

The despatch to
 the admirability of
 clause 61 of the Bill
 in view of the treaty
 between Germany and
 the Sultan of the 20th
 Decr. 1885, having
 &
 and refers to the
 fact that the provisions
 of the treaty do not
 seem to have been
 carried strictly by
 Govt of the Sultanate
 of

W. L. ANTROBUS.

691

DESPATCH

EAST AFR. PROT.
 No. 10898

C. O.
 10898
 Recd
 26 MAR 08

Governor. No.
 1908
 26th Feb.
 Last previous Paper.
 W
 6132/1

(Subject)

Liquor Bill
 Submits

(Minutes)

The Bill retains the prohibition
 of the sale of liquor by a to a native
 & in other respects seems all right
 ? Total Passy

Yes if it is decided to approve
 the Govt's opinion first read
 copy to Mr. Nelson / 6132/107
 M. S. P.

Mr. Passy
 The Bishop of ...
 is about the Bill
 Wait
 at near
 G. J. R. 3/4

dated 25th June 1888

Next subsequent Paper.
 12858

Governor's Office,

Nairobi,

February 26th 1908.

EAST AFRICA PROTECTORATE.

No. 93

(Incl. 3)

C O
10893
Recd
FEB 26 1908

My Lord,

I have the honour to transmit herewith for Your Lordship's assent copies of the Liquor Bill 1908 and of the Crown Advocate's memorandum and schedule of amendments.

2. This enactment, which like the Customs Bill has received the very careful consideration of the Legislative Council, is designed to bring our procedure in connection with the issue of licences for the sale of liquor and similar matters up to the standard required by the existence of an increasing white as well as native population in our midst.

3. The new Bill provides greater facilities for the public and the police to oppose undesirable licences

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES.

LONDON, E. W.

Bill
Mr. G. G. G.
Feb. 1908
Schedule

licences and imposes enhanced penalties in certain cases in which those at present existing are not heavy enough to exercise a sufficiently deterrent influence.

4. The Bill though based on the Transvaal law contains certain modifications which are considered expedient in view of the conditions prevailing here and the difficulty of inducing a good class of licensed victualler to establish a business in the Protectorate.

I have the honour to be,
With the highest respect,
My Lord,

Your Lordship's most obedient,
humble servant,

Thos. J. ...

MEMORANDUM.

THE LIQUOR ORDINANCE 1908.

C 10898
Recd
28 MAR 08

1. The object of this Ordinance is to make further and better provision for regulating the sale of wines, spirits and malt liquors.

The present law relating to the manufacture and sale of intoxicating liquors is to be found in the East Africa Liquor Ordinance 1902 (No. 27 of 1902) and the East Africa Liquor Ordinance 1903 (No. 13 of 1903) and in some rules published under the first of those Ordinances.

2. Under these laws licences for the sale of liquor are issued by a Provincial Commissioner. Applications for a licence are made to him privately and no opportunity is given either to the police or to the public to oppose the granting of a licence to an undesirable person or in respect of premises which as licensed premises may be a nuisance to the neighbouring residents.

Some of the purposes of this Ordinance are that provision may be made whereby proper notification should be given of every application for a liquor licence; that the application should be heard and determined in open Court and by a properly constituted Court; and that the police and the public should have an opportunity of opposing the grant of a licence.

The Ordinance provides that there shall be a separate licence Court for each Province and that in those Provinces in which Europeans are resident; that the Court shall consist of both Official and Non-official residents in the Province to be appointed by the Governor.

In those Provinces in which no Europeans or only a few Europeans are resident, the Provincial Commissioner will continue to be the licensing authority but he will hear and determine all applications in open Court.

3. The existing law makes no proper provision for the inspection of licensed premises by the police and imposes none of these conditions on license holders which have been found necessary elsewhere to ensure the proper conduct of the business of a vendor of intoxicating liquors. The police have therefore considerable difficulty in detecting breaches of the liquor laws and in maintaining proper order in and about licensed premises.

By this Ordinance it is sought to remove that defect in the present laws.

4. For a breach of the provisions of the existing laws the maximum penalty prescribed is 2 months imprisonment and a fine of 1,000 rupees. Whilst such a penalty may be quite sufficient punishment for the majority of offences against that law it is insufficient punishment for such an offence as the sale of intoxicating liquor to natives and especially so in the case of a second or subsequent conviction of such an offence.

5. The fees payable for the various licences have not as a whole been materially altered but the fee for some classes of licences been slightly increased whilst for other it has been reduced as experience has shown to be just. Some new classes of licences have been introduced as for instance a Retail liquor licence, a Club liquor licence, a general retail liquor licence, a public house licence, a licence that required for a general retail licence in a town and a Club liquor licence.

Under the 1902 Ordinance every person in selling liquor

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5. The fees payable for the various licenses have not as a whole been materially altered but the fee for some classes of licenses has actually increased whilst for other it has been reduced as experience has shown to be just. Some new classes of licenses have been introduced as for instance a Hotel liquor license, a Valt liquor license, a General Retail Liquor license outside Townships (at a fee less than that required for a General Retail license in a Township) and a Club liquor license.

6. Under the 1902 Ordinance every person importing liquor

for sale is required to take out^a licence for which he must pay a fee of 100 rupees. As the importer is required to take out another licence before he can dispose of the liquor imported it is somewhat difficult to understand why is so far as the importation of the liquor is concerned he should have a taxation put upon him which is not imposed upon a person importing^{liquor for his own consumption}. As it is considered that this additional taxation on the vendor of liquor is unnecessary and unfair, No provision is made in this Ordinance for the continuation of the importers licence.

The Ordinance is based upon the "Transvaal Liquor Licensing Ordinance 1902" (No. 3 of 1902). That law was selected as the majority of the licensed retail dealers said that they were familiar with that law and were anxious to work under a similar law here. When however the Bill was introduced on the lines of the Transvaal Law the persons who had creed out for that law discovered that they had made a mistake and that it was not all the law they wanted.

For some reason it was considered necessary by the makers of the Transvaal law to impose some years imprisonment for offences which in England are punishable with a small fine, and in this respect the Ordinance under consideration is a considerable modification of the Transvaal Ordinance. The Act under the latter Ordinance any licence can be taken away at the will of the licensing Court and without their assigning any reason. Under the East Africa the right of a licensing Court to refuse the renewal of a licence is limited. It is considered that if a good class of licensees are to be induced to enter the liquor trade these departures from the Transvaal law ^{are} necessary.

B. This Ordinance should be forwarded to the Secretary of State for his approval before His Excellency's assent to the Ordinance is given.

S. K. M. Couche

ORDIN ADVOCATE.

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LIQUOR ORDINANCE 1908.

Sections.	Remarks.
Section 1. Repeal of laws.	This Section repeals all existing laws relating to the sale of intoxicating liquors (other than native liquors) except Section 6 of the East Africa Liquor Ordinance 1903. That Section which fixes the import duty on spirits will be repealed by the Customs Ordinance 1908 when that Ordinance becomes law.
Section 2. Exemptions.	In part Section 2 of the Transvaal Ordinance (No. 19 of 1898) The sale of distilled perfume is regulated by the East Africa Liquor (Drugs and Perfumes) Ordinance 1903 (No. 17 of 1903); The fifth exemption is in accordance with the existing law.
Section 3. Definition of terms.	Section 3 of the Transvaal Ordinance.
Section 4. The sale or manufacture of liquor without a licence prohibited.	This Ordinance by the following Sections prohibits the manufacture of spirituous liquors. Provision is made for the granting of licences authorising the brewing of malt liquors.
Section 5. Prohibition of distilling.	The East Africa Liquor Ordinance 1903 and Section 5 of the Transvaal Ordinance.
Section 6. Exemption from prohibition of distilling.	Section 9 of the Transvaal Ordinance.
Section 7. Issue of licences.	Section 4 of the Transvaal Ordinance.
Section 8. Fees to be paid in respect of licences.	
Section 9. Description of licences.	Licences (2)(3)(4)(5) and 11 are as follows. The Club Liquor licence was introduced in 1907 by rules made under the 1903 Ordinance. The Rules issued under the last mentioned prescribed four classes of licence for the sale of liquor. <ol style="list-style-type: none"> 1. Wholesale licence. Rs. 200 2. Off retail licence between the hours of 6 a.m. and 8 p.m. Rs. 250

Section 28.

Remarks.

every application for a new licence or the removal or transfer of an existing licence shall be made to the Provincial Commission at least six weeks before the meeting of the Court, and that every application for a new licence shall be made on the first day of the Court sitting.

Section 29.

The Provincial Commissioner shall sign every licence issued by him.

Section 29 of the Transit Ordinance. In the above section, in respect of every application is all in the Ordinance the word "shall" has been changed to "may". As the provisions for licences under this Ordinance are substantially the same as those in the present Act of this Province, the Protectorate it is considered unnecessary to require a heavier fee to be paid for licences.

Section 30.

Death or insolvency of applicant.

Section 30 of the Transit Ordinance.

Section 31.

Who may object to issue of licence.

Section 32.

Objections not to be made.

Section 32 of the Transit Ordinance. The provisions of this section are similar to those of the present Act of this Province, and the provisions of (1) is added to meet the case, which is applicable, but difficult to carry out.

Section 33.

Grounds for refusal to issue licence.

Section 33 of the Transit Ordinance. Section 33 of the Transit Ordinance is similar to that of the present Act, but without giving reasons.

In the present Act of Ordinance has not been followed.

The grounds on which the renewal of licence may be refused are stated in Section 32 of this Ordinance.

Section 34.

And when there is no objection.

Section 34 of the Transit Ordinance.

Section 35.

Reasons for refusal of licence.

Section 35.

Section 35 of the Transit Ordinance. Section 35 (1) and (3) have been added whilst (2) and (4) of Section 35 of the Transit Ordinance have been omitted. It is considered that the matter referred to in these last mentioned provisions may properly be left to the discretion of the Court.

Sections.	Remarks.
<p>Section 33. Persons to whom a licence shall not be granted.</p>	<p>Section 31 of the Transvaal Ordinance (3) (6) (7) of the above have been omitted as those provisions are considered unnecessary. (8) has been omitted as it is thought that if in any case of the sale of liquor to a native there are such extenuating circumstances as to justify the imposition of a fine only the licence should not necessarily be forfeited. A person who has been convicted of the offence referred to would ordinarily come within the first case mentioned in this Section.</p>
<p>Section 34. Transfer of licence.</p>	<p>Section 38 of the Transvaal Ordinance.</p>
<p>Section 35. Removal of licensed premises.</p>	<p>Section 39 of the Transvaal Ordinance with slight modifications. The words (except a temporary licence) in the above Section appears to be unnecessary as it is conceivable that an application would be made under this Section for the transfer of a licence which can only be granted for a period not exceeding 3 days having regard to the fact that this Section requires 30 days notice to be given.</p>
<p>Section 36. Fresh application to be made.</p>	<p>Section 40 of the Transvaal Ordinance with the addition of the words "and any person to whom a provisional licence shall have been granted" inserted at the end of the case of a provisional licence granted under this Ordinance.</p>
<p>Section 37. Where transfer or removal not ratified.</p>	<p>Section 41 of the Transvaal Ordinance with the addition of the words "at the hearing of the Section from a Licensing Court" down to and including the words "Provincial Commissioner".</p>
<p>Section 38. Death of holder of licence.</p>	<p>Section 42 of the Transvaal Ordinance.</p>
<p>Section 39. Power and duties of representative of deceased.</p>	<p>Section 43 of the Transvaal Ordinance.</p>
<p>Section 40. Sign board.</p>	<p>A licensed person is not required by this Ordinance to keep a sign board on his premises. In other respects this Section is Section 44 of the Transvaal Ordinance.</p>
<p>Section 41. Natives not to be supplied.</p>	<p>Section 46 of the Transvaal Ordinance except that the punishment for a first and second offence under this Section is reduced.</p>

Sections.	Remarks.
Section 42. Persons prohibited from selling liquor.	
Section 43. Native not to obtain liquor.	Section 44 of the Transvaal Ordinance.
Section 44. Onus of proof as to whether a person is a native or not.	This Section is necessary having regard to the definition of "Native" in this Ordinance.
Section 45. Offences by licence holder.	Section 56 of the Transvaal Ordinance The words in this Section "suffer any unlawful game or gambling to be carried on on his premises" have been omitted. Unlawful gambling or gambling is not defined in any Ordinance and in the absence of some defini- tion which would exclude "bridge" played for low points it would appear to be some- what dangerous to insert that provision in this Ordinance having regard to the fact that proprietary clubs are licensed premises.
Section 46. Trading without a licence.	
Section 47. Club licences abuse of.	Section 58 of the Transvaal Ordinance.
Section 48. Offences by retail licence holders rendering licence holder liable to forfeiture and penalties.	Section 59 of the Transvaal Ordinance modified.
Section 49. Evidence of sale of liquor.	Section 60 of the Transvaal Ordinance.
Section 50. Onus of proof.	Section 61 of the Transvaal Ordinance.
Section 51. Persons on premises of retail licence holder during prohibited hours.	
Section 52. Offences for which no penalty provided.	
Section 53.	English Licensing Act. Licences for benefit of Licensing Court.
Section 54.	English Licensing Act. Introduced in the interests of the owner of licensed premises.
Section 55. Power to expel drunk- ards from licensed premises.	English licensing Act.

Sections.	Remarks.
Section 56. Report of Chief Officer of Police.	Section 65 of the Transvaal Ordinances.
Section 57. Inspection of premises.	Section 69 of the Transvaal Ordinances.
Section 58.	Section 66 of the Transvaal Ordinances.
Section 59. Inspection of unlined premises.	Section 67 of the Transvaal Ordinances.
Section 60. Police may demand the names and addresses of persons on premises.	Section 68 of the Transvaal Ordinances.
Section 61. Police may arrest without warrant in certain cases.	
Section 62. Licence to expire on the thirty first day of December.	Section 80 of the Transvaal Ordinances.
Section 63. Prohibition of payment of fines on licensed premises.	
Section 64. Governor may make regulations for proceed- ings of Licensing Court.	
Section 65. Costs of proceedings.	Section 90 of the Transvaal Ordinances.
Section 66. Short title.	

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Sections.	Remarks.
	<p>3. An on or off licence between the hours of 6 a.m. and 10 p.m. Sundays excepted. Rs. 450</p> <p>4. An on or off licence between the hours of 6 a.m. and 12 p.m. Rs. 600</p> <p>For these licences there have been substituted in this Ordinance</p> <ol style="list-style-type: none"> 1. A wholesale licence. Rs. 250 2. A Hotel Liquor licence (only authorising the sale to persons staying in the Hotel) Rs. 200 3. A restaurant or Cafe liquor licence. Rs. 300 4. Malt liquor licence. Rs. 75 5. Wine Merchants or Grocers licence. Rs. 300 6. General retail licence (within Townships). Rs. 600 7. General retail licence (outside Townships) Rs. 450 <p>It is considered that these licences better meet present requirements than those prescribed by the earlier Ordinance.</p> <p>The fee prescribed for a Brewers licence which authorises the holder to make and sell malt liquor is considered to be fair having regard to the fact that the industry should be encouraged.</p>
Section 10. Definition of different terms.	
Section 11. Constitution of Court.	<p>The intention is to give the Non-officials residents in the Protectorate an opportunity of serving on the Licensing Courts in those provisions in which the number of European residents justify the privilege being granted.</p>
Section 12. Disqualification of Members.	<p>Section 11 of the Transvaal Ordinance. The penalty for a breach of this Section has been reduced.</p>
Section 13. Term of members.	<p>The Section provides that persons appointed by the Governor to serve on the Licensing Court shall vacate their offices at the end of each year.</p>
Section 14. Annual meeting to be held.	<p>This Section provides for two ordinary meetings of the Court in each year at which meeting licences may either be issued for six or twelve months.</p> <p>Provision is made elsewhere in the Ordinance for the holding of an extraordinary meeting of the Court to deal with matters.</p>

Sections.

Remarks.

Section 16.

Application for renewal of licence to be entertained at the first meeting.

This Section as originally drafted on the lines of the Transvaal law provided that every application for a renewal of a licence should at the first meeting of the Court held under this Ordinance be treated as an application for a new licence. After considerable discussions it was decided that the renewal of existing licences which have hitherto been renewed as a matter of course should not be refused unless the grounds on which a renewal may be refused by the Court was shown to exist.

Section 16.
Quorum.

Section 16 of the Transvaal Ordinance.

Section 17.

The Provincial Commissioner or District Commissioner to preside at Meetings.

Section 18.

Adjournment.

Section 19.

Return of licences to be returned to District Commissioners and to the Inspector General of Police.

Section 20.

Granting of special privileges.

A general retail licence authorizes the sale of liquor until midnight.

This Section enables the same privilege to be granted to the holder of a restaurant licence on payment of an increased fee.

Section 21.

Provincial Licences.

This Section follows the English Acts. There appears to be no similar provision in the Transvaal Ordinance. The provision is however necessary for the protection of persons about to erect hotels at considerable costs.

Section 22.

Power of Governor to rectify omissions and order special meetings of licensing courts.

Sections 57 of the Transvaal Ordinance.

Section 23.

Evidence to be given on oath.

Sections 20 and 21 of the Transvaal Ordinance.

The difference in Sub-section 2 of this Section and Section 21 of the Transvaal Ordinance is necessary as the term "perjury" is not used in the I.P.C.

Section 24.

When application for licence to be made.

This Section required that notice of