makes in any book, statement or return, any false entry as to any matter regarding which he is by this Ordinance or by any Rule required to make an entry;

5 (d) wilfully obstructs any magistrate, commissioner, *curator, curator ad litem*, member of a Board, medical practitioner, superintendent, police officer or any person specially authorised by the Commissioner or under any order of court or any judge or registrar in the exercise of any of the powers conferred by this Ordinance or by any Rule,

10 shall be guilty of an offence.

77. Any officer, nurse, servant or other person employed in any institution or other place, or any person having the care or charge of a patient (whether by reason of any contract, or any ties of relationship or marriage or otherwise), who ill-treats or wilfully neglects any patient shall be guilty of an offence.

Ill-treatment
of patient by
nurses or other
persons in
charge.

78. Any person who wilfully permits or assists or connives at the escape or attempted escape of any patient, or who unlawfully secretes or harbours a patient, shall be guilty of an offence.

Conniving at
escape of
patient.

79. (1) It shall not be lawful to employ any male person in any institution in the personal custody or restraint of any female patient except under the continual supervision of a female nurse and then only on the instructions of the superintendent of the institution, who shall report such employment to the Commissioner.

Employment
of male person
in personal
custody of
female patient.

(2) This section shall not be construed as prohibiting, or imposing a penalty in respect of, the employment of male persons on such occasions of urgency as may in the judgment of the superintendent of the institution render such employment necessary, but such employment shall be immediately reported to the Commissioner.

80. (1) Any person who contravenes any of the provisions of this Ordinance in respect of which no penalty is by this Ordinance expressly provided, or who contravenes any Rule, shall, upon conviction, be liable to a fine not exceeding twenty pounds, or to imprisonment of either description for a period not exceeding three months.

Penalties.

(2) Any person who is guilty of any act or omission which is declared to be an offence under sections 75 to 78 inclusive shall, upon conviction, be liable to a fine not exceeding one hundred pounds, or to imprisonment of either description for a period not exceeding two years, or to both such fine and imprisonment.

81. Where it is necessary for a patient to be examined in connection with a prosecution under this Ordinance, the examination and inquiry shall, where possible, be held at the institution where the patient is detained.

Patients to
be examined
at institutions.

PART XII.

GENERAL AND SUPPLEMENTARY.

82. (1) Any person who does any act in pursuance or in intended pursuance of any of the provisions of this Ordinance shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of

No liability in
respect of act
done in good
faith in
pursuance of
this Ordinance.

mistake of law or of fact or on any other ground, if he has acted in good faith and with reasonable care.

(2) In any proceedings taken against any person for any such act as aforesaid the burden of proving that such person acted without good faith or without reasonable care shall lie upon the plaintiff or the prosecutor, as the case may be. 5

(3) Any proceedings taken against any person for any such act as aforesaid may, upon application to the court in which such proceedings are taken, be stayed, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious. 10

(4) No such proceedings as aforesaid shall be commenced after the expiry of three months from the date of commission of the act complained of, or, in the case of a continuance of injury or damage, after the expiry of three months from the cessation thereof : 15

Provided that, in estimating the said period of three months, no account shall be taken of any time or times during which the person alleged to be injured was under detention, 20 lawfully or unlawfully, as a mentally disordered or defective person, or was ignorant of the facts which constitute the cause of action.

(5) Nothing in this section shall be construed as depriving any person of any other defence to which he would be 25 lawfully entitled.

(6) No proceedings shall be taken against any person on the ground merely that any mentally disordered or defective person was certified or detained as belonging to any one class instead of another class. 30

**Mechanical
means of
restraint.**

83. Mechanical means of bodily restraint shall not be applied to any patient unless the restraint is necessary for the purposes of surgical or medical treatment, or to prevent the patient from injuring himself or others; and in every such case— 35

(a) a medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the ground upon which the certificate is founded;

(b) the certificate shall be signed, in the case of a 40 patient in an institution or other place of confinement, by a medical officer thereof, and in the case of a private patient, by his medical attendant;

(c) a full record of every case of restraint by mechanical means shall be kept from day to day;

(d) copies of the certificates and records under this section shall be sent to the Commissioner at the end of every quarter. 45

For the purposes of this section "mechanical means" shall be such instrument as the Commissioner may determine 50 or as may be prescribed.

**Escaped
patient may be
recaptured.**

84. (1) If any person escapes while being conveyed to any institution or other place pursuant to the provisions of this Ordinance, or if any person lawfully detained in an institution or other place for patients escapes, such person may be re-taken 55 within forty-two days after his escape by the superintendent of such institution or person in charge of such other place, or by any officer or servant belonging thereto, or by any person

assisting such superintendent, person in charge, officer or servant, or by the appointed escort of such escaped person, or by any police officer, and thereupon may be conveyed to and received and detained in such institution or other place.

5 (2) If the person so escaping is not re-taken within forty-two days, he shall be formally discharged, and, before his re-admission, a new order must be obtained.

10 (3) Any mentally disordered or defective person or prisoner detained under the provisions of the Criminal Procedure Code who escapes may be recaptured as aforesaid at any time after escape and may thereupon be re-admitted without any further order.

15 **85.** When any person shall be detained and maintained by the Government under the provisions of this Ordinance in any institution or other place, the maintenance and other expenses of such person shall, until further provision therefor be made, be defrayed out of the general revenues of the Colony :

20 Provided that all sums so paid may be recovered summarily as a civil debt from the estate of any such person, or from any person or persons liable by law to contribute towards the maintenance of such detained person.

**Cost of
maintenance of
patient main-
tained by
Government in
institution or
other place.**

25 **86.** Notwithstanding anything in this Ordinance contained, when any sum in respect of pay, pension, superannuation, or other allowance, or annuity under the control or management of any public department, is payable to any person, in respect either of service as a civil servant or of naval, military or air service, or of provision for a widow or child of a person employed in civil, naval, military or air service, and the person to whom the sum is payable is certified by a magistrate or minister of religion and by a medical practitioner to be unable by reason of mental disability to manage his or her affairs, the public department may pay so much of the said sum as the department may think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part thereof as the department may think fit, for or towards the maintenance and benefit of the wife or husband and relatives of the disabled person, and the department shall be discharged from all liability in respect of any sums so paid.

**Pension of
patient pay-
able by public
department.**

40 **87.** (1) Any magistrate, or the Commissioner, or any other person or persons appointed by any competent court or by the Governor or Commissioner to make any inquiry under this Ordinance, or in respect of any patient, may, if he deems it necessary so to do, summon any person to appear before him to testify on oath touching any matter respecting which such magistrate, Commissioner or other person is under this Ordinance, or by any order issued by any such court or by the Governor or Commissioner, authorised to inquire, which oath the Commissioner or other person is hereby empowered to administer.

**Holding
inquiries
under this
Ordinance.**

50 (2) Every person who does not appear pursuant to any such summons as is in sub-section (1) mentioned or does not show some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, upon conviction, be liable to a fine not exceeding twenty pounds.

55 (3) Every person so summoned as aforesaid shall be entitled to be paid his expenses as if he were a witness summoned to give evidence at a trial in a criminal case.

**Execution of
orders under
this Ordinance.**

88. (1) Every order, warrant or document which, under this Ordinance, may be issued by the Governor or Commissioner, shall be good and effectual if signed by an officer in the public service authorised by the Governor or Commissioner by notice in the Gazette to sign such order, warrant, or document, and, when so signed, shall be evidence in all courts of law and public offices and for other purposes that it was issued in accordance with the provisions of this Ordinance.

5

(2) Every such order and every magistrate's order for the detention or removal of a patient may be executed by the persons to whom it is addressed, or by any police officer, and when it relates to a person not under detention may be executed in like manner as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every police officer to aid in the execution of every order issued under this Ordinance.

10

15

**Medical
certificates
evidence of
certain facts.**

89. Every medical certificate given or report made under and for the purposes of this Ordinance shall be *prima facie* evidence of the facts therein stated, so far as they are within the knowledge of the person giving the certificate or making the report, and shall be evidence also of the opinion therein expressed by the certifying medical practitioner on such facts, to the same extent as if the matters therein appearing had been verified on oath.

20

**Visitation
of patients.**

90. Every person detained under the provisions of this Ordinance may be visited at any time by the Commissioner, or by any person delegated thereto by the Commissioner, and every such visit may be made without previous notice.

25

**References in
laws to lunatics
deemed to be
references to
mentally
disordered or
defective
persons, etc.**

91. Whenever in any law any reference to a lunatic or to lunacy is contained, that reference shall be read and construed as a reference to a patient or to a mentally disordered or defective person within the meaning of this Ordinance, or (as the case may be) to mental disorder or defect.

30

**Power to
make Rules.**

92. The Governor in Council may make Rules in respect of all or any of the following matters :—

35

(a) The discharge of patients on recovery, or on the application of relations or friends, or on probation, and the boarding out of patients from institutions;

(b) The removal or transfer of patients from one institution or place to another institution or place, including the temporary transfer of patients to any specified place for such period as may be deemed expedient, for the benefit of their health;

40

(c) The books which shall be kept in institutions or otherwise in reference to any patient and the entries which shall be made therein, and the accounts, returns, reports, extracts, copies, statements, notices, documents and information which shall be sent to the Commissioner or other authority or person as the Governor may direct;

45

(d) The persons by whom, the times when, and the manner in which such entries, accounts, returns, reports, extracts, copies, statements, notices, documents and information are to be made and sent in regard to any institution or patient;

50

- (e) The terms of payment and accommodation for paying patients in any institution, except a licensed institution;
- 5 (f) The management of licensed institutions and of patients under private care;
- (g) The visitation of general hospitals or similar institutions where patients are detained;
- (h) The forms which shall be used as nearly as circumstances shall permit, for the purposes of this
- 10 Ordinance;
- (i) The appointment, duties, discipline and conditions of service of institution officers;
- (j) Any matter required by this Ordinance to be prescribed,
- 15 and generally for the due administration and efficient working of this Ordinance, and the care and comfort of patients.

93. The enactments mentioned in the Second Schedule Repeal, hereto are hereby repealed to the extent specified in the fourth column thereof.

FIRST SCHEDULE.

(SECTIONS 68 (2) AND 70.)

*(If any particulars in this Statement be not known,
the fact to be so stated.)*

Name of patient

Nationality

Place of birth

Date of birth

Names of parents (including mother's maiden name)

.....

Sex

Age

Married, single or widower

Condition of life and previous occupation

.....

Places in which resided before entering Kenya

.....

.....

Whether first attack

Age (if known) on first attack

When and where previously under care and treatment

.....

Whether subject to epilepsy

Whether suicidal

Whether dangerous to others

Whether found by inquiry and date of order

.....

.....

.....

Whether any relatives or friends of the patient in the
place where the patient is to be removed; if any,
names and addresses

.....

.....

Special circumstances (if any)

.....

Photograph of the patient :—

Signed.....

SECOND SCHEDULE.

(See SECTION 93.)

Enactments Repealed.

Year	Number	Short Title	Extent of Repeal
1858	XXXV	The Indian Lunacy (District Courts) Act, as applied to the Colony	The whole Act.
1858	XXXVI	The Indian Lunatic Asylums Act, as applied to the Colony	The whole Act.
	Cap. 122 of the Revised Edition	The Lunacy Ordinance	The whole Ordinance.
	Cap. 123 of the Revised Edition	The Removal of Lunatics (European) Ordinance	The whole Ordinance.
	Cap. 37 of the Revised Edition	The Prisons Ordinance	Section 46.

OBJECTS AND REASONS.

This Bill is prepared on the instructions of the Secretary of State that whenever circumstances permit the applied Indian Acts should be replaced by local Ordinances.

The provisions of the Indian Lunacy (District Courts) Act, 1858, and the Indian Lunatic Asylums Act, 1858, which apply to the Colony, are inadequate to the present requirements of the Colony. The present Bill is designed to be comprehensive.

The Bill is designed to consolidate and amend the law relating to the Detention, Removal and Treatment of Mentally Disordered and Defective Persons and to make provision as to institutions in which such persons may be removed, detained and treated.

PART I. Detailed procedure has been laid down for the reception of mental patients in institutions and other places.

PART II relates to mentally disordered and defective persons under detention in respect of criminal offences.

PART III prescribes the conditions for the reception of any person who is desirous of voluntarily submitting to treatment.

PART IV. Patients may be allowed to reside under certain circumstances and conditions in private dwellings and may be treated in such dwellings.

PART V. The Commissioner is empowered to issue licences to any person to keep an institution for the reception and detention of mentally disordered or defective persons as boarders.

PART VI details the circumstances under which mentally disordered or defective persons may be received for temporary treatment in general hospitals or similar institutions.

PART VII. The Director of Medical and Sanitary Services shall be the Commissioner for Mental Hygiene and shall have general control of institutions and mental patients. Power is conferred on the Governor to establish "Mental Hospital Boards." Boards will visit institutions and report to the Commissioner.

PART VIII. Provision is made for the care and administration of the property of mentally disordered or defective persons.

PART IX. Power is taken to order a patient, who is a British subject, not being a native of the Colony, to be removed in safe custody to the United Kingdom or to any British dominion : Provided that the place to which the patient shall be removed shall be the British dominion from which the patient derives his British nationality.

Power is also taken to direct that any person other than a British subject be removed to his native country if his family or friends desire that he should be so removed or when his removal is likely to be for his benefit, provided that proper arrangements have been made for such removal and for his subsequent care and treatment.

Part X contains provision for the admission into institutions in the Colony of patients from East African territories.

Part XI defines offences and prescribes penalties for same.

Part XII contains general and supplementary provisions. Clause 86 deals with pay, pension or other allowance payable by a public department to a mental patient.

THE MENTAL DISORDERS BILL, 1929.

COMPARATIVE TABLE OF SECTIONS.

<i>Clause of the Bill.</i>	<i>Corresponding section of the Mental Dis- orders Act, 1916, of South Africa.</i>	<i>Corresponding section of other law.</i>
1	89	
2	87	
3	1	
4	2	
5	3	
6	4	
7	5	
8	6	
9	—	Section 11 of the Lunacy Ordinance, 1928, of Nyasaland.
10	7	
11	8	
12	9	
13	10	
14	11	
15	12	
16	13	
17	14	
18	15	
19	16	
20	18	
21	19	
22	20	
23	21	
24	22	
25	23	
26	24	
27	25	
28	26	
29	27	Section 20 of the Lunacy Ordinance, 1928, of Nyasaland.
30	31	
31	32	
32	33	
33	34 and 35	
34	36	
35	37	
36	38	
37	39	
38	40	
39	41	
40	42	
41 (New)	—	
42	44	
43	45	
44	46	
45	47	
46	48	
47	49	
48	50	
49	51	
50	52	
51	53	
52	54	

<i>Clause of the Bill.</i>	<i>Corresponding section of the Mental Dis- orders Act, 1916, of South Africa.</i>	<i>Corresponding section of other law.</i>
53	55	
54	56	
55	57	
56	58	
57	59	
58	60	
59	61	
60	62	
61	63	
62	64	
63	65	
64	66	
65	67	
66	68 (2)	
67	—	
68 (New)	—	Section 5 of the Re- moval of Lunatics (European) Ordin- ance (Cap. 123) Kenya.
69 (New)	—	
70	—	Section 6, ditto.
71	—	Section 7, ditto.
72	—	Section 8, ditto.
73	—	Section 71 of the Lunacy Act, 1890 (Imperial).
74	43	
75	69	
76	70	
77	71	
78	72	
79	73	
80	75	
81	75	
82	76	
83	77	
84	78	
85	79	
86	—	Section 335 of the Lunacy Act, 1890 (Imperial).
87	81	
88	82	
89	83	
90	84	
91	85	
92	86	
93 (New)	—	
Schedule (New)	—	

GOVERNMENT NOTICE No. 358.

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

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

A Bill relating to the Registration of Trade Marks.

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

1. This Ordinance may be cited as "the Trade Marks ^{Short title.} Ordinance, 1930," and shall come into operation on such date as the Governor may by notice in the Gazette appoint.

PART I.

5 2. In this Ordinance, unless the context otherwise ^{Interpretation.} requires :—

"Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

10 "Trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale;

15 "Registrable trade mark" means a trade mark which is capable of registration under the provisions of this Ordinance;

"Register" means the register of trade marks kept under the provisions of this Ordinance;

20 "Registered trade mark" means a trade mark which is actually upon the register;

"Prescribed" means, in relation to proceedings before the Court, prescribed by Rules of Court, and in other cases, prescribed by this Ordinance or the Rules thereunder;

"Court" means His Majesty's Supreme Court of 25 Kenya.

3. (1) The Governor shall appoint a fit and proper person, ^{Appointment of Registrar} hereinafter referred to as the "Registrar," to be the Registrar of Trade Marks under and for the purposes of this Ordinance.

(2) The Registrar shall have a seal of such device as 30 may be approved by the Secretary of State.

(3) Impressions of such seal or stamp shall be judicially noticed and admitted in evidence.

(4) Any act or thing directed to be done by or to the Registrar may be done by or to any officer authorised by the Governor.

REGISTER OF TRADE MARKS.

Register of
Trade Marks.Division of
Register.Trust not to be
entered in
Register.Incorporation
of existing
Register.Inspection of
and extract
from Register.Particular
goods.Trade marks
registerable
under Part A.

4. The Registrar shall for the purposes of this Ordinance keep a book called the "Register of Trade Marks" wherein shall be entered all registered trade marks, with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters, relating to such trade marks, as may from time to time be prescribed.

5

5. (1) The Register shall be divided into two parts to be called respectively "Part A" and "Part B."

10

(2) Part A of the Register shall comprise all trade marks entered in the Register of Trade Marks at the commencement of this Ordinance and all trade marks which after the commencement of this Ordinance may be registered under the provisions of Part A.

15

(3) Part B shall comprise all trade marks which may be registered under this Ordinance in accordance with the provisions for registration in Part B or which may be entered on or removed thereto under this Ordinance.

6. There shall not be entered in the Register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

20

7. The Register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the Register. Subject to the provisions of sections 40 and 46 of this Ordinance the validity of the original entry of any trade mark upon the Register so incorporated shall be determined in accordance with the law in force at the date of such entry, and such trade mark shall retain its original date; but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

25

30

8. The Register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to such Rules as may be prescribed, and certified copies sealed with the seal of the Registrar of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

35

REGISTRABLE TRADE MARKS.

9. A trade mark must be registered in respect of particular goods or classes of goods.

40

10. A trade mark registrable under Part A must contain or consist of at least one of the following essential particulars :—

- (1) The name of a company, individual or firm represented in a special or particular manner;
- (2) The signature of the applicant for the registration or some predecessor in his business;
- (3) An invented word or invented words;
- (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or surname;
- (5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

45

50

55

For the purpose of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the 5 Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered :

Provided always that any mark which has been registered 10 as a distinctive mark in Part A of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

11. A trade mark may be limited in whole or in part to 15 one or more specified colours, and in such case the fact that Coloured trade marks.
it is so limited shall be taken into consideration by any Court having to decide on the distinctive character of such trade mark.

If and so far as a trade mark is registered without limitation 20 of colour it shall be deemed to be registered for all colours.

12. (1) It shall not be lawful to register as a trade mark 25 or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered in respect of particular goods or classes of goods set forth in the Schedule to this Ordinance unless such trade mark has been and is registered in the United Kingdom in respect of such goods or 30 classes of goods.

REGISTRATION OF TRADE MARKS.

13. (1) Any person claiming to be the proprietor of a 35 trade mark desirous of registering the same in Part A must apply in writing to the Registrar in the prescribed manner.

Application for registration.

(2) Subject to the provisions of this Ordinance the Registrar may refuse such application or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose.

(3) In the case of such refusal or conditional acceptance 40 the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the material used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the 45 prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, or to what limitations, 50 if any, as to mode or place of user or otherwise, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection 55 to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

Restriction of registration.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit

5

**Registration of
trade marks in
Part B.**

14. (1) Where any mark has for not less than two years been *bona fide* used in the Colony upon or in connection with any goods (whether for sale in the Colony or exportation abroad), for the purpose of indicating that they are goods of the proprietor of the mark by virtue of manufacture, selection, certification dealing with or offering for sale, or where any mark has been registered in Part B of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, the person claiming to be the proprietor of the mark may apply in writing to the Registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the Register in respect of such goods.

10

15

(2) The Registrar shall consider every such application for registration of a trade mark in Part B of the Register, and if it appears to him, after such search, if any, as he may deem necessary, that the application is inconsistent with the provisions of section 12 or section 24 of this Ordinance, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

20

25

30

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the Register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the Court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the Register.

35

(5) A mark may be registered in Part B notwithstanding any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

40

(6) The provisions of sections 19 (9), 20, 29, 30, 32, 36 and 64 of this Ordinance shall not apply in respect of trade marks to which this section applies.

45

**Power to treat
applications for
registration in
Part A as
applications for
registration
in Part B.**

15. If any person applies for the registration of a trade mark in Part A of the Register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the Register and deal with the application accordingly.

50

**Removal from
Register of
word trade
mark used as
name of
articles.**

16. (1) Where in the case of an article or substance manufactured under any patent in force at or granted after the commencement of this Ordinance, a word trade mark registered under this Ordinance is the name or only practicable name of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law or by registration (and notwithstanding the provisions of

55

section 46 of this Ordinance), shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive mark, and may be removed by the Court from the Register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark, and any such word on the Register may, notwithstanding section 46 of this Ordinance, be removed by the Court from the Register on the application of any person aggrieved :

Provided that the provisions of this sub-section shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use.

(3) The power to remove a trade mark from the Register conferred by this section shall be in addition to and not in derogation of any other powers of the Court in respect of the removal of trade marks from the Register.

17. When an applicant for the registration of a trade mark or an agent does not reside or carry on business in the Colony he shall give the Registrar an address for service in the Colony, and if he fails to do so the Registrar may refuse to proceed with the application until such address has been given.

Address for service.

18. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall as soon as may be after such acceptance cause the application as accepted to be advertised in the Gazette. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted :

Advertisement of application

35 Provided that an application under the provisions of paragraph (5) of section 10 of this Ordinance may be advertised by the Registrar on receipt of such application and before acceptance.

19. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

Opposition to registration

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, or what limitations as to mode or place of user or otherwise, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, or what limitations, if any, as to mode or place of user or otherwise, registration is to be permitted. 5

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal. 10

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed. 15 20

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed 25 manner before being registered.

(10) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being given may treat the opposition or appeal as abandoned. 30

Disclaimers.

20. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade, or otherwise of a non-distinctive 35 character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the Register, may require as a condition of its being upon the Register that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion 40 of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration :

Provided always that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made. 45

Date of registration.

21. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for 50 notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the mark has been accepted in error, register the said trade mark, and the trade mark when registered shall be registered as of the date of the application 55 for registration, and such date shall be deemed for the purposes of this Ordinance to be date of registration.

22. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Certificate of registration

5 **23.** Where the registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant in the prescribed manner, treat the application as 10 abandoned unless it is completed within the time specified in that behalf in such notice.

Non-completion of registration.

IDENTICAL TRADE MARKS.

24. Except by order of the Court no trade mark shall be registered in respect of any goods or description of goods which 15 is identical with one belonging to a different proprietor which is already on the Register with respect to such goods or description of goods or so nearly resembling such a trade mark as to be calculated to deceive.

Identical trade marks.

20 **25.** Where each of several persons claims to be the proprietor of the same trade mark or of nearly identical trade marks, in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner 25 approved by him or by the Court.

Rival claims to identical marks.

26. In case of honest concurrent user or of other special circumstances which in the opinion of the Court or Registrar make it proper to do so, the Court or Registrar may permit the registration of the same trade mark, or of nearly identical 30 trade marks, for the same goods or description of goods, by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise as the Court or Registrar as the case may be, may think it right to impose.

Concurrent user.

ASSIGNMENT.

27. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

Assignment and transmission of trade marks.

40 But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in the United Kingdom or in any British possession or protectorate or in any foreign country in connection with any goods for which it is registered together 45 with the goodwill of the business therein in such goods, and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section 26 of this Ordinance, subject to such conditions and limitations as may be imposed under that section.

50 **28.** In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks)

Apportionment of marks on dissolution of partnership

on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, and to such limitations, if any, as to mode or place of user, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court. 5

ASSOCIATED TRADE MARKS.

Associated trade marks.

29. If the application be made for the registration of a trade mark identical with or so closely resembling a trade mark of the applicant already on the Register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the 15 Register as associated trade marks. 10

Combined trade marks

30. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the 20 conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the Register as such, but the user of the whole trade mark shall for the purposes of this 25 Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains. 25

Series of trade marks.

31. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of— 30

- (a) statements of the goods for which they are respectively used or proposed to be used ; or
- (b) statements of number, price, quality or names of places ; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or
- (d) colour ;

seeks to register such trade marks, they may be registered in 40 a series in one registration. All trade marks so registered shall be deemed to be and shall be registered as associated trade marks.

Assignment and user of associated trade marks.

32. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for 45 all other purposes be deemed to have been registered as separate trade marks :

Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, 50 accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION.

33. The registration of a trade mark shall be for a period of fourteen years but may be renewed from time to time in accordance with the provisions of this Ordinance.

Duration of registration.

5 34. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, 10 as the case may be, which date is herein termed "the expiration of the last registration."

Renewal of registration.

35. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his 15 registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the 20 Registrar may remove such trade mark from the Register, subject to such conditions (if any) as to its restoration as may be prescribed.

Procedure on expiry of period of registration

36. Where a trade mark has been removed from the Register for non-payment of the fee for renewal, such trade 25 mark shall nevertheless, for the purpose of an application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no bona fide trade user of such trade mark 30 during the two years immediately preceding such removal.

Status of unrenewed trade mark

CORRECTION AND RECTIFICATION OF REGISTER.

37. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name—

Correction of register.

- 35 (1) correct any error in the name or address of the person who is registered as proprietor of a trade mark;
 - (2) enter any change in the name or address of the person who is registered as proprietor of a trade mark;
 - (3) cancel the entry of a trade mark on the Register;
 - 40 (4) strike out any goods or classes of goods from those for which a trade mark is registered; or
 - (5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.
- 45 Any decision of the Registrar under this section shall be subject to appeal to the Court.

- 38.** (1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark, he shall make application to the Registrar to register 50 his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the Register of the assignment, transmission, or other instrument affecting the title.
- 55 Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of assignments.

(2) Except in cases of appeals under this section and applications made under section 40 of this Ordinance, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of sub-section (1) shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs. 5

Alteration of registered trade mark.

39. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, 15 the trade mark as altered shall be advertised in the prescribed manner. 10

Rectification of Register.

40. Subject to the provisions of this Ordinance—

- (1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion 20 in or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by an entry wrongfully remaining on the Register, or by an error or defect in any entry in the Register, make such order for making, expunging, or 25 varying such entry as it thinks fit;
- (2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the Register; 30
- (3) In case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section;
- (4) Any order of the Court rectifying the Register shall 35 direct that notice of the rectification be served on the Registrar in the prescribed manner, who shall, upon receipt of such notice, rectify the Register accordingly.

Trade marks registered under previous law.

41. No trade mark which is upon the Register at the 40 commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the Register on the ground that it was not registrable under the law in force at the date of its registration. But nothing in this section contained shall subject any person to any liability 45 in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the law then in force.

Non-user of trade mark.

42. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the Register in 50 respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the 55 ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon 60 such trade mark in respect of such goods.

EFFECT OF REGISTRATION.

43. Subject to the provisions of this Ordinance—

Powers of
registered
proprietor.

- 5 (1) The person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such Register to be vested in any other person, have power to assign the same and give effectual receipts for any consideration for such assignment;
- 10 (2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

- 44.** (1) Subject to the provisions of section 46 of this Ordinance and to any limitations and conditions entered upon the Register, the registration of a person as proprietor of a 15 trade mark in Part A of the Register shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered.

Rights of the
proprietor of a
trade mark.

- 2 (2) The registration of a person as the proprietor of a trade mark in Part B of the Register shall be *prima facie* evidence that that person has the exclusive right to use that trade mark, but, in any action for infringement of a trade mark entered in Part B of the Register, no injunction or other relief shall be granted to the owner of the trade mark 25 in respect of such registration if the defendant establishes to the satisfaction of the Court that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods the subject of such user were goods manufactured, selected, certified, dealt with or offered for 30 sale by the proprietor of the trade mark.

- 35 (3) Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except in so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

- 40 **45.** In all legal proceedings relating to a trade mark registered under this Ordinance (including applications under section 40 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark 45 and of all subsequent assignments and transmissions of the same.

Registration
prima facie
evidence of
validity.

- 50 **46.** In all legal proceedings relating to a trade mark registered under this Ordinance in Part A of the Register (including applications under section 40 of this Ordinance) the original registration of such trade mark shall after the expiration of seven years from the date of the original registration be taken to be valid in all respects unless such original registration was obtained by fraud or unless the trade mark offends against the provisions of section 12 of this Ordinance :

Registration
conclusive after
seven years.

Provided that nothing in this Ordinance shall entitle the proprietor of a trade mark registered under either Part A or Part B to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continually used such trade mark from a date anterior to the user or registration, whichever is the earlier, of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the Register for such similar trade mark in respect of such goods under the provisions of section 26 of this Ordinance. 5 10

**Unregistered
trade mark.**

47. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark. 15

Infringement.

48. In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

**User of name,
address or
description
of goods.**

49. No registration under this Ordinance shall interfere 20 with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

**"Passing off"
action.**

50. Nothing in this Ordinance contained shall be deemed 25 to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS.

**Certificate of
validity in legal
proceedings.**

51. In any legal proceeding in which the validity of a 30 registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or 35 judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

**Registrar to
have notice of
proceeding for
rectification.**

52. In any legal proceeding in which the relief sought 40 includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, 45 giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, 50 and such statement shall be deemed to form part of the evidence in the proceeding.

Costs.

**Costs of
proceedings
before the
Court.**

53. (1) In all proceedings before the Court under this Ordinance the Court may award to any party such costs as it 55 may consider reasonable and the costs of the Registrar shall be in discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

(2) In all proceedings before the Registrar, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of 5 Court.

EVIDENCE.

- 54.** In any proceeding under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right to do so, the Registrar may (with 10 the consent of the parties) take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.
- 15** In case any part of the evidence is taken *viva voce* the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an arbitrator appointed by the Court under the provisions of the Civil Procedure Rules. 1927.
- 20** **55.** Printed or written copies or extracts of or from the Register, or of or from the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, purporting to be certified by the Registrar and sealed with his seal, or purporting to be certified by the Registrar under the 25 Trade Marks Acts, 1905 to 1919, and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts and in all proceedings, without further proof or production of the originals.
- 30** **56.** A certificate purporting to be under the hand of the Registrar, or of the Registrar of Trade Marks in the United Kingdom under the Trade Marks Acts, 1905 to 1919, as to any entry, matter or thing which he is authorised to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having 35 been done or not done.

Sealed copies
to be evidence.

Certificate of
Registrar to be
evidence.

- 57.** In any appeal from the decision of the Registrar to the Court under this Ordinance the Court shall have and exercise the same discretionary powers as under this Ordinance 40 are conferred upon the Registrar.

Discretionary
powers.

- 58.** (1) Any application for the rectification of the Register or the removal of any trade mark from the Register in respect of any goods which, under sections 16, 40 or 42 of this Ordinance, is to be made to the Court may, at the option 45 of the applicant, be made in the first instance to the Registrar :

Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

- (2) The Registrar may, at any stage of the proceedings, 50 refer any such application to the Court or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

Rectification of
Register.

- (3) In any proceedings for rectification of the Register under this Ordinance the Court or the Registrar shall, in 55 addition to the other powers conferred by this Ordinance, have power to direct a trade mark entered in Part A of the Register to be removed to Part B of the Register.

Removal of
trade marks
from Part A
to Part B.

PART II.

Exercise of
discretionary
power of
Registrar.

59. Where any discretionary or other power is given to the Registrar by this Ordinance or Rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required to do so within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard. 5

Appeal from
Registrar.

60. Except where expressly given by the provisions of this Ordinance or Rules made thereunder there shall be no appeal from a decision of the Registrar, but the Court, in dealing with any question of the rectification of the Register (including all applications under the provisions of section 40 of this Ordinance), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made. 15

Recognition of
agents.

61. Where by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any proceeding relating thereto, such act may under and in accordance with Rules made under this Ordinance 20 or in particular cases by special leave of the Registrar be done by or to an agent of such party duly authorised in the prescribed manner.

Power to
make rules.

62. (1) Subject to the provisions of this Ordinance the Governor in Council may make such Rules, prescribe such forms, and generally do such things as he may deem expedient— 25

- (a) for regulating the practice under this Ordinance;
- (b) for classifying goods for the purposes of registration of trade marks; 30
- (c) for making or requiring duplicates of trade marks and other documents;
- (d) for securing and regulating the publishing and selling or distributing in such manner as the Governor in Council may think fit, of copies of trade marks and other documents; 35
- (e) generally, for regulating all things by this Ordinance placed under the direction or control of the Registrar.

Fees.

63. There shall be paid in respect of applications and registration and other matters under this Ordinance, such fees as the Governor in Council may from time to time prescribe. 40

Special
trade marks

64. Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connection with such goods, the Governor, if and so long as he is satisfied that such association or person is competent to certify as aforesaid, may, if he shall judge it to be to the public advantage, permit such association or person to register such trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor. 45 50 55

65. (1) If any person makes or causes to be made a false entry in the Register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding five years.

(2) Any person who represents any trade mark as registered which is not so shall be guilty of an offence and shall be liable to a fine not exceeding ten pounds.

A person shall be deemed for the purposes of this subsection to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

66. If any person, without the authority of His Majesty, Royal Arms uses in connection with any trade, business, calling or profession the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person, without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and shall be liable to a fine not exceeding thirty pounds :

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

67. (1) Where any person has registered or has applied for protection for any trade mark in the United Kingdom or in any foreign state with the Government of which His Majesty may have been pleased to make any arrangement for mutual protection of trade marks, such person or his legal representative or assignee shall be entitled to registration of his trade mark in priority to other applicants; and such registration shall have the same date as the date of application for protection in the United Kingdom or foreign state, as the case may be :

International
and Colonial
arrangements

Provided that—

(a) the application for registration is made within four months from the date of the commencement of this Ordinance or of the application for protection in the United Kingdom or foreign state; and

(b) nothing in the section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in the Colony.

(2) The registration of a trade mark shall not be invalidated by reason only of the use of the trade mark in the Colony during the aforesaid period of four months.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance, provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance. 5

(4) The provisions of this section shall apply only in the case of the United Kingdom and of those foreign states with respect to which the Governor may by Proclamation to be published in the Gazette declare them to be applicable and so long only in the case of each of such foreign states as the 10 Proclamation continues in force with respect to that state.

(5) Where it is made to appear to the Governor that in any British possession or protectorate or in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland or in any part of His Majesty's Dominions, satisfactory provision has been made for the protection of trade marks registered in this Colony it shall be lawful for the Governor by Proclamation to apply the provisions of this section to that 15 possession or protectorate or territory with such variations or additions (if any) as may be stated in the Proclamation. 20

**Provisions as
to public
holidays.**

68. Whenever the last day fixed by this Ordinance, or by any Rule for the time being in force, for leaving any document with or paying any fee to the Registrar shall fall on 25 Sunday or public holiday it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays if two or more of them occur consecutively.

69. The Registration of Trade Marks Ordinance 30 (Chapter 89 of the Revised Edition) is hereby repealed.

SCHEDULE.

1. (a) Cotton yarn.
- (b) Sewing cotton.
2. Cotton piece goods.
3. Cotton goods not included in other classes.
4. All metals, whether wrought, unwrought or partly wrought, and all goods composed wholly or partly of metal.

OBJECTS AND REASONS.

The Bill has been prepared in an attempt to achieve uniformity in legislation in the East African Dependencies on the subject of trade marks.

The desirability of securing, as far as possible, uniformity in legislation on commercial matters in the East African Dependencies was considered and recommended by the East African Commission in 1925. In regard to trade marks, the following is an extract from the Commission's Report :—

"The most up-to-date Trade Marks Ordinance now in force is undoubtedly that in Tanganyika, and we suggest that it should be taken as a basis, and that, when the law officers meet for the conference on bankruptcy legislation, they should endeavour to agree on a uniform Trade Marks Ordinance."

The matter was duly considered at the Conference of Law Officers held in 1926, and it was agreed that uniformity of legislation on this subject was desirable, and that, in framing the necessary legislation, the Tanganyika Ordinance should be adopted as a model.

The Bill, which is practically a copy of the Tanganyika Ordinance of 1921, is based on the United Kingdom Trade Marks Acts of 1905-1919. Special provision is, however, made in clause 12 (2) with regard to Cotton Marks; this provision corresponds to that made in section 9 (2) of the present law (Chapter 89 of the Revised Edition).

The only material alteration to the present law proposed by the Bill is—following the United Kingdom Trade Marks Act of 1919—the division of the Register into two parts—A and B. Part A corresponds to the present Register, while Part B is intended for the registration of trade marks not previously registrable under the existing law and of which user for two years in the Colony or prior registration in Part B of the United Kingdom Register is essential. Registration in Part B confers rights of a lower degree than are conferred by registration in Part A.

The Bill, as now presented, has been accepted by the Governments of Tanganyika, Uganda and Zanzibar.

COMPARATIVE TABLE.

Clause of the Bill	Corresponding section of the Trade Marks Ordinance, 1921, of Tanganyika	Corresponding section of the Trade Marks Ordinance (Chapter 89 of the Revised Edition of Kenya)
1	1	1
2	2	2
3	3	—
4	4	3
5	5	—
6	6	4
7	New	—
8	7	5
9	8	6
10	9	7
11	10	8
12	11	9
13	12	10 and 11
14	13	—
15	14	—
16	15	—
17	16	—
18	17	12
19	18	13, 14 and 15
20	19	16
21	20	17
22	21	13
23	22	19
24	23	20
25	24	21
26	25	22
27	26	23
28	27	24
29	28	25
30	29	26
31	30	27
32	31	28
33	32	29
34	33	30
35	34	31
36	35	32
37	36	34
38	37	35
39	38	36
40	39	37
41	New	—
42	40	38
43	41	39
44	42	40
45	43	41
46	44	42
47	45	43
48	46	44
49	47	45
50	48	46
51	49	47
52	50	—
53	51	49
54	52	—
55	53	50
56	54	51
57	55	—
58	56	—
59	57	53
60	58	—
61	59	—
62	60	54
63	61	—
64	62	55
65	63	57 (1) and (2)
66	64	57 (3)
67	65	58 and 59
68	67	60
69	New	New

GOVERNMENT NOTICE No. 359.

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

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

A Bill to Give Effect to a Certain Convention on the Execution of Arbitral Awards and to Amend the Arbitration Ordinance.

WHEREAS a Convention, set out in the Schedule to this Ordinance, on the Execution of Arbitral Awards was on the 26th day of September nineteen hundred and twenty-seven signed at Geneva on behalf of His Majesty :

AND WHEREAS it is expedient that such provisions should be enacted as will enable the said Convention to become operative in the Colony :

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

1. This Ordinance may be cited as "the Arbitration Short title. (Foreign Awards) Ordinance, 1930."

2. The provisions of this Ordinance apply to any award made after the twenty-eighth day of July, nineteen hundred and twenty-four—

(a) in pursuance of an agreement to which the protocol set out in the Third Schedule to the Arbitration Ordinance applies; and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Governor, being satisfied that reciprocal provisions have been made, may by proclamation declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

(c) in one of such territories as the Governor, being satisfied that reciprocal provisions have been made, may by proclamation declare to be territories to which the said Convention applies,

and an award to which the provisions of this Ordinance apply is in this Ordinance referred to as a "foreign award."

3. (1) A foreign award shall, subject to the provisions of this Ordinance, be enforceable either by action or under the provisions of section 13 of the Arbitration Ordinance.

Effect of foreign award.

Cap. 18.

(2) Any foreign award which would be enforceable under this Ordinance shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of these persons by way of defence, set off or otherwise in any legal proceedings, and any references in this Ordinance to enforcing a foreign award shall be construed as including references to relying on an award.

4. (1) In order that a foreign award may be enforceable under this Ordinance, it must have—

(a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;

Conditions for enforcement of foreign awards.

(b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(c) been made in conformity with the law governing the arbitration procedure;

(d) become final in the country in which it was made;

(e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Colony, and the enforcement thereof must not be contrary to the public policy or the law of the Colony.

5

10

(2) Subject to the provisions of this sub-section, a foreign award shall not be enforceable under this Ordinance if the Supreme Court is satisfied that—

(a) the award has been annulled in the country in which it was made; or

15

(b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity, or was not properly represented; or

20

(c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration :

Provided that, if the award does not deal with all the questions referred, the court may if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

25

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of sub-section (1) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of sub-section (2) of this section, entitling him to contest the validity of the award the court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

30

35

Evidence.

5. (1) The party seeking to enforce a foreign award must produce—

40

(a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it is made; and

(b) evidence proving that the award has become final; and

45

(c) such evidence as may be necessary to prove that the award is a final award, and that the conditions mentioned in paragraphs (a), (b) and (c) of sub-section (1) of the last foregoing section are satisfied.

(2) In any case where any document required to be produced under sub-section (1) of this section is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Colony.

50

55

(3) Subject to the provisions of this section, rules of court may be made under section 83 of the Civil Procedure Ordinance No. 3 of 1924, with respect to the evidence which must be furnished by a party seeking to enforce an award under this Ordinance.

5 **6.** For the purposes of this Ordinance, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made. Meaning of "final award."

7. Nothing in this Ordinance shall— Saving.
- 10 (a) prejudice any rights which any person would have had of enforcing in the Colony any award, or of availing himself in the Colony of any award if this Ordinance had not been enacted; or
- 15 (b) apply to any award made on an arbitration agreement governed by the law of the Colony.

8. Section 22 of the Arbitration Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, is hereby amended by inserting after the word "proceed" in the last line but one of the section the words "or" 20 that there is not in fact any dispute between the parties with regard to the matter agreed to be referred." Amendment of section 22 of Cap. 18. No. 7 of 1926.

SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

ARTICLE. 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

- (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*,

appel or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

- (e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

ARTICLE 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the court is satisfied—

- (a) that the award has been annulled in the country in which it was made;
- (b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c), and Article 2 (b) and (c), entitling him to contest the validity of the award in a court of law, the court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4.

The party relying upon an award or claiming its enforcement must supply, in particular—

- (1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;
- (3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5.

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

ARTICLE 6.

The present Convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

ARTICLE 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

ARTICLE 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

ARTICLE 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

ARTICLE 10.

The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the colonies, protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

OBJECTS AND REASONS.

On 24th September, 1923, at a meeting of the Assembly of the League of Nations, a Protocol on Arbitration Clauses was signed on behalf of His Majesty's Government.

Effect to that Protocol was given in the Colony by the Arbitration (Amendment) Ordinance, 1925 (No. 28 of 1925), which subsequently became section 22 of the Arbitration Ordinance (Chapter 18) by the Revised Edition of the Laws (Operation) Ordinance, 1926 (No. 7 of 1926).

On 26th September, 1927, a Convention on the Execution of Arbitral Awards was signed at Geneva on behalf of His Majesty, and legislative effect was given to that Convention by the Arbitration (Foreign Awards) Act, 1930 (20 Geo. V, c. 15).

It is important in the interest of trade and commerce in the Colony to incorporate similar provisions in the law of the Colony. This Bill closely follows the provisions of the English Act of 1930, and will give the Supreme Court power to enforce foreign awards, subject to the production of certain evidence, and to certain safeguards.

GOVERNMENT NOTICE No. 360.

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

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

A Bill to Consolidate and Amend the Law relating to Prisons, to Provide for the Organization, Discipline, Powers and Duties of the Prison Officers, and for matters incidental thereto.

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

1. This Ordinance may be cited as "the Prisons Short title, Ordinance, 1930", and shall come into force on such date as the Governor may, by notice in the Gazette, appoint.

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

"civil prisoner" means any prisoner other than a criminal prisoner;

"Commissioner" means the Commissioner of Prisons and includes an Assistant Commissioner of Prisons;

10 "convicted criminal prisoner" means any criminal prisoner under sentence of a court or court martial and includes a person detained in prison under the provisions of sections 161 to 166 of the Criminal Procedure Code;

15 "criminal prisoner" means any prisoner duly committed to custody under a writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court martial;

"European" means a person of European origin or descent;

20 "native" means any native of Africa not of European or Asiatic extraction, but includes a Swahili and a Somali;

"prison" means any prison declared a prison under section 3 and includes a temporary prison;

"prison officer" means any officer of the prisons;

25 "prisoner" means any person, whether convicted or not, under detention in any prison;

"prohibited article" means any article the introduction or removal of which into or out of a prison is prohibited by this Ordinance;

30 "subordinate officer" means a prison officer below the rank of matron and includes any person temporarily employed under section 38 of this Ordinance;

35 "superintendent" means a superintendent of prisons, and includes an assistant superintendent, and in prisons where there is no superintendent includes a chief officer.

ESTABLISHMENT OF PRISONS.

3. (1) The Governor may by notice declare any building in the Colony to be a prison under this Ordinance, and may in like manner declare that any such prison shall cease to be a prison for the purpose of this Ordinance.

Establishment
of prisons.

(2) The buildings which at the commencement of this Ordinance are in use as prisons, shall each of them be a prison within the meaning of this Ordinance.

**Temporary
prisons.**

4. Whenever—

(a) it appears to the Commissioner that the number of 5 prisoners in any prison is greater than can be conveniently kept therein, and that it is not convenient

to transfer the excess number to some other prison;
or

(b) from the outbreak of epidemic disease within any 10 prison, or for any other reason, it is desirable to provide for temporary shelter and safe custody of any prisoners,

provision shall be made as the Commissioner, with the approval of the Governor, may direct for the shelter and safe custody 15 in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison, and every such temporary prison shall be a prison for the purposes of this Ordinance.

PRISON OFFICERS.

20

**Application
of Ordinance
to existing
prison officers.**

5. All the provisions of this Ordinance and of all orders or regulations which may at any time be made in pursuance thereof shall extend to all persons who at the commencement of this Ordinance shall be serving as prison officers under the provisions of any previous Ordinance relating to the prison 25 officers as if such persons had been appointed under this Ordinance, and service under any such previous Ordinance, shall, for the purposes of this Ordinance, be deemed to be service under this Ordinance.

Prison officers.

6. The prison officers shall, unless otherwise ordered by 30 the Governor, consist of the following ranks:—

European officers :

Commissioner,
Assistant Commissioners,
Superintendents,
Assistant Superintendents,
Chief Officers,
Technical Instructors,
Matrons.

35

Subordinate Officers :

Chief Warders,
Sergeant Warders,
Corporal Warders,
Lance-Corporal Warders;
Warders,
Female Warders.

40

45

**Appointment
of prison
officers.**

7. (1) European officers shall be appointed by the Governor with the approval of the Secretary of State and in such manner as the Secretary of State may direct:

Provided that in the absence of such directions such 50 officers shall be appointed in a similar manner to other officers in the service of the Colony.

(2) Subordinate officers shall be appointed by the Commissioner subject to the provisions of this Ordinance and of such rules as may be made thereunder.

POWERS AND DUTIES OF PRISON OFFICERS.

5. 8. (1) The Commissioner shall, subject to the orders and directions of the Governor, have the administrative command, superintendence, control and direction of the prisons and prison officers of the Colony, and, subject to the provisions of this Ordinance and of such rules as may be made thereunder, may make such appointments, promotions, transfers and reductions in ranks and grades of subordinate officers as he may see fit.

General powers of Commissioner.

(2) The Commissioner may, subject to the provisions of this Ordinance and to the orders and directions of the Governor, from time to time frame orders and regulations for the observance of all prison officers and may also frame orders for the general government of such persons in relation to their enlistment, discharge, training, arms and accoutrements, clothing and equipment, places of residence, classification and particular services, as well as their distribution and inspection, and may also frame such other orders and regulations relative to the said prison officers as he may deem expedient for preventing neglect or abuse, and for rendering such prison officers efficient in the discharge of their duties and for promoting discipline.

9. The Commissioner shall periodically visit and inspect or cause to be visited and inspected all prisons in the Colony.

Commissioner to inspect prisons.

10. Any act or thing which may be done, ordered or performed by the Commissioner may, subject to the orders and directions of the Commissioner, be done, ordered or performed by the Assistant Commissioner.

Assistant Commissioner to exercise powers of Commissioner.

11. Every superintendent in charge of a prison shall supervise and control all matters in connection with the prison to which such superintendent is appointed, and shall be responsible to the Commissioner for the conduct and treatment of the prison officers and prisoners under his control, and for the due observance by prison officers and prisoners of the provisions of this Ordinance and for all rules and orders issued thereunder.

Duties of superintendents.

12. Every prison officer shall exercise such powers and perform such duties as may be prescribed, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Prisons Department.

Powers and duties of prison officers.

13. (1) No prison officer shall be concerned in any employment not connected with the Government, or have any interest, direct or indirect in any contract for the supply of goods to the prison.

Prison officers not to be concerned with private employment nor to make gratuities.

50 (2) No prison officer shall receive any fee or gratuity from, or have any business dealings with prisoners or with the friends of prisoners or with visitors to prisoners.

14. It shall be lawful for any prison officer to use his weapons against any prisoner when such prisoner—

Use of arms against any prisoner in case of an outbreak or attempt to escape.

(1) is escaping or attempting to escape;

(2) is engaged in any combined outbreak or in any attempt to force or break open the outside door or gate or enclosure wall of the prison, an officer may continue to use such weapons so long as such combined outbreak or attempt is actually prosecuted; 5

(3) is using violence to any prison officer or other person :
Provided that resort shall not be had to the use of any such weapons—

(a) as authorized under paragraph (1) of this section 10 unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape nor unless such officer shall give a warning to such prisoner that he is about to use the weapons against him; 15

(b) authorized under paragraph (3) of this section unless such officer has reasonable ground to believe that the prison officer or other person is in danger of life or limb, or that other grievous bodily harm is likely to be caused to him : 20

Provided further that no prison officer shall, in the presence of his superior officer, use his weapons against a prisoner as authorized under paragraphs (1) and (2) of this section except under the orders of such superior officer :

And provided further that the use of weapons under this 25 section shall be as far as possible to disable and not to kill.

Prison officers
may be deemed
police officers
in certain
cases.

15. For the purpose of conveying any person to or from a prison, or for the purpose of apprehending any person who may have escaped from a prison or who may have escaped while being conveyed to or from a prison, every prison officer 30 while engaged in any such duty shall have all the powers, protections and privileges of a police officer.

Prison officers
not to enter
cells at night.

16. Except in the case of sickness or emergency it shall be unlawful for a prison officer to enter a prisoner's cell at night unless accompanied by another prison officer. 35

Male officer
not to enter
cell where
females are
confined.

17. No male prison officer shall enter or remain in a cell in which female prisoners are confined unless accompanied by a matron or female warder.

Failure to
deliver up
accoutrements
on ceasing to
be a prison
officer.

18. Any subordinate officer having ceased to be a prison officer under this Ordinance, who shall not forthwith deliver 40 up the clothing, accoutrements, appointments and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty pounds, or to imprisonment of either description for a period not exceeding six months, or to 45 both.

Apprehension
of deserters.

19. Upon reasonable suspicion that any person is a deserter from the prison service any prison officer or other person may apprehend him without warrant, and forthwith bring before a magistrate of the district wherein he was found ; 50 and upon conviction of being a deserter such person shall be liable to imprisonment of either description for a period which may extend to two years and shall be liable to a fine not exceeding fifty pounds.

MEDICAL OFFICERS.

20. The duties of the medical officer of a prison shall be performed by such of the medical officers of the Government as the Director of Medical and Sanitary Services may appoint. Appointment of medical officers.

21. (1) Subject to the control of the Commissioner, the medical officer shall have the general care of the health of the prisoners and shall report to the Commissioner, and make known to the superintendent any circumstance connected with the prison or the treatment of the prisoners, which at any time appears to him to require consideration on medical grounds. Duties of medical officers.

(2) The medical officer shall examine every prisoner on admission and prior to discharge, and shall record his state of health and such facts connected therewith as may be prescribed.

15 (3) The medical officer shall examine daily every prisoner in solitary confinement or hospital, or reported to him as being sick.

(4) The medical officer shall, on the death of any prisoner, record in the register the following particulars so far as they can be ascertained, namely—

- (a) the day on which the deceased first complained of illness, or was observed to be ill;
- (b) the labour, if any, on which he was engaged on that day;
- 25** (c) the scale of his diet on that day;
- (d) the day on which he was admitted to hospital;
- (e) the day on which the medical officer or his subordinate was first informed of the illness;
- (f) the nature of the disease;
- 30** (g) when the deceased was last seen before death by the medical officer or his subordinate;
- (h) when the prisoner died, and (in cases where a post-mortem examination is made) an account of the appearance after death, together with any special remarks that may appear to the medical officer to be required.

VISITING JUSTICES.

22. (1) The Governor may from time to time appoint any fit and proper persons to be visiting justices for each prison. Visiting justices.

(2) Members of the Executive Council and Judges of the Supreme Court shall be *ex officio* visiting justices of all prisons in the Colony. Every Provincial Commissioner shall be an *ex officio* visiting justice of all prisons in his province.

45 (3) An *ex officio* visiting justice may at any time visit any prison and an appointed visiting justice may at any time visit the prison to which he is appointed.

- (4) Any visiting justice may—
 - (a) call for all books, papers, and records relating to the management and discipline of the prison;
 - (b) visit every ward, yard, cell and see every prisoner in confinement;
 - (c) inspect and test the quality and quantity of prisoners' food; and

(d) ascertain, so far as possible, that the rules and regulations are adhered to.

(e) if a male, exercise any of the powers conferred by sections 58 and 59 of this Ordinance.

(5) On the completion of the visit, every visiting justice shall enter in a book to be kept for such purpose such remarks, suggestions or recommendations as he may deem fit to make. 5

(6) Every visiting justice other than a woman visiting justice shall, for the purpose of this Ordinance, have power to summon witnesses and to administer oaths. 10

ADMISSION AND CONFINEMENT OF PRISONERS.

Admission of prisoners.

23. (1) No person shall be admitted into a prison, unless accompanied by a remand warrant, a warrant or order of detention or a warrant of conviction or of committal :

Provided that the child of a female prisoner may be 15 admitted into a prison with its mother if it is at the breast and less than eighteen months old.

(2) The superintendent shall verify that the prisoner is the person named in the warrant or order, and that such warrant or order bears the signature of the proper authority 20 and in all other respects complies with the requirements of law.

Medical examination of prisoner on admission.

24. Every prisoner shall, as soon as possible after his admission, be separately examined by the medical officer, who shall record the state of health of the prisoner, and such other 25 particulars as may be prescribed, and until so examined such prisoner shall so far as is possible be kept apart from other prisoners.

Search of prisoner on admission.

25. (1) Every prisoner shall be searched on admission and at such times subsequently as may be prescribed, and all 30 prohibited articles shall be taken from him.

(2) A female prisoner shall be searched by female officers.

Particulars to be recorded.

26. Upon the admission of any person to prison the superintendent shall cause to be recorded such particulars regarding such person as may be prescribed. 35

Prisoner's money and other effects to be kept in custody by superintendent.

27. (1) All money, clothes or other effects brought into the prison by any prisoner, or sent to the prison for his use, which he is not allowed to retain, shall be placed in the custody of the superintendent, who shall keep an inventory of them, and all such property shall be returned to such prisoner when 40 he is released.

(2) In any case where clothes of such prisoner are so old, worn-out or filthy as to be useless or not capable of further use the Superintendent may order the same to be destroyed, and in such case, on the release of such prisoner, the 45 superintendent may give him clothing suitable to his position in life.

(3) The superintendent may refuse to take into prison any property of a prisoner which by reason of its bulk or excessive quantity cannot be conveniently stored in the 50 prison.

28. (1) Male and female prisoners shall be confined in **Separation**. separate parts of the prison in such manner as to prevent their seeing or conversing or holding any intercourse with each other.

5 (2) The prisoners of each sex shall, as far as the prison accommodation renders it practicable, be divided into distinct classes, namely—

- (a) prisoners awaiting trial shall be kept apart from convicted prisoners;
- 10 (b) persons under sixteen years of age, from adults;
- (c) civil prisoners from criminal prisoners;
- (d) Europeans from Non-Europeans;
- (e) Asiatics from natives;
- (f) first offenders from recidivists.

15 **29.** Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoner) for the safe custody of any prisoner that he should be confined in irons, he may so confine him in accordance with such rules as may be prescribed.

Certain prisoners may be confined in irons.

20 CUSTODY AND REMOVAL OF PRISONERS.

30. Every prisoner confined in any prison shall be deemed to be in the legal custody of the superintendent thereof. Every prisoner shall be subject to prison discipline and regulations during the whole time of his imprisonment, 25 whether he is or is not within the precincts of any prison.

Prisoners in legal custody of superintendent.

31. The Commissioner may by any general or special order direct that any person in prison under sentence of any court for an offence committed by him be removed to any other prison, and whenever any prisoner is removed to any 30 other prison than that named in the warrant or order under which he may have been imprisoned, the said warrant or order, together with an order of removal, either endorsed on the warrant or order, or separate therefrom, shall be sufficient authority for the removal of such prisoner to the prison named 35 in the order of removal, and his detention therein, and for carrying out the sentence described in the warrant or order of imprisonment, or any part thereof which may remain unexecuted.

Removal of prisoners from one prison to another.

32. In case of a contagious or infectious disease 40 occurring in any prison, it shall be lawful to remove any of the prisoners from such prison to another place although such place may not have been declared a prison under this Ordinance, and such removal may be made in pursuance of an order under the hand of the Governor, or, in case of 45 emergency, of the superintendent or of any of the visiting justices of such prison, and such place shall be deemed during the continuance of any prisoner therein to be a part of the prison from which such prisoner was so removed, and when such disease shall have ceased any prisoners so removed from 50 any prison shall be taken back to the prison whence they were removed, if still liable to be confined therein.

Removal of prisoners in case of infectious diseases.

Removal of lunatic prisoners.

33. If any prisoner shall become or be found to be of unsound mind in any prison the superintendent shall forthwith report to the medical officer and the medical officer shall visit and inquire into the state of mind of such prisoner, and if the medical officer shall sign a certificate with respect to such prisoner according to the form in the schedule, the superintendent shall forward a copy of such certificate to the Colonial Secretary and it shall be lawful for the Colonial Secretary, by order in writing under his hand directed to the superintendent of such prison, to order that such prisoner be forthwith removed to any fit place for the custody and treatment of lunatics, which may from time to time be appointed by the Governor for that purpose either within any prison or elsewhere. Any person so removed shall remain in such place until it shall be certified by a medical officer in the service of the Government that such prisoner has become of sound mind whereupon he shall by order of the Colonial Secretary be redelivered into the custody of the superintendent of such prison if still liable to be confined there, and if not so liable released. 5 10 15 20

Removal of sick prisoners to hospital.

34. In case of the serious illness of a prisoner confined in a prison in which there is not suitable accommodation for such prisoner, any magistrate may, on the certificate of a medical officer, make an order for his removal to a Government hospital. In case of emergency such removal may be 25 made by a superintendent on the certificate of a medical officer.

Monthly report by medical officer.

35. So long as any prisoner who shall have been removed to any hospital under the provisions of the last preceding section shall remain therein he shall be deemed to 30 be in lawful custody. The medical officer of the hospital shall, at the end of every month, transmit to the superintendent a certificate signed by him that it is in his opinion necessary that such prisoner should remain in the hospital.

Power to convey prisoners back to prison.

36. So soon as, in the opinion of the medical officer in 35 charge of any hospital, it is no longer necessary that any prisoner who shall have been removed to the said hospital remain therein, he shall transmit to the superintendent a certificate stating that such necessity has ceased, and thereupon the superintendent shall forthwith cause such prisoner 40 to be brought to the prison if he is still liable to be confined therein.

Officers to take precautions to prevent escapes.

37. Every precaution shall be taken by the medical officers and other officers of hospital to prevent the escape of any prisoner who may at any time be under treatment 45 therein, and it shall be lawful for the said officers to take such measures for preventing the escape of any such prisoner as shall be necessary :

Provided that nothing be done under authority hereof which in the opinion of the medical officers is likely to be 50 prejudicial to the health of such prisoner.

Measures for further security of prisoner in hospital.

38. Where in any case from the gravity of the offence for which any prisoner may be in custody or for any other reason the superintendent considers it to be desirable to take special measures for the security of such prisoner while under 55 treatment in a hospital, it shall be lawful for him to give such prisoner into the charge of fit and proper persons, not being less than two in number, one of whom at the least shall always

be with such prisoner day and night and such persons shall be vested with full power and authority to do all things necessary to prevent such prisoner from escaping, and shall be answerable for his safe custody until such time as he is handed over to the superintendent on his discharge from hospital or until such time as his sentence expires, whichever may first occur.

LABOUR OF PRISONERS.

- 39.** (1) Every prisoner under sentence of imprisonment Labour.
 10 with hard labour or rigorous imprisonment may be kept to labour within or without the precincts of any prison in any part of the Colony, and in any employment that may be prescribed.
 (2) Prisoners sentenced to imprisonment without hard labour or to simple imprisonment may be given light employment.
 15 (3) Female prisoners shall not be employed outside the prison, except on the recommendation of the medical officer, and then only on such labour as is suitable for women.
 20 (4) All prison labour shall be under the supervision of the superintendent.

REMISSION OF SENTENCES.

- 40.** (1) Every criminal prisoner under sentence of imprisonment for six months or more may after the completion of six months' imprisonment earn a remission of one-seventh of the remaining period of his sentence by industry, accompanied by good conduct.
 25 (2) For the purpose of giving effect to the provision of sub-section (1) each prisoner on admission shall be credited with the full amount of remission to which he would be entitled, and shall only lose such remission as a punishment for idleness, lack of industry or other offence against prison discipline.
 30 (3) On the recommendation of the Commissioner, the Governor may grant a further remission on special grounds, such as exceptional merit or permanent ill-health.

- 41.** The sentence of a prisoner sentenced to imprisonment for life shall be specially considered at the end of fifteen years with a view to the release of such prisoner and the Governor shall give such directions in the matter as he shall think fit. Life sentence
to be
considered
at the end of
fifteen years.

LICENCES TO PRISONERS TO BE AT LARGE.

- 42.** The Commissioner may grant to any prisoner under sentence of imprisonment for a term of three years or upwards who has completed two-thirds of any such sentence and has been of good behaviour while undergoing his sentence a licence to be at large in the Colony or in such part thereof as in such licence shall be specified and it shall be lawful for the Commissioner to revoke or alter such licence at his pleasure :
 45 (a) to any prisoner sentenced to imprisonment for life ; or
 (b) to any prisoner who previously to the sentence he is undergoing, has been sentenced to imprisonment for any period exceeding six months.
- 50 Provided that no such licence shall be granted—
- (a) to any prisoner sentenced to imprisonment for life ; or
 - (b) to any prisoner who previously to the sentence he is undergoing, has been sentenced to imprisonment for any period exceeding six months.

Legal effect of a licence to be at large.

Form and conditions of licence to be at large.

43. So long as such licence to be at large shall continue in force, the person to whom the same has been granted shall not be liable to imprisonment by reason of his sentence.

44. Every licence to be at large shall be in such form as shall be prescribed and shall be granted subject to the following conditions :—

- (a) the finger prints of the holder of the licence shall be impressed thereon, and such holder shall preserve his licence and shall at all times produce it on demand when called upon by a magistrate or police officer to do so;
- (b) the holder of such licence shall abstain from any violation of the law;
- (c) the holder of such licence shall not habitually associate with notoriously bad characters such as reputed thieves, housebreakers, receivers of stolen property and the like;
- (d) the holder of such licence shall not lead an idle or dissolute life without visible means of earning an honest livelihood;
- (e) the holder of such licence shall at the time of his discharge from prison inform the superintendent of the prison as to the place where he intends to reside and shall with all convenient speed proceed to such place and shall within forty-eight hours of arrival at such place report himself personally unless prevented by unavoidable cause to the officer in charge of the nearest police station of the district wherein such place is situate;
- (f) the holder of such licence shall, unless prevented by unavoidable cause, thereafter once in every month report himself personally to the officer in charge of the nearest police station of the district in which he is residing and shall, unless prevented by unavoidable cause, on every change of residence within the same district notify, either personally or by letter, such officer in charge as aforesaid, and, on every change of residence from one district to another shall, unless prevented by unavoidable cause, give forty-eight hours' notice, either personally or by letter to such officer in charge of the police station of the district he is leaving, of his intention to leave, and so far as is practicable of his exact future address; and shall, unless prevented by unavoidable cause, within forty-eight hours of arrival at his destination within the new district where he intends to reside, report himself personally to the officer in charge of the nearest police station in such district;
- (g) any other conditions which may be prescribed.

Penalty on breach of conditions of a licence or other criminal offences.

45. If the holder of a licence to be at large granted under the provisions of this Ordinance is guilty of any offence against this Ordinance or fails to comply with any of the conditions of such licence by any act that is not of itself punishable by any law in force, he shall be liable, on conviction before a magistrate, to imprisonment for a period not exceeding three months, and to have his licence forfeited by the order of the magistrate by whom such person is convicted.

46. Where any licence under this Ordinance is forfeited or revoked, the person whose licence is forfeited or revoked shall, after undergoing any other punishment to which such person may be sentenced for the offence in consequence of which his licence is forfeited or revoked, further undergo a term of imprisonment equal to the portion of his term that remained unexpired at the time of his release under such licence.

47. If the holder of a licence granted under the provisions of this Ordinance proves to the satisfaction of a magistrate that he has lost his licence through no fault of his own he shall be entitled to a duplicate of such licence.

48. (1) Whenever a licence is revoked by the Commissioner, any magistrate shall, on the production to him of a certificate of such revocation, issue a warrant which may be executed in any part of the Colony for the apprehension of the person to whom such licence was granted; and such person being apprehended shall be brought before the magistrate who shall make out his warrant for the recommitment of such person to prison to undergo the residue of his sentence as if no such licence had been granted.

(2) Whenever a licence is forfeited by the order of the magistrate under section 45 of this Ordinance, such magistrate shall make out a warrant for the recommitment of such person to prison to undergo the residue of his sentence as if no such licence had been granted.

MAINTENANCE.

49. (1) A civil prisoner or a criminal prisoner before trial, may be permitted to maintain himself, and to purchase or receive from private sources at proper hours moderate quantities of food, clothing, bedding or other necessaries, but subject to examination and such other conditions as may be prescribed.

(2) No food, clothing, bedding or other necessaries allowed to a civil prisoner or a criminal prisoner before trial under sub-section (1) shall be given, hired or sold to any other prisoner and any prisoner who is guilty of an offence under the provisions of this section shall be liable to lose the privilege of purchasing food, clothing, bedding or other necessaries or receiving them from private sources for such time as the superintendent may decide or to any other punishment provided under section 58 of this Ordinance.

50. If a civil prisoner or a criminal prisoner before trial does not desire to provide himself with clothing and bedding such prisoner shall receive the regular prison clothing and bedding.

Maintenance of certain prisoners from private sources.
Supply of clothing and bedding to civil or unconvicted prisoners.

PROHIBITED ARTICLES.

51. Any prison officer may examine anything carried in or out of the prison, and may stop and search, or cause to be stopped and searched, any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the superintendent or chief officer, if any.

Examination of articles taken in or out of prison.

Prohibited articles.

52. Any person who—

- (a) save as is provided by section 49, brings, throws, or attempts by any means whatever to introduce into any prison, or to give to any prisoner, any spirituous liquor, tobacco or any intoxicating or poisonous drug or any article whatsoever ;
 (b) contrary to any rule or regulation communicates with any prisoner,

is guilty of an offence and is liable to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding thirty pounds, or to both.

Power of arrest to prison officer.

53. Any prison officer may arrest any person who—

- (a) commits or attempts to commit in the presence of any prison officer any offence specified in the last preceding section ;
 (b) refuses on demand of such prison officer to give his name and residence ; or
 (c) gives a name or residence which such prison officer knows or has reason to believe to be false,

and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

VISITS AND COMMUNICATIONS.

Visits and communication to prisoners.

54. (1) Convicted criminal prisoners may be allowed once a month to receive a visit from friends in the sight and hearing of a prison officer, and to write and receive a letter.

(2) Should a prisoner be seriously ill and desire to be visited by any near relative or friend, the superintendent, on the recommendation of the medical officer, may give an order in writing for the admission of such relative or friend if he considers it advisable.

(3) All prisoners awaiting trial shall be allowed all reasonable opportunities of communicating with their friends or legal adviser, and, subject to any regulations which may be made under this Ordinance, they may write and receive letters.

(4) Ministers of religion may be admitted at proper and reasonable times to the prison to visit prisoners who may be desirous of their services, and may be permitted to hold religious services at such hours and in such places as the superintendent may sanction.

Visitors may be searched and names and addresses may be demanded.

55. The officer in charge of a prison shall enter the name and address of any visitor to a prisoner in a book provided for the purpose ; and, when he has any ground of suspicion, may search or cause to be searched male visitors, and may direct a matron or female warden to search female visitors. Such search shall not be made in the presence of any prisoner or of another visitor. In case of any such visitor refusing to permit himself to be searched, the officer in charge may deny such visitor admission, and the grounds of such denial shall be recorded in the said book.

PRISONERS UNDER SENTENCE OF DEATH.

Supervision of prisoners under sentence of death.

56. (1) Every prisoner sentenced to death shall be confined in some safe place within the prison, and, if possible, apart from all other prisoners and shall be placed under constant observation both by day and by night.

(2) Except on the written authority of the superintendent, no person other than prison officers, the medical officer, a visiting justice or a minister of the religious denomination to which such prisoner belongs shall have access to such prisoner.

(3) All executions shall be attended by the superintendent, the chief officer (if any) and the medical officer, and at the request of the prisoner, may be attended by a minister of the denomination to which he belongs.

10

DISCIPLINE.

57. The following acts are declared to be prison offences Prison offences when committed by a prisoner :—

- (1) quarrelling with any other prisoner ;
- (2) making groundless complaints ;
- 15 (3) making false charges against prison officers in reply to any question as to matters concerning the prison or prison discipline, or answering untruthfully any question as to matters contained in section 24 put by a prison officer ;
- 20 (4) holding any communication, in writing, by word of mouth or otherwise, with an outsider or with a prisoner in disobedience of the regulations of the prison ;
- 25 (5) doing any act calculated to create any unnecessary alarm in the minds of the prisoners or prison officers ;
- (6) omitting or refusing to march as ordered when moving about the prison, or proceeding to or returning from work ;
- 30 (7) refusing to eat the food prescribed by the prison diet scale ;
- (8) eating or appropriating any food not assigned to him or taking or adding to the portions assigned to other prisoners ;
- 35 (9) without permission of a prison officer removing food from the cook-house, or from the place where meals are served, or disobeying any order as to the issue and distribution of food and drink ;
- (10) wilfully destroying food, or throwing it away without orders ;
- 40 (11) introducing into food or drink anything likely to render it unpalatable or unwholesome ;
- (12) omitting or refusing to wear the clothing given to him, or exchanging any portion of it for the clothing of other prisoners, or losing, discarding, damaging, or altering any part of it ;
- 45 (13) removing, defacing, or altering any distinctive number, mark or badge attached to, or worn on the clothing or person ;
- (14) omitting or refusing to keep the person clean, or disobeying any order regulating the cutting or shaving of hair ;
- (15) omitting or refusing to keep clothing, blankets, bedding or fetters clean, or disobeying any order as to the arrangement or disposition of such articles ;
- 55 (16) tampering in any way with prison locks, lamps or lights, or other property with which he has no concern ;

- (17) stealing the prison clothing or any part of the prison kit of any other prisoner;
- (18) committing a nuisance in any part of the prison;
- (19) defacing or injuring the walls, furniture or other property of the prison;
- (20) spitting on or otherwise soiling any floor, doors, wall or other part of the prison building or any article in the prison;
- (21) wilfully befouling the walls, latrines, washing or bathing places;
- (22) omitting or refusing to take due care of, or injuring, destroying or misappropriating any tools or any clothing or other articles, the property of the Government;
- (23) wilfully causing to himself any illness, injury or disability;
- (24) causing or omitting to assist the suppressing of, violence or insubordination of any kind;
- (25) taking part in any attack upon any prison officer or upon another prisoner;
- (26) omitting or refusing to help any prison officer in case of an attempted escape, or of an attack upon such officer or upon another prisoner;
- (27) disobeying any of the regulations or any lawful order of a prison officer, or omitting or refusing to perform duties in the manner prescribed;
- (28) treating with disrespect any prison officer or servant of the prison, or any visitor, or any person employed in connection with the prison;
- (29) being idle, careless or negligent at work, or refusing to work;
- (30) leaving his cell or other appointed location, or his place of work without permission;
- (31) having in his possession any article he is not entitled to have;
- (32) any assault or use of criminal force;
- (33) cursing, swearing or making unnecessary noise;
- (34) immoral, or disorderly, or indecent behaviour;
- (35) insulting, threatening or indecent language;
- (36) malingering;
- (37) wilfully bringing a false accusation against any prison officer or prisoner;
- (38) escaping, or conspiring to escape or assisting in an escape;
- (39) attempting to commit any of the offences aforementioned;
- (40) abetting the commission of any prison offence;
- (41) any other act, conduct, disorder or neglect to the prejudice of good order or discipline though not specified in the foregoing paragraphs.

5

10

20

25

35

40

50

Power to
try prison
offences.

58. The Commissioner, a superintendent or a visiting justice shall have power to hear and decide a charge against any prisoner in respect of any prison offence and the said Commissioner, superintendent or visiting justice may punish any prisoner found guilty by him of any prison offence by ordering the loss of remission of sentence not exceeding seven days, by solitary confinement, with or without penal diet, not

55

exceeding forty-eight hours, by keeping the offender upon reduced diet not exceeding four days, or by any combination of these punishments.

59. In any case of aggravated, more serious or repeated offences, any one or more of the following punishments may be imposed by the Commissioner, a superintendent or a visiting justice after due inquiry—
In cases of aggravated or repeated prison offences.

- (1) solitary confinement, with or without penal diet, for a period not exceeding fourteen days;
- 10 (2) reduced diet for a period not exceeding twenty-eight days;
- (3) loss of remission not exceeding twenty-eight days;
- (4) corporal punishment :

Provided that—

- 15 (a) solitary confinement shall not be continuous for more than seven days, and an interval of seven days shall elapse before a further period of such confinement;
- (b) if an offender is sentenced to penal diet for a longer period than four days the penal diet shall not be imposed for more than three days continuously with an interval of three days before it is again imposed.
- 20 (c) if an offender is sentenced to reduced diet for a longer period than seven days the reduced diet shall not be imposed for more than seven days continuously with an interval of three days before it is again imposed.
- 25 (d) if an offender is sentenced to reduced diet for a longer period than seven days the reduced diet shall not be imposed for more than seven days continuously with an interval of three days before it is again imposed.

60. No prisoner shall be punished until he has had an opportunity of hearing the charge and evidence against him, 30 and making his defence.
Prisoner to be allowed to make his defence.

61. (1) Corporal punishment shall not be awarded except for the following offences :—
Corporal punishment.

- (a) repeated serious offences against prison discipline;
- (b) personal violence to any person;
- 35 (c) grossly abusive or offensive language; or
- (d) any act of grave misconduct or insubordination.

(2) A sentence of corporal punishment shall be to be whipped once only. Such whipping shall be with a rod or cane to be approved by the Governor or with such other instrument as the Governor may approve. The sentence shall specify the number of strokes which shall not exceed twenty-four. A sentence of corporal punishment imposed on a non-native or where the number of strokes exceeds twelve shall be subject to confirmation by the Governor and shall not be carried into effect until such confirmation shall have been received.

(3) No sentence of corporal punishment shall be passed upon any of the following persons :—

- (a) Females.
- 50 (b) Males under sentence of death.
- (c) Males more than forty-five years of age.

(4) A sentence of corporal punishment shall not be carried out except in the presence of a medical officer or, if no such medical officer is available, of a European officer of the Colony, nor before such medical or other officer has after

examination certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him.

(5) The medical or other European officer may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out, if in his opinion the prisoner is unable to bear such sentence without risk of grave or permanent injury. 5

(6) No sentence of corporal punishment shall be carried out by instalments. 10

Trial before court for prison offence.

62. Any prisoner may be charged before any court of competent jurisdiction with any offence against prison discipline, and such court may sentence the offender to imprisonment for a period not exceeding six months. Such 15 sentence shall run from the expiration of any previous sentence.

Offence by subordinate officers.

63. Any subordinate officer who—

- (1) uses traitorous or disloyal words regarding the Sovereign; or 20
- (2) strikes or uses or offers any violence against his superior officer, or uses threatening or insubordinate language to his superior officer; or
- (3) wilfully disobeys any lawful command; or
- (4) is drunk; or drinks intoxicants while actually on 25 duty; or
- (5) absents himself without leave; or
- (6) sleeps on his post; or leaves it before being regularly relieved except in fresh pursuit of any offender whom he ought to apprehend; or 30
- (7) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority; or
- (8) neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to 35 arrest; or
- (9) allows any prisoner to escape who is committed to his charge or whom it is his duty to keep or guard; or
- (10) offers unwarrantable personal violence to any person 40 in his custody; or
- (11) is guilty of cowardice; or
- (12) fires his rifle without just cause or orders; or
- (13) without cause fails to appear at any parade appointed by his superior officer; or 45
- (14) pawns, sells, loses by neglect, makes away with or wilfully spoils his arms, accoutrements, clothing, or necessaries or any medal or decoration granted to him for service or good conduct; or
- (15) steals any money or goods the property of any prison officer or prisoner, or steals or embezzles any Government money or goods, or receives any such money or goods knowing them to have been stolen or embezzled from any prison officer or prisoner of the Government; or 50
- (16) commits any act of plunder or wanton destruction of property; or 55

- (17) solicits or accepts a gratuity ; or
 - (18) is slovenly, inattentive, uncivil, or quarrelsome ; or
 - (19) does not keep his rifle clean ; or
 - 5 (20) loses without any reasonable cause any ammunition issued to him ; or
 - (21) without due authority discloses or conveys any information concerning any investigation or departmental matter ; or
 - 10 (22) malingers or feigns or produces any disease or infirmity ; or
 - (23) is wilfully guilty of misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders by means of which misconduct or disobedience he produces or aggravates disease or infirmity or delays its cure ; or
 - 15 (24) incurs debt ; or
 - (25) without proper authority exacts from any person, carriage, portage or provisions ; or
 - (26) resists an escort whose duty it is to apprehend him or to have him in charge ; or
 - 20 (27) breaks out of warders' lines, camp or quarters ; or
 - (28) makes any false statement on becoming a prison officer ; or
 - (29) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send ; or
 - 25 (30) makes a false accusation against any prison officer or prisoner knowing such accusation to be false ; or
 - (31) in making a complaint, where he thinks himself wronged, knowingly makes any false statement affecting the character of any prison officer or knowingly and wilfully suppresses any material facts ; or
 - (32) engages without authority in any employment other than his duty as a prison officer ; or
 - 30 (33) is guilty of any other act, conduct, disorder, or neglect to the prejudice of good order and discipline, shall be deemed to have committed an offence against discipline :
 - 35 Provided that nothing in this section shall be construed to exempt any subordinate officer from being proceeded against for any offence by the ordinary course of law.
- 64.** The Commissioner or a superintendent may inquire into any such offence and thereupon punish the offender by—
- (a) admonition ;
 - (b) reprimand or severe reprimand ;
 - (c) confinement to lines and extra duty ;
 - (d) fine not exceeding ten shillings ;
 - (e) forfeiture of one good conduct badge ;
 - 45 (f) stoppage of pay where there has been loss by neglect of or injury to Government property, or absence without leave ;

Punishment
for offences by
subordinate
officers.

- (g) reduction in grade;
- (h) dismissal;
- (i) any two or more of the above punishments:

Provided that—

- (a) any sentence of reduction of more than one grade or
dismissal shall be subject to confirmation by the
Commissioner; and 5
- (b) any stoppage of pay exceeding one-half of the
offender's monthly pay shall be subject to confirmation
by the Commissioner. All stoppages of pay 10
shall be recovered from the offender's pay due or
thereafter accruing due and so much only of his
pay shall be stopped as shall leave him a residue of
at least one-half of his monthly pay.

DISCHARGE.

15

**Superintendent
to be
responsible for
the discharge
of prisoners.**

65. Every superintendent in charge of a prison shall be responsible for the due discharge of all prisoners in such prison immediately upon their becoming entitled to release.

**Release of
prisoners.**

66. All prisoners shall be discharged by noon on the day on which they are entitled to be released, but should that 20
day fall on a Sunday or any public holiday, they shall be released by noon on the day next preceding.

**Gratuity to
prisoners on
discharge.**

67. When a prisoner is discharged and has no friends or means of subsistence the superintendent may pay him a gratuity of such sum as the Commissioner may prescribe, 25
and may provide him with transport to the district where such prisoner normally resides.

**Medical
inspection
of prisoners
before removal
or discharge.**

68. All prisoners, prior to being removed to another prison or to a mental hospital or discharged, shall be examined by the medical officer, and no prisoner shall be 30
discharged, except at his own request, while labouring under any acute or dangerous illness.

MISCELLANEOUS.

**Power to
make rules.**

69. The Governor in Council may make rules with respect to any of the following matters—

35

- (1) the duties, powers and conduct and conditions of engagement of prison officers and other persons employed in prisons and for the punishment of such officers or other persons;
- (2) the establishment of a Rewards and Fines Fund for 40
prison officers and the method of administering such fund;
- (3) the grant of gratuities to and purchase of discharge by prison officers;
- (4) the duties and powers of visiting justices of prisons; 45
- (5) the medical inspection of prisoners;
- (6) the prevention of contagious diseases in prisons;
- (7) the construction and description of cells for separate confinement;
- (8) the classification of prisons into grades;

- (9) the safe custody, the classification, hours of labour, mode of employment, separation, diet, clothing, maintenance, instruction, discipline, discharge, treatment and correction of prisoners;
- 5 (10) prescribing what labour or employment shall be deemed hard labour;
- (11) the remission of portions of sentences to be earned by good conduct;
- 10 (12) any other purpose or object for which by this Ordinance it is provided rules may be made; and
- (13) generally all such rules as are necessary for the effective administration of this Ordinance or for the good management and government of such prisons, and the discipline and safe custody of the prisoners therein, and not only therein, but also while employed at labour beyond the limits of the prison.

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

General
penalty for
offences.

71. The Prisons Ordinance (Chapter 37 of the Revised Edition), as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, is hereby repealed.

No. 7 of 1926

SCHEDULE.

(Section 33.)

MEDICAL CERTIFICATE.

I, the undersigned.....hereby certify that I, on the.....day of.....19....., at the Prison at.....in the Colony and Protectorate of Kenya, personally examined..... a prisoner in the said prison, and that the said..... is a (a)..... (a) Lunatic or idiot or a person of unsound mind and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion on the following facts:—

1. Facts indicating insanity observed by myself (b)..... (b) Here state the facts.

2. Other facts (if any) indicating insanity communicated to me by other (c)..... (c) Here state the information and from whom.

Dated this.....day of.....19.....

.....
Medical Officer.

OBJECTS AND REASONS.

The object of this Bill is to consolidate and amend the law relating to prisons in the light of experience gained since 1914, in which year the existing Ordinance was enacted.

2. Apart from amendments, which are specifically dealt with hereunder, the Bill is mainly a re-enactment of the existing law, but the sections have been arranged in more convenient order and the phraseology has been varied in many instances with a view to simplification.

3. Certain provisions relating to enlistment, discharge and discipline of subordinate officers of prisons existing in the present Ordinance have been deleted, and such provisions will be made by Rules under the Ordinance when enacted. This procedure will not only simplify the law but will bring it into line with prisons legislation in England.

4. Clause 32 is a new provision which provides that, in the event of a contagious or infectious disease occurring in any prison, it shall be lawful to remove any of the prisoners from such prison to another place, although such place may not have been declared to be a prison under the Ordinance.

5. Clause 34 provides powers for the removal to a Government hospital of any prisoner who may be seriously ill, and who is confined in a prison where suitable accommodation is not available.

6. Clauses 35, 36, 37 and 38 deal with the duties of the medical officer in charge of any Government hospital to which a prisoner may have been removed, in pursuance of the provisions of Clause 34 in regard to the custody of such prisoner.

GOVERNMENT NOTICE No. 361.

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

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

A Bill relating to the Sale of Goods.

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

1. This Ordinance may be cited as "the Sale of Goods Short title. Ordinance, 1930," and shall come into operation upon such date as the Governor may by notice in the Gazette appoint.
2. (1) In this Ordinance, unless the context otherwise Interpretation. 5 requires—
 - "action" includes counterclaim and set-off;
 - "buyer" means a person who buys or agrees to buy goods;
 - "contract of sale" includes an agreement to sell as well as a sale;
 - "delivery" means voluntary transfer of possession from one person to another;
 - "document of title to goods" includes any bill of lading dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;
 - 20 "fault" means wrongful act or default;
 - "future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;
 - "goods" includes all chattels personal other than things in action and money. The term includes implements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the land, which are agreed to be severed before sale or under the contract of sale;
 - "plaintiff" includes defendant counter-claiming;
 - 30 "property" means the general property in goods, and not merely a special property;
 - "quality of goods" includes their state or condition;
 - "sale" includes a bargain and sale as well as a sale and delivery;
 - 35 "seller" means a person who sells or agrees to sell goods;
 - "specific goods" means goods identified and agreed upon at the time a contract of sale is made;
 - "warranty" means an agreement with reference to 40 goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which

gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done "in good faith" within the meaning of this Ordinance when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Ordinance who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

10

(4) Goods are in a "deliverable state" within the meaning of this Ordinance when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART I.

15

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

3. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. 20 There may be a contract of sale between one part owner and another.

20

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract 25 is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

25

(4) An agreement to sell becomes a sale when the time 30 elapses, or the conditions are fulfilled subject to which the property in the goods is to be transferred.

30

Capacity to buy and sell. Sale of necessaries to persons incompetent to contract.

4. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property: Provided that where necessaries are sold 35 and delivered to an infant or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

35

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and 40 to his actual requirements at the time of the sale and delivery.

40

Formalities of the Contract.

Contract of sale, how made.

5. Subject to the provisions of this Ordinance and of any Ordinance in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties: Provided that nothing in this section shall affect the law relating to corporations.

45

Contract of sale for ten pounds or more to be in writing.

6. (1) A contract for the sale of any goods of the value of two hundred shillings or upwards shall not be enforceable by 50 action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit 5 or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning Acceptance. of this section when the buyer does any act in relation to the 10 goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract.

7. (1) The goods which form the subject of a contract of Existing or sale may be either existing goods, owned or possessed by the 15 seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Ordinance called "future goods."

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency 20 which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

8. Where there is a contract for the sale of specific Sale of goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract 25 is void.

9. Where there is an agreement to sell specific goods, Goods and subsequently the goods, without any fault on the part of perished after 30 the seller or buyer, perish before the risk passes to the buyer, agreement to sell. the agreement is thereby avoided.

The Price.

10. (1) The price in a contract of sale may be fixed by Ascertainment of price. the contract, or may be left to be fixed in manner thereby 35 agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. 40

11. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided: Provided that if the 45 goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party 50 in fault.

Conditions and Warranties.

12. (1) Unless a different intention appears from the Stipulations terms of the contract, stipulations as to time of payment are as to time.

not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

" Month."

(2) In a contract of sale " month " means *prima facie* calendar month. 5

When condition to be treated as warranty.

13. (1) (a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated. 10

(b) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends 15 in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

(c) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the 20 contract is for specific goods, the property in which has passed to the buyer, the breach of any conditions to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express 25 or implied, to that effect.

Saving as to stipulations excused by law.

(2) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Implication by law of condition as to title;

as to quiet possession;

against encumbrances.

14. In a contract of sale, unless the circumstances of 30 the contract are such as to show a different intention there is—

(1) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the 35 property is to pass;

(2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(3) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third 40 party, not declared or known to the buyer before or at the time when the contract is made.

Conditions implied by description.

15. Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, 45 as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

No implied warranty as to fitness, except

on purchase in reliance on seller's skill;

16. Subject to the provisions of this Ordinance and of any Ordinance in that behalf, there is no implied warranty 50 or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which 55 the goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods

are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

- 10 (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality : Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

15 (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

20 (4) An express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent therewith.

Sale by Sample

- 25 17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

Sale by sample

30 (2) In the case of a contract for sale by sample there is—
 (a) an implied condition that the bulk shall correspond with the sample in quality;
 (b) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 (c) an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of sample.

35

PART III

EFFECTS OF THE CONTRACT

- 40 Transfer of Property as between Seller and Buyer

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Property in unascertained goods.

- 19.** (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

20. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer :—

- 55 *Rule 1.* Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the

property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

Rule II. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof. 5

Rule III. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the 15 buyer has notice thereof.

Rule IV. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to 20 the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has 25 been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time.

Rule V. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made. 30 35

(2) Where, in pursuance of the contract, the seller 40 delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the 45 goods to the contract.

Reservation
by seller of
right of
disposal—
generally;

21. (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain 50 conditions are fulfilled. In such case notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. 55

in case of
shipped goods;

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

22. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault: Provided also, that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

Risk *prima facie* passes with property.

23. (1) Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Sale by person not the owner.

(2) Provided also that nothing in this Ordinance shall affect—

- (a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

24. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Sale under voidable title.

25. (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

Revesting of property in stolen goods on conviction of offender.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revert in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.

26. (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Resale by seller, his agent in possession after sale.

Resale by buyer or his agent in possession after sale.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner. 10

" Mercantile Agent."

(3) In this section the term " mercantile agent " means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. 15

Effect of writs of execution.

27. (1) A writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation 20 of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same:

Provided that no such writ shall prejudice the title to 25 such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained 30 unexecuted in the hands of the sheriff.

(2) In this section the term " sheriff " includes any officer charged with the enforcement of a writ of execution.

Duties of seller and buyer.

28. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery *prima facie* concurrent conditions.

29. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, 40 the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery.

30. (1) Whether it is for the buyer to take possession of 45 the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence:

Place.

50

Provided that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made, are in some other place, then that place is the place of delivery.

(2) Where under the contract of sale the seller is bound **Time.**
to send the goods to the buyer, but no time for sending them
is fixed, the seller is bound to send them within a reasonable
time.

5 (3) Where the goods at the time of sale are in the posse-
sion of a third person, there is no delivery by seller to buyer
unless and until such third person acknowledges to the buyer
that he holds the goods on his behalf : Provided that nothing
in this section shall affect the operation of the issue or transfer
10 of any document of title to goods.

(4) Demand or tender of delivery may be treated as **Hour.**
ineffectual unless made at a reasonable hour. What is a
reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and inci- **Expenses.**
15 dental to putting the goods into a deliverable state must be
borne by the seller.

31. (1) Where the seller delivers to the buyer a quantity **Delivery**
of goods less than he contracted to sell, the buyer may reject **of wrong**
them, but if the buyer accepts the goods so delivered he must **quantity or**
20 pay for them at the contract rate. **description.**

(2) Where the seller delivers to the buyer a quantity of
goods larger than he contracted to sell, the buyer may accept
the goods included in the contract and reject the rest, or he
may reject the whole. If the buyer accepts the whole of the
25 goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he
contracted to sell mixed with goods of a different description
not included in the contract, the buyer may accept the goods
which are in accordance with the contract and reject the rest,
30 or he may reject the whole.

(4) The provisions of this section are subject to any usage
of trade, special agreement, or course of dealing between the
parties.

32. (1) Unless otherwise agreed, the buyer of goods is not **Delivery by**
35 bound to accept delivery thereof by instalments. **instalments.**

(2) Where there is a contract for the sale of goods to be
delivered by stated instalments, which are to be separately
paid for, and the seller makes defective deliveries in respect of
one or more instalments, or the buyer neglects or refuses to
40 take delivery of or pay for one or more instalments, it is a
question in each case depending on the terms of the contract
and the circumstances of the case, whether the breach of
contract is a repudiation of the whole contract or whether it
is a severable breach giving rise to a claim for compensation
45 but not to a right to treat the whole contract as repudiated.

33. (1) Where, in pursuance of a contract of sale, the **Delivery to**
seller is authorised or required to send the goods to the buyer,
delivery of the goods to the carrier, whether named by the
buyer or not, for the purpose of transmission to the buyer is
50 *prima facie* deemed to be a delivery of the goods to the buyer. **carrier, as**
buyer's agent.

(2) Unless otherwise authorised by the buyer, the
seller must make such contract with the carrier on behalf of
the buyer as may be reasonable having regard to the nature
of the goods and the other circumstances of the case. If the
55 seller omit so to do, and the goods are lost or damaged in
course of transit, the buyer may decline to treat the delivery
to the carrier as a delivery to himself, or may hold the seller
responsible in damages. **Seller's duty**
as to contract
with carrier.

Insurance on
sea transit.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit. 5.

Risk where
goods are
delivered
elsewhere
than at place
of sale.

34. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, 10 take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's
right of
examining
the goods.

35. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. 15

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in 20 conformity with the contract.

Acceptance.

36. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does 25 any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer is not
bound to
return rejected
goods.

37. Unless otherwise agreed, where goods are delivered 30 to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of
buyer for
neglecting
or refusing
delivery of
goods.

38. When the seller is ready and willing to deliver the 35 goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods : 40 Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

Unpaid seller
defined.

39. (1) The seller of goods is deemed to be an " unpaid seller " within the meaning of this Ordinance—

- (a) when the whole of the price has not been paid or tendered ;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise. 50

(2) In this Part of this Ordinance the term " seller " 55 includes any person who is in the position of a seller, as, for

instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

40. (1) Subject to the provisions of this Ordinance, and ^{Rights of unpaid seller.} 5 of any Ordinance in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) a lien on the goods or right to retain them for the price while he is in possession of them ;
- 10 (b) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them ;
- (c) a right of re-sale as limited by this Ordinance.

(2) Where the property in goods has not passed to the 15 buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

Unpaid Seller's Lien.

41. (1) Subject to the provisions of this Ordinance, the Seller's lien. 20 unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :—

- (a) Where the goods have been sold without any stipulation as to credit ;
- 25 (b) Where the goods have been sold on credit, but the term of credit has expired ;
- (c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee 30 or custodier for the buyer.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on ^{Lien after part delivery.} 35 the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

43. (1) The unpaid seller of goods loses his lien or right ^{Termination of lien.} of retention thereon—

- 40 (a) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;
- (b) when the buyer or his agent lawfully obtains possession of the goods ;
- 45 (c) by waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

**Right of
stoppage
in transitu.****Duration of
transit.****Mode of
stoppage
in transitu.****Effect of
subsale or
pledge by
buyer.***Stoppage in transitu.*

44. Subject to the provisions of this Ordinance, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price. 5

45. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodier. 10

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, 15 the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, 20 and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and he carrier or other bailee or custodier continues in possession of 25 them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of 30 the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to 35 the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

46. (1) The unpaid seller may exercise his right of 40 stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, 45 to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage *in transitu* is given by the 50 seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller.

47. Subject to the provisions of this Ordinance, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods 55

which the buyer may have made, unless the seller has assented thereto :

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of
 5 the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was
 10 by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

48. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an
 15 unpaid seller of his right of lien or retention or stoppage *in transitu*. Effect on sale of exercise of lien or stoppage *in transitu*.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original
 20 buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods
 25 and recover from the original buyer damages for any loss occasioned by his breach of contract. Re-sale of perishable goods or on notice.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of
 30 sale is thereby rescinded, but without prejudice to any claim the seller may have for damages. Re-sale under right expressly reserved by contract.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

49. (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. Action for price.
 35

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.
 40 45

50. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. Action for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract. Measure of damages.
 50

(3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept. 5

Remedies of the Buyer.

Action for non-delivery.

51. (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. 10

Measure of damages.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. 15

Right to specific performance.

52. In any action for breach of contract to deliver 20 specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, 25 payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty.

53. (1) Where there is a breach of warranty by the 30 seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

- (a) set up against the seller the breach of warranty in 35 diminution or extinction of the price; or
- (b) maintain an action against the seller for damages for the breach of warranty.

Measure of damages.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the 40 ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. 45

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and special damages.

54. Nothing in this Ordinance shall affect the right of 50 the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI.

SUPPLEMENTARY.

55. Where any right, duty, or liability would arise under Variation, etc.,
a contract of sale by implication of law, it may be negatived of implied
5 rights or varied by express agreement or by the course of dealing
between the parties, or by usage, if the usage be such as to
bind both parties to the contract.

56. Where, by this Ordinance, any reference is made Reasonable time.
to a reasonable time, the question what is a reasonable time
10 is a question of fact.

57. Where any right, duty, or liability is declared by Rights, etc.,
this Ordinance, it may, unless otherwise by this Ordinance enforceable
provided, be enforced by action.

- 58.** In the case of sale by auction :— Auction sales.
- 15 (1) Where goods are put up for sale by auction in lots,
each lot is *prima facie* deemed to be the subject of a
seperate contract of sale.
- 20 (2) A sale by auction is complete when the auctioneer
announces its completion by the fall of the hammer,
or in other customary manner. Until such an-
nouncement is made any bidder may retract his
bid.
- 25 (3) Where a sale by auction is not notified to be subject
to a right to bid on behalf of the seller, it shall
not be lawful for the seller to bid himself or to
employ any person to bid at such sale, or for the
auctioneer knowingly to take any bid from the seller
or any such person: Any sale contravening this
rule may be treated as fraudulent by the buyer.
- 30 (4) A sale by auction may be notified to be subject to a
reserved or upset price, and a right to bid may also
be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not other-
wise, the seller, or any one person on his behalf, may bid
35 at the auction.

- 59.** (1) The rules in bankruptcy relating to contracts of Savings.
sale shall continue to apply thereto, notwithstanding anything
in this Ordinance contained.
- (2) The rules of the common law, including the law mer-
40 chant, save in so far as they are inconsistent with the express
provisions of this Ordinance, and in particular the rules relat-
ing to the law of principal and agent, and the effect of fraud,
misrepresentation, duress or coercion, mistake or other
invalidating cause, shall continue to apply to contracts for the
45 sale of goods.

(3) Nothing in this Ordinance shall affect the enactments
relating to bills of sale or any other enactment relating to the
sale of goods.

(4) The provisions of this Ordinance relating to contracts
50 of sale do not apply to any transaction in the form of a
contract of sale which is intended to operate by way of
mortgage, pledge, charge, or other security.

60. Chapter VII of the Indian Contract Act (Act IX of 1872), as applied to the Colony, is hereby repealed.

←
OBJECTS AND REASONS.

In a memorandum on the question of the unification of commercial laws, the Executive of the Association of East African Chambers of Commerce on 5th February, 1930, wrote as follows :—

"The Executive has learnt that the law relating to sale of goods in India, which is contained in Chapter 7 of the Indian Contract Act, 1872, is now in process of amendment. It has been found inadequate and incomplete and the law upon the subject is now to be codified and brought into line with the English Sale of Goods Act, 1893, which is admittedly one of the best drafted of English Statutes and stood the test of thirty-five years of practical application. The Executive learns that existing legislation under this heading in East Africa is the applied Indian Contract Act, 1872, which, as shown, is now to be amended. The Executive accordingly suggests that an opportunity now exists for the introduction of the satisfactory English Act of 1893, with such minor amendments as are necessary to meet local conditions, into East Africa."

The Indian law relating to sale of goods, which is in force in the Colony, is antiquated, and must be a distinct hindrance to commerce and trade. The English law on the subject, which was mainly case law, was codified in 1893, but the Colony is still working under the law as it was in 1870. The Indian Government is amending the Act, on the lines of the English legislation, but that amendment will not apply to the Colony.

This Bill, which is modelled on the English Act of 1893, is therefore being introduced.

GOVERNMENT NOTICE No. 362.

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

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

A Bill to make Further Provision for the Administration of Justice and to Constitute Native Tribunals in the Colony.

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

1. This Ordinance may be cited as "the Native Short title. Tribunals Ordinance, 1930."

2. In this Ordinance—

Interpretation.

"native" means a native of Africa, and includes Somalis,

5 Swahilis and Comoro Islanders;

"native tribunal" means a tribunal established under this Ordinance;

"headman" means a headman appointed under the provisions of the Native Authority Ordinance.

Cap. 129.

10 3. (1) By warrant under his hand, and subject to the approval of the Governor, a provincial commissioner may establish within his province such native tribunals as he shall think fit which shall exercise over natives such jurisdiction and within such limits as may be defined by such warrant.

*Establishment
of native
tribunals.*

15 3. (2) With the approval of the Governor a provincial commissioner may at any time suspend, cancel or vary any warrant establishing a native tribunal or defining the jurisdiction of any such tribunal or the limits within which such jurisdiction may be exercised.

20 4. A native tribunal shall be constituted in accordance with the native law or custom of the area in which the tribunal is to have jurisdiction and a native tribunal purporting to be so constituted shall be deemed to be lawfully constituted in accordance with this Ordinance unless the contrary be shown :

*Constitution
of tribunals.*

Provided that, if he shall think fit, the provincial commissioner may, with the approval of the Governor, prescribe the constitution of any native tribunal, or the order of precedence among the members thereof, or the powers and duties of any persons acting as assessors to any such tribunal.

30 5. A provincial commissioner may suspend for a period not exceeding three months, or, with the approval of the Governor, may dismiss or may suspend for a period exceeding three months, any member of a native tribunal who shall appear to have abused his power, or to be unworthy or to be incapable of exercising the same justly, or for other sufficient reason. On such dismissal or for the period of his suspension the member shall be disqualified from exercising any powers or jurisdiction as a member of the tribunal unless and until 40 he is expressly reinstated by the provincial commissioner.

*Suspension
and dismissal
of members.*

6. All warrants, appointments and orders issued or made by a provincial commissioner under this Ordinance which are subject to the approval of the Governor shall be operative and of effect from the date thereof unless and until disallowed by the Governor.

*Operation of
warrants, etc.,
issued by a
provincial
commissioner
subject to
approval of
Governor.*

Sessions.

7. A native tribunal shall hold sessions at such times and places as may be necessary for the convenient and speedy despatch of the business of the tribunal:

Provided that the Provincial Commissioner may direct sessions to be held at such times and places as he shall think fit. 5

**Jurisdiction
of native
tribunals.**

8. Every native tribunal shall have full jurisdiction, to the extent set forth in its warrant and subject to the provisions of this Ordinance, over causes and matters in which all the parties are natives resident or being within the area of the jurisdiction of the tribunal:

Provided that in civil cases in which one or more of the parties is an Arab or in criminal cases in which the accused person is an Arab a native tribunal shall have jurisdiction with the consent of such party or parties. 15

**Governor may
exclude
persons from
jurisdiction of
native
tribunals.**

9. The Governor may direct that any native or class of natives shall not be subject to the jurisdiction of native tribunals except with their consent or the consent of the provincial commissioner.

**Criminal
jurisdiction.**

10. The criminal jurisdiction of a native tribunal shall extend, subject to the provisions of this Ordinance, to the hearing, trial and determination of all criminal charges and matters in which any native is accused of having wholly or in part within the jurisdiction of the tribunal, committed or been accessory to the committing of an offence. 20 25

**Civil
jurisdiction.**

11. The civil jurisdiction of a native tribunal shall extend, subject to the provisions of this Ordinance, to the hearing, trial and determination of all civil suits and matters in which the defendant is ordinarily resident within the area of the jurisdiction of the tribunal or in which the cause of action shall have arisen within the said area: 30

Provided that civil proceedings relating to immovable property shall be taken in the native tribunal within the area of whose jurisdiction the property is situated.

**Cases excluded
from the
ordinary
jurisdiction
of a tribunal.**

12. Subject to the express provision conferring jurisdiction, no native tribunal shall have jurisdiction to try— 35

- (a) cases in which a person is charged with an offence in consequence of which death is alleged to have occurred or which is punishable under any law with death or imprisonment for life; 40
- (b) cases in connexion with marriage other than a marriage contracted under or in accordance with native law or custom, except where the claim is one for bride price only;
- (c) cognizable offences committed in any place which, under any law in force in the Colony, is declared to be a municipality or a township. 45

**Law to be
administered.**

13. Subject to the provisions of this Ordinance, a native tribunal shall administer—

- (a) the native law and custom prevailing in the area of the jurisdiction of the tribunal, so far as it is not repugnant to justice or morality or inconsistent with the provisions of any order of the King in Council or with any other law in force in the Colony; 50

- 5
- (b) the provisions of all rules or orders made by a provincial commissioner, district officer, or native authority under the Native Authority Ordinance and *Cap. 129.*
 - (c) the provisions of any Ordinance which the tribunal is by or under such Ordinance authorized to administer; and
 - 10 (d) the provisions of any law which the tribunal may be authorized to administer by an order of the Governor made under section 14.

14. The Governor may by order confer upon all or any native tribunals jurisdiction to enforce all or any of the provisions of any law specified in such order subject to such 15 restrictions and limitations, if any, as the Governor may specify.

15. For offences against native law or custom a native Punishments. tribunal may, subject to the provisions of this Ordinance, impose a fine or may order imprisonment with or without 20 hard labour, or both a fine and imprisonment, or may inflict any punishment authorized by native law or custom :

Provided that such punishment shall not be repugnant to natural justice and humanity, and the fine or other punishment shall in no case be excessive but shall always be proportioned to the nature and circumstances of the offence :

Provided further that no native tribunal shall pass a sentence of corporal punishment.

16. Every person sentenced by a native tribunal to imprisonment or taken in execution of the process of such 30 court shall be detained in a place authorized by a provincial commissioner as a native prison :

Provided that where there is no such authorized native prison in which such person can be detained he may be detained in a prison established under any law of the Colony.

35 17. A native tribunal may order that any fine which it shall impose shall be paid at such time or times and by such instalments and in kind or otherwise as it shall think just, and in default of the payment of any fine or of any instalment of the same when due, the tribunal may order that the amount 40 of the fine or of the instalment, as the case may be, shall be levied by the sale of any property belonging to the offender.

18. A native tribunal may direct any fine, or such part thereof as it shall deem fit, to be paid to the person injured or aggrieved by the act or omission in respect of which such 45 fine has been imposed, on condition that such person, if he shall accept the same, shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of such act or omission.

50 19. Any native subject to the jurisdiction of a native Contempt of tribunal who shall omit to produce or deliver up a document court. on the lawful order of such tribunal or who shall contumaciously refuse or neglect to comply with any lawful order of such tribunal, or who shall refuse to answer any question lawfully asked by the tribunal, or to sign any statement lawfully

required by the tribunal, or who intentionally insults the tribunal or any member thereof, or who intentionally interrupts the proceedings thereof at any stage, shall be guilty of a contempt of court and shall be liable to a fine not exceeding one hundred shillings, and in default of payment to imprisonment with or without hard labour not exceeding one month. 5

Power to summon witnesses.

20. (1) Every native tribunal shall have power to summon before the tribunal any native for the purpose of giving evidence. 10

(2) Any native who without reasonable excuse shall fail to obey any summons lawfully issued under this section may be arrested and brought before the tribunal and shall be liable to a fine not exceeding one hundred shillings or in default of payment to imprisonment with or without hard 15 labour for a period not exceeding one month.

Service outside the jurisdiction of a native tribunal.

21. (1) Any writ, warrant, order or other process issuing out of a native tribunal, and endorsed by the district commissioner with a request for the service or execution thereof within the jurisdiction of another native tribunal may, upon 20 payment of the prescribed fees for service or execution be served or executed within the jurisdiction of such other tribunal.

Proof of service or execution.

(2) An affidavit that process has been served or executed under this section, or that it cannot be so served or executed 25 shall be made by the officer by whom such service or execution was effected or was attempted to be effected.

Witness expenses in civil cases to be paid.

(3) The tribunal within whose jurisdiction any summons for a witness in a civil case is to be served may order that such summons be not served unless there shall have been 30 paid such sum as the tribunal may consider reasonable to cover the expenses of such witness in attending the trial.

Practice and procedure.

22. Subject to such rules as may be made under section 43, the practice and procedure of native tribunals shall be regulated in accordance with native law and custom. 35

Reports of cases to be submitted to the provincial commissioner or district commissioner.

23. At such times and in such form as may be directed, every native tribunal shall submit to the provincial commissioner or to the district commissioner in writing, or, if so directed, orally, a report of all cases tried in such tribunal.

If such report is made orally a record of all cases so 40 reported shall be made by the officer to whom the report is made.

Parties to appear in person.

24. No advocate or legal practitioner may appear or act for any party before a native tribunal, or on any appeal from a judgment or order of a native tribunal, but a native 45 tribunal may permit the husband or wife, or guardian, or any servant, or the master, if a native, or any inmate of the household of any plaintiff or defendant, who shall give satisfactory proof that he or she has authority in that behalf, to appear and to act for such plaintiff or defendant. 50

Provincial commissioner and district officer may sit as advisers.

25. A provincial commissioner may sit as adviser in any native tribunal in his province, and subject to the directions of the provincial commissioner a district officer shall have the like authority in respect of any native tribunal in his district.

26. Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted native tribunal, except in accordance with the provisions of any order of His Majesty in Council or of 5 any Ordinance, or who shall sit as a member of such tribunal without due authority, shall be liable, on conviction before a subordinate court of the first or second class, to imprisonment with or without hard labour for a period not exceeding twelve months or to a fine not exceeding fifty pounds, or to 10 both such fine and imprisonment.

27. Whoever, being or expecting to be a member of a native tribunal, accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration 15 as a motive or reward for doing or forbearing to do any act as a member of such tribunal, or for showing or forbearing to show, as a member of such tribunal, favour or disfavour to any person shall be liable on conviction before a magistrate of the first or second class to imprisonment with or without 20 hard labour for a period not exceeding two years or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

28. Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person for himself or for 25 any other person, any gratification or reward whatever, whether in money or otherwise, for inducing by corrupt or illegal means, or by personal influence any native tribunal, or any member thereof, to do or forbear to do any act which such tribunal or member is authorized to do in the exercise 30 of lawful jurisdiction or to show favour or disfavour to any person, shall be liable on conviction before a magistrate of the first or second class to imprisonment with or without hard labour for a period not exceeding one year or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

29. Whoever in any proceeding before a native tribunal 35 gives evidence, whether upon oath or otherwise, which he knows to be false, or believes to be false or does not believe to be true, shall be guilty of an offence and shall be liable on conviction before a magistrate of the first or second class 40 to imprisonment with or without hard labour for a period not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

30. Every provincial commissioner and district officer shall at all times have access to any native tribunal in his 45 province or district and to the records of such tribunals, and on the application of any person concerned or of his own motion, may—

(a) revise any of the proceedings of a native tribunal, whether civil or criminal, and may make such order or pass such sentence therein as the native tribunal could itself have made or passed, provided that no sentence of fine or imprisonment or other sentence in any criminal proceeding shall be increased without first giving the accused an opportunity to be heard and provided further that if any such sentence shall be increased upon revision by a district officer, there shall be an appeal from the order of the district officer to the provincial commissioner and

Adjudication
without
authority.

Members of
native
tribunals
taking
rewards.

Taking reward
for influencing
native
tribunals.

Penalty for
false
evidence.

Revisionary
powers of
provincial
commissioners
and district
officers.

from the provincial commissioner to the Governor, and that if any such sentence shall be increased upon revision by a provincial commissioner there shall be appeal from the provincial commissioner to the Governor;

5

- (b) order any case to be re-tried either before the same native tribunal or before any other native tribunal of competent jurisdiction;
- (c) transfer any cause or matter either before trial or at any stage of the proceedings, whether before or 10 after sentence passed or judgment given to any subordinate court of the first or second class.

Removal on motion of defendant.

31. The defendant in any case, civil or criminal, commenced or brought before any native tribunal may apply to the provincial commissioner for the removal of the proceedings, and the provincial commissioner may, for reasons which he shall record in writing, stop the hearing or further hearing of the case before such native tribunal on such terms as he may consider just, and may direct that the case be tried by any subordinate court of competent jurisdiction.

15

20

Proceedings on transfer from native tribunal to subordinate court.

32. When a case is transferred from a native tribunal to a subordinate court, whether for trial or re-trial, by an order under section 30 (c) or section 31 or section 37 (b), the native tribunal shall report the proceedings to the subordinate court and thereupon the subordinate court shall proceed to 25 the trial or re-trial of the case as though, in a criminal proceeding, a complaint of facts constituting the offence had been made to the court and, in a civil proceeding, as though a plaint therein had been filed in the court.

Appointment of courts of appeal.

33. (1) A provincial commissioner may, with the 30 approval of the Governor, by order under his hand, appoint the native tribunal presided over by a headman or senior elder or a tribunal composed of not fewer than three selected elders in a province or district, to be a court of appeal from all or any of the native tribunals in the province or district in 35 respect of all or any of the cases arising therein.

(2) If there be no native tribunal competent to hear an appeal under the preceding sub-section, or if in any particular case, or class of cases, the provincial commissioner shall so direct, an appeal shall lie from the native tribunal of first 40 instance to the district commissioner.

Appeals.

34. (1) Any person aggrieved by any order or decision of a native tribunal of first instance may within thirty days from the date of such order or decision, appeal therefrom to the native court of appeal or, if there be no such native court 45 of appeal, or if the provincial commissioner shall so direct under sub-section (2) of section 33, to the district commissioner.

(2) Any person aggrieved by any order or decision of a native court of appeal may within thirty days from the date 50 of such order or decision appeal therefrom to the district commissioner.

(3) Any person aggrieved by any order or decision of a district commissioner, whether made or given upon appeal from a native tribunal of first instance or upon appeal from a 55 native court of appeal, may within thirty days from the date of such order or decision appeal therefrom to the provincial commissioner.

(4) Any person aggrieved by any order or decision of the provincial commissioner made or given upon appeal from a district commissioner may within thirty days from the date of such order or decision appeal therefrom to the Governor.

5 **35.** Leave to appeal out of time to any court or Appeals out of authority prescribed by the preceding section may be given time.
by such court or authority upon such terms as to such court or authority shall seem just.

10 **36.** In order to prevent appeals in frivolous or trivial Appeals in cases the Governor may by rule prescribe that an appeal shall frivolous or trivial cases.
not lie in any specified class of case, whether civil or criminal, either at all or beyond any specified authority.

15 **37.** A native court of appeal, a district commissioner, Power on a provincial commissioner or the Governor, in the exercise of appeal.
appellate jurisdiction in any cause or matter under this Ordinance may require the aid of such persons as assessors as the court or other authority shall think fit and may—

- 20 (a) confirm vary or set aside the order of the tribunal of first instance or make any such order or pass any such sentence as the tribunal of first instance could have made or passed in such cause or matter;
(b) order any such cause or matter to be reheard before the tribunal of first instance, or before any other native tribunal, or before any subordinate court of competent jurisdiction.

25 **38.** A native tribunal shall carry into execution any decrees or orders of the Supreme Court or of any subordinate court or of any other native tribunal directed to the tribunal, and shall execute all warrants and serve all process issued by any such court as aforesaid and directed to the tribunal for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required. Execution of orders of Supreme Court, subordinate courts or other native tribunals.

30 **39.** At the end of every month the district commissioner shall forward to the Attorney General, on such form as the Governor may prescribe, a complete list of all criminal proceedings decided by or brought before a native tribunal in his district during the month setting out the name of the defendant, the offence with which he was charged, and, if convicted, the date of conviction, and the sentence or order in full. Monthly lists to be sent to Attorney General.

35 **40.** Every list of criminal cases so transmitted shall operate as an appeal on behalf of every convicted person whose name is included therein, and the Attorney General may without hearing argument, exercise in respect of any case included in such list any of the powers conferred on an appellate authority by section 37 of this Ordinance. Lists to operate as appeal.

40 **41.** No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Ordinance, whether or not within the limits of his jurisdiction : Indemnity of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

45 Provided that at the time of such act or order he believed in good faith that he had jurisdiction to do such act or to make such order; and no officer of any native tribunal or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this

Ordinance shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

Existing native tribunals.
Cap. 5.

Cap. 5.

Cap. 5.

Power to make provision for certain matters by rule.

42. (1) The Governor may declare that all or any native tribunals established under the Courts Ordinance in any specified district or area shall be deemed to be native tribunals established under this Ordinance and thereupon the jurisdiction conferred upon such tribunals under the Courts Ordinance shall be deemed to have been conferred upon such tribunals under this Ordinance and shall be exercised in all respects and may be determined or varied in accordance with this Ordinance and nothing in the Courts Ordinance shall apply to any such tribunals. 5
10

(2) Save as provided by this section nothing in this Ordinance shall apply to any court established under the Courts Ordinance. 15

43. The Governor may by rule make provisions for the following matters—

- (1) the fees to be charged in any native tribunal and on appeals from a native tribunal; 20
- (2) the disposal and application of fines and fees received by native tribunals;
- (3) the practice and procedure of native tribunals;
- (4) the practice and procedure on appeal from a native tribunal; 25
- (5) the establishment and government of native prisons; and
- (6) generally for the carrying into effect the provisions of this Ordinance. 30

44. This Ordinance shall continue in force until the 31st day of December, 1933, and shall then expire:

Provided that the Governor may by proclamation with the approval of the Legislative Council and of the Secretary of State declare that this Ordinance shall remain in force until a date to be fixed in such proclamation or until repealed.

OBJECTS AND REASONS.

This Bill introduces three material changes in the law governing the jurisdiction and procedure of native tribunals in the Colony:—

- (1) Jurisdiction is conferred on native tribunals over all natives, including Somalis and Swahilis, and also over Arabs if the Arabs consent to such jurisdiction. At present a council of elders have jurisdiction only over the members of their own tribe.
- (2) Advocates are debarred from appearance before a native tribunal or on appeal from a native tribunal.
- (3) Appeals from native tribunals lie through the administrative officers of the province to the Governor instead of to the Supreme Court as at present.

Native tribunals will be established by warrant, which will set out the territorial and penal jurisdiction of such tribunal. Clauses 8, 10 and 11 extend the jurisdiction of tribunals over all natives, subject to the terms of its warrant.

Clause 12 excludes certain types of cases from the jurisdiction of a tribunal.

Clauses 13 and 14 extend the jurisdiction of tribunals to various statutory offences which are not offences against native law and custom.

Contempt of a tribunal's authority and false evidence before a tribunal are made punishable by clauses 19 and 29, and adjudication without authority and corruption are made penal offences by clauses 26 to 28.

The existing powers of revision by administrative officers and transfer to subordinate courts are preserved in clauses 30 and 32.

Clause 33 provides for the establishment of native courts of appeal either for a province or for a district.

GOVERNMENT NOTICE No. 363.

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

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

A Bill to Consolidate and Amend the Law relating to Collective Punishment.

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

Short title.

Fines on
villagers, etc.,
accessory to
crimes.

1. This Ordinance may be cited as "the Collective Punishment Ordinance, 1930."

2. The Governor may impose fines on all or any inhabitants of any village, area or district or members of any tribe, sub-tribe or community, if, after inquiry, he is satisfied—

(a) that they have colluded with any criminal, or harboured, or rescued, or attempted to rescue, or failed to take all reasonable means to prevent the escape of, any criminal or any person accused of having committed a crime concerning whom a public announcement had previously been made within the limits of their village or district by an authorized emissary of a district officer or of a native authority; 10

(b) that they have suppressed, or combined to suppress, evidence in any criminal case, investigation, or inquiry, or in any inquest;

(c) that stolen property, or property which might reasonably be suspected of being the proceeds, or part of the proceeds, of a theft concerning which a public announcement had previously been made in the manner specified in paragraph (a), having been traced to within the limits of their village or district, they have failed or neglected to restore 25 the property or to take on the track beyond the limits of such village or district,

and may order the whole or any part of the fines recovered under the provisions of paragraphs (a), (b) and (c) to be applied in compensation for the injury caused by the offence 30 of which the criminal is accused or to which the criminal case, investigation, inquiry, or inquest relates, or in compensation to the owner of the stolen property.

Fines on
villages, etc.,
where
offence
against the
person
is committed
or attempted.

3. When within any village, area or district a person is dangerously or fatally wounded by unlawful attack, or the body is found of a person believed to have been unlawfully killed, or any serious offence has been committed against any person, the inhabitants of such village, area or district or the members of any tribe, sub-tribe, or community resident therein, shall be deemed to have committed an offence under 40 the last foregoing section and may in like manner be fined by the Governor, unless they can show that they—

(a) had not an opportunity of preventing the offence or arresting the offender; or

(b) have used all reasonable means to bring the offender 45 to justice.

- 4.** The Governor may, either by the order imposing the fine or by a subsequent order, direct that the whole or any part of the fine recovered under the provisions of this Ordinance shall be repaid to the persons paying such fine Power to return whole or part of fine after period of good behaviour.
- 5** provided that they shall have kept the peace and been of good behaviour for such period as the Governor may determine; and any such order may be subsequently varied by a further order of the Governor curtailing or extending such period.
- 10** **5.** In addition to or in lieu of a fine the Governor may order all or any inhabitants of any village or district or members of any tribe or community who have been guilty of an offence against any of the provisions of any of the foregoing sections to deliver up such number of arms as may be ordered to such officer as may be specified. Power to order delivery up of arms.
- For the purposes of this section—
 “arms” includes arms of precision and any weapon discharging a projectile by explosion, and any part of such weapon, and also swords, cutlasses, spears, daggers, bows and arrows; and
- 20** “arms of precision” includes magazine guns, rifles, breech loaders, cap-guns, flint-locks with rifled barrels, revolvers, pistols, air guns and air pistols, or any part or parts thereof.
- 25** **6.** The Governor may, in making any order under this Ordinance, determine the limits of any village, area or district, or define a tribe, sub-tribe, or community for the purpose of such order. Governor may determine limits of a village, etc., or define tribe or community for the purpose of any order made under the Ordinance.
- 7.** A fine imposed under this Ordinance may be recovered by distress. Recovery of fine.
- 8.** An inquiry under this Ordinance shall be conducted Inquiry. by a magistrate or other judicial officer, in the same manner, as far as may be, as an inquiry under the law relating to criminal procedure.
- 35** **9.** An appeal shall not lie from any order made under this Ordinance, which shall be final and shall not be liable to be contested by suit or otherwise. Finality of orders.
- 40** **10.** The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance and the grounds thereof, and the proceedings thereunder. Governor to report to Secretary of State.
- 11.** The Collective Punishment Ordinance (Chapter 77 of the Revised Edition) is hereby repealed. Repeal of Cap. 77.

OBJECTS AND REASONS.

This Bill with which it is intended to repeal the Collective Punishment Ordinance (Chapter 77 of the Revised Edition), introduces the following changes in the law relating to collective punishment.

Clause 2 extends the scope of section 2 of the existing Ordinance by making it an offence for a community to harbour or rescue a person who though not a criminal, in the sense of having been convicted of a crime, has, to the knowledge of the community, been accused of the commission of a crime.

Similarly the offence of suppressing evidence is extended to evidence at any investigation or inquiry or inquest.

Property suspected of being stolen and the proceeds of a theft are included in paragraph (c) with stolen property.

Clause 3 extends the liability to collective fine to offences against the person.

Clauses 4 and 5 import two new provisions, power to return the whole or part of a fine after a period of good behaviour, and power to order the delivery up of arms.

The provisions in the existing Ordinance dealing with forced labour are not re-enacted.