

1936

38217

CO 533/474

38217

KENYA

Water

Legislation

Previous

23277/34

Subsequent

1731

297

17/36

309

14/37

Water

14

297

17/2

304

14/4

Water

5

M: Date

23/4

M: Flood

9.5

Norm 309

4/1

Water

R: 297

14/5

Library

18/5

R: 297

14/6

M.S.N. Complete

14/6

R 302

Water

Spies 6
Liby

1. Col. Sec. - 3 pm (omitted) - 13-1-36
(orig. in 38072/36)

Des. 12 copies of Report of Select Ctee appointed to consider report upon the provisions of a Bill to Amend the Water Ordinance, 1929.

Wait the Ordinance

Ch. Forman
12-2-36

9/1/36
1-1-36

2. Envs. Report - 1936 - 23-1-36

Des. 2 amendments - 12 printed copies (with large boards) - 1936. (Amo 2-1936)

The Water Ordinance of 1929 was brought into operation on the 1st of July 1935. The amendments made in

Ordinance No 2 of 1936 are, with one exception, now controversial, and will be seen from the debate on the Water (Amendment) Bill, copy attached.

Section 10 of the Ordinance provides satisfactory facility for the amendment of Section 58 of the Principal Ordinance, as proposed in the S.P.S. despatch 999 of the 3rd of December, 1934.

No 2
28277/36

The select Committee appointed to consider the Draft Bill were not unanimous as regards the provisions of Section 9 of the Bill. Mr Logan and Mr Selwyn presenting. The section in question deals with the removal of penalties for offences against the Ordinance. Previously an Employer was liable for offences committed by his employees. It is suggested that the Ordinance should provide that the Employer shall be liable for such offences as the Employer may be liable to be liable.

Subject to Report from Finance Committee
14.4.36

I cannot see that any attempt has been made to deal with the point raised in para 2 of No 2 on 23277/34, as to water flowing into a native reserve, nor can I find any mention of this point.

They have added the words as suggested. The other point is dealt with.

J. J. [Signature]
15/4

I do not feel altogether happy about the provisions of the new Sections 20(4) and 28(5) which enable applicants to be exempted from the procedure under which objections may be made by third parties. Presumably, however, the power will be used reasonably and we might perhaps let it pass as the clauses were not opposed.

* But only where it is a case of removal of that rights which have been granted.

The opposition to Clause 9 seems to me, without knowledge of local conditions or the grounds upon which it was passed, to have been not unreasonable. It is not entirely clear to me why the vicarious liability of the occupier is necessary at all, but I do not wish to question it.

The words "the principal Ordinance" in line 9 of the new subsection 2(a) of Section 20 (see Clause B) should apparently be "this Ordinance" as in line 7.

[Signature]
28/4/36.

We can signify non disallowance points out as at X.

J. J. [Signature]
9.5 done

[Signature]
Note
to Mr
14/5/36

4 To Kenya, 320 (2 revised) 14 MAY 1936

W. $\frac{9}{8}$ Draft

5F217/36

34

No. *Keizer*

long with 4/5
in Parkin 12/5 jr.



No 320
for

Downing Street,

14 MAY 1936

Sir,

I have the honour to acknowledge the receipt of your despatch

No. *74* of the *28th* of *January* and to inform

you that His Majesty will be advised to exercise his power of disallowance

in respect of *Ordinance* No. 2 of *1936*

of the Legislature of *Kenya*

"An Ordinance to amend the Water Ordinance
1934."

whereas the said Ordinance is contained in
the Ordinance which amends Section 20 of the
Principal Ordinance and to state that the
words "the Principal Ordinance" in the words
of the new Section 20 of Section 20 should

apparently be "this Ordinance" as in the
seventh line.

Your most obedient, humble servant,

Chase etc

The Officer Administering
the Government of

(Signed) J. H. THOMAS

W. G. 8
Draft

FR 17/36

31

No. *Kearse*

to Sir... 1/5
to Parkin 12/5 B.

No 320
fr.

Downing Street,

14 MAY 1936

Sir,

I have the honour to acknowledge the receipt of your despatch
No. *4th of the 23rd of January* and to inform
you that His Majesty will not be advised to exercise his power of disallowance

in respect of *Ordinance* No. *2* of *1935*

of the Legislature of *Kenya* entitled

The Ordinance to amend the Local Ordinance
1935

I have the honour to refer you to Clause 6 of
the Ordinance which amends Section 20 of the
Principal Ordinance and to state that the
word "the Principal Ordinance" in the
of the new Section 20 of Section 20 should
I have the honour to be,
Apparently be "the Ordinance" as in the
seventh line.

Your most obedient, humble servant,

Thors et

The Officer Administering
the Government of

(Signed) J. H. THOMAS

law in the past, that because of this lack of legal security capital was actually being scared away, and people were unwilling to embark on enterprises of any magnitude. Fortunately there is no need for such misapprehension under the new law.

There is, however, some apprehension in the minds of permittees under the old law regarding the trouble and possibly expense to which they may be put in the change over from the old permits. I do not think they have grasped the difference between the permit under the old law and a water right under the new law. The difference is analogous to that between a temporary occupation licence of land and a lease of land. I should like to assure them that, in my opinion, the little trouble and expense to which they will be put will be more than justified and well-worth their while. If this Bill passes, I shall relieve them of some trouble and expense. In cases where the Board finds it already has sufficient information to decide the details in sections 21, 22, 27, 28 and 29 of the principal Ordinance and will not put permittees to any more trouble than is essential.

It is deemed to give certain concessions to those applicants for water permits under the repealed law who had fulfilled adequately the whole or a part of their obligations but who were in a hurry to apply and not received their permits before the new Ordinance came into force and the old law was repealed, and who desire a water right under the Water Ordinance. In many cases these applicants had submitted valid applications before but were held up by the necessity of scrutinizing the effect which their diversion would have on native reserves by the Local Board or Central Native Trusts, Trust Board, or other cause. This change will give power to the Water Board to waive the necessity for submitting a fresh application, provided the Board is satisfied it has that information to fulfil requirements.

The concession proposed in this clause is the reduction of fees otherwise payable by such applicants to one quarter of the prescribed fees. In an ordinary straightforward application, not complicated by the necessity for authority to enter lands held by other assignments or other circumstances, the fees payable would not be likely to amount to more than Sh. 15 or Sh. 20. That is a very small sum to pay for a water right. In other countries the fees amount to £100 or more.

The other clauses are I think largely matters of detail and might well be left to the Select Committee. If any question arises in debate I shall be pleased, of course, to answer those queries to the best of my ability.

THE HON. T. D. H. BRUCE seconded.

THE HON. CONWAY HARVEY: Your Excellency, I very cordially approve of the main object for which this amending Ordinance has been introduced, namely, to simplify and cheapen the acquisition of a proper licence under the Water Ordinance in place of the somewhat indefinite water permits which users have at the present moment.

I should, however, like to ask whether the provisions of this measure have been considered by the Water Board, a body which I understand particularly applies itself to water problems and which, being to some extent responsible for the administration of water legislation, in my humble opinion should have been consulted in regard to any amendments to the Water Ordinance, 1929, under which they function.

Of course, we all most cordially welcome the additional security we shall enjoy by reason of a fixed permanent title to use water we require which may be on or near our farms. I sincerely trust that the water authority will extend this most admirable principle of cheapening by doing everything within its power to simplify the form of application under the Ordinance which, to the majority of users of water, the farmers concerned, is really a first step at the present moment, necessary though it may be from the point of view of the water authority. I would ask the hon. mover seriously to consider whether it is possible to simplify this form of application.

I do make one constructive suggestion in regard to cheapening the matter, and that is that it is a little short of a wicked swindle to make users of water pay a sum of Sh. 7/60 for a publication of this nature, just as the rules called Water Rules, 1929. Everybody applying for a permit must have a copy, and I suggest it is a wicked injustice that one should be obliged to pay a sum of no less than Sh. 7/60 for a fooling. This document of this nature. This is one constructive suggestion put forward for the consideration of the water authority. I may mention that accompanying the Water Ordinance Rules, 1929, are 35 forms which are all included in what you get for Sh. 7/60, but of those 35 only two or three are pertinent to the particular application involved. I suggest that it is a wicked waste on stationery and printing of public money, and hope that that will engage the serious attention of the water authority.

Those hon. members who were in the Council about ten years ago, when the subject of water was first debated, I hope especially those who were here in 1929, will share my very vivid recollections of the very long discussions and debates which took place in regard to section 83 of the principal Ordinance. I suggest for the hon. mover's consideration that this, even now, requires most careful and intensive scrutiny and

intensive consideration by the Select Committee to be appointed. I notice in the objects and reasons that the change is supposed to be of narrower application than section 83 (1) of the Water Ordinance, 1925, which is supposed to be improved upon. In my humble opinion, Sir, the proposed change, instead of narrowing the application, is of very much wider significance than the clause it is intended to improve. Under clause 9 of this Bill under discussion, section 83 (2) states:

"For the purposes of this sub-section a native under contract with an occupier under section 4 of the Resident Native Labourers Ordinance, 1925, and the members of the family of such native, shall be deemed to be persons in the employment of the occupier, and whom such contract has been made."

I suggest that this should be gone into most carefully by the Select Committee, because I should say that I do not think that our legislation has ever in this country

How in the name of God can a native domiciled in the constituency be responsible for the actions of members of the family of one of his people? Native labour who may be living at Lamu or Mombasa, who are never and never will be brought to the coast, how and never will. Nevertheless, he is a member of the family contracted under the Resident Native Labourers Ordinance, 1925. I suggest that the consideration of this Select Committee on the scope of that provision may quite well be limited to those members of the family of the resident native labourer who may be under contract domiciled off the hill of the employer concerned.

I do not wish to waste time by reading section 83 (2) when it is proposed to amend it. It is of very great importance to all users of water, and will I trust seriously engage the attention of the Select Committee.

Apart from these points, I have nothing to add, and do most cordially support the measure for the reasons I have given.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, the only point that I want to make it to ask that consideration be given in the Select Committee to the needs of the Natives, not only from the point of view of the full supply of water necessary to their well-being in the Native Reserves, but also to the purity of the water that may flow from where it is being used in certain manufactures and returned again into the stream, that the purifying of that water be given full consideration by the Board, so that the natives will enjoy the privileges they have heretofore enjoyed in the Native Reserves.

HIS EXCELLENCY: If no other hon. member wishes to speak, I will call upon the hon. member to reply.

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, to answer the first question by the hon. Member for Nyanza, I think it will dispose of his fears that this matter has not been considered by the Water Board when I say that I regard this Bill as being the child of the Water Board. It is entirely due to the Water Board that this Bill has come before the Council and the Water Board considered it at a number of meetings.

The hon. member was concerned at the length of the form of application for a water right under the Ordinance. It is admittedly long, but, Sir, it will be found on going through the form of application that in the case of any diversion for any particular line, there really only a small portion of the form which has to be filled in, and I do suggest to the hon. member that the little trouble in doing this might be given as the information which we have to give the details of the diversions which are taking place, is fully justified and worth the time which will be spent on it. Also it will help to remove any difficulties which perplexed under the old law, and in putting the correct interpretation on any of the requirements of that form.

As regards the plans which have to be submitted, we have under consideration methods which the provisions will simplify and reduce the expense to applicants in the submission of their applications. That is a matter which will be considered by the Water Board at the next meeting.

I think the hon. member saw that Sli. 7/50 for the Rules is very high and I am taking this matter up with the Government Printer. I had hoped the Rules would be published at Sli. 1 per copy. (Clear, hear.)

I think the point raised by the hon. member about the resident natives under section 83 of the Principal Ordinance is one that can best be dealt with in Select Committee. It always has been an extremely controversial point though it has never seemed to me to be one of vital importance. The chances of a case coming before the court under that section, to my mind, are rather small, and I think the court will take a liberal view.

I am in entire agreement with the hon. and venerable Member, Archdeacon Burns, regarding the importance of seeing that water is not polluted. It is a noticeably difficult matter to deal with. We have pollution of streams going on at present throughout the whole of the coffee areas owing to the pulping of coffee and discharge into the streams. That

KENYA.

No. 411



RECEIVED
15 FEB 1936
7186
GOVERNMENT HOUSE
NAIROBI.
KENYA

23 JANUARY, 1936.

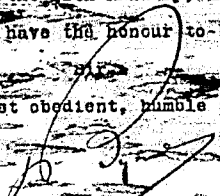
Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. 11 of 1936 entitled "An Ordinance to Amend the Wages Ordinance, 1929" together with a Legal Report thereon by the Attorney General.

This Ordinance passed its third reading in the Legislative Council on the 9th January, 1936, and I assented to it in His Majesty's name on the 18th January, 1936.

I have the honour to be,

Your most obedient, humble servant,


CHIEF CLERK-GENERAL
GOVERNOR

THE RIGHT HONOURABLE,
J. H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWLING STREET,
LONDON, S. W. 1.

LEGAL REPORT

THE WATER (AMENDMENT) BILL, 1936

14/10/36
Clause 2 - It is considered that the definition of "Riparian" in the Principal Ordinance is not sufficiently comprehensive, and a new definition, on the lines of the Water Act, 1912, of the Union of South Africa, is proposed to be inserted in place of the old one.

Clause 3 - This amendment provides for application for sanctions as well as for licences. As the section stands at present, provision is made for applicants to apply for either one or the other. Under the Water Board is empowered to grant a sanction as well as a licence.

Clause 4 - This amendment is necessary to enable sanctions to be granted for community projects as well as water rights.

16/7/36
Clause 5 - The Principal Ordinance provides for official members of the Water Board to be represented by Deputies in certain circumstances, and this clause provides that unofficial members of the Board may, in similar circumstances, be represented by alternate members.

Clause 6 - It is felt that in the case of many of the holders of water permits under section 145 of the Crown Lands Ordinance, now repealed, it would be unduly onerous to require them to go through the full procedure for the acquisition of a water right or sanction which is laid down in the Principal Ordinance. It is thought that discretion should rest with the Water Board regarding the requirements which should be fulfilled in each individual case. It is also felt by the Water Board that persons who held a water

permit up to the thirty-first day of December, 1934, and neglected, through inadvertence or some other cause, to renew it for 1935, should, nevertheless, be able to obtain a sanction from the Water Board, and should only pay half fees for the application and the issue of a sanction, and that if full fees, in these circumstances, had already been paid, that half such fees should be refunded by the Director.

160707-0
Clause 7 - It is considered necessary that section 21 of the Principal Ordinance should be amended so as to provide for applications for sanctions as well as for water rights.

Clause 8 - As the law stands at present, the priority of a licence is determined by the date when the application for the licence is received. It is thought, however, that the priority should date from the date when the licence is conditionally approved.

Clause 9 - It is considered that sub-section (2) of section 82 of the Principal Ordinance, which deals with the recovery of penalties imposed by the Principal Ordinance or by Rules made thereunder, is too narrow in its application, and this clause sets out a new sub-section of wider application. As it stands, the sub-section provides that if the person committing the offence is an occupier under the Resident Native Labourers' Ordinance, 1925, or his family, the employer under the Ordinance is and must be solely liable. This clause provides that, in these circumstances, either the person actually committing the offence or the employer may be sued.

Clause 10 - As it stands, section 88 of the Principal Ordinance provides that the Water Board may grant sanctions, notwithstanding anything contained in the Principal Ordinance. Section 75 of the Principal Ordinance, however, lays down that the powers conferred, and the duties and obligations

imposed, by the Principal Ordinance shall in any area of Crown land declared to be a native reserve or a communal reserve be exercised subject to the provisions of any law for the time being in force relating to land in native reserves or communal reserves. This being so, it is necessary that section 88 should be made subject to the provisions of section 75.

Clause 11 - It is felt that persons who applied for water permits prior to the bringing into force of the Water Ordinance, 1929, and who, for various reasons, were not granted permits should have special terms granted to them if, in the discretion of the Water Board, this is deemed desirable in particular cases. It is also felt that such applicants should be exempted from three quarters of the fees in respect of the application and issue to them of a water right or sanction. This clause makes the necessary amendments to the Principal Ordinance.

No Comparative Table accompanied the Bill since the amendments contained therein are not modelled on any Ordinance or Imperial Act. A copy of the Bill, however, showing the sections of the Principal Ordinance which are proposed to be amended or replaced is enclosed for transmission to the Secretary of State.

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

Nairobi,
9th January, 1936.

T. D. H. [Signature]
SOLICITOR GENERAL
for ATTORNEY GENERAL

COPY

THE WATER (AMENDMENT) BILL, 1936 SHOULD
BE REFERRED TO THE WATER COMMISSION,
WHICH ARE PROPOSED TO BE NEED
BE REPLACED BY THE BILL.

Colony and Protectorate of Kenya

Government Notice No. 2986

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

M. F. G. TROUGHTON,
Acting Clerk of the Legislative Council.

A Bill to Amend the Water Ordinance, 1929.

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 Water (Amendment) Ordinance, 1935, and shall be read as one with the Water Ordinance, 1929, hereinafter referred to as the No. 35 of 1929.

Principal Objective.

2. Section 2 of this Principal Ordinance as already amended by the delimitation of the boundaries of the Principal Objective and by the substitution thereof of the following definition:

"Riparian" as applied to land means land abutting on or traversed by a body of water, and includes the following:

- land, including unalienated Crown land and Native Reserve (as defined in section 4 of the Native Land Ordinance, 1930), the No. 11 of 1930, the boundaries of which in relation to a body of water would render it riparian on the first day of July, 1935;
- any sub-division of such land made on or after the first day of July, 1935, even if such sub-division does not abut upon or is not traversed by the body of water.

3. Section 10 of the Principal Ordinance is hereby amended by the insertion after the word "licence" in the fifth line thereof, of the words "or sanction".

The definition of "Riparian" in section 2 of the Principal Ordinance which it is proposed to replace.

2. In this Ordinance, unless inconsistent with the text or subject-matter, the following expressions shall have the meanings hereby assigned to them, that is to say:

"Riparian," as applied to land, means abutting on or traversed by a body of water.

Section 10 of the Principal Ordinance which it is proposed to amend.

10. In all cases of proposed diversion, abstraction, obstruction, storage, or use of water from a body of water, other than those referred to in the last preceding section, application must be made in the manner prescribed by this Ordinance for a licence for the diversion, abstraction, obstruc-

Definitions and interpretation.

When licence is required.

Colony and Protectorate of Kenya

GOVERNMENT NOTICE No. 796

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

N. P. G. TROUGHTON,
Acting Clerk of the Legislative Council.

A Bill to Amend the Water 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 Water (Amendment) Ordinance, 1935, and shall be read as one with the Water Ordinance, 1928, hereinafter referred to as the Water Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by the deletion thereout of the definition of the word "Riparian" and by the substitution thereof of the following definition:

"Riparian" means any land abutting on, or over which water flows, and includes the following:

(a) land including reserved Crown land or a reserve (as defined in section 2 of the Native Lands Trust Ordinance, 1928) the situation of which in relation to a body of water would render it riparian on the first day of July, 1935;

(b) any sub-division of land made after the first day of July, 1935, even if such sub-division does not abut on or is not traversed by the body of water.

3. Section 10 of the Principal Ordinance is hereby amended by the insertion after the word "licence" in the fifth line thereof, of the words "or permission".

The definition of "Riparian" in section 2 of the Principal Ordinance which it is proposed to replace.

2. In this Ordinance, unless inconsistent with the context, subject-matter, the following expressions shall have the meanings hereby assigned to them, that is to say:—
"Riparian," as applied to land, means abutting on or traversed by a body of water.

Section 10 of the Principal Ordinance which it is proposed to amend.

When licence is required.

10. In all cases of proposed diversion, abstraction, obstruction, storage, or use of water from a body of water, other than those referred to in the last preceding section, application must be made in the manner prescribed by this Ordinance for a licence for the diversion, abstraction, obstruc-

conformity with the terms of the said permit, if application be made by him to the Water Board for a water right under this Ordinance within six months after the date of the coming into operation of this Ordinance and after receipt by the Water Board of any particulars it may require regarding the diversion, abstraction, obstruction or use of the water, or other matters pertaining thereto; shall be entitled to receive a licence under this Ordinance:

Provided that the licence shall authorise the diversion, abstraction, storage, or use of a discharge or the construction of works or the diversion, abstraction, storage, or use of a proportion of the flow of a stream, or all or any of them, which shall be determined by the Water Board after consideration of the discharge or proportion of the stream which at the time of the coming into operation of this Ordinance is being diverted, abstracted and generally used, and of the water required, and of the probable future utilisation of the body of water by other users. The licence issued under such terms and conditions as may be decided by the Water Board.

Provided also that if in the opinion of the Water Board a licence should not be issued under this Ordinance if a topographic survey or other investigation has been made, or if for any other reason the Water Board deems it desirable to delay the issue of a licence, the Water Board may issue a sanction under section 88 of this Ordinance in lieu of the said permit.

(3) When a licence or a renewal thereof terminating on the 31st day of December has been issued and no appeal made therefrom in conformity with the terms thereof, a sanction may be issued by the Water Board under section 88 of this Ordinance in lieu of the said permit.

Sub-section (2) of section 21 of the Principal Ordinance which it is proposed to amend.

(2) Every person who has been, prior to the coming into operation of this Ordinance, diverting, or abstracting, or obstructing water, or allowing water to be diverted, abstracted, or obstructed, within the boundaries of land held by him under any terms of tenure, shall either discontinue to divert, abstract or obstruct water; and, if required by the Water Board, cause to be removed any works constructed, maintained or used by him which cause to be diverted or abstracted or which obstruct or impede the flow of any body of water, or shall, within six months from the date of the coming into

7. Sub-section (2) of section 21 of the Principal Ordinance is hereby amended by the insertion after the words "water right" in the thirteenth line thereof of the words "or sanction".

Amendment
of section
21 (2) of the
Principal
Ordinance.

operation of this Ordinance, or within such further period as may be determined by the Governor in Council by notice in the Gazette, apply for a water right under this Ordinance, and shall supply such particulars as may be required by Rules made under this Ordinance or as the Water Board may specify regarding the works, diversion and use of the water.

Section 34 of the Principal Ordinance which it is proposed to amend :-

Licence. 34. (1) Upon completion of the works to the satisfaction of the Water Board, and in accordance with the terms of the authorisation or amended authorisation, the Water Board shall issue a licence to the operator to divert, abstract, use or store the discharge of quantity of water to which he is entitled and in accordance with the terms of the licence, and of the authorisation, or any approved modification thereof, and such licence shall bear the number accorded to the authorisation, with priority from the date on which the application, containing full details of the applicant's proposals together with such particulars, plans or plans as may have been required, was received by the Water Board.

(2) A licence may be issued for a fixed period or otherwise as the Water Board may decide.

Section 83 of the Principal Ordinance which it is proposed to amend :-

Penalties. 83. (1) Except where it is otherwise provided, all penalties imposed by this Ordinance, or by any Rules in force under it, may be recovered by any person thereto authorized by the Governor.

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is, and on whose behalf he is acting, or from the person if the person actually committing the offence is a resident native labourer, or a member of his family, under the Resident Native Labourers Ordinance, 1923, from the person or whose farm such resident native labourer or the members of his family may have been actually residing at the time of the offence.

Section 88 of the Principal Ordinance which it is proposed to amend :-

Sanctions. 88. (1) Notwithstanding anything contained in this Ordinance, it shall be lawful for the Water Board to authorize by sanction for any fixed period of time the diversion, abstract-

B. Section 34 of the Principal Ordinance is hereby amended by the deletion of the word "received" from the twelfth line thereof, and by the substitution thereof of the words "conditionally approved".

9. Section 83 of the Principal Ordinance is hereby amended by the deletion of sub-section (2) therefrom and by the substitution thereof of the following sub-section :-

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is or from the person actually acting, or from both.

For the purposes of this sub-section a native under contract with an occupier under section 4 of the Resident Native Labourers Ordinance, 1923, and the members of the family of such native shall be deemed to be persons in the employment of the occupier with whom such contract has been made.

10. Section 88 of the Principal Ordinance is hereby amended by the insertion after the word "Ordinance" in the second line thereof of the following words :-

"other than the provisions of section 75 thereof".

operation of this Ordinance, or within such further period as may be determined by the Governor in Council by notice in the Gazette, apply for a water right under this Ordinance, and shall supply such particulars as may be required by Rules made under this Ordinance or as the Water Board may specify regarding the works, diversion and use of the water.

Section 34 of the Principal Ordinance which it is proposed to amend:-

34. (1) Upon completion of the works to the satisfaction of the Water Board, and in accordance with the terms of the authorisation or amended authorisation, the Water Board shall issue a licence to the operator to divert, abstract, use or store the discharge of quantity of water to which he is entitled and in accordance with the terms of the licence and of the authorisation, or any approved modification thereof, and such licence shall bear the number accorded to the authorisation, with priority from the date on which the application, containing full details of the applicant's proposals together with such particulars, maps or plans as may have been required, was received by the Water Board.

(2) A licence may be issued for a fixed period or otherwise as the Water Board may decide.

Section 83 of the Principal Ordinance which it is proposed to amend:-

83. (1) Except as it is otherwise provided, all penalties imposed by this Ordinance, or by any Rules in force under it, may be recovered by any person thereto authorized by the Governor.

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is, and on whose behalf he is acting, or from both; or if the person actually committing the offence is a resident native labourer, or a member of his family, under the Resident Native Labourers Ordinance, 1925, from the person on whose farm such resident native labourer or the members of his family may have been actually residing at the time of the offence.

Section 88 of the Principal Ordinance which it is proposed to amend:-

88. (1) Notwithstanding anything contained in this Ordinance, it shall be lawful for the Water Board to authorize by sanction for any fixed period of time the diversion, abstract-

8. Section 34 of the Principal Ordinance is hereby amended by the deletion of the word "received" from the twelfth line thereof, and by the substitution thereof of the words "conditionally approved".

Amendment of section 34 of the Principal Ordinance.

Section 83 of the Principal Ordinance is hereby amended by the deletion of the words "or by any Rules in force under it" and by the substitution thereof of the following words:-

Amendment of section 83 of the Principal Ordinance.

(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is or on whose behalf he is acting or from both.

For the purposes of this section a native under contract with an occupier under section 4 of the Resident Native Labourers Ordinance, 1925, and the members of the family of such native, shall be deemed to be persons in the employment of the occupier with whom such contract has been made.

10. Section 88 of the Principal Ordinance is hereby amended by the insertion after the word "Ordinance" in the second line thereof of the following words:-

Amendment of section 88 of the Principal Ordinance.

"other than the provisions of section 75 thereof".

tion, obstruction, or use of water and the works required therefor according to such terms and conditions as the Water Board may embody in the sanction or as may be prescribed by Rules made under this Ordinance.

(2) In the event of any works not being in conformity with a sanction, or in the event of a sanction having been terminated, the Water Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court.

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable.

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit.

(5) A sanction as a copy thereof required by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in the sanction.

Section 99 of the Principal Ordinance which it is intended to amend.

99. Section 145 of the Crown Lands Ordinance and all Rules made thereunder shall be repealed without prejudice to anything lawfully done hereunder previous to the coming into operation of this Ordinance.

11. The Principal Ordinance is hereby amended.

(a) by renumbering section 99 thereof as section 100.

(b) by inserting the following additional section as section 99.

"99. (1) Notwithstanding anything contained in this Ordinance (other than section 100 thereof) or in any Rules made thereunder, in any case where the Water Board is satisfied that an application for a water right under section 145 of the Crown Lands Ordinance was made at any time during the period between the thirty-first day of December, 1932 and the nineteenth day of May, 1935, the Water Board, if it decides to entertain such application, and in its absolute discretion, may

(a) grant a sanction as if such application had been an application for a sanction made on the form prescribed therefor, subject always to the payment of the prescribed fees and to the applicant submitting such further information and plans as the Water Board may require; or

(b) deem such application to be an application made under this Ordinance for the grant of a water right, subject always to due

tion, obstruction, or use of water and the works required therefor according to such terms and conditions as the Water Board may embody in the sanction or as may be prescribed by Rules made under this Ordinance.

(2) In the event of any works not being in conformity with a sanction, or in the event of a sanction having been terminated, the Water Board may forthwith demolish any such works and recover the cost of such demolition from the person concerned in any competent court.

(3) A sanction shall not grant a water right, shall not be appurtenant to any piece of land, and shall not be transferable.

(4) A sanction may be renewed at the discretion of the Water Board for such period as it may think fit.

(5) A sanction or a copy thereof certified by the Chairman of the Water Board shall be evidence in any court of the matters comprehended in this sanction.

Section 99 of the Principal Ordinances is hereby amended to read as follows:

99. Section 145 of the Crown Lands Ordinance and all Rules made thereunder are hereby repealed with effect from the date of the coming into operation of this Ordinance.

II. The Principal Ordinances are hereby amended:

(a) Section 59 thereof as section 100, and

by inserting therein the following section:

99. (1) Notwithstanding anything contained in this Ordinance (other than the provisions of section 10 thereof) or any Rules made thereunder, in any application for a water permit under section 140 of the Crown Lands Ordinance made at any time during the period beginning on the thirty-first day of October, 1920, and the nineteenth day of May, 1935, the Water Board, if it decides to entertain such application, and in its absolute discretion, may

(c) grant a sanction as if such application had been an application for a sanction made on the form prescribed therefor, subject always to the payment of the prescribed fees and to the applicant submitting such further information and plans as the Water Board may require; or

(b) deem such application to be an application made under this Ordinance for the grant of a water right, subject always to due

compliance by the applicant with all the requirements of this Ordinance and of any Rules relating to applications for water rights and to the making of any formal application which the Water Board may direct.

(2) Any application which the Water Board directs the applicant to make in the exercise of its discretion under paragraph (a) or paragraph (b) of the last preceding sub-section shall be made in the form prescribed in this Ordinance and in any Rules made thereunder, and shall be received by the Water Board not later than the thirtieth day of June, 1936: Provided that in any case the Governor in Council may extend the date by which any such application is to be received.

(3) In the exercise of its discretion under this section the Water Board in any case under paragraph (a) or paragraph (b) of sub-section (1) of this section

(a) may impose such terms and conditions as it may think fit;

(b) shall reduce the fee payable to the Water Board in respect of the application for and the issue of the sanction or water right, as the case may be, by an amount equal to three-quarters of the prescribed fees.

(4) Every application considered by the Water Board under paragraph (a) or paragraph (b) of sub-section (3) of this section and every subsequent grant of a water right or licence thereon shall in all respects be subject to the provisions of this Ordinance and any Rules made thereunder save where the contrary is expressly provided in this section.

(5) Notwithstanding anything in this section contained the Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 26, 27, 28 and 29 of this Ordinance, or any part of such sections.

(6) This section shall be deemed to have come into force on the 1st day of July, 1936, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction or water right, as the case may be, affected by this section, before the passing of this Ordinance, shall be deemed to have been reduced by an amount equal to three-quarters of the prescribed fees, and the Director shall repay such sum accordingly to each person concerned.

(Amended by Ordinance No. 19 of 1936, Act, 1936, inserted)

compliance by the applicant with all the requirements of this Ordinance and of any Rules relating to applications for water rights and to the making of any formal application which the Water Board may direct.

(2) Any application which the Water Board directs the applicant to make in the exercise of its discretion under paragraph (a) or paragraph (b) of the last preceding sub-section shall be made in the form prescribed in this Ordinance and in any Rules made thereunder, and shall be received by the Water Board not later than the thirtieth day of June, 1936: Provided that in any case the Governor or Council may extend the date by which any such application is to be received.

(3) In the exercise of its discretion under this section the Water Board in any case under either paragraph (a) or paragraph (b) of sub-section (1) of this section

may impose such terms and conditions as it thinks fit.

(4) The fee payable to the Water Board in respect of the application for and the issue of the sanction or water right, as the case may be, by an amount equal to three quarters of the prescribed fee.

(4) Every application considered by the Water Board under paragraph (a) or paragraph (b) of sub-section (1) of this section and every subsequent issue of a sanction, right or licence consequent thereon shall in all respects be subject to the provisions of this Ordinance and any Rules made thereunder save where the contrary is expressly provided in this section.

(5) Notwithstanding anything in this section contained, the Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 26, 27, 28 and 29 of this Ordinance, or any part of such sections.

(6) This section shall be deemed to have come into force on the 1st day of July, 1935, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction or water right, as the case may be, effected by this section, before the passing of this Ordinance, shall be deemed to have been reduced by an amount equal to three quarters of the prescribed fee, and the Director shall repay such sum accordingly to each person concerned.

Ordinance
No. 191
Act, 1935
inserted



Colony and Protectorate of Kenya.

IN THE TWENTY-SIXTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.

JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.H.E., C.B.,
Governor.

Assented to in His Majesty's
name this 15 day of January,
1936.

J. BYRNE
Governor.

AN ORDINANCE TO AMEND THE WATER
ORDINANCE, 1929

ORDINANCE No. II of 1936

An Ordinance to Amend the Water Ordinance, 1929

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 Water (Amendment) Ordinance, 1936; and shall be read as one with the Water Ordinance, 1929, hereinafter referred to as the Principal Ordinance.

2. Section 2 of the Principal Ordinance is hereby amended by the deletion therefrom of the definition of "Riparian" and by the substitution thereof of the following definition:

"Riparian, as applied to land means land abutting on or traversed by a body of water, and includes the following:

- (a) land, including unalienated Crown land or a Native Reserve (as defined in section 3 of the Native Lands Trust Ordinance, 1930), the No. 2 of 1937, situation of which in relation to a body of water would render it riparian on the first day of July, 1935;
- (b) any sub-division of such land made after the first day of July, 1935, even if such sub-division does not abut upon or is not traversed by the body of water.

3. Section 10 of the Principal Ordinance is hereby amended by the insertion after the word "licence" in the fifth line thereof, of the words "or sanction".

Amendment of section 10 of the Principal Ordinance.

*The word
Principal
Ordinance
was
changed to
free*

Amendment
of section 14 of
the Principal
Ordinance.

4. Section 14 of the Principal Ordinance is hereby amended by the insertion after the words "water right" in the third line thereof, of the words "or sanction".

Amendment
of section 18 of
the Principal
Ordinance.

5. Section 18 of the Principal Ordinance is hereby amended in the following respects:—

(a) by the substitution of a comma for the full stop at the end of the proviso to sub-section (2) of the section, and by the addition to the proviso of the following words:—

"and two of the four representatives of the public by one of two alternate members who shall be appointed by the Governor by notice in the Gazette";

(b) by the deletion of sub-section (2) of the section and by the substitution thereof of the following sub-section:—

"(2) The four representatives of the public and the two alternate members referred to in sub-section (1) of this section shall be appointed by the Governor by notice in the Gazette, and their appointment shall be subject to the Governor's pleasure."

Amendment
of section 20 of
the Principal
Ordinance.

6. Section 20 of the Principal Ordinance is hereby amended by the addition thereto of the following sub-section:—

"(3) (c) If a permit or a renewal thereof terminating on the thirty-first day of December, 1934, has been issued, for which no renewal terminating on the thirty-first day of December, 1935, has been issued, and no permit or renewal thereof, being made in conformity with the terms thereof, a sanction may be issued by the Water Board under section 88 of this Ordinance in lieu of the said permit, and the fees payable to the Water Board under the Principal Ordinance, in respect of the application for, and the issue of the sanction shall be one half of the prescribed fees, and any sum paid in excess of one half of such fee shall be refunded by the Director.

(b) This sub-section shall be deemed to have come into force on the first day of July, 1935.

(4) The Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 25, 27, 28 and 29 of this Ordinance or any part of such sections."

7. Sub-section (2) of section 31 of the Principal Ordinance is hereby amended by the insertion after the words "water right" in the thirteenth line thereof of the words "or sanction".

Amendment
of section
31 (2) of the
Principal
Ordinance.

8. Section 34 of the Principal Ordinance is hereby amended by the deletion of the word "received" from the twelfth line thereof, and by the substitution thereof of the words "conditionally approved".

Amendment
of section 34
of the Principal
Ordinance.

9. Section 63 of the Principal Ordinance is hereby amended by the deletion of sub-section (2) therefrom and by the substitution thereof of the following sub-section:—

Amendment
of section 63
of the Principal
Ordinance.

"(2) The said penalties may be recovered from the person actually committing the offence or from the person in whose employment he is or on whose behalf he is acting, or from both."

For the purposes of this sub-section a native under contract with an occupier under section 4 of the Present Native Labourers Ordinance, 1925, and the members of No. 5 of 1929, the family of such native included in such contract, shall be deemed to be persons in the employment of the occupier with whom such contract has been made."

10. Section 89 of the Principal Ordinance is hereby amended by the insertion after the word "Ordinance" in the second line thereof of the following words:—

Amendment
of section 89 of
the Principal
Ordinance.

"other than the provisions of section 75 thereof."

11. The Principal Ordinance is hereby amended:—

Amendment
of the Principal
Ordinance.

(a) by renumbering section 99 thereof as section 100; and
(b) by inserting therein the following additional section as section 99:—

"99. (1) Notwithstanding anything contained in this Ordinance (other than the provisions of section 75 thereof) or in any Rules made thereunder, in any case where the Water Board is satisfied that an application for a water permit under section 145 of the Crown Lands Ordinance was made at any time during the period between the thirty-first day of

Saving for
pre-existing
applications

December, 1936, and the nineteenth day of May, 1935, the Water Board, if it decides to entertain such application, and in its absolute discretion, may—

(c) grant a sanction as if such application had been an application for a sanction made on the form prescribed therefor, subject always to the payment of the prescribed fees and to the applicant submitting such further information and plans as the Water Board may require;

(d) deem such application to be an application made under the Ordinance for the grant of a water right, and to do so in accordance with the provisions of the Ordinance and the Rules made thereunder, for water rights and to the extent of any formal application which the Water Board may

(2) Any application which the Water Board directs the applicant to make in the exercise of its discretion under paragraph (c) or paragraph (d) of the last preceding sub-section shall be made in the form prescribed in the Ordinance and in any Rules made thereunder, and shall be received by the Water Board not later than the thirtieth day of June, 1936: Provided that the date by which any such application is to be received.

(3) In the exercise of its discretion under this section the Water Board in any case under either paragraph (c) or paragraph (d) of sub-section (1) of this section—

(a) may impose such terms and conditions as it thinks fit;

(b) shall reduce the fees payable to the Water Board in respect of the application for and the issue of the sanction or water right, as the case may be, by an amount equal to three-quarters of the prescribed fees;

(4) Every application considered by the Water Board under paragraph (c) or paragraph (d) of sub-section (1) of this section and every subsequent grant of a sanction, right or licence consequent thereon shall in all respects be subject to the provisions of this Ordinance and any Rules made thereunder save where the contrary is expressly provided in this section.

(5) Notwithstanding anything in this section contained, the Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 21, 26, 27, 28 and 29 of this Ordinance, or any part of such sections.

(6) This section shall be deemed to have come into force on the 1st day of July, 1935, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction or water right, in any case may be affected by this section, before the passing of this Ordinance, shall be deemed to have been reduced by an amount equal to three-quarters of the prescribed fees, and the Director shall repay such amount accordingly to each person concerned.

Passed in the Legislative Council on the ninth day of January, in the year of our Lord one thousand nine hundred and thirty six.

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

J. F. G. TROUGHTON

Acting Clerk of the Legislative Council.

R E P O R T

G. F.

THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL TO AMEND THE WATER
ORDINANCE, 1929.

Your Excellency,

We, the members of the Select Committee appointed to consider and report upon the provisions of the above Bill, have the honour to recommend that the Bill be amended in the following respects:

1. That Clause 1 be amended by the deletion of the figures 1935 which occur in the second line thereof and the substitution thereof of the figures 1936.

2. That Clause 5 be amended by the deletion of the word "four" which occurs in the eighth and sixth lines thereof respectively and the substitution thereof in each instance of the word "two".

3. That Clause 6 be deleted and the following clause substituted therefor:

"6. Section 26 of the Principal Ordinance is hereby amended by the addition thereto of the following sub-section:

(3). When a permit or licence issued therefor terminating on the 31st day of December, 1934, has been issued for which no renewal terminating on the 31st day of December, 1935, has been issued and was during the year 1934, being made use of in conformity with the terms thereof, a sanction may be issued by the Water Board under Section 26 of this Ordinance in lieu of the said permit.

This sub-section shall be deemed to have come into force on the 1st day of July, 1935, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction effected by this sub-section, before the passing of this Ordinance, shall be deemed to have been reduced to an amount equal to one half of the prescribed fees, and the Director shall repay such sum accordingly to each person concerned.

(4) The Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 26, 27, 28 and 29 of this Ordinance or any part of such sections."

4. That Clause 9 be amended by the insertion in the eleventh line thereof after the word "native" of the words "included in such contract".

5. That Clause 11 be amended by the insertion therein, as sub-clause (5) thereof, of the following:-

"(5) Notwithstanding anything in this section contained, the Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 26, 27, 28 and 29 of this Ordinance, or any part of such sections".

and also by the insertion therein, as sub-clause (c) thereof of the following:-

"(6) This section shall be deemed to have come into force on the 1st day of July, 1936, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction or water right, as the case may be, affected by this section, before the passing of this Ordinance, shall be deemed to have been reduced by an amount equal to three-quarters of the prescribed fees, and the Director shall repay such sum accordingly to each person concerned."

We have the honour to be,
Your Excellency's obedient servants.

- SD. H.L. SIKES (CHAIRMAN)
- SD. S.H. LOGAN (MEMBER)
- (Subject to the note hereunder)
- SD. T.D.H. BRUCE (MEMBER)
- SD. CONWAY HARVEY (MEMBER)
- SD. W.H. BELL (MEMBER)
- SD. W.E.Y. SHAW (MEMBER)
- SD. C. BURNS (MEMBER)
- SD. A.C.L. DE SOUSA (MEMBER)
- (Subject to the note hereunder)

Although we have signed this Report we desire to dissent from the amendment to section 83(2) of the Water Ordinance, 1923, which is embodied in Clause 9 of the amending Bill. We consider that section 83(2) of the Water Ordinance, 1923, should stand unaltered.

SD. S.H. LOGAN
SD. A.C.L. DE SOUSA

Nairobi.

"(5) Notwithstanding anything in this section contained, the Water Board may in any particular case under this section waive the necessity of compliance with the requirements of sections 23, 26, 27, 28 and 29 of this Ordinance, or any part of such sections".

and also by the insertion therein, as sub-clause (b) thereof of the following:-

"(6) This section shall be deemed to have come into force on the 1st day of July, 1935, and any fees paid to the Water Board under the Principal Ordinance in respect of the application for, and the issue of, a sanction for water right, as the case may be, affected by this section, before the passing of this Ordinance, shall be deemed to have been reduced by an amount equal to three-quarters of the prescribed fees, and the Director shall repay such sum accordingly to each person concerned."

We have the honour to be,
Your Excellency's obedient servants,

SD. H. H. BIKES	(CHAIRMAN)
SD. A. M. DEAN	(MEMBER)
(Subject to the note hereunder)	
SD. F. D. H. BRUCE	(MEMBER)
SD. CONWAY HARVEY	(MEMBER)
SD. G. H. RIDDELL	(MEMBER)
SD. R. DE W. SHAW	(MEMBER)
SD. G. BURNS	(MEMBER)
SD. A. C. L. DE SOUSA	(MEMBER)
(Subject to the note hereunder)	

Although we have signed this Report we desire to dissent from the amendment to section 83(2) of the Water Ordinance, 1929, which is embodied in Clause 9 of the amending Bill. We consider that section 83(2) of the Water Ordinance, 1929, should stand unaltered.

SD. M. M. LOGAN
SD. A. C. L. DE SOUSA

Nairobi.