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Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No. 76.

HIS EXCELLENCY the Acting Governor has approved of the following Bill being introduced into Legislative Council :—

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

THE KENYA AND UGANDA RAILWAY BILL.

STATEMENT OF OBJECTS AND REASONS.

The Bill, in the main, reproduces the East Africa Railways Ordinance (Chapter 115 of the Revised Edition). Certain alterations and modifications necessitated by the creation of the office of High Commissioner for Transport have been made.

Provision is made for the working and management of the Kenya and Uganda Railway including the Lake Services. The Bill, apart from certain provisions relating to private railways, does not deal with railways generally.

The responsibility of the High Commissioner as a carrier has been made clear by the substitution of new clauses for section 72 of the East Africa Railways Ordinance by which the responsibility of a railway administration was that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

It is also laid down, following the lines of a provision in the South Africa Act, 1909, that the services shall be administered on business principles, due regard being had to agricultural and industrial development in Kenya and Uganda by means of cheap transport, and that the earnings of the services shall not be more than sufficient to cover necessary outlay for working and maintenance, and to make provision for reserve funds, renewals and betterments, and interest and sinking fund charges.

Certain restrictions are imposed in respect of claims for damage by fire caused by sparks from locomotives.

A Bill to Provide for the Regulation, Control and Management of Railways, Ports, Harbours and Steamer Services in the Colony and Protectorate of Kenya, and for matters incidental thereto.

PRELIMINARY.

1. This Ordinance may be cited as "The Kenya and Uganda Railway Ordinance, 1927," and shall come into force on such day as the Governor shall by Proclamation prescribe.

Short title and commencement

2. In this Ordinance, unless there is something repugnant in the subject of the context :—

Definitions.

"Animals" includes animate things of every kind except human beings.

"Colony" means the Colony and Protectorate of Kenya.

"Fare" includes all sums received or receivable, charged or chargeable, for conveyance of passengers upon or along the railways or on any ship.

"Firebreak" means a strip of land cleared and maintained in a clean state by burning, ploughing or any similar or other method. 5

"Free pass" means an authority in writing given to any person to travel as a passenger on the railways or on any ship without the payment of any fare.

"Freight" includes all sums received or receivable, charged or chargeable, for the transport of goods. 10

"General Manager" means the officer appointed by the High Commissioner as such pursuant to the provisions of the Order-in-Council.

"Goods" means goods, luggage, or other movable property of any description, and shall include animals and birds, whether alive or dead. 15

"Harbours" means and includes all the ports on the lakes of the Colony, and shall include the relative areas thereto, together with the wharves, slips, docks, and breakwaters, and the machinery, plant, tools, and other property appertaining thereto. 20

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

"Imprisonment" means imprisonment of either description. 25

"Luggage" means such articles of necessity of personal use and convenience as, being enveloped in some kind of package, are usually carried by passengers for their personal use, but shall not include merchandise or other valuables, which, though carried in the trunks of passengers or otherwise, are not designed for any such use, but are for sale or other like purposes. 30

"Master" in relation to a ship, means any person (other than a pilot) having charge of that ship. 35

"Order-in-Council" means the Kenya and Uganda (Transport) Order-in-Council, 1925.

"Perishable goods" means goods liable to rapid deterioration, and shall include fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, dogs, small animals, birds, poultry, and any other thing which may hereafter be declared by the High Commissioner by proclamation in the Gazette to be perishable goods. 40

"Private railways" means all lines of railways within the Colony that are now or may hereafter be constructed for a private person or corporation by virtue of any law, and all land, stations, sidings, buildings, plant, machinery, rolling-stock, and all other movable and immovable property and servitudes used in connection therewith. 45

"Railway" means the whole or any portion of the railways. 50

“ Railways ” and “ the railways ” means and includes all lines of railway of which the High Commissioner has the control, working and management, and all lands, stations, sidings, buildings, plant, machinery, rolling-stock, and all
5 other movable and immovable property and servitudes used in connection therewith.

“ Railway and Harbour Fund ” means the fund established by the Order-in-Council.

“ Regulation ” means any regulation made and in force
10 in accordance with this Ordinance.

“ Rolling-stock ” means locomotive engines, tenders, motors, coaches, wagons, trucks and trolleys of all kinds.

“ Servant ” means any person employed in the services.

“ Services ” means the services as defined in the Order-
15 in-Council.

“ Ship ” includes any ship, vessel, or boat of any kind whatsoever, whether propelled by steam or otherwise, or towed, and the term shall include any steamer, tug, lighter or boat used by the services for the conveyance of passengers,
20 animals or goods.

“ Traffic ” includes not only passengers and their luggage and goods conveyed by the High Commissioner, but also rolling-stock.

“ Train ” means a locomotive engine or motor by
25 itself, or any rolling-stock that is drawn or propelled along a railway or is in course of being drawn or propelled along a railway by a locomotive engine or motor.

“ Ticket ” includes a single ticket, a return ticket, a season ticket, a trip-bearer ticket (when date-stamped at a
30 booking office) and any other written authority (not being a free pass) for a person to travel as a passenger on the railways.

“ Warehouse ” means any building or place provided or used by the High Commissioner or by any railway servant in charge of a station for the purpose of storing or depositing
35 goods. Where it is more convenient to the High Commissioner that the goods to be warehoused shall remain in trucks, those trucks when placed in a siding shall, for the purposes of this Ordinance, be deemed a warehouse.

CHAPTER I.

40 POWERS OF THE HIGH COMMISSIONER.

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

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

(b) To enter into agreements with any person whether in the Colony or elsewhere in connection with matters affecting or incidental to the control, working and management of the services, including contracts for the supply of water or electric energy to ships or to persons; and to grant powers of attorney and like authorities; 5

(c) To construct any lines of railway or any roads or any other works whatever, or to negotiate with any person for the construction of lines of railway, roads or works of any kind, and to complete agreements concerning the same. No railway for the conveyance of public traffic and no port or harbour or similar work shall be constructed without the sanction of the Legislative Council, and no such sanction shall be given without a prior report thereon or on any alternative railway line, port or harbour by the Council, but the sanction of the Legislative Council shall not be necessary for the construction of sidings or short branch lines to mines, stores, warehouses, or other works or premises, or for other purposes; 20

(d) To erect, maintain and regulate lighthouses, beacons, port lights and signal stations within his jurisdiction, and to provide the necessary staffs for the same;

(e) To establish and maintain lifeboats, life-saving apparatus and such other works, institutions or appliances as may be necessary for the requirements of any harbour or other place; 25

(f) To transport and convey upon the railways and ships or upon any road all such traffic as may be offered to it for transport and conveyance, but subject to the regulations and to the by-laws of any local authority having control of the roads over which such traffic is transported or conveyed; 30

(g) To delegate to the General Manager any of the powers conferred upon him by this Ordinance; 35

(h) Generally to execute and do all such acts, deeds and things as may be necessary for the control, working, management and construction of railways, harbours and ships.

CHAPTER II.

CONSTRUCTION AND MAINTENANCE OF WORKS. 40

Authority of
the High
Commissioner to
execute all
necessary works.

4. Subject to the provisions of this Ordinance and, in the case of immovable property, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes the High Commissioner may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force:— 45

(a) Make or construct in, upon, across or over any lands, or any streets, roads, railways, tramways, or any rivers, canals, streams, or other waters, or any drain-pipes, water-pipes, gas-pipes, or telegraph or electric power lines, such temporary or permanent arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, cuttings and fences as the High Commissioner may think proper; 50

5 (b) Alter the course of any rivers, streams, or water-courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over and under them, and divert or alter, as well temporarily as permanently, the course of any rivers, streams or water-courses, or any roads, streets, or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the High Commissioner may think proper;

10 (c) Make, alter or repair drains or conduits into, through or under any lands for the purpose of conveying water from or to the railway;

15 (d) Erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, engines, machinery, apparatus, and other works and conveniences as he may think proper;

(e) Alter, repair or discontinue such buildings, works, and conveniences as aforesaid or any of them, and substitute others in their stead;

20 (f) Take, carry away and use any earth, stone, timber, gravel or sand, or any other materials or things out of any land contiguous to or adjoining such railway and other works and which may be proper or necessary for making, maintaining, altering, repairing, or using such railway or works;

(g) Sink wells, construct dams and all other works necessary for providing a water supply; and

(h) Do all other acts necessary for making, maintaining, altering or repairing and using the railway.

30 5. The High Commissioner may, for the purpose of exercising the powers conferred upon him by this Ordinance, alter the position of any pipe for the supply of gas, water, or compressed air, or the position of any electric wire, or of any drain not being a main drain : Alteration of pipes, wires, and drains.

35 Provided that—

40 (a) When he desires to alter the position of any such pipe, wire or drain, he shall give reasonable notice of his intention to do so, and of the time at which he will begin to do so, to the local authority or company having control over the pipe, wire or drain, or when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;

45 (b) A local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the High Commissioner shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air, or electricity, or the maintenance of the drainage, as
50 the case may be.

Powers in case
of accident.

6. It shall be lawful for the High Commissioner or any person authorised by him in case of any accident from whatever cause happening or being apprehended to any cutting or embankments or other works connected with any railway to enter upon any land adjoining such railway for the purpose of repairing any damage caused by such accident or of guarding against any apprehended accident and to do such work as may be necessary for the purpose. 5

7. (1) The High Commissioner shall do as little damage as possible in the exercise of the powers conferred by sections 4, 5 and 6, and compensation shall be paid for any damage caused by the exercise thereof. 10

(2) A suit shall not lie to recover such compensation but in case of dispute the amount thereof shall be determined and paid in accordance, so far as may be, with the provisions of sections 11 to 15 both inclusive, sections 18 to 34 both inclusive, and sections 53 and 54 of the Indian Land Acquisition Act, 1894, and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation. 15

High Com-
missioner may
take water for
railway
purposes.

8. The High Commissioner may take, or cause to be taken, water for the purposes of the services :— 20

(a) From any river, stream, pan or other natural source;

(b) From any dam, furrow or artificial works used for the storage or distribution of water upon payment of compensation to the owner of such dam or furrow or artificial works : Provided that a sufficient supply be left to the owners or occupiers of land entitled to the use of such water for household and agricultural purposes and for watering their stock. 25 30

Accommodation
works.

9. (1) The High Commissioner shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely :—

(a) Such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from the railway, as may, in the opinion of the High Commissioner, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made; and 35 40

(b) All necessary arches, tunnels, culverts, drains, water-courses or other passages, over or under or by the sides of the railway of such dimensions as will, in the opinion of the High Commissioner, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be. 45

(2) Subject to the other provisions of this Ordinance the works specified in clauses (a) and (b) of subsection (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works. 50

(3) The foregoing provisions of this section are subject to the following provisos, namely :—

5 (a) The High Commissioner shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made;

10 (b) Save as hereinafter in this chapter provided, the High Commissioner shall not be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened
15 for public traffic;

(c) Where the High Commissioner has provided suitable accommodation for the crossing of a road or stream and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the
20 High Commissioner shall not be compelled to provide other accommodation for the crossing of the road or stream.

10. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing
25 section to be insufficient for the commodious use of the land, or if the Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the High Commissioner to make at his or its expense such further
30 accommodation works as he or it thinks necessary and are agreed to by the High Commissioner, or as, in the case of difference of opinion, may be decided by the Governor in Council.

Power for owner, occupier or local authority to cause additional accommodation works to be made.

11. (1) Where a railway has been constructed across a
35 public road on the level, the High Commissioner may at any time, if it appears to him necessary for the public safety, carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the
40 level, or to execute such other works as, in the circumstances of the case, may appear to the High Commissioner to be best adapted for removing or diminishing the danger arising from the level crossing.

Over and under bridges.

(2) In the absence of agreement the High Commissioner
45 may require that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost of such works, or such portion of the cost as the High Commissioner thinks just.

12. In either of the following cases, namely :—

50 (a) Where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic;

(b) When a tree obstructs the view of any fixed signal;

the High Commissioner may cause the tree to be cut down or
55 deal with it such other manner as will, in his opinion, avert the danger or remove the obstruction, as the case may be.

Removal of trees dangerous to or obstructing the working of a railway.

CHAPTER III.

WORKING OF THE SERVICES.

13. The Services shall be administered on business principles, due regard being had to agricultural and industrial development in Kenya and Uganda by means of cheap transport. So far as may be, subject to such provisions as may be considered necessary to meet contingencies, the total earnings of the Services shall not be more than sufficient to meet :—

(a) The necessary outlays for working and maintenance;

(b) Contributions to reserve funds for renewals, betterments, stores and other purposes;

(c) Interest and sinking fund charges due on capital not being capital contributed out of railway or harbour revenue;

(d) Such costs, compensation or damages as may be awarded against the High Commissioner.

Conveyance of Passengers.

Time-tables and fares to be posted up.

14. A copy of the time-table and of the fares and conditions for the time being in force relating to the conveyance of passengers shall be posted up in a conspicuous place at each railway station so as to be visible and accessible.

Conditions upon which tickets are issued.

15. (1) Fares shall be deemed to be accepted and tickets to be issued subject to the condition of there being room available in the train or ship, and, on the train, in a compartment of the class for which the tickets are issued.

(2) A person to whom a ticket has been issued and for whom there is no room available in the train or ship for which the ticket was issued, shall, upon returning the ticket at the earliest opportunity, be entitled to have his fare refunded.

(3) A person for whom there is no room available in the class of compartment on a train for which he has purchased a ticket, and who elects to travel in a compartment of a lower class shall, on delivering up his ticket and receiving the certificate hereinafter in this section referred to, be entitled to a refund of the difference of the fare paid by him and the fare payable for the class of compartment in which he travelled : Provided that a refund shall only be made if at the first opportunity the passenger so travelling has called the attention of the servant in charge of the train to the fact that he is obliged to travel in a class of compartment inferior to that mentioned on his ticket, and has received from that servant a certificate showing that he is entitled to the refund.

(4) A servant in charge of a train may, for the purpose of better utilising the accommodation on a train, require a passenger to move from one compartment to another compartment of the same class.

(5) The class of coach or compartment shall be from time to time fixed by the High Commissioner, and shall be legibly marked on the outside of each coach or compartment.

(6) Subject to the provisions of this Ordinance or any other law or any regulation, the High Commissioner shall not refuse to carry a passenger who has tendered the proper fare for the journey which he desires to make and the class in which he desires to travel.

(7) The provisions of subsections (2) and (3) shall not apply to season tickets.

16. The High Commissioner may refuse to carry, except in accordance with the regulations, a person who appears to be a lunatic or suffering from any contagious or infectious disease, or who appears to be under the influence of liquor, whether or not such person has a ticket or free pass.

Conveyance of lunatics or infectious persons.

17. (1) The High Commissioner shall only be liable for loss of life or personal injury to any passenger when the loss of life or personal injury is caused by the want of ordinary care, diligence or skill on the part of the High Commissioner or of his servants, and shall in no case be liable for loss of life of, or personal injury to, a passenger who is travelling by special permission, whether verbal or written, in any part of a train other than in a passenger coach, or who is travelling on a free pass, or a passenger who is travelling by permission of the Resident Engineer, or any person appointed by him, over any construction line.

Liability in respect of loss of life or personal injury to passenger.

(2) For the purposes of this section the term "passenger" shall include every person lawfully travelling upon a train.

18. No person shall enter any coach on a railway or upon any ship for the purpose of travelling therein as a passenger unless he has with him an available free pass or ticket.

Travelling without a free pass or ticket prohibited.

19. (1) If a passenger travel in a train or ship without having an available free pass or ticket with him, or being in or having alighted from a train or ship fails or refuses to present for examination or to deliver up his free pass or ticket immediately on requisition being made therefor, he shall be liable to pay on the demand of any authorised servant, the excess charge hereinafter in this section mentioned in addition to the ordinary fare for the distance which he has travelled or is travelling or, if there be any doubt as to the station or harbour from which he originally started, the fare from the station or harbour from which the train or ship originally started, or, if the tickets of passengers have been examined since the original starting of the train or ship, the ordinary fare from the place where the tickets were examined, or, if they have been examined more than once, the place where they were last examined.

Travelling without free pass or ticket or with insufficient pass or ticket or beyond authorised distance.

(2) If a passenger travel or attempt to travel in a compartment or portion of a ship of a higher class than that for which he has obtained a free pass or ticket, or travels in a compartment or ship beyond the place authorised by his free pass or ticket, he shall be liable to pay on the demand of any authorised servant the excess charge mentioned in subsection (3), in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made.

(3) The excess charge referred to in subsections (1) and (2) shall be :—

(a) Where the passenger has immediately after incurring the charge and before being requested to produce his free pass or ticket as aforesaid, notified to a servant on duty with the train or ship the fact of the charge having been incurred, two shillings, one shilling, or twenty cents, according as the passenger is travelling or has travelled or has attempted to travel in a compartment or portion of a ship of the first class, or in a compartment or a portion of a ship of the second class, or in a compartment or vehicle or a portion of a ship of any other kind or class; and

(b) In any other case twelve shillings, six shillings or two shillings, according as the passenger is travelling or has travelled or has attempted to travel in a compartment or a portion of a ship of the first class, or in a compartment or a portion of a ship of the second class, or in a compartment or vehicle or a portion of a ship of any other class or kind :

Provided that the excess charge shall in no case exceed :—

(i) If the liability to pay it arise under subsection (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that subsection; or

(ii) If the liability to pay arise under subsection (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If any person wilfully refuse to pay the amounts due by him under this section to any servant demanding the same, it shall be lawful for any stationmaster or other authorised servant or police officer to arrest that person without warrant and detain him in custody and bring him as speedily as possible before a court having jurisdiction to be dealt with according to law on a charge of such wilful refusal; and he shall be liable on conviction to a fine not exceeding five pounds, or to imprisonment for a period not exceeding one month, or to both such fine and imprisonment : Provided that no person shall be arrested or detained without warrant unless there shall exist reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay, trouble or expense.

(5) The sum payable by a passenger under this section shall, on application made to any magistrate by any servant appointed by the High Commissioner in this behalf, be recovered by the magistrate from the passenger as if it were a fine imposed on the passenger by the magistrate and shall, as it is recovered, be paid to the High Commissioner.

Altering or
defacing free
pass or ticket.

20. (1) If a passenger wilfully alter, obliterate, or deface a free pass or ticket with intent to render the date, number or any material portion thereof illegible, he shall be liable to a fine not exceeding ten pounds, or, in default of payment, to imprisonment for a period not exceeding one month, and shall in addition be liable to a further fine equal to the amount of a single ticket for the journey performed by the class in which he was travelling; and any such altered, obliterated, or defaced free pass or ticket shall be confiscated.

(2) Any person who obtains by false pretences or other fraudulent means or who counterfeits, forges, or alters any ticket, order, receipt for fare or free pass issued by the High Commissioner designed to entitle the holder to travel in the coaches or ships of the High Commissioner, or who utters, publishes, or puts into circulation any counterfeit or false ticket, order, receipt for fare or free pass, with intent to defraud the High Commissioner or any other person, or any person who attempts to do any of the foregoing acts, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

21. If a person sell, or attempt to sell, or part or attempt to part with the possession of a season ticket, free pass or any half of a return ticket in order to enable any other person to travel therewith or purchase or receive a season ticket, free pass or half of a return ticket so sold or parted with he shall be liable to a fine not exceeding ten pounds, or in default of payment, to imprisonment for a period not exceeding one month, and if the purchaser or receiver of the season ticket, free pass or half of a return ticket travel or attempt to travel therewith, he shall be liable to pay a further fine not exceeding the amount of the single fare for the journey authorised by the ticket, or to imprisonment for a further period not exceeding one month.

Transferring season ticket or any half of return ticket.

22. If a person, with intent to defraud the High Commissioner :—

Fraudulent travelling or attempting to travel.

(a) Enter any coach or other rolling-stock on a railway or any ship; or

(b) Use or attempt to use a single free pass or single ticket which has already been used on a previous journey, or in the case of a return ticket or pass, a half thereof which has already been so used;

he shall be liable to a fine not exceeding ten pounds or to imprisonment for a period not exceeding one month, in addition to the amount of the single fare for any distance he may have travelled, together with the excess charge or booking fee described in section twenty-seven.

23. It shall be the duty of the court passing any sentence under section nineteen to impose, in addition to the sentence, a further fine equal to the amount payable to the High Commissioner for the fare and excess charge payable or due by the accused in respect of the journey performed by him in the class in which he was travelling, and to order that if, on the payment of the fine or at the expiration of the sentence, the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month.

Recovery of fare, etc.

Any further fine recovered under this section or any further fine or amount recovered under sections nineteen to twenty-two, inclusive, shall be paid into the Railway and Harbour Fund.

Passengers' Luggage.

24. The High Commissioner shall convey without charge such amount of luggage as may be prescribed by regulation or by public notice for each class of passenger.

Conveyance of passengers' luggage.

Registration
of luggage.

25. (1) When passengers' luggage is handed to a servant for conveyance in the luggage van or hold of a ship he shall cause the same to be registered, and shall affix to every package a registered number and shall give to the passenger a duplicate of that number : Provided that the High Commissioner shall not be liable for luggage left with a servant or otherwise disposed of at any railway station unless registered as in this subsection is provided or deposited in a cloakroom. 5

(2) Whenever a passenger fails to have his luggage so registered and conveyed in the luggage van or hold of a ship, it is carried at his own risk. 10

(3) Cloakrooms provided by the High Commissioner shall be deemed to be warehouses established for the sole convenience of passengers and the public.

(4) The High Commissioner shall not be liable for the loss, misdelivery or detention of, or damage to any article or package deposited in a cloakroom which exceeds in value the sum of five pounds unless at the time of deposit the value of the article be declared and an additional charge paid for excess value in accordance with the regulations. 15 20

Lien on
luggage.

26. The High Commissioner shall have a lien upon the luggage of a passenger for the payment of any fare or other charge to which he is entitled from him.

Carriage of Property.

Maximum load
for wagons.

27. (1) The High Commissioner shall determine the maximum load for every wagon or truck in his possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every wagon or truck. 25

(2) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the High Commissioner for the class of axle under the wagon or truck. 30

Power for the
High Com-
missioner to
impose rates
and conditions
for working
traffic.

28. (1) The High Commissioner may, from time to time, fix rates, classify animals and goods, and impose conditions, not inconsistent with this Ordinance or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods. 35

(2) The High Commissioner shall not be bound to carry any animal suffering from any infectious or contagious disorder. 40

Lien for rates,
terminals and
other charges.

29. (1) If a person fails to pay on demand made by or on behalf of the High Commissioner any rate, terminal or other charge due from him in respect of any animals or goods, the High Commissioner may detain the whole or any of the animals or goods or, if they have been removed from the railway, or from any ship or harbour, any other animals or goods of such person then being in or thereafter coming into his possession. 45

- (2) When any animals or goods have been detained under subsection (1), the High Commissioner may sell by public auction, in case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.
- (3) Out of the proceeds of the sale the High Commissioner may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods, if any, as remain unsold, to the person entitled thereto.
- (4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under subsection (1) or any animals or goods which have remained unsold after a sale under subsection (2), the High Commissioner may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of subsection (3).
- (5) Notwithstanding anything in the foregoing subsection the High Commissioner may recover by suit any such rate, terminal or other charge as aforesaid or balance thereof.

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

Disposal of unclaimed things on a railway.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the High Commissioner may, within a reasonable time, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

31. Where any animals, goods or sale-proceeds in the possession of the High Commissioner are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the High Commissioner may withhold delivery of the animals, goods or sale-proceeds until the person entitled in his opinion to receive them has given an indemnity, to the satisfaction of the High Commissioner, against the claims of any other person with respect to the animals, goods or sale-proceeds.

Power for the Administration to require indemnity on delivery of goods in certain cases.

32. (1) The owner or person having charge of any goods which are delivered to the High Commissioner for the purpose of being transported, and the consignee of any goods which have been transported, shall, on the request of any servant appointed in this behalf by the High Commissioner, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the High Commissioner is entitled to charge in respect thereof.

Requisition for written accounts of description of goods.

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the High Commissioner may (a) in respect of goods which have been brought for the purpose of being transported, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time for any class of goods, or (b) in respect of goods which have been transported, charge a rate not exceeding such highest rate.

(3) If an account delivered under subsection (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been transported, the High Commissioner may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time for that or any other class of goods.

(4) If any difference arises between a servant and the owner or person having charge, or the consignee, of any goods which have been delivered for transport, or have been transported, respecting the description of goods of which an account has been delivered under this section, the servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under subsection (1), the person who delivered the account, or if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the High Commissioner the cost of the detention and examination of the goods, and the High Commissioner shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under subsection (1), the High Commissioner shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

**Dangerous or
offensive goods.**

33. (1) No person shall be entitled to take with him, or to require the High Commissioner to carry, any dangerous or offensive goods on a train or ship.

(2) No person shall take any such goods with him upon a train or ship without giving notice of their nature to the servant in charge of the place where he brings the goods upon the train or ship, or shall tender or deliver any such goods for carriage upon a train or ship without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the servant to whom he tenders or delivers them.

(3) Any servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in subsection (2) having to his knowledge been given, may refuse to carry them or may stop their transit.

(4) If any servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in subsection (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from any law in force in the Colony relating to the possession or transport of explosives, and nothing in subsections (1), (3) and (4) shall be construed to apply to any goods tendered for carriage by order or on behalf of the Government or to any goods which a member of His Majesty's naval, military or air forces, or a member of any force established by Ordinance for the defence of the Colony, or a police officer or a person enrolled as a volunteer or volunteer reservist may take with him upon a railway in the course of his employment or duty as such.

34. A copy of the conditions and rates for the time being in force under subsection (1) of section 28 shall be kept at every station, traffic depot, or harbour and the servant appointed by the High Commissioner to quote the rate shall, at the request of any person show to him at all reasonable times, and without payment of any fee, the rate-books or other documents in which the conditions and rates are authorised by the High Commissioner.

Exhibition to the public of rate-books, etc., authorising quoted conditions and rates.

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CHAPTER IV.

RESPONSIBILITY OF THE HIGH COMMISSIONER AS CARRIER.

35. (1) Unless the owner or consignor or his representative accompany goods and retain control thereof, the High Commissioner shall, subject to the provisions of this Ordinance and the regulations, be liable for loss of or injury to goods transported from any cause whatsoever from the time the goods are accepted in accordance with the regulations until delivery of the goods to the consignee or his representative or until the same are placed in a warehouse pursuant to this Ordinance or the regulations, except in the case of—

Measure of general responsibility of the High Commissioner as a carrier of animals and goods.

(a) an inherent defect, vice or weakness, or some action of the property itself;

(b) the act of God;

(c) inevitable accident;

35 (d) the act of the King's enemies or any inevitable superior force;

(e) the act of the law.

40 (2) The High Commissioner shall be liable even in the cases excepted by subsection (1), if the negligence of his servants expose the property to the cause of the loss.

(3) The High Commissioner shall be liable for loss arising from delay only when it is caused by want of ordinary care and diligence.

45 36. (1) The liabilities and obligations of the High Commissioner shall not be limited by general notice but may be limited by special contract.

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void unless it—

50 (a) is in writing signed by or on behalf of the person sending or delivery to the High Commissioner the animals or goods, and

(b) is otherwise in a form approved by the Governor in Council :

Providing that nothing in this subsection contained shall be deemed to apply to any condition, expressed in a contract of carriage, regarding the responsibility of the High Commissioner in respect of any loss, destruction or deterioration of animals or goods which may happen during carriage by ship. 5

(3) Nothing in the common or statute law of England, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of the High Commissioner. 10

Further provision with respect to the liability of the High Commissioner as a carrier of animals.

37. (1) The responsibility of the High Commissioner under the two last foregoing sections for the loss, destruction or deterioration of animals delivered to the High Commissioner for the purpose of being transported shall not in any case exceed, in the case of horses, fifty pounds a head or, in the case of mules, twenty pounds, or, in the case of ostriches, camels, or horned cattle, five pounds a head, or, in the case of donkeys, sheep, goats, dogs, or other animals, one pound a head, unless the person sending or delivering them to the High Commissioner caused them to be declared or declared them, at the time of their delivery for transport, to be respectively of higher value than fifty, twenty, five or one pound or pounds a head, as the case may be. 15 20

(2) Where such higher value has been declared, the High Commissioner may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid. 25

(3) In every proceeding against the High Commissioner for the recovery of compensation for the loss, destruction, or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation. 30

Further provision with respect to the liability of the High Commissioner as a carrier of luggage, etc.

38. The High Commissioner shall not be responsible for the loss, destruction or deterioration of any parcels, luggage or goods unless they shall have been accepted, booked and a receipt granted therefor by a servant. 35

Further provision with respect to the liability of the High Commissioner as a carrier of articles of special value.

39. (1) When any articles mentioned in the Schedule are contained in any parcel or package delivered to the High Commissioner for transport, and the value of such articles in the parcel or package exceeds ten pounds, the High Commissioner shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the High Commissioner caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for transport, and, if so required by the High Commissioner, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk. 40 45 50

(2) When any parcel or package of which the value has been declared under subsection (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the

value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

- 5 (3) The High Commissioner may make it a condition of carrying a parcel declared to contain any article mentioned in the Schedule that a servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

- 10 40. In any suit against the High Commissioner for compensation for loss, destruction or deterioration of goods delivered to the High Commissioner for transport, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

Burden of proof in suits in respect of loss of goods.

- 15 41. (1) A person shall not be entitled to a refund of an overcharge in respect of passengers, animals or goods transported or to compensation for the loss of animals or goods delivered to be transported, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the High Commissioner within six months from the date of the carriage of the passenger or the delivery of the animals or goods for transport.

Notification of claims to refunds of overcharges and to compensation for losses.

- 20 (2) A person shall not be entitled to compensation for damage to or the deterioration of animals or goods delivered for transport unless his claim has been preferred in writing by him or on his behalf to the High Commissioner within one month from the date of the delivery of the animals or goods to the consignee.

- 30 42. Notwithstanding anything in the foregoing provisions of this chapter, the High Commissioner shall not be responsible for the loss, destruction or deterioration of any animals or goods with respect to the description of which an account materially false has been delivered under subsection (1) of section thirty-two or in respect of which a wrong or improper or insufficient address for delivery has been given, if the loss, destruction, or deterioration is in any way brought about by the false account or by giving a wrong or improper or insufficient address, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

Exoneration from responsibility in case of goods falsely described or wrongly addressed.

- 45 43. Notwithstanding anything in any agreement purporting to limit the liability of the High Commissioner with respect to traffic while on a railway not included in the Services, a suit for compensation for loss of life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods, may be brought against the High Commissioner where the passenger was or the animals or goods were booked through by the High Commissioner over a railway not included in the Services.

Suits for compensation for injury to through booked traffic.

- 50 44. (1) When the High Commissioner contracts to carry passengers, animals or goods solely by ship or partly by train and partly by ship, a condition exempting the High Commissioner from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by ship from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam

Limitation of liability of the High Commissioner in respect of accidents on ship.

and all and every other dangers and accidents of the seas, lakes, rivers, and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and subject to that condition, and to any conditions expressed in the contract of carriage, the High Commissioner shall, irrespective of the nationality or ownership of the ship, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by ship, to the extent to which he would be responsible under the Merchant Shipping Act, 1894, if the ship were registered under that Act and the High Commissioner were owner of the ship, and not to any greater extent.

(2) The burden of proving that any such loss, injury or damage as is mentioned in subsection (1) happened during the carriage by ship shall lie on the High Commissioner.

CHAPTER V.

ACCIDENTS.

Report of
railway
accidents.

45. When any of the following accidents occurs in the course of working a railway or in a harbour or ship, namely :—

(a) Any accident attended with loss of human life, or with grievous hurt as defined in the Penal Code or with serious injury to property ;

(b) Any collision between trains or ships of which one is a train or ship carrying passengers ;

(c) The derailment of any train carrying passengers or of any part of such a train ;

(d) Any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property ;

(e) Any accident of any other description which the Governor may notify in this behalf in the Gazette ;

the General Manager shall, without unnecessary delay, send notice of the accident to the Governor, and the station-master or pier-master nearest to the place at which the accident occurred, or, where there is no station-master or pier-master the railway servant in charge of the section of the railway, or, in the case of a ship, the master of such ship on which the accident occurred shall, without unnecessary delay, give notice of the accident to the magistrate of the district in which the accident occurred, and to the officer in charge of the police station within the local limits of which it occurred, or to such other magistrate and police officer as the Governor appoints in this behalf.

Power to make
rules regarding
notices of and
inquiries into
accidents.

46. The Governor may make rules consistent with this Ordinance and any other enactment for the time being in force for all or any of the following purposes, namely :—

(a) For prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain ;

(b) For prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred ;

(c) For prescribing the duties of servants, police officers, inspectors and magistrates on the occurrence of an accident.

47. The General Manager shall send to the Governor a return of accidents occurring upon the railways or ships or at the harbours, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor directs.

Submission of
return of
accidents.

48. Whenever any person injured by an accident on a railway or ship or at the harbours claims compensation on account of the injury, any court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the cost of the examination as it or he thinks fit.

Provision for
compulsory
medical
examination of
person injured
in railway
accident.

CHAPTER VI.

15 GENERAL OFFENCES IN RESPECT OF RAILWAYS, HARBOURS AND SHIPS AND BY SERVANTS.

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

Penalties for
certain classes
of offences.

20 (a) Trespasses upon a railway and refuses to leave after being warned to leave by any servant.

(b) Wilfully gives a false name or address to a servant or constable for the purpose of avoiding prosecution;

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

(d) Does or attempts to do anything which may cause injury to persons employed or travelling on the railways or upon any ship;

30 (e) Commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language on the railways or upon any ship;

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

35 (g) Wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp or light on a train or railway or upon any ship;

40 (h) Defaces the writing on any board or any notice authorised to be maintained on any railway or train or upon any ship;

(i) Damages or attempts to damage any railway rolling-stock or any material used upon or belonging to any railway;

45 (j) Being a passenger, enters a coach or a compartment or a cabin of a ship which is reserved by the High Commissioner for the use of another passenger or which already contains the maximum number of passengers authorised to be carried therein, and refuses to leave it when required to do so by a servant;

(k) Being a passenger, resists the lawful entry of another passenger into a coach or a compartment not reserved by the High Commissioner for the use of the passenger resisting, or not already containing the maximum number of passengers to be carried therein or thereon; 5

(l) Being a passenger, refuses or neglects to obey the lawful request of a servant, acting under section fifteen (4), within a reasonable time;

(m) After having been refused admission to a ship by a servant on account of the ship being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship; 10

(n) Having gone on board a ship at any place, and having been requested on account of the ship being full by a servant to leave the ship before it has quitted that place and had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request; 15

(o) Smokes in any part of any ship or any compartment or other part of a coach on a train when smoking is prohibited in that compartment or part; 20

(p) Enters or attempts to enter or leaves or attempts to leave any railway coach on a train while it is in motion, or elsewhere than at the side of the coach adjoining the platform or other place appointed by the High Commissioner for passengers to enter or leave the coach, or opens any outer door of any railway coach on a train while it is in motion; 25

(q) Travels or attempts to travel on or in any part of a train not intended for the use of passengers; 30

(r) In the absence of a gatekeeper, omits to shut and fasten any gate on the railway so soon as such person and the animal, vehicle or other things (if any) under his charge have passed through the gate: Provided that the gate is furnished with a practical latch or fastening easily applied; 35

(s) Being a driver or conductor of a tramcar, omnibus, carriage or other vehicle, disobeys while upon the premises of the railways, the reasonable directions of a servant or police officer or constable; 40

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

Penalties for
certain other
classes of
offences.

50. Any person who does, or causes or procures to be done, any of the following acts, namely, who:— 45

(a) Being a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by the High Commissioner for communication between passengers and a servant in charge of or concerned in the running of a train; 50

5 (b) Knowing or being in a position to know that a railway coach, compartment, or other place is reserved for the exclusive use of males or females, or persons of particular races, or different classes of persons, or natives, enters that coach, compartment or other place in contravention of a regulation and without lawful excuse, or having so entered it remains therein after having been desired by a servant to leave it;

10 (c) Knowing or having reason to believe that an engine or train is approaching along a railway, opens or attempts to open any gate, chain or bar set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take any animal, vehicle or other thing across the railway;

15 (d) Pulls down or attempts to pull down or wilfully injures or attempts to injure any board or document set up or posted by order of the High Commissioner on a railway or ship or on any rolling-stock;

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

25 (f) Being a passenger who to his knowledge is suffering from an infectious or contagious disease, enters or travels upon a railway or ship in contravention of the regulations;

30 (g) Being a servant and knowing that a person is a lunatic or suffering from an infectious or contagious disease, wilfully causes that person to travel upon a railway or ship without arranging for his separation from other passengers;

35 (h) Fails to deliver at the earliest possible opportunity to a servant any property found on any railway or in any railway coach or on any ship or removes any property so found from a railway or ship or railway coach or compartment;

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

40 (j) Discharges any firearm, or throws stones, metal, bricks, gravel, timber, glass, bottles, or other articles likely to obstruct or injure anyone engaged in working on or near the railway, or discharges any firearm from a ship, or attempts to do any of the foregoing acts;

45 (k) Removes or attempts to remove from a railway or ship or any railway premises any rolling-stock, tarpaulins, tools, appliances, or property of any kind, or permits any such rolling-stock, tarpaulins, tools, appliances, or property to be unlawfully in his possession or on his premises;

50 (l) Permits or allows any animal to stray on a railway provided with fences, subject to such fences being in a proper state of repair;

55 (m) Drives or knowingly permits any animal to be on any railway otherwise than for the purpose of lawfully crossing the railway, whether he be the owner of the animal or only in charge thereof, provided that such railway be properly fenced;

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

Penalties for
grave offences.

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

(a) Does any act which obstructs or might obstruct the working of a railway or ship or endangers or might endanger the lives of persons travelling thereon; 5

(b) Without lawful authority, moves any part of the rolling-stock on a railway or leaves the same on any part of a railway;

(c) Without lawful authority moves any signals, points, wires, sleepers, rails, stop-blocks, or machinery 10 on a railway, or shows any signal likely to mislead;

(d) Damages, removes, or in any other way interferes with any lighthouse, buoy, mark or beacon, sets adrift, or otherwise causes damage to any ship, or causes any damage to sheds or piers; 15

(e) Without lawful authority cuts down, breaks, removes, destroys or injures any fence, building or bridge, or other property in or upon any railway;

(f) Attempts or counsels the doing of, or assists or aids in doing, any of the acts mentioned in this section; 20

shall be liable on conviction to a fine not exceeding two hundred pounds, or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

False returns.

52. If any return which is required by this Ordinance is false in any particular to the knowledge of any person who signs it, that person shall be liable on conviction to a fine not exceeding fifty pounds, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment. 25

Giving false
account of
goods.

53. If a person requested under section thirty-two to give an account with respect to any goods wilfully gives an account which is materially false, he shall be liable on conviction to a fine not exceeding seventy-five pounds, and the fine shall be in addition to any rate or other charge to which the goods may be liable. 30

Unlawfully
bringing
dangerous or
offensive goods
upon a railway.

54. If in contravention of section thirty-three a person takes with him any dangerous or offensive goods upon a railway or ship, or tenders or delivers any such goods for transport, he shall be liable on conviction to a fine not exceeding fifty pounds and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway or ship. 35 40

Offences by Servants.

Breach of duty
imposed by
section
forty-two.

55. If a servant whose duty it is to comply with the provisions of section thirty-four negligently or wilfully omits to comply therewith, he shall be liable on conviction to a fine not exceeding two pounds. 45

Drunkenness.

56. If a servant is in a state of intoxication while on duty he shall be liable on conviction to a fine not exceeding five pounds, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway or ship, to imprisonment for a period not exceeding two years, or to a fine not exceeding fifty pounds or to both such fine and imprisonment. 5

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

Endangering the safety of persons.

(a) By disobeying any general rule made, sanctioned, published and notified under this Ordinance; or

5 (b) By disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(c) By any rash or negligent act or omission;

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

58. If a station master or a servant in charge of a section of a railway omits to give such notice of an accident as is required by this Ordinance he shall be liable on conviction to a fine not exceeding five pounds.

Omission to give notice of accidents.

59. If a servant unnecessarily :—

Obstructing level crossings.

(a) Allows any rolling-stock to stand across a place where the railway crosses a public road on the level; or

20 (b) keeps a level-crossing closed against the public; he shall be liable on conviction to a fine not exceeding two pounds.

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

Dismissal from the service.

61. (1) If a servant before leaving the services shall fail to give to the High Commissioner the notice specified in his agreement (if any) or if no notice is so specified, then one month's notice (in writing when the servant is able to write) he shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the High Commissioner from his pay and shall in addition be liable to a fine not exceeding fifteen pounds.

Leaving service without having given the requisite notice.

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

(3) Nothing in this or the preceding sections contained shall be deemed to exempt a servant, if a native or Arab, from punishment under the Employment of Natives Ordinance (Chapter 139 of the Revised Edition), or any Ordinance amending or substituted for the same.

Penalty for
demanding
more than is
due.

62. Any servant who, with intent to defraud, asks or receives a greater sum or a lesser sum than is allowed by law and is provided by the tariff then in force for the conveyance of passengers or transport of goods or for any other services rendered or goods supplied, shall be liable on conviction to imprisonment of either description for a period of three months or to a fine not exceeding twenty pounds, or in default of payment to such imprisonment, or to both such fine and imprisonment. 5

Procedure.

Arrest for
offences against
certain sections.

63. (1) If a person commits any offence mentioned in sections forty-nine, fifty, fifty-one, fifty-six, fifty-seven and fifty-nine, he may be arrested without warrant or other written authority by any servant or police officer or by any other person whom such servant or police officer may call to his aid. 15

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

Arrest of
persons likely
to abscond or
unknown.

64. (1) If a person commits any offence under this Ordinance, other than an offence mentioned in the last foregoing section, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any servant or police officer or any other person whom such servant or police officer may call to his aid, may, without warrant or other written authority, arrest him. 20 25

(2) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond, without sureties, for his appearance before a magistrate when required. 30

(3) If the person cannot give bail and his true name and address are not ascertained, he shall with the least possible delay be taken before the nearest magistrate having jurisdiction. 35

Appointment of
persons to
maintain order
upon the rail-
ways and at
the harbours.

65. The High Commissioner may appoint so many persons as may be deemed necessary for the duty of maintaining order upon the railways and harbours and when any such person so appointed is carrying out that duty he shall be capable of exercising all such powers and shall perform all such functions as are by law conferred on or are to be performed by a police officer or constable, and shall be liable in respect of acts done or omitted to be done to the same extent as he would have been liable in like circumstances if he were a member of the police force of the Colony, and shall have the benefits of all the indemnities to which a member of the police force would in like circumstances be entitled. 40 45

Place of trial.

66. (1) Any person committing any offence against this Ordinance shall be triable for such offence in any place in which he may be, or which the Governor may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force. 50

(2) Every notification under subsection (1) shall be published in the Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations or ports as the Governor may direct. 55

67. When any act or omission punishable under this Ordinance is also punishable under any other law for the time being in force the offender shall be liable to be prosecuted and punished either under this Ordinance or under such other law but shall not be liable to be punished twice for the same offence.

CHAPTER VII.

PRIVATE RAILWAYS.

68. (1) Save as in this chapter is provided, all private railways shall continue to be governed by the law or other authority under which their construction and working were authorised, and no private railway shall be built or constructed in the Colony unless enabled in that behalf by legislation.

Conditions applicable to private railways.

The provisions of Chapter III, and sections nine to twelve, both inclusive, and sections forty-five, forty-seven, sixty-three and sixty-four shall apply to private railways *mutatis mutandis*.

(2) Subject to the approval of the High Commissioner, the owner of a private railway may make regulations not inconsistent with this Ordinance with respect to any of the matters referred to in section eighty-three of this Ordinance in so far as they relate to railways, and in respect of the duties and conduct of servants in the employment of any owner of a private railway, and for that purpose section eighty-three of this Ordinance shall *mutatis mutandis* apply to private railways.

(3) Sections fifty-six to fifty-nine, both inclusive, and section fifty-two shall *mutatis mutandis* apply to private railways.

69. (1) The High Commissioner may, when and so often as he thinks fit, upon information received, cause an inspection to be made by one or more competent engineers, of the lines and works of any private railway, and if from the report of any such inspection it appears that any part of such line or works is in a condition dangerous to the safety of public passenger or goods traffic, the High Commissioner may, by written notice, require the owner of the private railway to put that part in a state of repair satisfactory to the High Commissioner within a period to be fixed in the notice. If the terms of the said notice be not complied with in every respect the High Commissioner may, by order under his hand, direct that the working of the said private railway for public passenger and goods traffic shall be stopped pending the completion of certain repairs to be specified with reasonable accuracy in the order: Provided that the owner may before the expiration of the written notice, make such representation and produce such evidence to the High Commissioner as he may think fit for the purpose of obtaining the withdrawal of the notice or a reduction of the expenditure which it may involve. After the order has been served upon the owner or his representative traffic upon the part of the said private railway which is the subject of the order shall be stopped and shall not be resumed until the order has been withdrawn in writing by the High Commissioner.

Inspection of private railways by the High Commissioner, and stoppage of traffic if same be not put in repair to satisfaction of High Commissioner.

(2) The owner, and, in the event of the owner being a company, every director as well as the manager or person acting as manager of the private railway, who during the currency of the order, transports or causes or permits to be transported either passenger or goods traffic upon a part of a

private railway in respect of which an order under subsection (1) has been issued, shall each be liable on conviction to a fine not exceeding two hundred pounds for every day during which such traffic is so transported, or, in default of payment, to imprisonment for a period not exceeding twelve months. 5

(3) Nothing in this section contained shall be construed as rendering the High Commissioner liable for loss or damage caused on or in respect of a private railway nor shall the absence of an inspection by the High Commissioner exempt the owner of a private railway from liability. 10

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS:

Taxation of
railways by
local
authorities.

70. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes 15 in respect of the railways and harbours in aid of the funds of local authorities, namely :—

(1) The High Commissioner shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor in Council has by notification in the Gazette 20 declared the High Commissioner to be liable to pay the tax.

(2) While a notification of the Governor in Council under clause (1) of this section is in force the High Commissioner shall be liable to pay to the local authority 25 either the tax mentioned in the notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable. 30

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

(4) Nothing in this section is to be construed as debarring the High Commissioner from entering into a contract with any local authority for the supply of water 35 or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) "Local authority" in this section means a 40 municipal corporation or committee, district board or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

Restriction of
liability for
compensation
for fires caused
by sparks from
locomotives.

71. No compensation shall be payable by the High 45 Commissioner to any owner or occupier of any land contiguous to railway land adjoining a railway in respect of fires caused by sparks from locomotives to the land of such owner or occupier or to any property thereon unless he shall within fourteen days of such fire give notice to the High Commissioner 50 in writing of his intention to make a claim in respect thereof and unless he shall prove that :—

(a) Prior to such fire he had on his land, contiguous to railway land adjoining a railway, a firebreak not less 55 than ten feet wide;

(b) At the time such fire originated he had such fire-break in good condition;

(c) Not less than three months prior to such fire he had notified the High Commissioner to construct a similar firebreak on railway land and contiguous to his firebreak;

(d) In the case of a building and any property therein damaged or destroyed by fire, such building was not within a distance of two hundred feet from the railway.

72. None of the rolling-stock, ships, machinery, plant, tools, fittings, materials or effects used or provided by the High Commissioner for the purpose of the traffic on its railways and ships or of its stations, ports or workshops, shall be liable to be taken in execution of any decree or order of any court, or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution without the previous sanction of the High Commissioner.

Restriction on execution against railway property.

73. (1) Every servant shall be deemed to be a public servant for the purposes of chapter nine of the Indian Penal Code.

Railway servants to be public servants.

(2) A servant shall not :—

(a) Purchase or bid for, either in person or by agent in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section twenty-nine or thirty; or

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

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

Arrest of railway servant.

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

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

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

Mode of
signifying
communications
from the High
Commissioner.

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

Service of
notices on the
High Com-
missioner.

77. Any notice or other document required or authorised by this Ordinance to be served on the High Commissioner may be served on the General Manager :—

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

(b) By leaving it at his office ; or

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

Service of
notices by
the High
Commissioner.

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

(a) By delivering it to the person ; or

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

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

Presumption
where notice is
served by post.

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

Limitation
of actions.

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

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

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

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

Representation
of High
Commissioner
in court.

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

82. The High Commissioner may, by notification in the Gazette, extend this Ordinance or any portion thereof to any tramway worked by steam or other mechanical power.

Prwer to
extend Ordin-
ance to steam
tramways.

CHAPTER X.

REGULATIONS AND REPEAL.

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

Regulations.

20 (1) The mode in which and the speed at which trains are to be propelled or moved, and the times of arrival and departure of any trains, or other conveyances, as also the duties of servants in connection with the working of trains and ships;

25 (2) The loading or unloading of rolling-stock and the weights or dimensions of goods to be transported on any rolling-stock;

(3) The collection, receipt, cartage, and delivery of goods transported or to be transported by rail, ships or road or at the harbours;

30 (4) The accommodation and convenience of passengers, the manner in which they shall travel, the exclusion of short-distance passengers from long-distance or express trains, the manner of conveying the luggage of passengers, the use of bedding, lavatory accommodation, urinals, and other like conveniences on the trains, ships, or at stations, and the charges which may be fixed for the conveyance of luggage;

(5) Fares, freight, or other charges, the amount thereof, and the time when and the place where they shall be paid;

40 (6) The reservation of railway premises (including conveniences), or of any railway coach or ship or of any portion thereof, for the exclusive use of males or females, or of persons of particular races, or of different classes of persons, and the restriction accordingly of the use of the premises, coach, ship, or portion thereof so reserved;

45 (7) The proper control and management of any anchorage, dock, basin or harbour within his jurisdiction, and the entrance thereto, the removal of any obstruction therein, and the preservation from injury of any works, buoys, dredgers, ships or other property connected there-
50 with;

(8) The erection of buildings or other structures, or the planting of posts or poles that may interfere with the proper working of any harbour or the signals or beacons thereat;

(9) The licensing or other authorisation of admission 5
on to any trains, ships, or railway premises, at any special times of any hotel representatives, or other persons soliciting patronage from passengers, at any railway station or railway premises;

(10) The prohibition of smoking in or on wharves, 10
jetties, quays, buildings or rolling-stock;

(11) The prevention of obstructions and the preservation of good order on railway premises, wharves, jetties, landing places, breakwaters, and other works within his jurisdiction, or the approaches to the same; 15

(12) The duties and conduct of carmen, draymen, carriers and persons, other than servants, who ply for hire to or from any station, building, or other place which is under the control of the High Commissioner;

(13) The admission of the public to, or their exclusion 20
from any of the railways, harbours, docks, wharves, jetties and landing places and the charges (if any) to be made for admission, and the closing to the public for such period as the High Commissioner may think fit of any stations, harbours, docks, wharves, jetties, sheds, roads, 25
or landing places under his jurisdiction;

(14) The prevention of damage or injury to any railway station, harbour, dock, slip, wharf, jetty, landing place or other works and premises, ships, railways, rolling-stock, or any property whatever; 30

(15) The prevention of the commission of any nuisance in or upon the railways harbours, docks, wharves, jetties or landing places, and generally the promotion and ensuring of good sanitation, cleanliness and decency; 35

(16) The charges to be made for warehousing goods and for their care or custody, and the terms and conditions upon which they shall be received, and provision for the disposal of unclaimed goods;

(17) The issue of free passes and concession tickets 40
and the prevention of abuse thereof;

(18) The definition for the purposes of this Ordinance of dangerous or offensive goods and the conditions under which and the times when those classes of goods shall be transported, and the prohibition of the transport of those 45
classes of goods, and provision for or sanctioning of the removal or destruction of the same;

(19) The use of railways or railway or harbour land for coal stands, depositing or forwarding sites, pipe lines, power lines and the like, and whether the same shall be 50
overhead or underground;

(20) The crossing and the manner of approaching any street, road or thoroughfare by a train;

(21) The construction, use, and maintenance of private sidings and branch lines connected with the railways, and the construction, opening and inspection of new railways, sidings, or branch lines within his jurisdiction;

5 (22) Advertising, and bookstalls on the railway and at the harbours, and the fixing of the hours and days during which any such bookstall may remain open for the use of the public;

10 (23) The use of stamps as prepayment upon parcels or goods;

(24) The insurance of persons travelling on the railways;

15 (25) The sale of liquors and refreshments in refreshment rooms at railway stations and in refreshment cars and on ships;

and generally with respect to the travelling or traffic upon or the use or working of the railways, ships or harbours and for the good government thereof, and the maintenance of order thereon and therein.

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

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

A copy of all regulations for the time being in force shall be kept at each station on the railways and at the principal
35 office at each harbour, and any person shall be allowed to inspect the same free of charge.

All by-laws and regulations in force at the commencement of this Ordinance, having reference to the railways and not inconsistent with this Ordinance, shall, until altered or
40 rescinded, be deemed to be regulations made under this section and shall be construed as if so made, and shall, until so altered or rescinded, remain in full force and effect.

84. (1) The East Africa Railways Ordinance (Chapter 115 Repeal of the Revised Edition) is hereby repealed:

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

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

THE SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See Section 39.)

- (a) Gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) Plated articles, coins;
- (c) Cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police officer, or person enrolled as a volunteer or of any public officer, British or foreign, entitled to wear uniform;
- (d) Amber, pearls, precious stones, jewellery and trinkets;
- (e) Watches, clocks and timepieces of any description;
- (f) Government securities;
- (g) Stamps;
- (h) Bills of exchange, promissory notes, bank notes and orders or other securities for payment of money;
- (i) Maps, plans, writings and title-deeds;
- (j) Paintings, engravings, lithographs, pictures, photographs, carvings, statuary, sculpture and other works of art;
- (k) Art pottery, glass, china and marble;
- (l) Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;
- (m) Cameras and cinematograph apparatus (including films);
- (n) Lace, furs and feathers;
- (o) Opium and narcotic preparations;
- (p) Ivory, ebony and sandalwood;
- (q) Musk, sandalwood oil and other essential oils used in the preparation of perfumes;
- (r) Musical and scientific instruments;
- (s) Any article of special value which the High Commissioner may by notification in the Gazette add to this schedule.

