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Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No. 412.

His Excellency the Acting Governor has approved of the following Bill being introduced at the next session of the Legislative Council.

R. W. LAMBERT,
for Colonial Secretary.

A Bill to Enable Local Authorities to take Measures for the Prevention of Malaria within the Colony.

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

1. This Ordinance may be cited as “the Malaria Short title. Prevention Ordinance, 1929.”

2. In this Ordinance—

Interpretation.

“Drain” means any pipe or channel whether open or
5 closed, used or intended to be used for the drainage of land;

“Land” includes all buildings thereon;

“Local Authority” means local authority as defined in the Public Health (Amendment) Ordinance, 1928.

“Owner” shall, as regards immovable property, include
10 any person, other than His Majesty, receiving the rent or profits of any lands or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let, whether on his own account or as agent for any person, other than His Majesty, entitled thereto or
15 interested therein. The term includes any lessee or licensee from the Crown, and any superintendent, overseer or manager of such lessee or licensee residing on the holding.

3. A local authority may for the purpose of prevention or suppression of malaria construct and maintain within the
20 area subject to its control a system or systems of drainage for the removal of water from any land within the said area, and may level or adjust the surface of such land as part of such system or systems, and may readjust the boundaries, areas and shapes of any plot or holding affected.

Local authority may construct and maintain drainage systems.

4. For the purpose of enabling the provisions of the last preceding section to be carried out, a local authority by its
25 duly authorised agents or servants may enter upon any land upon which a system or systems of drainage is or are to be constructed, and may do thereon all such work as may be
30 necessary for the construction of such system or systems of drainage as aforesaid, and may, at any time after the completion of the work, from time to time by its duly authorised servants or agents, enter upon the said land for the purpose of working, maintaining and keeping in good condition such
35 system or systems of drainage as aforesaid. All drains constituting part of any such system or systems of drainage, shall be under the control of the local authority.

Power of entry upon land.

Dams, etc.,
not to be
built so as to
obstruct flow
of water.

5. No person shall, within any area subject to the control of a local authority, build or maintain any dam or other construction so as to obstruct the flow of water into or out of any drain under the control of the local authority, nor by any means alter the level of any water so as to reduce its flow as aforesaid, nor construct any steps, bridge or platform over any drain under the control of the local authority without the consent in writing of such local authority, and such local authority may cause any such dam or other construction, or any steps, bridge or platform so built or constructed (as the case may be) without such written consent as aforesaid to be demolished, altered, re-made or otherwise dealt with as it may think fit at the expense of the person building such dam or other construction or constructing such steps, bridge or platform, and any money becoming due from any person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

Trees, etc.,
not to be
planted with-
out consent of
local authority.

6. No person shall, within any area subject to the control of a local authority, plant trees or otherwise cultivate land in such a manner as is likely, in the opinion of such local authority, to obstruct the flow of water into or out of or in any drain, or culvert under the control of the said local authority, and the said local authority may, by notice in writing, require the removal of any tree or vegetation which is likely to cause such obstruction, and, in the event of the non-removal of such trees or vegetation within a time to be specified by the local authority, such local authority may cause any such trees or vegetation to be removed at the expense of the person planting or cultivating the same, and any money becoming due from any person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

Drains not to
be connected
without con-
sent of local
authority.

7. No person shall, without the written consent of a local authority, make or connect, or cause to be made or connected, any drain into any other drain or into any canal or stream under the control of the local authority, and a local authority may cause any such drain constructed without such written consent as aforesaid to be demolished, altered, re-made or otherwise dealt with as it may think fit at the expense of the person making or connecting such drain, and any money becoming due from such person under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

Owner of land
to do works
in certain
cases.

8. Whenever it appears to a local authority that any land or any pond, tank, well, spring, drain, stream, waterlogged ground or swamp, irrigation canal, or other collection of water within the area under its control, is or is likely to be favourable to the existence or propagation of mosquitoes, the local authority may, by notice in writing, require the owner or occupier of the land within a reasonable time to be specified in such notice to comply with such requirements in regard to such land, pond, tank, well, spring, drain, stream, waterlogged ground or swamp, irrigation canal, or other collection of water as it may specify for the purpose of preventing or suppressing the existence or propagation of mosquitoes therein or thereupon, and if within the time specified in the said notice such owner or occupier of the land has not complied with the requirements thereof he shall be guilty of a contravention of this Ordinance and in such case the local authority may enter upon such land and may carry out or complete the required work thereon, and may recover the cost

of carrying out or completing such work from the person in default, and all monies due from such person to the local authority under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

15 Ordinance.

9. A local authority may require the owner of any land benefited by the construction or maintenance or both of any system or systems of drainage under section 3 of this Ordinance to contribute the whole or a portion of the cost of such construction or maintenance or both :

Contribution
by owner of
land towards
cost of
drainage.

20 Provided that the question as to whether or not the owner of any land is benefited by such construction or maintenance or both as aforesaid shall be decided by mutual agreement between the local authority and the owner of such land, and failing such agreement, then by reference to arbitration under the Arbitration Ordinance, and any sum of money awarded against the owner of the land under that Ordinance shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

Cap. 18.

Cap. 6.

20 Provided further that the amount of any contribution towards such construction as aforesaid shall in no case exceed the difference between the selling value of such land prior to such construction as aforesaid and the selling value of such land after such construction as aforesaid :

25 Provided further that any contribution made under this section shall be in addition to and not in substitution for any other contribution that may be required by the local authority for any work or service under any law for the time being in force.

30 10. If any plot or holding is increased in size by re-adjustment of boundaries under section 3 of this Ordinance, the owner of such plot or holding shall pay to the local authority the value of the area by which the said plot or holding is so increased ; and all monies due from such person to the said local authority under this section shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance :

Cap. 6.

40 Provided that the value of the area by which the said plot or holding is so increased shall be agreed upon between the owner of the said plot or holding and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Cap. 18.

45 11. If any plot or holding is diminished in size by re-adjustment of boundaries under section 3 of this Ordinance, the owner of such plot or holding shall receive as compensation from the local authority the value of the area by which the said plot or holding is so diminished, and the amount of the compensation shall be agreed between the owner of the said plot or holding and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Cap. 18.

55 12. In the event of the owner of the land claiming compensation for any damage caused to his land by any action taken by the local authority in pursuance of the powers granted by this Ordinance, the amount of such compensation shall be agreed upon between the owner of the land and the local authority, and, failing such agreement, shall be decided by arbitration under the Arbitration Ordinance.

Mode of
determining
compensation.

Cap. 18.

Penalty.

13. Any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any notice thereunder or who shall obstruct any person in the execution of his duty under this Ordinance shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds.

5

Saving of the
Public Health
Ordinance.
Cap. 124.

14. The powers and provisions contained in this Ordinance shall be in addition to and not in derogation of the powers and provisions contained in the Public Health Ordinance.

OBJECTS AND REASONS.

This Bill gives effect to the recommendations of the Select Committee on the Draft Estimates for 1929 that Government should take power in the interests of public health to prevent the owner or lease-holder of land in townships from having on such land places in which mosquitoes may breed, and should introduce legislation on the lines of legislation now in force in the Malay States providing that proper and adequate steps shall be taken by the owner or lease-holder to remove such potential breeding-places from such land to the satisfaction of the local authority, who should be empowered to deal with such places at the expense of the owner or lease-holder if such owner or lease-holder refuses or neglects to do so; and that any compensation payable for interference with vested rights should be assessed in accordance with the terms of a law, and should not be left to be determined by the Governor in Council as is the case at present under the Public Health Ordinance.

This Bill gives effect to the recommendations of the Select Committee, and also contains some other necessary provisions.

Clause 3 provides that a local authority may construct and maintain drainage systems, and may readjust the boundaries, areas and shapes of any plot or holding affected thereby and Clause 4 gives the local authority power of entry upon land in order to construct and maintain such drainage systems.

Clause 10 provides that if a plot or holding is increased by readjustment the owner shall pay to the local authority the value of such increase, and Clause 11 provides that if the plot is diminished by readjustment the local authority shall pay compensation to the owner.

Clause 9 provides that the owner of any land benefited by such drainage systems may be called upon to contribute towards the cost of such systems.

Clause 5 provides that dams and other constructions shall not be built so as to obstruct the flow of water, and by Clause 6 no person is allowed to plant trees or cultivate land in a manner likely to obstruct the flow of water off the land.

Clause 8 deals with works which have to be done by the owner of land in order to prevent the land being or becoming a breeding ground for mosquitoes, and Clause 12 provides for the mode of determining compensation in the event of the owner of the land claiming compensation for damage.