

A Bill to Consolidate and Amend the law
relating to Income Tax.

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DRAFT INCOME TAX BILL.

Income Tax Ordinance 1940.

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A Bill to Consolidate and Amend the Law
relating to Income Tax.

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Note.-

Under the marginal note of each clause a cross-reference is given to the number of the corresponding section in the Income Tax Ordinance, 1940. These references are given by figures only. Where alterations have been made or new clauses added a reference is given to any existing law on the subject. Abbreviations are:-

- EA. = The East African Income Tax Ordinances.
Ceylon = The Ceylon Income Tax Ordinance 1932 as amended.
Cod. = The Draft Bill prepared by the Codification Committee of the United Kingdom,
S.R. = The Southern Rhodesian Income Tax Consolidation Act 1937.

Throughout the Draft all alterations of the existing law and any new clauses have been underlined in red ink. Where any of the existing law has been omitted an explanation is given in the Notes.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:-

Part I.

PRELIMINARY.

Short Title
and
Commencement.
1.

1. This Ordinance may be cited as the Income Tax Ordinance, 1943, and shall apply to income tax charged for the year of assessment commencing on the 1st April 1943 and each succeeding year of assessment.

Definitions.
2.

2. Definitions:-

"body of persons" means any body politic, corporate or collegiate and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or a partnership;

EA.2.

*Mitigation of penalties
& institution of proceedings*

"Commissioner" means the Commissioner charged with the administration of this Ordinance, and includes a Deputy Commissioner or an Assistant Commissioner for all purposes of this Ordinance except the exercise of the powers conferred upon the Commissioners by section 70, section 71 and section 74 of this Ordinance;

EA.2.

"company" means any company incorporated or registered under any law in force in Nigeria or elsewhere;

"executor" includes any executor, administrator, or other person administering the estate of a deceased person;

"incapacitated person" means any infant, married woman, lunatic, idiot, or insane person;

EA.2.

& UK 13/1937

"loss" in relation to a trade, business, profession or vocation means loss computed in like manner as profits;

U.K. 15(3)/1937

"mills, factories or other similar premises" means any

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EA.2.

building which forms part of premises, being either -

(1) a building which contains, and is used wholly or mainly for the purpose of operating machinery worked by steam, electricity, water or other mechanical power, or

(ii) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as is mentioned in paragraph (1) of this definition;

"person" includes a company or body of persons;

EA.2.

"resident in Nigeria", when applied to an individual means an individual who resides in Nigeria except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Nigeria; when applied to a company or a body of persons means a company or a body of persons the control and management of whose business are exercised in Nigeria;

"tax" means the income tax imposed by this Ordinance

"year of assessment" means the period of twelve months commencing on the 1st day of April, 1943, and each subsequent period of twelve months.

Part II.

ADMINISTRATION.

Administrative authority.

3.

3. (1) For the due administration of this Ordinance the Governor may by notice in the Gazette appoint a Commissioner, Deputy Commissioner, Assistant Commissioners and such other officers and persons as may be necessary. The Commissioner shall be responsible for the assessment and collection of the tax and shall pay all amounts collected in respect thereof into the Treasury to the credit of the general revenue of Nigeria.

(2) The Commissioner may by notice in the Gazette or in writing authorise any person to perform or to assist in the performance of any specified duty imposed upon the Commissioner by this Ordinance.

(3) Subject to such conditions as the Commissioner may specify the Commissioner may by notice in the Gazette direct that any information, return or document required to be supplied, forwarded or given to the Commissioner may be supplied to such other person as the Commissioner may direct.

(4) Any person within or without Nigeria may be appointed as authorised under the provisions of this section.

Official secrecy.

4.

4. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income or items of the income of any person, as secret and confidential.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts

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to communicate such information or anything contained in such documents, returns, lists, or copies to any person -

(a) other than a person to whom he is authorised by the Governor to communicate it; or

(b) otherwise than for the purpose of this Ordinance, shall be guilty of an offence against this Ordinance.

(3) Any proceedings for an offence against this section may be taken by or in the name of the Commissioner but not by any other person except with the consent of the Attorney-General.

EA.4(3).

(4) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance, or in order to, or in the course of, a prosecution for any offence committed in relation to income tax.

51.

(5) Where under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection, provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria, the obligation as to secrecy imposed by this section of this Ordinance shall not prevent the disclosure to the authorised officers of the Government in that of His Majesty's Dominions or in that place under His Majesty's protection of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in Nigeria or from income tax in that part or place aforesaid.

EA.4(5).

(6) Notwithstanding anything contained in this section the Commissioner may permit the auditor of the Colony or any officer duly authorised in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of this section.

Rules.
65.

5. (1) The Governor in Council may from time to time make rules generally for the carrying out of the provisions of this Ordinance and may, in particular, by those rules provide:-

- (a) for the registration of the wives and children of individual taxpayers;
- (b) such other matters as are authorised by this Ordinance to be prescribed.

Forms.
65.
EA.5(2).

(2) The Commissioner may from time to time specify the form of returns, claims, statements and notices under this Ordinance.

Service and
signature of
Notices.
EA.5.

6. (1) Except where it is provided by this Ordinance that service shall be effected either personally or by registered post a notice may be served on a person either personally or by being sent through the post.

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40(1)

(2) Where a notice is served by ordinary or registered post it shall be deemed to have been served on the day succeeding the day on which the notice would have been received in the ordinary course of post if the notice is addressed -

Chapter
138.

(a) in the case of a company incorporated in Nigeria, to the registered office of the company,

(b) in the case of a company incorporated outside Nigeria either to the individual authorised to accept service of process under the Companies Ordinance at the address filed with the Registrar of Companies, or to the registered office of the company wherever it may be situated, and

(c) in the case of an individual or a body of persons, to the last known business or private address of such individual or body of persons.

40(2).

(3) Where the person to whom there has been addressed a registered letter containing any notice which may be given under the provisions of this Ordinance is informed of the fact that there is a registered letter awaiting him at a post office and such person refuses or neglects to take delivery of such registered letter such notice shall be deemed to have been served upon him on the date on which he was informed that there was a registered letter awaiting him at a post office.

39(1).

(4) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by some person or persons from time to time authorised by him for that purpose under section 3, and every such notice shall be valid if the signature of the Commissioner or of such person or persons is duly printed or written thereon;

Provided that any notice in writing under this Ordinance to any person to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by any person duly authorised by him.

39(2).

(5) Where a person has applied for and been granted permission to make payment of the tax in the United Kingdom the signature of the agent appointed under section 54 on any assessment notice shall be deemed to be equivalent to that of the Commissioner.

Part III.
IMPOSITION OF INCOME TAX AND INCOME CHARGEABLE.

Charge of
Income Tax.

5.

7. The tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereinafter for the year of assessment commencing on the 1st day of April, 1943, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received, in Nigeria in respect of:-

(a) gains or profits from any trade, business profession or vocation, for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;

(b) gains or profits from any employment, including any allowance other than the value of any quarters or residence or of any passage from or to Nigeria for the purpose of leave granted in

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EA.7(1)(b).

respect of the employment whether in money or otherwise;

- (c) dividends, interest or discounts;
- (d) any pension, charge or annuity;
- (e) rents, royalties, premiums and any other profits arising from property.

Income deemed to accrue in, or be derived from Nigeria.-
Sales of produce.
India Chap.5
1(3)

8. (1) In the case of a trade or business of which all the operations are not carried out in Nigeria, the gains or profits of the trade or business shall be deemed to accrue in or be derived from Nigeria to the extent to which such gains or profits are reasonably attributable to that part of the operations carried out in Nigeria.

Ceylon 90(3).

Where the gains or profits so liable to tax cannot be definitely ascertained, the Governor in Council may prescribe methods by which an estimate of such gains or profits may be made.

Profits of shipping and air-transport.
EA.18.

(2) Subject to the provisions of paragraph (a) of subsection (1) of section 9, where a non-resident person carries on -
either (a) the business of shipowner or charterer or (b) the business of air-transport and any ship or aircraft owned or chartered by him calls at a port, aerodrome or airport in Nigeria, his full profits arising from the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria shall be deemed to accrue in Nigeria;

Provided that this subsection shall not apply to goods which are brought to Nigeria solely for transshipment or for transfer from one aircraft to another or in either direction between an aircraft and a ship.

Profits of Cable or Wireless Undertakings.
E.A.19.

(3) Where a non-resident person carries on the business of transmitting messages by cable or by any form of wireless apparatus his full profits arising from the transmission of any such messages to places outside Nigeria shall be deemed to accrue in Nigeria.

Gains or Profits of employments.
SR.11(2).

(4) The gains or profits from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from such employment are received in Nigeria or not.

Profits on plant, machinery or fixtures sold or discarded.
Ceylon 9(1)(b).

(5) Where the sum to be deducted from the cost of any plant, machinery or fixtures under the provisions of paragraph (c) of subsection (1) of section 10 exceeds such cost, the excess shall be deemed to be a profit of the trade, business, profession, vocation or employment for the purpose of this Ordinance:

Provided that where such plant, machinery or fixtures were only partly used or employed in such trade, business, profession, vocation or employment such profit shall be proportionately reduced.

Income Exempted.
8.

9. (1) There shall be exempt from the tax:-

- (a) the official emoluments received by the Officer Administering the Government;
- (b) the emoluments payable to members of the permanent consular services of foreign countries in

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respect of their offices or in respect of services rendered by them in their official capacity and any income derived by them from sources outside Nigeria;

- (c) the emoluments payable from Imperial Funds to members of His Majesty's Forces and to persons in the permanent service of the Imperial Government in Nigeria in respect of their offices under the Imperial Government;
- (d) the income of any person who is subject to tax under the Direct Taxation Ordinance, 1940, in so far as such income ^{is} derived from the Protectorate or the Colony elsewhere than the township of Lagos;
- (e) the income of any non-resident individual whose chargeable income does not exceed fifty pounds other than dividends, mortgage interest and debenture interest subject to tax by deduction at the source in accordance with the provisions of sections 28 and 29; ✓
- (f) notwithstanding any other provisions of this Ordinance, the first two hundred pounds of the assessable income of any woman for any year of assessment;
 Provided that the Commissioner is satisfied that such income is the personal property of the woman;
- (g) the income of any local authority, native authority or Government institution;
- (h) the income of any statutory or registered building society or statutory or registered friendly society in so far as such income is not derived from a trade or business carried on by such society;
- (i) the income and profits of any co-operative society registered under the Co-operative Societies Ordinance, 1935.
- (j) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution;
- (k) the income of any body of persons formed for the purpose of promoting social or sporting amenities not involving the acquisition of gain by the body of persons or by its individual members, subject to such conditions as the Commissioner may prescribe;
- (l) capital sums received by way of retiring or death gratuities or as consolidated compensation for death or injuries.
- (m) wound and disability pensions granted to members of His Majesty's Forces;

accrues in or

No. 39 of 1935.

*Amended under 1946 Scheme - see No 77
Capital sums withdrawn on retirement
from Imperial pension funds (No 77)*

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No. 44 of 1938.

14(4)

Chapter 104.

8.

Government loans. 9.

Temporary residents. 26.

Power of Governor in Council to exempt. EA.10(2).

Deductions allowed 10

(n) the income of any trade union registered under the Trade Unions Ordinance, 1938 in so far as such income is not derived from a trade or business carried on by such trade union;

(o) interest paid or credited to any person by the Nigerian Post Office Savings Bank or in respect of any Nigerian Savings Certificates;

(p) gains or profits from the business of shipowner or charterer carried on by a person not resident in Nigeria in so far as the business is not carried on in inland waters only and by means of ships to which the provisions of section 24 of the Shipping and Navigation Ordinance apply: Provided that -

(a) the Commissioner is satisfied that an equivalent exemption from tax is granted by the country in which such person is resident to persons resident in Nigeria, and, if that country is a country other than the United Kingdom, to persons resident in the United Kingdom;

(b) a person shall be deemed to be resident in that country only in which the central management and control of his business are exercised.

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interest, bonuses, salaries or wages paid wholly or in part out of the income so exempted.

(2) The Governor may by notice in the Gazette provide that the interest payable on any loan charged on the public revenue of Nigeria shall be exempted from the tax, either generally or in respect of interest payable to persons not resident in Nigeria, and such interest shall as from the date and to the extent specified by such notice be exempt accordingly.

(3) There shall be exempt from the tax any income arising out of Nigeria and received therein by any person who is in Nigeria for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Nigeria at one or more times for a period equal in the whole to six months in the year of assessment.

(4) The Governor in Council may exempt any person or class of persons from all or any of the provisions of this Ordinance on any ground which to him may seem sufficient.

Part IV.

ASCERTAINMENT OF INCOME.

10. (1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Ordinance there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person on the production of the income, including -

(a) except as hereinafter provided, sums payable by way of interest upon any money borrowed by him, where the Commissioner is satisfied that

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the interest was payable on capital employed in acquiring the income;

(b) rent payable by any person in respect of land or buildings occupied by him for the purpose of acquiring the income;

Ceylon 9(1)(b).

(c) where any person who carries on or exercises any trade, business, profession, vocation or employment has sold or discarded any plant, machinery or fixtures used or employed in such trade, business, profession, vocation or employment, any loss attributable to the cost of the plant, machinery or fixtures sold or discarded after deducting from that cost such sum as shall represent the total diminution in value which has occurred by reason of wear and tear since the date of purchase of such plant, machinery or fixtures and any sum realized or likely to be realized by the sale thereof;

Provided that where such plant, machinery or fixtures were only partly used or employed in such trade, business, profession, vocation or employment, the deduction under this paragraph shall be proportionately reduced.

(d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;

Provided that no deduction shall be made for the cost of renewal of any plant machinery or fixtures which has been the subject of a deduction under paragraph (e) of this subsection;

13. — Sha. u. 11
EA.13(1)(K)

(e) such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any plant, machinery, fixtures or premises being mills factories or other similar premises has been diminished by reason of wear and tear arising out of their use or employment by the owner thereof in a trade, business, profession, vocation or employment;

Provided that:-

(i) where any such plant, machinery, fixtures or premises is used for the purpose of a trade, business, profession, vocation or employment on such terms that the burden of the wear and tear thereof falls upon the person by whom the business is carried on, but the plant, machinery, fixtures or premises do not belong to him, he shall be entitled to any deduction to which he would have been entitled if the plant, machinery, fixtures or premises had belonged to him;

(ii) in no case shall any such deduction be made for the depreciation of any other premises, or buildings or other structures or works of a permanent nature;

(iii) the amount to be deducted in respect of premises being mills factories or other similar premises shall not exceed one percent of the cost thereof for each year during which such premises are so employed or used;

(f) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are

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respectively estimated to the satisfaction of the Commissioner to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that -

(i) where in any period a deduction under this paragraph is to be made ~~in~~ respects any particular debt, and a deduction has in any previous period been allowed in respect of the same debt the appropriate reduction shall be made in the deduction to be made in the period in question;

(ii) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that period;

- (g) any contribution or abatement deducted from the salary or pension of a public officer under the Widows' and Orphans' Pensions Ordinance or under any approved scheme within the meaning of that Ordinance;
- (h) any contribution to a pensions, provident or other society or fund which may be approved by the Commissioner subject to such conditions as he may prescribe; *(not exceeding 20% of contributor's income)*
- (i) such sum as may be prescribed in respect of ^{20% 77} expenditure incurred by an individual on behalf of himself or his dependants on transport to or from any place outside Nigeria for the purposes of health or recreation;
- (j) where the income is derived from mining operations such deductions in respect of capital expenditure as may be prescribed in lieu of the deduction under the provisions of paragraphs (c) and (e) of this subsection;
- (k) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The Governor in Council may prescribe the method of calculating or estimating the deductions allowed or prescribed under this section.

11. Subject to the express provisions of this Ordinance no deduction shall be allowed for the purpose of ascertaining the income of any person in respect of:-

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;

Cod.
31.

Tanganyika
13(1)(m).

EA.13(1)(m).

Deductions
not allowed.
11.

shd. be 12

*and include
Nigeria (see 77)*

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- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) any amounts paid or payable in respect of the United Kingdom income tax or sur-tax or Empire income tax as defined by section 32;
- (h) any payment to any provident, savings, widows' and orphans' or other society or fund, except such payments as are allowed under section 10(1)(g) and (h);
- (i) any sum payable by way of interest by any person out of Nigeria to another person out of Nigeria except where tax has been deducted and accounted for under the provisions of section 29 of this Ordinance.

Ceylon
13(1)(a)(11).

Insurance
Companies
other than
Life Insurance
Companies.
14.

12. Notwithstanding anything to the contrary contained in this Ordinance, it is hereby provided that :-

(1) In the case of an insurance company whether mutual or proprietary (other than a life insurance company) where the gains or profits accrue in part outside Nigeria, the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in Nigeria (less any premiums returned to the insured and premiums paid on re-insurances), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period for which the gains or profits are being ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company.

(2) In the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission):

Provided that where such a company received premiums outside Nigeria, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in Nigeria bore to the total premiums received after deducting from the amount so arrived at the agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company:

Provided further that in the case of an insurance company having its head office outside Nigeria, the Commissioner may substitute some other basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being gains or profits on which tax is payable.

Life Insurance
Companies.
14.

Proviso

EA.17(1)(b).

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Income from certain dividends to include tax thereon.
EA.20.

15. The income of a person from a dividend paid by a company liable to tax under this Ordinance, United Kingdom Income Tax, or Empire Income Tax within the meaning of subsection (3) of section 32 of this Ordinance, shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

Certain undistributed profits may be treated as distributed.
EA.21.

16. Where it appears to the Commissioner that with a view to the avoidance or reduction of tax a company controlled by not more than five persons has not distributed to its shareholders as dividend profits made in any period ending after the first day of April 1943, which could be distributed without detriment to the company's existing business, he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

Commissioner may disregard certain transactions and dispositions.
EA.22.

17. (1) Where the Commissioner is of the opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly.
In this section "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) Nothing in this section or in section 16 contained shall prevent the decision of the Commissioner in the exercise of any discretion given to him by either such section from being questioned in an appeal against an assessment in accordance with Part XII. of this Ordinance.

Part V.

ASCERTAINMENT OF ASSESSABLE INCOME.

Basis for computing assessable income.
6(1)

18. (1) Save as provided in this section, the income of any person for each year of assessment from each source of his income (hereinafter referred to as "assessable income") shall be the full amount of the income from each such source during the year preceding the year of assessment, notwithstanding that he may have ceased to possess any such source or that any such source may have ceased to produce income.

6(2)

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of a trade, business, profession, vocation, or employment carried on or exercised by him to some day other than the thirty-first day of March, he may direct that the assessable income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment. Where, however, the assessable income of any person from a trade, business, profession, vocation, or employment has been computed by reference to an account made up to a certain day, and such person fails to make up an account to the corresponding day in the year following, the assessable income from that source both of the year of assessment in which such failure occurs and of the two years of assessment following shall be computed on such basis as the Commissioner in his discretion thinks fit.

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New trades
businesses &c.

6(3)

Cod. 57

(3) The assessable income of any person from any trade, business, profession, vocation, or employment for the year of assessment which he commenced to carry on or exercise such trade, business, profession, vocation, or employment and for the two following years of assessment (which years are in this subsection respectively referred to as "the first year", "the second year", and "the third year") shall be ascertained in accordance with the following provisions:-

- (a) For the first year the assessable income shall be the amount of the income for that year;
- (b) For the second year the assessable income shall, unless such notice as hereinafter mentioned is given, be the amount of income for one year from the date of the commencement of the trade, business, profession, vocation or employment;
- (c) For the third year the assessable income shall, unless such notice as is hereinafter mentioned be given, be computed in accordance with the provisions of subsection (1) of this section.

6(4).
6(5).

- (d) The person carrying on or exercising the trade, business, profession, vocation or employment shall be entitled, on giving notice in writing to the Commissioner within two years after the end of the second year, to require that the assessable income both for the second year and the third year (but not for one or other only of those years) shall be the income of the year of assessment:

Provided that he may, by notice in writing given to the Commissioner within twelve months after the end of the third year, revoke the notice, and in such case the assessable income both for the second year and the third year shall be computed as if the first notice had never been given;

- (e) Where such a notice as aforesaid has been given or revoked such additional assessments, or, on a claim being made for the purpose, such reductions of assessments or repayments of tax, shall be made as may be necessary to give effect to the last foregoing paragraph.

Cessation of
trades,
businesses,
etc.

6(6).

(4) Where a person permanently ceases to carry on or exercises a trade, business, profession, vocation, or employment his assessable income therefrom shall be -

- (a) as regards the year of assessment in which the cessation occurs, the amount of the income of that year;
- (b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the income as computed in accordance with the foregoing subsections, or the amount of the income of such year, whichever is the greater, and he shall not be deemed to derive assessable income from such trade, business, profession, vocation, or employment for the year of assessment following that in which the cessation occurs.

Provided that where any such person becomes entitled to receive after the date on which such cessation occurs a pension, such person shall be deemed to have commenced a

Pensions.
Ceylon 11(6).

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new employment on the date next succeeding the date of such cessation and such pension shall be deemed to be income arising from such new employment and the provisions of this section shall apply accordingly,

Ceylon
11(6)(A).

(5) For the purposes of this section, any employment carried on or exercised by any person shall not be deemed to cease by reason only of the grant of leave to that person, whether such leave is granted preparatory to retirement or otherwise,

Estates of
deceased
persons.
6(9) & (10)
Ceylon 11(10).

(6) The assessable income of the executor of any deceased person shall be the income of the estate for the year preceding the year of assessment -

Provided that -

(a) any income of the estate proved to have been received by, distributed to, or applied to the benefit of any beneficiary of the estate during the year preceding the year of assessment shall be deducted;

(ii) the provisions of subsections (3) and (4) of this section shall not apply to any executor as regards any trade or business forming part of the estate.

(7) The assessable income for any year of assessment of any beneficiary of the estate of a deceased person administered by an executor shall be the amount of the income received by or distributed to him or applied to his benefit out of the estate during the year preceding that year of assessment (otherwise than as the capital amount or any part of the capital amount of his interest in the estate

Apportionment
of income.
7.

(8) Where in the case of any trade, business, profession, vocation, or employment it is necessary in order to arrive at the income of any year of assessment or other period to divide and apportion to specific periods the income of any period for which accounts have been made up, or to aggregate any such income or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Commissioner, having regard to any special circumstances, otherwise directs.

Partnership.
38(1)

19. Where a trade, business, profession or vocation is carried on by two or more persons jointly -

(1) the income of any partner from the partnership for any period shall be deemed to be the share to which he was entitled during that period in the income of the partnership, such income being ascertained in accordance with the provisions of this Ordinance;

Ceylon
29(4).

(2) the assessable income of any partner from the partnership shall be computed in accordance with the provision of section 18 by treating his share of the divisible income of the partnership as though it were income of a trade, business, profession or vocation carried on or exercised by him.

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Part VI.

ASCERTAINMENT OF TOTAL INCOME.

Total income
from all
sources.

20. (1) The total income of any person from all sources chargeable with tax under this Ordinance for any year of assessment shall be his assessable income for that year subject to the deductions allowed in this Part of this Ordinance.

Loss in trade,
business &c.
EA.13(1)(1)

(2) There shall be deducted -

(a) the amount of a loss incurred by him during the year of assessment in any trade, business, profession or vocation, which, if it had been a profit, would have been assessable under this Ordinance;

Provided that no such deduction shall be made unless it is claimed in writing within six months after the end of the year of assessment;

13.
EA.13(1)(m).

(b) the amount of a loss similarly incurred by him in any such trade, business, profession or vocation during any of the six years preceding the year of assessment which has not been allowed against his assessable income of a prior year:

Provided that -

(1) in no circumstances shall the aggregate deduction from assessable income in respect of any such loss exceed the amount of such loss; and

(ii) a deduction under this paragraph shall be made as far as possible from the assessable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then from the assessable income of the next year of assessment, and so on.

Ceylon
13(1)(2).

(3) For the purpose of subsection (2) of this section the loss incurred during any year of assessment shall be computed, where the Commissioner so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 18 for the computation of assessable income of the following year of assessment if a profit had arisen.

Part VII.

ASCERTAINMENT OF CHARGEABLE INCOME,
AND PERSONAL RELIEFS.

Chargeable
income.

21. The chargeable income of any person for any year of assessment shall be his total income for that year subject to the deductions allowed in this part of this Ordinance.

Resident
individual.
EA.25.

22. In the case of an individual resident in Nigeria in the year of assessment who proves to the satisfaction of the Commissioner that in the year immediately preceding the year of assessment -

Deduction
for wife.
15(1)
EA.25.

(a) he had a wife living with or wholly maintained by him there shall be allowed a deduction of £200;

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Deduction for Alimony. EA.25.

(A) and (B) not to be allowed for the year 77

(b) he paid alimony to a previous wife whose marriage with has been dissolved by any court of competent jurisdiction, there shall be allowed a deduction of the amount of such alimony or £200 whichever is the less;

Children 16 EA.25.

(c) he maintained an unmarried child who was either under the age of sixteen years at any time within that year or who was receiving full time instruction at any university, college, school or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of £25 in respect of each such child;

Proviso

Provided that - (i) where such individual satisfies the Commissioner that a sum exceeding £25 was, during the year preceding the year of assessment, expended directly on the maintenance and education of such child elsewhere than in Nigeria there shall be allowed a deduction equal to the total amount so expended but not exceeding £400 in respect of each such child;

(ii) no deduction shall be allowed in respect of any child whose total income for the year preceding the year of assessment exceeded the amount of the deduction which would otherwise be allowed under this section;

(iii) in calculating the total income of the child for the purpose of the foregoing proviso no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment;

(iv) no deduction under this section shall be allowed to any individual in respect of more than three children.

The expression "child" in this subsection includes a stepchild or a child adopted in accordance with any statutory provision who was during the year preceding the year of assessment wholly maintained by the individual but does not include an illegitimate child.

Dependant Relative EA.25

(d) he at his own expense maintained or contributed to the maintenance of a person being a relative of the individual or of the individual's spouse who was either incapacitated by old age or infirmity from maintaining himself or is the widow or mother (whether so incapacitated or not) of the individual or of the individual's spouse there shall be allowed a deduction of a sum not exceeding one hundred pounds expended as such maintenance;

Provided that - (i) the income (whether accrued in, derived from or received in, Nigeria or not) of the person maintained did not in the year preceding the year of assessment exceed one hundred and fifty pounds;

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Deduction for Alimony. 15(2) EA.25.

(a) and (b) not to be allowed 2011/12/77

(b) he paid alimony to a previous wife whose marriage with has been dissolved by any court of competent jurisdiction, there shall be allowed a deduction of the amount of such alimony or £200 whichever is the less;

Children 16 EA.25.

(c) he maintained an unmarried child who was either under the age of sixteen years at any time within that year or who was receiving full time instruction at any university, college, school or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession there shall be allowed a deduction of £25 in respect of each such child;

Proviso

Provided that - (i) where such individual satisfies the Commissioner that a sum exceeding £25 was, during the year preceding the year of assessment, expended directly on the maintenance and education of such child elsewhere than in Nigeria there shall be allowed a deduction equal to the total amount so expended but not exceeding £100 in respect of each such child;

(ii) no deduction shall be allowed in respect of any child whose total income for the year preceding the year of assessment exceeded the amount of the deduction which would otherwise be allowed under this section;

(iii) in calculating the total income of the child for the purpose of the foregoing proviso no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment;

(iv) no deduction under this section shall be allowed to any individual in respect of more than three children.

The expression "child" in this subsection includes a stepchild or a child adopted in accordance with any statutory provision who was during the year preceding the year of assessment wholly maintained by the individual but does not include an illegitimate child.

Dependant Relative EA.25

(d) he at his own expense maintained or contributed to the maintenance of a person being a relative of the individual or of the individual's spouse who was either incapacitated by old age or infirmity from maintaining himself or is the widowed mother (whether so incapacitated or not) of the individual or of the individual's spouse there shall be allowed a deduction of a sum not exceeding one hundred pounds expended as such maintenance;

Provided that - (i) the income (whether accrued in, derived from or received in, Nigeria or not) of the person maintained did not in the year preceding the year of assessment exceed one hundred and fifty pounds;

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(ii) where two or more individuals jointly maintained any such person as aforesaid, the deduction to be made under this subsection shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

Deduction for Life Insurance. 17.

(e) he shall have made insurance on his life or on the life of his wife with any insurance company there shall be allowed a deduction of the annual amount of the premium paid by him in that year for such assurance as aforesaid:

Provided:-

(i) that in the case of any policy securing a capital sum on death (whether in conjunction with any other benefit or not) the amount of the deduction allowed shall not exceed seven per centem of that capital sum, exclusive of any additional benefit by way of bonus or otherwise;

(ii) that no such deductions shall be allowed in respect of any such annual amount of premium beyond an amount equal to one-sixth part of the total income of such person for the year of assessment.

Non-Residents British Subjects etc. Deductions. 19.

23. In the case of an individual who is not resident in Nigeria in the year of assessment and who proves to the satisfaction of the Commissioner that he is a British Subject or a British protected person there shall be allowed the deductions to which he would be entitled if he were resident in Nigeria during the year of assessment:

Provided that no such deductions as aforesaid shall be allowed so as to reduce the amount of tax payable by that individual below an amount which bears the same proportion to the amount of tax which would be payable by him if the tax were charged on his aggregate income as the amount of his total income bears to the amount of his aggregate income.

For the purpose of this proviso the expression "aggregate income" shall mean the total income whether accruing in, derived from, or received in, Nigeria or elsewhere computed in accordance with the provisions of this Ordinance.

Proof of claims. EA.26.

24. Every individual who claims a deduction under this Part of this Ordinance shall make his claim on the proper form. Such deduction shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

Part VIII.

RATES OF TAX, RIGHTS OF DEDUCTION, AND ALLOWANCES FROM TAX CHARGED.

A. RATES OF TAX.

Minimum flat rate for adult males. 21(1).

25. (1) There shall be due from, payable by and collected from every male individual above the age of sixteen years at the commencement of the year preceding the year of assessment who was not in that year in receipt of a total income exceeding fifty pounds a tax of five shillings for each such year of assessment.

Provided that:-

(a) there shall be exempt from tax under this section:-

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- (i) bona fide students in full time attendance at any school, college or training centre;
- (ii) any individual who in the opinion of the Commissioner cannot reasonably be called upon to pay on account of old age, infirmity, permanent or partial disablement or other cause whatsoever;
- (iii) Any individual who satisfied the Commissioner that he had paid tax in respect of the year of assessment under the Direct Taxation Ordinance 1940;
- (iv) Any person who, ^{delete see No 77} before the 1st of April, 1937, was awarded the Victoria Cross, the Medal of the Order of the British Empire, the Distinguished Conduct Medal, the Military Medal, the Distinguished Service Medal or the Meritorious Service Medal; ^{King's Police Medal}
- (v) ^{see Gallantry see No 77} any individual who is liable to pay tax under the provisions of section (22) of this Ordinance for the same year of assessment.

? 26

Appeal against minimum flat rate assessment. 21(1).

- (b) any individual assessed for tax under this section who objects that by reason of age, infirmity or other cause he is unable to pay the tax may appeal either in person or in writing to the Commissioner whose decision shall be final. Such appeal shall be made within forty-two days of the service of notice of assessment.

(2) Where the Commissioner is satisfied that an individual is subject to tax under the preceding subsection he may assess such individual with tax accordingly without calling upon him to render a return of his chargeable income.

(3) Any individual who, without lawful justification or excuse, the proof whereof shall lie on the person charged, fails to pay such tax within three months after he shall have been informed by the Commissioner of his assessment, shall be guilty of an offence and shall be liable to a fine of ten pounds or to imprisonment for one month or to both.

Rate of tax upon individuals. 22.

26. There shall be levied and paid for each year of assessment upon the income of every person, other than a company, whose total income exceeds fifty pounds - either (a) tax on the chargeable income at the rate set forth in the First Schedule, or (b) tax at the rate of 3d on every pound of the total income, whichever is the greater.

Rate of tax upon companies. 23.

27. There shall be levied and paid upon the chargeable income of every company tax at the rate of five shillings on every pound of the chargeable income thereof.

EA.27(2).

Provided that where any such person proves to the satisfaction of the Commissioner that any dividends have been paid out of such chargeable income an amount equal to such dividends may be charged at a lower rate or not charged with any tax, as the Commissioner shall determine.

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B. RIGHTS OF DEDUCTION OF TAX.

Deduction of
tax from
dividends of
companies.
24.

Provisoes

28. (1) Every company which is resident in Nigeria shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company (as reduced by any relief granted under sections 31 and 32 of this Ordinance) on the income out of which such dividend is paid:

Provided that:-

(i) where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company;

(ii) the Commissioner may give notice in writing for any year of assessment to a company resident in Nigeria requiring it to deduct tax from dividends payable to a particular shareholder at a rate greater than the rate paid or payable by the company and the company shall thereupon deduct tax from all dividends paid during that year of assessment to that shareholder at the rate mentioned in the notice and the excess tax so deductible shall be a debt due from the company to the Government and shall be recoverable forthwith as such or may be assessed and charged upon the company in addition to any other tax otherwise payable by it.

(2) Every such company shall upon payment of a dividend whether tax is deducted therefrom or not furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend.

Deduction of
and accounting
for tax on
mortgage and
debenture
interest.
35.

EA.29(1).

29. (1) Where any person pays mortgage or debenture interest to a person not resident in Nigeria and is entitled to deduct such interest under section 10(1)(a) he shall upon paying the interest deduct therefrom tax at the rate of five shillings on every pound of such interest, and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt from him to the Government and shall be recoverable as such:

Provided that the Commissioner may give notice in writing to the person who pays such mortgage or debenture interest requiring that person to deduct and account for tax at a higher or lower rate than five shillings on every pound of such interest or to pay such interest without deduction of tax.

(2) In the case of a company the account aforesaid shall be rendered by the manager or other principal officer of the company.

C. ALLOWANCES FOR TAX CHARGED.

Tax deducted
from dividends,
debenture or
mortgage
interest.
25.

35(4)

30. Any tax -

(a) which a person has deducted or is entitled to deduct from any dividend under the provisions of section 28 or has deducted from any mortgage or debenture interest under the provisions of section 29 of this Ordinance;

(b) applicable to the share to which any person is entitled in the income of a body of persons or in the income of the estate of a deceased person;

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shall, when such dividend, mortgage interest, debenture interest or share is included in the chargeable income of such person, be set off for the purposes of collection against the tax charged on that chargeable income.

D. RELIEF IN CASES OF DOUBLE TAXATION.

Relief in respect of United Kingdom income tax.

48.

31. (1) Any person who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income and who proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from tax under this Ordinance paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds half the appropriate rate of United Kingdom income tax. If, however, the rate of tax appropriate to his case under this Ordinance exceeds the appropriate rate of United Kingdom income tax he shall be entitled only to relief at a rate equal to half the appropriate rate of United Kingdom income tax.

(2) For the purpose of this section a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom income tax in any particular case.

Definition of "rate of tax".

(3) For the purposes of this section :-
"rate of tax" when applied to tax paid or payable under this Ordinance means the rate determined by dividing the amount of the tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable under this Ordinance has been charged for that year except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of this Ordinance on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

Relief in respect of Empire income tax.
49.

32. (1) If any person resident in Nigeria who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Empire income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in Nigeria paid or payable by him on that part of his income at a rate thereon to be determined as follows:-

- (a) if the Empire rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Ordinance in Nigeria the rate at which relief is to be given shall be the Empire rate of tax;
- (b) in any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Ordinance.

(2) If any person not resident in Nigeria who has paid, by deduction or otherwise, or is liable to pay, tax under this Ordinance for any year of assessment on any part of his income proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable

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to pay Empire income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Ordinance on that part of his income at a rate thereon to be determined as follows:-

- (a) if the Empire rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be one-half of the Empire rate of tax;
- (b) if the Empire rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Ordinance, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Ordinance exceeds one-half of the Empire rate of tax.

Definition of
"Empire
Income tax".

(3) For the purposes of this section:-
"Empire income tax" means any income tax charged under any law in force in any part of His Majesty's Dominions or in any place under His Majesty's protection (other than the United Kingdom or Nigeria):

Proviso.

Provided that the legislature of that part or place has provided for relief in respect of tax charged on income both in that part or place and Nigeria in a manner which appears to the Commissioner to correspond to the relief granted by this section.

EA. 33(3)

(4) For the purposes of this section the rate of tax under this Ordinance shall be computed in the manner provided by subsection (3) of the last preceding section and the Empire rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in Nigeria and in a part or place in which Empire income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

Part IX.

PERSONS CHARGEABLE &c.

A - Husband and Wife.

Wife's
income
20.

33. (1) The income of a married woman living with her husband shall, for the purposes of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee:

Proviso.

Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the total income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her.

EA. 34(3)

(2) When a married woman is not living with her husband each spouse shall for all purposes of this Ordinance be treated as if he or she were unmarried.

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(3) For the purposes of this Ordinance a married woman shall be treated as living with her husband unless -

(1) they are separated under an order of court of competent jurisdiction or by deed of separation; or

(ii) they are in fact separated in such circumstances that the separation is likely to be permanent; or

(iii) she is resident in Nigeria and her husband is not resident in Nigeria.

B - TRUSTEES, AGENTS &c.

Chargeability of trustees and other representations.

27.

34. A receiver appointed by the court, a trustee, guardian, curator, or committee, having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

Chargeability of agent of person residing out of Nigeria.

28.

35. (1)(a) A person not resident in Nigeria (hereinafter in this section referred to as a non-resident person) shall be assessable and chargeable to tax either directly or in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch, or manager, whether such attorney, factor, agent, receiver, branch, or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in Nigeria and in the actual receipt of such income:

Provided that in the case of any individual who is not resident in Nigeria, no deduction shall be allowed under the provisions of section 22.

(b) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch, or management, and shall be so assessable and chargeable in the name of the attorney, factor, agent, receiver, branch, or manager.

[...]

(2) Where a non-resident person carries on business with a resident person and it appears to the Commissioner that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(3) Where it appears to the Commissioner by whom the assessment is made, or to the judge by whom an appeal is heard, that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the Commissioner or judge may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case

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the provision of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged;

Proviso

Provided that the amount of the percentage shall in each case be determined, having regard to the nature of the business and shall, when determined by the Commissioner, be subject to an appeal to the Supreme Court as provided by Part XII of this Ordinance.

For agent

(4) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent is not an authorised person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (2) and (3), in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(5) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of subsections (2) and (3) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(6) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of Nigeria by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner or, in the case of an appeal, to the judge, to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the Commissioner or the Court of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

E.A.36(3).

(7) The master of any ship owned or chartered by a non-resident person who is chargeable under the provisions of section 8(2) shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Ordinance.

E.A.42(3).

(8) The income of any non-resident partner or partners from a partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in Nigeria, and the tax charged thereon shall be recoverable by all means provided in this Ordinance out of the assets of the partnership or from any partner or from any such agent.

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Acts to be done by trustees and certain others.
29.

36. ~~(X)~~ The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

Manager of corporate bodies of persons.
31.

37. The manager or other principal officer in Nigeria of every company or body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Ordinance for the assessment of such body and payment of the tax.

Indemnification of representative.
32.

38. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Power to appoint agent.
EA. 38(1).

39. (1) The Commissioner may by notice in writing, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared the agent shall be the agent of such other person for the purposes of this Ordinance, and may be required to pay any tax due from any moneys, including pensions, salary, wages, or any other remuneration, which may be held by him for, or due by him to; the person whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him in the manner provided by section 65.

Power to require information.
EA. 38(2).

(2) For the purposes of this section the Commissioner may require any person to give him information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any other person

Appeal.

(3) The provisions of sections 57 and 58 shall apply mutatis mutandis where any person declared by the Commissioner to be the agent of any other person under the provisions of subsection (1) of this section is aggrieved by such declaration.

Deceased persons.
33.
Cod. 166.

40. Where an individual dies, then as respects income arising before his death all rights and duties which would have attached to him, and any liability to be charged with or to pay tax to which he would have been subject under this Ordinance if he had not died, shall pass to his executor, and the amount of any tax payable by the executor under this section shall be a debt due from and payable out of the estate of the deceased:

Provided that:-

- (a) any assessment or additional assessment on any such income shall not be made later than the end of the third year of assessment following that in which the individual died;
- (b) where, by reason of the death of the individual a trade, business, profession, vocation or employment ceases to be carried on or exercised by him and the provisions of section 18(4) apply the executor of the individual shall be liable for the tax for which he would have been liable if he had not died and the cessation had taken place at the date of his death;

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(c) in the case of an individual dying during the year preceding the year of assessment, if his executor distributes the estate before the commencement of the year of assessment such executor shall pay any tax for that year of assessment at the rate or rates in force at the date of distribution of the estate, if the rate of tax for that year of assessment has not been varied at that date.

Company wound up.
UK
FA.1937
5th Sch.
Part III, para. 3.

41. Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company.

Joint trustees.
EA.41.

42. Where two or more persons act in the capacity of trustees of a trust they may be charged jointly or severally with the tax with which they are chargeable in that capacity and shall be jointly and severally liable for payment of the same.

Part X.

R E T U R N S.

Notice of chargeability and returns.
36.

43. (1) The Commissioner may by notice in writing require any person to furnish him within a reasonable time with a return of income and such particulars as may be required for the purposes of this Ordinance with respect to the income for which such person is chargeable.

(2) Every person chargeable with tax for any year of assessment who has not been required within three months after the commencement of such year of assessment to make a return of his income for that year as provided in subsection (1) of this section shall within fourteen days after the expiration of that period give notice to the Commissioner that he is so chargeable;

Provided that any individual who arrives in Nigeria during any year of assessment shall give such notice within one month of the date of his arrival.

Commissioner may call for further returns.
EA.44.

44. The Commissioner may give notice in writing to any person when and as often as he thinks necessary requiring him to furnish within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Ordinance.

Power to call for returns, books etc.
EA.45.

45. For the purpose of obtaining full information in respect of any person's income the Commissioner may give notice to such person requiring him within the time limited by such notice, which time shall not be less than thirty days from the date of service of such notice, to complete and deliver to the Commissioner any return specified in such notice and/or to attend personally before him and to produce for examination any books, documents, accounts and returns which the Commissioner may deem necessary.

Returns to be deemed to be furnished by due authority.
EA.46.

46. A return, statement or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such

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Company wound up.
UK
FA.1937
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return, statement or form shall be deemed to be cognizant of all matters therein.

Books of account.
EA.47.

47. If a person chargeable with tax fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of income tax, the Commissioner may by notice in writing require him to keep such records, books and accounts in such language as he may in the said notice direct.

Official information and official secrecy.
37.

Supreme Court - No. 7
48. (1) The Commissioner may require any officer in the employment of the Government or any local authority or other public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer;

Proviso

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

Returns to be made by employer.

(2) Every employer when required to do so by notice from the Commissioner shall, within the time limited by the notice, prepare and deliver for any year a return containing:-

EA.49.

- (a) the names and places of residence of all persons employed by him; and
- (b) the full amount of remuneration, whether in cash or otherwise paid or payable to those persons in respect of that employment.

(3) Where the employer is a company or a body of persons the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

(4) Every head of a family, every householder and every person who may be so required by the Commissioner shall give orally or in writing, as may be required, all such information as may be demanded of him by the Commissioner for the purpose of enabling the Commissioner to make an assessment or to collect the tax.

Lists to be prepared by representative or agent.

30.

49. Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in Nigeria and not an incapacitated person shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period mentioned in such notice a return signed by him, containing:-

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the same shall belong.

Return to be made by a partnership.

38(2)

50. (a) Where a trade, business, profession or vocation is carried on by two or more persons jointly the precedent partner, that is to say, the partner who of the partners resident in Nigeria -

- (1) is first named in the agreement of partnership; or
- (ii) if there be no agreement is named singly or with

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precedence to the other partners in the usual name of the firm; or
 (iii) is the precedent acting partner if the partner named with precedence is not an acting partner;

shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year.

(b) Where no partner is resident in Nigeria, the return shall be made and delivered by the attorney, agent, manager or factor of the firm resident in Nigeria.

Part XI.

ASSESSMENTS.

Commissioner to make assessments.
41.

51. (1) The Commissioner shall proceed to assess every person chargeable with the tax as soon as may be after the expiration of the time allowed to such person for the delivery of the return provided for in section 43.

(2) Where a person has delivered a return the Commissioner may -

(a) accept the return and make an assessment accordingly; or

(b) refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and make an assessment accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay tax, he may, according to the best of his judgment, determine the amount of the chargeable income of such person and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

Additional assessments.
42.

52. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount, as according to his judgment ought to have been charged, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings under this Ordinance shall apply to such assessment or additional assessment and to the tax charged thereunder.

Lists of persons assessed and notices of assessment.
43.

53. (1) The Commissioner shall as soon as possible prepare lists of person assessed to tax.

(2) Such lists (herein called the assessment lists) shall contain the names and the addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him, and such other particulars as may be prescribed.

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EA.57(3).

(3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the office of the Commissioner they shall constitute the assessment lists for the purpose of this Ordinance.

Appointment of agents in the United Kingdom.

54. For the purpose of facilitating the assessment of the income of persons residing in the United Kingdom the Governor may appoint agents in the United Kingdom any one of whom shall make enquiries on behalf of the Commissioner in respect of any such person as may apply to be dealt with through such agent, and shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Ordinance and shall forward to the Commissioner the accounts and computations upon which his report is based. The Commissioner on receipt of the report shall enter the amount reported in the assessment list:

Proviso.

Provided that:-

(a) if it appears to the Commissioner that any error has occurred in the accounts or computation he may refer the report back for further consideration;

(b) nothing in this section shall affect the right of appeal conferred by sections 57 and 58.

Service of notice of assessment. 45(1)

55. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice stating the amount of his chargeable income, the tax payable by him, the place at which such payment should be made, and informing him of his rights under the next subsection:

Provided that where a person has applied under section 54 to be dealt with through the agents in the United Kingdom and has applied for and been granted permission to make payment of the tax in the United Kingdom the Commissioner may direct that the notice of assessment shall be served by the agent in the manner above prescribed:

Provided further that nothing in the above proviso shall affect the responsibility of the manager of any corporate body under section 37 for the payment of tax.

Revision of assessment in case of objection. 40(2).

(2) If any person other than an individual assessed under section 25 disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objections to the assessment and shall be made within forty-two days from the date of the service of the notice of assessment:

Proviso

Provided that the Commissioner, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(3) On receipt of the notice of objection referred to in subsection (2), the Commissioner may require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him and may examine such person (except the clerk, agent, servant, or other person

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confidentially employed in the affairs of the person to be charged) on oath or otherwise.

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person;

Provided that in the event of any person who, under subsection (2), has applied to the Commissioner for a revision of the assessment made upon him failing to agree with the Commissioner as to the amount at which he is liable to be assessed his right of appeal under the provisions of this Ordinance, against the assessment made upon him, shall remain unimpaired.

Errors &c.
in assess-
ment and
notice .

47.

56. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by the reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance or any Ordinance amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected:-

(a) by reason of a mistake therein as to -

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof;

Provided that in cases of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

Part XII.

APPEALS.

Appeals to
the Supreme
Court
against
assessments.

46(1)

EA.62(1)

610
N 77

EA.62(2).

57. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in subsection(4)of section 55 , or, subject to the provisions of subsection (7) of section 58, having appealed to the Board of Commissioners under the provisions of section 58 of this Ordinance, is aggrieved by the decision of such Board, may appeal against the assessment to the Supreme Court upon giving notice in writing to the Commissioner within fifteen days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired or within fifteen days after the date of the decision of the Board as the case may be;

The Commissioner may, subject to the provisions of subsection (7) of section 58 of this Ordinance, if he is dissatisfied with the decision of the Board of Commissioners appeal against the decision to the Supreme Court upon giving notice in writing to the other party to the appeal under section 58 within fifteen days after the date of such decision.

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and the provisions of this section so far as they are applicable shall apply to any such appeal by the Commissioner:

Provided that, notwithstanding the lapse of such period of fifteen days, any person may appeal against the said assessment if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Every person appealing shall attend before the court in person on the day and at the time fixed for the hearing of his appeal:

Provided always that if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness, or other reasonable cause, any person is prevented from attending in person at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant, or he may admit the appeal to be made by any agent, clerk or servant of the appellant, on his behalf.

(3) Seven clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Commissioner of the date fixed for the hearing of the appeal.

(4) The onus of proving that the assessment complained of is excessive shall be on the appellant.

EA.62(6)

(5) The judge may confirm, reduce, increase or ~~annul~~ the assessment or make such order thereon as to him may seem fit.

(6) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by the Commissioner either personally on, or by registered post to, the appellant.

(7) Notwithstanding anything contained in section 64 if in any particular case the judge, from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered he may on application being made by or on behalf of the Commissioner require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(8) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.

(9) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

(10) The Chief Justice may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case and the procedure upon the hearing of the case stated.

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Appeals to the Board of Commissioners against assessments, and the constitution of the Board.
46(2)
Proviso

58. (1) In lieu of an appeal to the court under the preceding section a person aggrieved may appeal against the assessment to a Board of Commissioners who shall be appointed by the Governor for such period and at such remuneration as may be prescribed.

(2) The Board shall consist of three persons, none of whom shall be a public officer:

Provided that if during any period owing to absence or inability to act from illness or any other cause any of such persons shall be unable to exercise the powers or perform the duties of a member of the Board the Governor may appoint some other person, who is not a public officer, to exercise the said powers and perform the said duties for so long as he may consider necessary and such other person may receive the remuneration prescribed for a member of the Board during that period.

(3) The Board shall appoint one of the members to be chairman and every decision of the Board shall be signified under the hand of the chairman.

(4) The Governor shall appoint some person to be secretary to the Board and all notices and documents other than decisions of the Board may be signified under the hand of the secretary.

(5) The provisions of subsections (2) (4) (5) (6) (7) and (8) of the preceding section shall apply to appeals to the Board under this subsection in the same way that they apply to appeals under the preceding section as if references to a judge in the said subsections were references to the Board.

(6) Notice of an appeal shall be given in writing to the Commissioner within fifteen days from the date of the refusal of the Commissioner to amend the assessment as desired: Provided that:

Notwithstanding the lapse of such period of fifteen days, any person may appeal against the said assessment if he shows to the satisfaction of the Board that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

~~All appeals shall be heard in camera, unless the Board shall, on the application of the appellant, otherwise direct.~~

EA.61(5)

(7) In the case of a person who has been assessed to pay a total tax of an amount not exceeding two hundred shillings no appeal shall lie from the decision of the Board under the provisions of subsection (1) of section 57 in respect of the whole or any part of such tax, provided that such person has certified in writing on the notice under subsection (6) of this section that he desires the decision of the Board to be final and conclusive.

(8) The Governor may make rules prescribing the procedure to be followed in the conduct of appeals before the Board.

EA.63

Assessments to be final and conclusive.

59. Except as expressly provided in this Ordinance, where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under subsection (4) of section 55, or where the amount of such chargeable income has been determined on objection or appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such chargeable income:

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Provided that nothing in this Part shall prevent the Commissioner from making any refund under the provisions of section 68 or any assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

Part XIII.

COLLECTION, RECOVERY AND REPAYMENT OF TAX.

Procedure in cases where objection or appeal is pending.
52.

60. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance until such objection or appeal is determined:
Provided that the Commissioner may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

Time within which payment is to be made.
53.
EA.66.

61. Subject to the provisions of sections 60 and 66, tax for any year of assessment levied in accordance with sections 26 or 27 shall be payable at the place stated in the notice of assessment under section 55, within two months after the service of such notice:

Provided that -

(a) if an instalment of one half of the tax due from any person is paid by him within the prescribed period and that period ends before the thirty first day of March within the year of assessment, a second such instalment shall be payable not later than the said thirty first day of March;

(b) the Commissioner in his discretion may extend the time within which payment is to be made.

Payment of tax by persons about to leave Nigeria.
54.

62. (1) If in any particular case the Commissioner has reason to believe that a person who has been assessed to tax may leave Nigeria before such tax becomes payable without having paid such tax, he may by notice in writing to such person demand payment of such tax within the time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment, unless security for payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith.

(2) If in any particular case the Commissioner has reason to believe that tax upon any chargeable income may not be recovered, he may at any time and as the case may require:-

(a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within the time to be specified in such notice;

(b) make an assessment upon such person in the amount of the income returned, or if default is made in making such return or if the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;

(c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to the Commissioner's satisfaction.

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- (3) If in any particular case the Commissioner has reason to believe that tax upon any income chargeable to such tax may not be recovered, he may at any time:-
 - (a) by notice in writing to the person by whom the tax would be payable determine a period for which tax shall be charged and require such person to render within the time specified therein returns and particulars of such income for that period;
 - (b) make an assessment upon such person in the amount of the income returned, or if default is made in making a return or if the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable.
- (4) Notice of assessment made in accordance with the provisions of subsections (2) and (3) shall be given to the person assessed, and any tax so charged shall be payable on demand made in writing under the hand of the Commissioner, and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith.
- (5) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under this section shall have the right of objection and appeal conferred by sections 55, 57 and 58 and any amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.
- (6) The provisions of this section shall not affect the powers conferred upon the Commissioner by section 52.

63. (1) Subject to the provisions of subsection (3) of this section, if any tax is not paid within the periods prescribed in section 61 -

Penalty for non-payment of tax; and enforcement of payment.
55.

- (a) a sum equal to five percentum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
- (b) the Commissioner shall serve a demand note upon the person assessed; and if payment is not made within one month from the date of the service of such demand note, the Commissioner may proceed to enforce payment as hereinafter provided;
- (c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Ordinance.

EA.67(1)(c).

(2) Any person who without lawful justification or excuse, the proof whereof shall lie on the person charged, fails to pay the tax within the period of one month prescribed in subsection (1)(b), shall be guilty of an offence against this Ordinance.

EA.67(2).

(3) The Commissioner may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1) of this section.

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Collection of tax after determination of objection or appeal. 56.

64. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable within one month from the date of service on the person assessed of the notification of the tax payable, and if such tax is not paid within such period the provisions of the last preceding section shall apply.

Suit for tax by Commissioner.

65. (1) Tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith as a debt due to the Government of Nigeria.

EA.70(2)

(2) The Commissioner may appear personally or by an advocate in any suit instituted under this section.

EA.70(3).

(3) In any suit under subsection (1) of this section, the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

Refusal of clearance where tax is in arrear. EA.70(4)

(4) In addition to any other powers of collection and recovery provided in this Ordinance, the Commissioner may, where the tax charged on the income of any person who carries on the business of shipowner or charterer has been in default for more than three months (whether such person is assessed directly or in the name of some other person) issue to the Comptroller of Customs or other authority by whom clearance may be granted a certificate containing the name or names of the said person and particulars of the tax in default. On receipt of such certificate, the Comptroller of Customs or other authority shall be empowered and is hereby required to refuse clearance from any port in Nigeria to any ship owned wholly or partly or chartered by such person until the said tax has been paid.

(5) No civil or criminal proceedings shall be instituted or maintained against the Comptroller of Customs or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer, or agent to pay harbour dues and charges for the period of detention.

Deduction of tax from official pay or pension. Cod.183.

66. (1) Where any official pay or pension is payable to any individual deductions on account of tax which is or will be payable by him for any year of assessment may be made out of the pay or pension or any arrears thereof.

(2) Deductions authorised by this section shall be made at such times in each year as the payments on account of the pay or pension are made whether or not the tax has been assessed, so however that if on the assessment becoming final and conclusive it appears that the deductions made exceed the tax payable, the amount overpaid by means of the previous deductions shall be repaid.

Provided that where any such deduction has been made from the pay or pension of any individual, he shall have the same right of objection or appeal against the deduction as he has against an assessment made upon him.

(3) If and so far as any official pay or pension is paid without such deduction of tax as aforesaid, the tax may be collected and payment thereof enforced in accordance with the provisions of section 60, 61, 62 and 63;

Provided that for the purpose of section 61 the Commissioner shall determine the period within which the tax shall be payable.

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(4) For the purpose of this section -
"Official pay or pension" means any emoluments or pensions which are payable out of the revenue of Nigeria, the Nigerian Railway, any native authority, or the funds of any township.

Remission of tax.
63.

67. (1) The Commissioner may remit, wholly or in part, the tax payable by any person on the ground of poverty and may also for like reason refund the tax or any part thereof.

(2) The Governor in Council may remit, wholly or in part, the tax payable by any person if he is satisfied that it will be just and equitable to do so.

Repayment of tax.
58.

formerly law

68. If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates. The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Accountant-General shall cause repayment to be made in conformity therewith.

Part XIV.

OFFENCES AND PENALTIES.

Penalty for offences.
59.

69. Any person guilty of an offence against this Ordinance or any person who contravenes or fails to comply with any of the provisions of this Ordinance or of any rules made thereunder for which no other penalty is specifically provided shall be liable on conviction to a fine of £100 and in default of payment to imprisonment for six months.

Penalty for making incorrect return &c.

70. (1) Every person who without reasonable excuse -

- (a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or
- (b) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership;

shall be guilty of an offence and shall be liable on conviction to a fine of one hundred pounds and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

EA. 74(1)

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.

EA. 74(3).

(3) The Commissioner may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

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False statements and returns.
60.

71. (1) Any person who, for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representation, forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token evidencing payment of the tax under this Ordinance and,

(2) Any person who aids, abets, assists, counsels, incites or induces another person:-

(a) to make or deliver any false returns or statement under this Ordinance;

(b) to keep or prepare any false accounts or particulars concerning any income on which tax is payable under this Ordinance;

(c) unlawfully to refuse or neglect to pay tax, shall be guilty of an offence and shall be liable on conviction to a fine of two hundred pounds and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

EA.75(1)

(3) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

EA.75(2).

Penalties for offences by authorised and unauthorised persons.
61.

72. Any person who:-

(1) being a person appointed for the due administration of this Ordinance or any assistant employed in connection with the assessment and collection of the tax who -

(a) demands from any person an amount in excess of the authorised assessment of the tax;

(b) withholds for his own use or otherwise any portion of the amount of tax collected;

(c) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him;

(d) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Commissioner or any other individual; or

(2) not being authorised under this Ordinance to do so, shall collect or attempt to collect the tax under this Ordinance, shall be guilty of a felony and liable on conviction to a fine of three hundred pounds or to imprisonment for three years or both.

Tax to be payable notwithstanding any proceedings for penalties.
EA.76.

Prosecution to be with the sanction of the Commr.
EA.77.

73. The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any tax for which he is or may be liable.

74. No prosecution in respect of an offence under section 68, sections 69 to 70, section 71 or section 72 may be commenced except at the instance of or with the sanction of the Commissioner.

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RULES.

1. These Rules may be cited as the Income Tax (Deduction for Passages) Rules, 1944.

2. In these Rules -

"dependant" means the individual's wife, his house-keeper or his children in respect of whom he is permitted to claim a deduction under the provisions of section 24 of the Income Tax Ordinance, 1940, for the year of assessment;

"East Africa" means all or any of the following territories, that is to say - the Colony and Protectorate of Kenya, the Tanganyika Territory, the Uganda Protectorate and the Zanzibar Protectorate;

"excluded country" means all or any of the following countries, that is to say, - the Belgian Congo, the Sudan, Northern Rhodesia, Somaliland and Nyasaland.

3. Subject to the provisions of Rule 4 of these Rules, for the purpose of ascertaining the total income of any individual there may be deducted in respect of actual expenditure incurred by the individual in the year preceding the year of assessment on behalf of himself or his dependants on transport to or from any place outside East Africa other than an excluded country for the purposes of health or recreation the following amounts, that is to say-

- (a) up to seventy-five pounds in respect of such expenditure on journeys undertaken by himself; and
- (b) up to seventy-five pounds in respect of such expenditure on journeys undertaken by his dependants.

4. The deductions permitted by Rule 3 of these Rules shall be subject to the following conditions, that is to say-

- (1) The deductions permitted under paragraphs (a) and (b) respectively thereof shall not be made more than once during any three consecutive years of assessment.
- (ii) Where the whole of the cost of such transport of the individual or his dependants, as the case may be, has been borne by the individual's employer during the year preceding the year of assessment or during either of the two years immediately preceding such year, no deduction under paragraph (a) or paragraph (b) thereof (whichever be relevant) shall be allowed.
- (iii) Where part only of such cost has been borne by the individual's employer during the said period, the deductions permitted under paragraphs (a) and (b) respectively thereof shall not exceed an amount which bears the same proportion to the whole cost of transport or seventy-five pounds whichever is the less as the part of cost of the transport borne by the taxpayer on his own or his dependant's behalf as the case may be, bears to the whole of the cost of such transport.
- (iv) No deduction shall be made in respect of any journey unless the individual making the journey had, during a period of two years immediately preceding the journey, resided in East Africa, for a period of, or for periods amounting in the aggregate to, over eighteen months.

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1. These rules may be cited as the Income Tax (Mining Operations) Rules, 1944
2. In these Rules, unless the context otherwise requires-
 "capital expenditure" means expenditure-
 - (a) on equipment including any premium or consideration in the nature of a premium paid for the use of equipment;
 - (b) on shaft sinking; including expenditure on sumps, pump chambers, stations and ore bins accessory to a shaft;
 - (c) on development, general administration and management prior to the commencement of production or during any period of non-production;

(on mills, factories or other similar premises;

"expenditure" means the net expenditure, after taking account of any rebates or returns from expenditure;

"minerals" means all minerals and mineral substances, other than mineral oils, and may be precious metals, precious stones or non-precious minerals, but (if obtainable without any underground mining operations) shall not include common clay (excluding kaolin and bentonite), marl, sand, limestone, sandstone and any sodium compound, or any other common mineral substances, always provided these do not contain any precious metal or precious stone in economically workable quantities;

"mining operations" include every method or process by which any mineral is won from the soil or from any substance or constituent thereof;

"recoupment from capital expenditure" means any recoupment of any expenditure incurred on a mine and allowed to rank for a deduction under these Rules to the person by whom such recoupment is received;

"the Ordinance" means the Income Tax Ordinance, 1940.
3. (1) The amount to be deducted under provisions of paragraph (n) of subsection (1) of section 13 of the Ordinance in respect of capital expenditure incurred by a company carrying on mining operations in a mine of which such company is the owner shall be-
 - (a) for the first year of assessment in respect of which a deduction is allowed under these Rules - the quotient resulting from the total capital expenditure on the mine incurred by such company at the end of the year preceding the year of assessment less any recoupments from capital expenditure up to that date, divided by the number of years of life of the mine as determined under the provisions of Rule 4 of these Rules.
 - (b) for any other year of assessment - the quotient resulting from the sum of the "unredeemed capital expenditure" (as hereinafter defined) at the commencement of the year preceding the year of assessment, plus the amount of capital expenditure incurred during the year preceding the year of

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assessment less any recoupments from capital expenditure during that year, divided by the estimated number of the remaining years of life of the mine:

Provided that where upon the calculation for any year of the amount of the unredeemed capital expenditure, the recoupments from capital expenditure and the deductions allowed under these Rules for previous years of assessment exceed the total capital expenditure the amount of such excess shall be treated as income from mining operations chargeable to tax for that year.

2. For the purpose of these Rules-

"redeemed capital expenditure" means the total of-

- (a) the deductions allowed to the company under these Rules;
- (b) any recoupments from capital expenditure; and
- (c) an amount being the sum of the deduction made for the year preceding the first year of assessment, multiplied by the number of years since the mine commenced regular production under the ownership of the company.

"unredeemed capital expenditure" means the balance of capital expenditure after the redeemed capital expenditure has been deducted therefrom.

4. (1) The Company shall furnish annually to the Commissioner an estimate as at the end of each year preceding the year of assessment of the number of years during which productive mining operations may be expected to continue based on the certified estimates of ore reserves, supported by calculations showing how the estimate is arrived at. Such estimate shall be determined by the Commissioner, and the number of years determined by him shall be the remaining years of life of the mine. The sum of such estimated number of years together with the number of years which have elapsed since the mine commenced regular production shall be the life of the mine.

Where, however, the life of the mine estimated and determined as aforesaid is less than seven years, then so long as the life does not exceed that period, the life shall be taken to be seven years; and where the life so ascertained exceeds a period of twenty years, then so long as the life exceeds that period the life shall be taken to be twenty years.

(2) The annual revision shall not affect any assessment determined or any deduction made or presumed to have been made under these Rules.

5. Where separate and distinct mining operations are carried on in mines that are not contiguous, the amount to be deducted shall be computed separately according to the estimated life of each such mine as determined under sub-rule (1) of Rule 4 of these Rules.

6. The amount to be deducted in respect of capital expenditure in the case of-

- (a) a company carrying on mining operations in a mine of which such company is not the owner; or
 - (b) any person other than a company carrying on mining operations;
- shall be fixed by the Commissioner at such sum as may seem to him to be fair and reasonable in each case.

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7. (1) Whenever there takes place a change of ownership of a mining property in respect of which there is an unredeemed balance of capital expenditure, the transferor and transferee of the property shall jointly furnish to the Commissioner a statement in writing as to the proportion of the consideration, where consideration is given, or of the value, where no consideration is given, which appertains to such assets the cost of which would rank as capital expenditure under the provisions of these Rules.

(2) If the Commissioner is satisfied with such statement he shall allow the amount so declared to rank as capital expenditure for the purpose of these Rules to the transferee of the property, and if the transfer has been effected for valuable consideration, such amount shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(3) If the Commissioner is not satisfied with the statement furnished by the transferor and transferee, or if no statement has been furnished, the Commissioner may determine the proportion of the consideration given, or of the value where no consideration is given which shall rank as capital expenditure for the purpose of these Rules in the hands of the transferee and if the transfer has been effected for valuable consideration, the amount so determined shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

8. Any decision of the Commissioner under these Rules shall be subject to objection and appeal as provided by the Ordinance.

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Saving for
criminal
proceedings.
62.

75. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law.

Part XV.

MISCELLANEOUS.

Power to
alter rate
of tax by
Resolution
and Order.
64.

First Schedule.

76. The Legislative Council, by Resolution, in so far as such resolution relates to the Colony and to the Southern Provinces, and the Governor, by order, in so far as such order relates to the Northern Provinces, may add to, vary or revoke the whole or any part of the First Schedule and substitute a new schedule therefor.

77. The Income Tax Ordinance, 1940, is hereby repealed:

Repeal No. 3
of 1940.
EA. 80.

Provided that, notwithstanding such repeal, any tax which would have been leviable for any year of assessment ending on or before the 31st March 1943 under such repealed Ordinance and which has not been collected at the date of commencement of this Ordinance shall be levied and collected in accordance with, and subject to, the provisions of such repealed Ordinance.

FIRST SCHEDULE.

(Section 26)

Chargeable Income	Rate of Tax.		
	£.	s.	d.
For every pound of the first £200	0.	0.	3
" " " " " next £200	0.	0.	6
" " " " " " £200	0.	0.	9
" " " " " " £200	0.	1.	0
" " " " " " £400	0.	2.	0
" " " " " " £800	0.	3.	0
" " " " " " £1000	0.	4.	0
" " " " " " £1000	0.	5.	0
" " " " " " £1000	0.	6.	0
" " " " " " £5000	0.	7.	6
" " " exceeding £10000	0.	10.	0

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GOVERNMENT HOUSE, NIGERIA

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17th September, 1942

My Lord, — I have the honour to transmit herewith ten copies of

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Rules No. 10 of 1942, made under

"The Income Tax (No. 3 of 1940,)" Ordinance, 1940
~~(Chapter XXXXX)~~ (No. 12 on 1940 file)

I have the honour to be, My Lord,

Your Lordship's most obedient, humble Servant,

B. H. BOURDILLON

Governor

THE RIGHT HONOURABLE

THE VISCOUNT CRAWBORNE, P.C.,

SECRETARY OF STATE FOR THE COLONIES, &c., &c., &c.

GP Lagos 3158/41/1,000 (R)

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NIGERIA

No. 10 of 1942

RULES

MADE UNDER

THE INCOME TAX ORDINANCE, 1940 (No. 3 of 1940)

In exercise of the powers conferred upon the Governor in Council by section 65 of the Income Tax Ordinance, 1940, the following rules are hereby made:—

1. These rules may be cited as the Income Tax (Board of Commissioners) Rules, 1942.
2. Members of the Board of Commissioners appointed under the provisions of section 46 (2) (a) of the Ordinance shall serve in such appointment for a period of one year and shall be granted remuneration at the rate of one pound for each day or part of a day in which they are engaged in hearing and determining appeals.

MADE by the Governor in Council at Lagos this 27th day of August, 1942.

P. F. CAMPBELL,
Clerk of the Executive Council.

35949/S. 26/1B

Printed and Published by the Government Printer, Lagos. 2303/942/400 2d. per copy.

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THE WEST AFRICA
PROPRIETORS AND



PUBLISHING CO. LTD.
PUBLISHERS OF

179

WEST AFRICA

THE WEEKLY NEWSPAPER OF NIGERIA, GOLD COAST,
SIERRA LEONE, GAMBIA, FRENCH WEST AFRICA, MANDATED
TERRITORIES AND BELGIAN CONGO. 26TH YEAR OF PUBLICATION.

CHANSITOR HOUSE, CHANCERY LANE, LONDON, W.C. 2.

Telephone—Holborn 9815 Telegrams—Afripress, Holb., London.

LIVERPOOL OFFICE: COTTON EXCHANGE BUILDINGS, OLD HALL STREET, LIVERPOOL, 3.

Telephone—Aldgate 7563 Telegrams—Fridenew, Liverpool.

22nd September, 1942.

Dear Mr. Sabine,

Thank you for the notes of your remarks at the recent conference. We are still working through the report and I hope to make something of what you have sent us.

A | Can you tell me anything about Col. A.F.R. Lumby, appointed Economic Adviser to the West African Governors' Conference? He is ex the Indian army but I cannot find his record on economics, or any West African connection.

B | Lord Cranburne recently sent a personal letter to a sergeant in the Nigerian police. There must be something behind this unusual compliment. Can you tell me what it is?

C | As regards Sir B. Bourdillon's refusal to assent to the recent income-tax amendment bill, can you tell me whether he acted of his own motion or

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at the wish of the Colonial Office; and
if the latter, whether this indicates the
possibility of new income-tax proposals
in West Africa? If you say anything on
these points it will, of course, be
treated anonymously. 180

D/ Can you tell me anything about Mr.
W.V. Wootton, whom you have approved as an
unofficial M.L.C. in Nigeria? We have
no record of him here.

I have not forgotten your kind
permission as to my seeing the films, but
there has been no spare hour obtainable
so far. I am keeping the thing on my
notes.

I hope you will forgive this series
of questions, and am

Yours sincerely,

A. Cartwright

Noel Sabine Esq.,
Public Relations Officer,
Colonial Office,
Downing Street,
S.W.1.

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COPY FOR REGISTRATION

Received

181

Code Telegram

FROM EAST AFRICAN GOVERNORS CONFERENCE

FROM: Acting Chairman.
TO: Secretary of State for the Colonies.

D. 23rd September, 1942.
R. 23rd " " 16.25 hrs.

No. 507

Addressed to S. of S.
Repeated Governor Nigeria No. 1135.

Proposed visit of Mundy to Nigeria.

East African Governments have agreed to visit of not more than six weeks on the understanding that they are reimbursed full salary £1,550 plus house allowance, consequential acting allowance, transport expenses and any necessary subsistence allowance. Subsistence allowance to be a matter for direct negotiation between Mundy and the Government of Nigeria as it is not known what out-of-pocket expenses will be.

Will Government of Nigeria please telegraph when Mundy should arrive.

SEP 16 1942

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30231/42.

Recypled & Sent
23.15 19/9/42
RS.

C. O.

Mr. Watherston. 10.9.42.

Mr. Williams 10.9 aton

Mr.

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Sir A. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

182

J13
DRAFT. CYPHER TELEGRAM

Addressed

1. CHAIRMAN, EAGON, NAIROBI.

Repeated to

2. GOVERNOR, NIGERIA. ✓

Addressed ~~Chairman~~, Eagon, No. *192*. Secret
Repeated to Governor, Nigeria, No. *1340*
Secret. Reference ~~your~~ *Niger* Telegram No. 1350.

Governor Nigeria is anxious for expert advice on question of income tax, including taxation of profits made by produce buying firms and has asked whether Mundy, Commissioner of Income Tax, could go to Nigeria for a few weeks to assist in the drafting of new income tax law and law for the imposition of excess profits tax. Governor wishes to have proposals for ~~later~~ ready for submission to Legislative Council at next Budget Session.

I very much hope that it will be possible for East African Governments to spare person named for this important work. Please repeat reply to Governor Nigeria.

Sec.

11 SEP 1942
11 /

FURTHER ACTION.

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30231/42 66.

183

Cypher Telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 3rd September, 1942.
R. 5rd " " 19.40 hrs.

No. 1350 Secret.

No. 710. ^{SS} Your secret telegram

A

I am anxious to have proposals for an Excess Profits Tax ready for submission to the Legislative Council at the next Budget Session, and shall be grateful if consideration can now be given to recommendation in paragraph 9 of my secret despatch of 4th April. 46.

Received
in
Registry

5 SEP 1942

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DRAFT AND RECORD COPY

R98 65.

LETTER SENT
52

REGISTERED No.

DATE
Downing Street,
S.W.1.

25th June, 1942.

DRAFT

MR. Caine 25.6.42.

MR.

MR.

Dear Sir Alan,

184

Thank you for your letter of the 23rd of June. Some increase was made in the income tax rates on individual incomes in Nigeria at the same time as the Company's rate was increased from 2/6d to 5/- in the £. I have not got the exact details handy at the moment but they could of course be obtained if you wanted them. There has also since that time been a further proposal to increase rates on individual incomes still higher but I understand that, in view of considerable local opposition, this increase has been dropped for the time being.

Yours sincerely,

ENCLOSURES

FURTHER ACTION

To SIR ALAN H.M., K.B.E.

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TELEPHONE 6922

RIDGWAY,
HEADINGTON HILL,
OXFORD.

23-6-42

185

64

Dear Sirs

Many thanks for your letter about Income Tax in Nigeria. It is a complicated business and I was puzzled by what Bickel wrote in para 48 of his note for the Draft Committee the raising of the rate on companies from 2-6 to 5⁰ of some other the position substantially but was on the old 2-6 rate an estimate of £210,000 for the total receipts from income tax on companies in 1941-42 seemed very low for such a large and in the whole profitable trade. Now if some legal difficulties such as you refer to may come in. When the companies rate was put up to 5⁰ the all the accompanying rates for individual incomes raised similarly.

Yours faithfully
A. S. P.

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R9863

REGISTERED No.
181

LETTER SENT
52

DATE: 186

Downing Street, S.W.1.

22nd June, 1942.

DRAFT

MR. Caine 22.6.42

MR.

MR.

Dear Sir Alan,

Clauson has passed to me your letter of the 17th of June about Nigerian income tax as income tax matters fall rather within my sphere.

The Nigerian Government does I think collect income tax from all companies carrying on trade in Nigeria irrespective of whether their head offices are in England or elsewhere. The procedure is not that a total sum is collected by the United Kingdom Income Tax authorities and then a proportion paid over to Nigeria. What happens is that the United Kingdom authorities assess the tax on total profits of the companies and the Nigerian income tax people assess the tax on so much of the profit as arises in Nigeria. Any relief due under the system of Income Tax Relief is then paid out by the responsible Government to the Company. In theory the Company has first to pay both lots of income tax and then claim a refund but I imagine in practice, particularly with the high rates now prevalent, an attempt is made to arrive at a net figure and only the net amount is actually paid over.

As you see it is certainly not easy to disentangle the profits of the United Africa Company and similar firms operating in several

To

West

SIR ALAM PIM, K.B.E.

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C.O.

REGISTERED No.

187

LETTER SENT

DATE

188

DRAFT

MR. G. L. D.

MR.

MR.

West African territories both British and foreign as well as in this country but somehow or other assessments are arrived at by the local income tax people. One of the difficulties, the effect of which may considerably reduce the yield of income tax to the West African Colonies is that it appears to be established in law that the mere purchase of produce in a country does not constitute the carrying on of trade there and in respect of their business as buyers of produce the West African trading concerns appear to be liable only in so far as their operations of packing, sorting, processing, etc. add to the value of the produce before it leaves the country. A firm which merely bought cocoa for instance on the quay at Lagos and then shipped and sold it to the United Kingdom would not be liable at all but a firm which bought cocoa up country transported it, sorted and packed it before shipment would be liable at least on a proportion of its profits on the transaction.

There is, however, a technical complication. The answer to your main question is that the rate of tax collected by Nigeria from companies is determined by the rate imposed by the Nigerian Legislature subject to the provisions for Income Tax relief. The net effect of these is that the Colony gets the full benefit of any rate of tax up to one half of the current United Kingdom rate and Nigeria has in effect lately increased the rate on companies to 5/- in the £. If the Colonial rate of tax were increased to more than one half the U.K. rate the position gets more complicated. But broadly the effect remains that the Colony would still receive tax at a rate equal to one half the U.K. rate.

ENCLOSURE

1 Double

of

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I am afraid this may still not be perfectly clear but if there are any further particulars you want please let me know.

Yours sincerely,



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TELEPHONE 6922

RIDGWAY, 189
HEADINGTON HILL,
OXFORD.

62,
17-6-42

Dear Pearson

I am sorry to trouble you but there is a question which has puzzled me in connection with Miss Paken's history of Nigeria for Haffeld and I shall be very much obliged if you can very kindly help me. It is in connection with Income Tax.

There was no tax on companies up to 1939 and the estimated income for the year for 1941-42 was £200,000 which seems an extraordinarily small sum considering that according to income before the local commission £13 millions has invested in a Nigerian merchandising & produce trader apart from the capital in mining.

The Nigerian Income Tax Ordinance gives 2-6 as the rate on companies but the Nigerian Government cannot collect the directly on companies with their headquarters in England and presumably as in the case of Northern Rhodesia the Nigerian Government receives a share of the Profits Income Tax under the provisions for the avoidance of double taxation. In Northern Rhodesia they received half a British pound in 1938 but the population is presumably smaller now and the rate of tax on companies is 4s in the £.

The Nigerian case is much more complicated as the UAC & other

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comparisons spread over various territories & cannot be any to disadvantage
the profits.

Can you tell me what principles are applied in determining the amount of
income tax which is made over to Virginia. I understood from the
Exhibit's note that there had been some discussion with the
Treasury on the subject. The section in the Virginia Ordinance
dealing with double taxation does not seem to throw any light
on the point.

Again apologizing for troubling you.

Yours sincerely
J. R. Pine

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SAVING.

191

From the Officer Administering the Government of Nigeria.

To the Secretary of State for the Colonies

Date 9th June, 1942.

No. 330. Saving. CONFIDENTIAL.

RECEIVED
15 JUN 1942
C. O. F. OFFICE

dup

In consequence of representations made at the last budget session of the Legislative Council regarding the urgent need for the adoption of active measures for tightening up of income tax assessment, and of allegations by unofficial Europeans as to Government failure to ensure adequate taxation of Syrians, I have, in anticipation of Your Lordship's approval, sanctioned the immediate engagement of one Second or Third-class Clerk as an addition to the establishment provided under item 1(7) of Head 14, Inland Revenue, of the current Estimates.

This appointment would enable a clerk to be detailed to examine Customs invoices and bills of entry relating to importations by individual Syrian merchants and to obtain figures of the value of goods imported during this and subsequent financial years for comparison with information furnished in income tax returns, thus making it possible to secure an accurate assessment of the tax payable by them from year to year.

2. I have also sanctioned the provision of a sum of £50 under a new sub-item 1(14), for "Temporary Clerical Assistance" for the work of extracting similar information from Customs entries for the year 1941/42 for the purpose of checking income tax returns furnished for the current financial year.

(19) Paid

3. I should be glad to receive Your Lordship's early approval of the additional expenditure involved.

162

LBZLE

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59
THE UNITED AFRICA COMPANY LIMITED
UNILEVER HOUSE · BLACKFRIARS · LONDON · E.C.4

TELEPHONE 362.
CENTRAL 7474 EXT

TELEGRAMS: AFRASIAN, TELES, LONDON.
CABLES: AFRASIAN, LONDON.

R 6 FFS/T. _____
COAST STAFF DEPT

Date 3rd June, 1942.

192

F.J. Pedler, Esq.,
Colonial Office,
Downing Street,
London, S.W.1.

Dear Pedler,

57 Many thanks for your letter of
29th May, enclosing copy of the Bill for
an Ordinance to amend the Income Tax Ordinance,
1940. I note it has not yet received the Governor's
assent.

Yours sincerely,

Handwritten signature

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30231/62
Downing Street,
S. W. 1. 193
29th May, 1942.

Dear Sands,

Thanks for your letter of the 21st of May, which was post-marked the 28th of May and received this morning.

I do not think I can do better than send you a copy of the Bill for an Ordinance to amend the Income Tax Ordinance, 1940. As you are aware, this Bill has not received the Governor's consent, and it is not possible at present to inform you what its fate will be.

Yours sincerely,

FJP
Walt
FJP

P. F. SANDS, ESQ.,

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194 57

LETTER SENT

REGISTERED No.

Downing Street,

S. W. 1.

29th May, 1942.

DRAFT

MR. Pedler. 21.5.42.

Dear Sands,

Thanks for your letter of the 21st of May, which was post-marked the 28th of May and received this morning.

I do not think I can do better than send you a copy of the Bill for an Ordinance to amend the Income Tax Ordinance, 1940. As you are aware, this Bill has not received the Governor's consent, and it is not possible at present to inform you what its fate will be.

Yours sincerely,

ENCLOSURES

FURTHER ACTION

To

P. P. SANDS, ESQ.,

[12583A] W.L. 47177/265 10m. 2/42 C.N.L.D. 744

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UNILEVER HOUSE · BLACKFRIARS · LONDON · E.C.4

TELEPHONE
CENTRAL 7474 EXT

TELEGRAMS: AFRASIAN, TELEX, LONDON.
CABLES: AFRASIAN, LONDON.

Ref. Coast Staff Dept.
FFS/B

DATE 21st May 1942.

F.J. Pedler Esq.,
Colonial Office,
Downing Street, S.W.1.

195

Dear Mr. Pedler,

With reference to our conversation over the telephone this afternoon, the following is an extract of a letter received from our General Manager at Lagos, and we would be glad if you would confirm that the position is as stated :-

" INCOME TAX ORDINANCE. Further to my letter of the 5th March, the principal amendments are that the permissible deductions for a wife resident in Nigeria has been increased from £100 to £200 and the deduction for a wife resident outside Nigeria has been increased from £200 to £400.

Yours faithfully,
For THE UNITED AFRICA COMPANY LIMITED.

Wands
(F.F. SANDS.)

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Recyphered sent 55

Consid 15-15 196

28.5.66. 2-6-42

C. O.

Mr. Williams 1/5/42. V minute

Mr.

Mr.

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Sir A. Dawe.

Sir J. Shuckburgh.

X Permt. U.S. of S. 29.5.

Parly. U.S. of S.

X Secretary of State.

*after France
2.VI*

J 11

DRAFT. TELEGRAM (CYPHER).

Governor,
Lagos.

No. *710* Secret.

Your secret despatch 4th April. After consultation with Bourdillon I have reached conclusion that income tax should not be further increased in Nigeria until it is possible to *also* Gold Coast and Sierra Leone. I shall be addressing both those Governments shortly on the subject. Meanwhile I agree that present Bill should not be proceeded with.

*SOME
impose same measure of
direct taxation in the
for Carson*

- 2 JUN 1942
U 2 -

It appears to me to be very desirable that *a similar policy should obtain throughout* West Africa as regards income tax or other forms of direct taxation and I should prefer to defer considering recommendations in paragraph 9 of your despatch until prospect of attaining such uniformity of policy becomes clearer as result of my correspondence with Governments of Gold Coast and Sierra Leone.

FURTHER ACTION.

Secer.

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NOTE ON INCOME TAX IN WEST AFRICA.

154
197

All the
Colonies in
East & Central
Africa have
it. W.P.S.

Nigeria and the Gambia are the only West African Colonies which at present have an income tax. The following table shows how the rates in the two Colonies compare with each other:

Tax Payable by Single Men.

Income. £	Nigeria. Proposed			Gambia.	
	£.	s.	cents	£.	s.
200	2.	10.		1.	17.
300	5.	-	↓	5.	-
400	7.	-	10	11.	5.
500	11.	5.	20	21.	5.
600	15.	-	30	38.	2.
700	20.	-	40	75.	12.
800	25.	-	50	113.	2.
1,000	45.	-	90	188.	2.
2,000	185	-	370	620.	-

Various allowances not uniform for either Colony are provided for married men and for children.

In December, 1941, the Nigerian Government proposed to introduce substantial increases in the rates from £400 upwards as a result of which, for instance, the tax on an income of £1,000 would be raised from £45 to £90 and the tax on £2,000 would be raised from £185 to £370. The proposed increases have met with a very bad reception in the Legislative Council and Sir Alan Burns has withheld his consent pending instructions from the Secretary of State after consideration of his views and those of Sir Bernard Bourdillon who had been strongly in favour of increased taxation.

The position as regards the Gold Coast is that any form of direct tax has been traditionally unpopular in that Colony and that for this and other reasons, and in view of the favourable financial position Sir Arnold Hodson had long opposed the introduction of any such tax. Shortly before the end of his term of office, he changed his mind after discussion with Sir Arthur Dawe, who was then staying with him. Sir Arnold was, however, informed by Lord Moyne that it was thought best to let this matter stand over so that it could be considered by the new Governor and the understanding between Lord Moyne and Sir A. Burns was that Sir Alan should review the situation thoroughly on his arrival in the Gold Coast before making any recommendations, and it was estimated that he might require a year within which to do this. Sir Alan has, however, now already come down definitely in favour of imposing direct taxation, but he would wish it to be in the form of a graduated poll tax instead of a full-scale income tax on the U.K. model, on the grounds that the introduction of such a complicated fiscal instrument as income tax could only be effected with the help of an income tax expert which was understood to be impossible in present circumstances. As a first step the Inland Revenue are being consulted as to the technical details of Sir Alan's proposals, some of which appear open to doubt.

In Sierra Leone although there is a direct tax on natives, ~~in the Protectorate~~ in the Protectorate there is no income tax either there or in the Colony and the only direct tax in the Colony is a very small capitation tax on non-Africans. As in the case of the Gold Coast there

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is a strong local prejudice in the Colony of Sierra Leone against income tax and ~~various~~ attempts to introduce it have met with considerable resistance. Sir Hubert Stevenson has pointed out in a recent semi-official letter to Sir A. Dawe that any attempt to introduce income tax in Sierra Leone if similar action were not taken in the Gold Coast, would be a most difficult task and would be met with serious opposition. Sir Hubert is being informed of the stage which has now been reached by Sir A. Burns in considering proposals for introducing direct taxation in the Gold Coast and while it has been made clear that the question of principle has not yet been submitted to the present Secretary of State it has been suggested to Sir Hubert that he should now turn over the whole question in his mind once more in view of the probable introduction of a direct tax in the Gold Coast in the not distant future.

O. G. R. H

27/4/42.

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AIR MAIL.

30231/42

NIGERIA.

Government House
Nigeria. 199
18 MAY 1942
7th May, 1942.

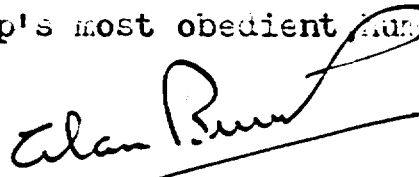
NC. 205

My Lord,

With reference to my despatch No. 182 of the 23rd of April, 1942, I have the honour to transmit copies of letters received from the Local Council Nigerian Chamber of Mines and from the Nigerian Mining Association on the subject of the Bill for an Ordinance to amend the Income Tax Ordinance which was submitted to Legislative Council in March last.

I have the honour to be,
My Lord,

Your Lordship's most obedient Servant,



Officer Administering the Government.

The Right Honourable
Lord Cranborne, P.C.,
Secretary of State for the Colonies,
London, S.W.1.

has

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JFD/2

Jos,
Northern Provinces,
Nigeria.
20th April, 1942.

Reference No.1942/2.

The Honourable,
The Chief Secretary to the Government,
Nigerian Secretariat,
Lagos.

Sir,

This Council, at a meeting held on the 20th April, considered the Amended Income Tax Bill, enacted at the last meeting of the Legislative Council, together with the Minority Report thereon.

The Local Council endorse and unanimously support the views expressed in the minority report, and particularly wish to stress their agreement with the view expressed in para.18 of the report.

In the case of the Companies, Government has already agreed to support them in an endeavour to obtain relief from E.P.T., on the grounds that their interests will be seriously affected by the uneconomic working of the mines, which will be necessary if maximum production is to be obtained over the next few years.

The Local Council would point out that the interests of the Tin Mining Companies employees will be no less affected, and it is, after all, only through the goodwill of the employees that largely increased tin production can be obtained.

Uneconomic working of the mines, in order to obtain a quick increase in production, or in some cases, even to maintain present production, must entail a serious shortening of the economic life of the mines and this aspect seriously affects the future prospects of all Tin Mines employees.

Employees are, in effect, asked "to work themselves out of employment as soon as possible", and at the same time to be subject to much higher taxation on that part of their income which they might reasonably expect to save to provide a capital sum from which to derive an income on retirement.

The Local Council, while endorsing all the points made in the minority Report, consider that the increased taxation is particularly harsh to all employees in the Tin Mining Industry, in view of the circumstances referred to in this letter.

The Local Council therefore requests that this letter be placed before His Excellency the Governor, for his consideration.

We have the honour to be,
Sir,
Your obedient servants,

(Sgd) Cassleton Elliott & Co.

Secretaries.

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201

THE NIGERIAN MINING ASSOCIATION.

JFD/2.

P.O.Box 176,

Jos, N. Nigeria.

21st April, 1942.

The Honourable,
The Chief Secretary,
Nigerian Secretariat,
Lagos.

Sir,

We have read the Minority Report on the Income Tax Bill by the Provisional Commercial Member for Lagos, and endorse the opinions therein expressed; in addition we should like to bring into prominence the following:-

A private Owner previous to the war, who was producing 30 tons of tin per year at £70 per ton profit, was in receipt of £2,100 per year gross less income tax say £2080 nett; today, as a war effort, he produces 50 tons, but his profit is £50 per ton on account of increased costs, say £2,500 gross. Under the new taxation scheme, he will pay £570 tax reducing his income to £1930; therefore a Private Owner is worse off now than he was before the war; he pays Government £570 a year and depletes his reserves by 20 tons a year without any profit. May we suggest that this is tantamount to a capital levy, and that the Nigerian Private Owners are being harshly and unjustly penalised for their war effort.

We would ask you to place the above before His Excellency the Governor.

We have the honour to be,
Sir,
Your obedient servants,
for NIGERIAN MINING ASSOCIATION.

(Sgd.) Cassleton Elliott & Co.

Secretaries.

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AIR MAIL.

3023/42 50.

NIGERIA.

RECEIVED
15 MAY 1942
D.O. REG.

Government House, 202
Nigeria.

No. 182

23rd April, 1942.

My Lord,

I have the honour to transmit a copy of a letter from the Lagos Chamber of Commerce on the subject of the Bill for an Ordinance to amend the Income Tax Ordinance which was recently submitted to Legislative Council.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

Alan Burns

Officer Administering the Government.

The Right Honourable
Lord Cranborne, P.C.,
Secretary of State for the Colonies,
London, S. W. 1.

SEA.

Ans (SF)

han

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CHAMBER OF COMMERCE,
LAGOS.

203

(Nigeria)
P.C.Box 109,
13th. April, 1942.

THE HONOURABLE
THE CHIEF SECRETARY TO THE GOVERNMENT,
LAGOS.

Sir,

At the monthly meeting held on 1st April 1942, my Chamber considered the Amended Income Tax Bill, recently enacted, together with the minority report submitted by the Provisional Commercial Member for Lagos.

I have been instructed to draw the attention of Government to my Chamber's wish to endorse the views expressed in the minority report which they consider just and reasonable.

Arising from the discussion, I am directed to invite your attention to the anomaly of a body of pensionable officials voting to order on a question of justice raised by and affecting non-pensionable non-officials. Furthermore my Chamber is much concerned that the defeat of the amendment to adopt the minority report will actually deprive the United Kingdom Government of the considerably larger sum which would be raised through Compulsory Savings Legislation.

I am further directed to ask if you will kindly place this letter before His Excellency so that he may refer the views of this Chamber to the Colonial Office with the request the Secretary of State withdraw the Income Tax Bill and substitute a Compulsory Savings Bill.

I have the honour to be,

Sir,

Yours faithfully,

(Sgd.) C. A. Marshall

SECRETARY .

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Income Tax Bill Will Go to A Select Committee

In the Legislative Council yesterday, when the Bill for "An Ordinance to amend the Income Tax Ordinance" came for debate, the principles of it were rigorously opposed by the Honourable F. Edmondson, Commercial Member for Port Harcourt.

He was strongly supported by the Honourable E. H. L. Richardson and the Honourable H. H. W. Boyes and had to be referred to a select committee.

Starting the debate on the Bill, Honourable Edmondson pointed out that it came as a result of the advice from Lord Moyne, in his Despatch to the Governors of Colonies.

It was clear, he said, that there was no urgent need for the money to be raised, as there was no immediate need for it.

Besides, the money to be raised would be so small that it could hardly be of any particular value to the war efforts.

He, therefore, moved that the Bill should come for debate at a further date.

The Honourable Richardson said that it should come into operation in 1943, as there was no urgent need for the money.

People were contributing to the war efforts, and lending money to the Imperial Government in different ways, and so he could not see why a few of them should be particularly burdened.

The present tax, he said, only affected a few, and if by all means money was to be raised it should be general as a form of Customs tax on luxuries.

This view was strongly supported by the Honourable Boyes who observed that the administration of Nigerian finances had never been particularly impressive.

The Honourable Jibril Martin moved that the Bill be deferred for two years.

He read extracts from Lord Moyne's Despatch, which inspired the Bill, and showed that, according to that memorandum, no extra taxation should be raised, excepting to meet budget deficit.

His Honour the Chief Commissioner, Northern Provinces, suggested an amendment to the effect that the Ordinance should operate for only one year or for the duration of the war.

On the suggestion of the Honourable S. B. Rhodes, the Bill was passed to a select committee appointed by the Governor as follows:

The Chief Secretary to the Government, the Financial Secretary, the Chief Commissioner, Northern Provinces, the Commercial Member for Lagos, the Honourable S. B. Rhodes and the Honourable H. S. A. Thomas.

Press, Limited, 18-3-42.

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49

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204

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205

April 25th

My dear Dawe,

Herewith the Nigerian Income
Tax papers, with a note of my views as a
basis for discussion.

*your
B.A. M. A. I.*

I also send a note about the general
questions of Africans on Ex.Co. I have
not got Burns' despatch yet, and if it
comes tomorrow morning I shall not have
time to write anything, as I have to catch
an early train to London. If I am to
discuss with the Secretary of State on
Tuesday or Wednesday, he may like to have
my general views in writing beforehand.

N.H.A.
26/4

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Note on Sir Alan Burns' Income Tax despatch of April 4th.

I am both surprised and disappointed at the opposition to the proposals, and feel that it could have been diminished a good deal by a stirring appeal in the gubernatorial address. It is however a fact that there was strong feeling in Ex.Co against any increase, the Acting Financial Secretary, Marlowe, being the only member really in favour. Strong pressure from myself was necessary to secure acceptance, and there was a genuine feeling on the part of most members that the hardship that would be caused was out of all proportion to the money that would be raised. The really important point is that when the original proposals were made we did not expect to be able to balance our budget. I will revert to this later.

2. Para 3 of the despatch.

(a) and (b). Perfectly correct.

(c) I know of no country in which persons who earn pensions are directly taxed at a different rate to those who do not, and it must be remembered that the pensions pay Nigerian Income tax.

(d) I will revert to this.

(e) I will not add to what I have already said on this point!

(f) Nonsense. The views of an unofficial committee were most carefully considered, and several modifications in the original proposals were made on their advice.

(g). Correct.

(h) Incorrect. What will be affected in future is not the demand on Nigerian taxpayers, but that for assistance from H.M.C.

(i). Perfectly correct. Logically indefensible but psychologically important.

(j). Begs at least two important questions!

(k) I do not agree - the stock argument, that has always proved wrong in the past.

(l) Correct.

3. The really important point, and the only one which makes me inclined not to proceed with the proposal, is that when it was put forward and approved I did not think that we should balance our budget. It is now quite clear that we shall not only do this, but shall have a surplus. This fact, besides being important in itself, adds greatly to the weight of the Gold Coast argument.

4. I am not in favour of the proposal in para 9 of the despatch unless the enquiry and report include the Gold Coast also.

5. I am considerably hampered by not knowing the views of the Executive Council (with its two new members) on the present situation.

6. I am inclined to recommend that Sir Alan Burns be told that I feel that the situation has been considerably altered by the fact that Nigeria is now budgeting for a surplus without the

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new taxation whereas, when this was originally proposed, we expected to be budgeting for a ~~series~~ with it, and also that I am opposed to his proposal in his para 9 unless the enquiry is extended to the Gold Coast (and Sierra Leone and the Gambia?). He should then be asked to consider the present situation at a full meeting of Ex.Co and thereafter to make recommendations.

207

7. If the Secretary of State thinks that the Bill should be ~~xxxxxxx~~ assented to, then I agree with Sir Alan's para 8.

D.H. Amun
25/4/62

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SAVING.

AIR MAIL.

208 47

3023/12

From the Officer Administering the Government, Lagos.

To the Secretary of State for the Colonies, London.

Date : 8th April, 1942.

No. : 191 Saving (Confidential). 22 APR 1942

Your secret saving telegram No. 37 of the 21st of February, 1942. Excess Profits Tax. A list of companies operating in Nigeria which are not liable to United Kingdom Excess Profits Tax with a statement of the annual profits assessed to tax either under the Companies Income Tax Ordinance [No. 14 of 1939] or under the Income Tax Ordinance [No. 3 of 1940] during the past three years is transmitted herewith. It is possible that the Société Commerciale de l'Ouest Africain and the Compagnie Française de l'Afrique Occidentale are already liable to Excess Profits Tax in the United Kingdom; the accounts produced for the purposes of assessment to Nigerian Income Tax are not conclusive on this point.

2. There would be difficulty in computing standard profits if the methods indicated in section 13 of the United Kingdom Finance (No. 2) Act, 1939, were adopted in Nigeria since the information at present available affords no reliable figure for the profits which might be affected. The profits declared for the purposes of the 1939/40 assessment - the first year of company taxation - were made in 1938/39 or possibly somewhat earlier but there are no figures to shew what profits were earned prior to that date since none were called for in respect of earlier years.

LBZLE

SEA.

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Statement concerning profits of Companies not liable to United Kingdom Excess Profits Tax which might become liable if the tax were applied locally.

209

	Share Capital	Profits assessed 1939-40 tax	Profits assessed 1940-41 tax	Profits assessed 1941-42 tax.	Remarks
	£	£	£	£	
1. Pamol Ltd.	340,000	29,527	78,598	27,931 ⁺	+ Part I assessment covering 5 months only.
2. G.Gottschalck & Co. Ltd.	5,000			12,541 [≠]	≠ Part I Assessment covering 5 months only. New Company which took over assets of private firm of same name
3. Nigerian Properties Ltd.	750,000	110,156	147,528	191,838	
4. Atlantic W.A.Co.Ltd.		3,755	74	7,059	
5. Union Trading Co.Ltd.	53,900	6,560	10,745	11,909	
6. Texas Co.(Overseas) Ltd.		9,790	8,177	12,380	
7. Nigerian Tin & Exploration Co. Ltd.	31,880	7,453	7,100	9,318	
8. C. F. A. O.		33,777	122,798	200,645	
9. C. Z a r d & Co. Ltd.	5,000	4,400	14,846	Not yet assessed.	
10. Keffi Tin Company Ltd.	10,000	4,938	21,030 1,871)	20,000	
11. S. C. O. A.		37,643	30,619	46,173	
12. Socony Vacuum Oil Co. Ltd.		93,985	85,805	125,650	A New Company which took over the assets of the Vacuum Oil Company (probably Sept.1939).

Figures in red indicate losses sustained.

Reference:-

CO 583/259/30231

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SAVING.

AIR MAIL.

211

From the Officer Administering the Government, Lagos.
To the Secretary of State for the Colonies, London.
Date : 8th April, 1942.
No. : 191 Saving (Confidential).

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LBZLE

SEA.

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AIR MAIL

NIGERIA

SECRET

Government House, 212
Nigeria.

23 APR 1942

4th April, 1942.

My Lord,

I have the honour to refer to the correspondence terminating with Lord Moyne's secret telegram No. 1295 of the 30th of December on the subject of the proposed increase in the rates of income tax in Nigeria, and to transmit herewith copy of the Bill for an Ordinance to amend the Income Tax Ordinance, 1940, which was first published in the Gazette on the 26th of February.

2. This Bill was introduced into Legislative Council on the 16th of March and was immediately attacked violently by the (European) Provisional Commercial Member for Lagos. It was evident that his dislike for the Bill was shared by some of his colleagues, but I was amazed when one of his criticisms of the Bill (that it was an unfair imposition on a section of the community already heavily taxed) was warmly applauded by some of the official members. I was subsequently informed that one official member had intended speaking against the Bill, and only desisted when he was told that it would be most improper for him to do so. As a result of the opposition I decided to refer the Bill to a Select Committee, and I transmit herewith a copy of the Committee's Report, with the amended Bill (which had to be prepared in great haste) suggested by the Committee (marked "B"). The main recommendations of the Majority Report were that the life of the Bill should be limited to the duration of the war and that more generous concessions should be made in the matter of allowances.

3. On the motion that the Majority Report of the Committee should be adopted, the Provisional Commercial Member for Lagos moved as an amendment that the Minority Report should be adopted. He was supported by all the European unofficial members and several Africans, the principal arguments being :-

(a) that the persons who would be affected by the Bill were already heavily taxed;

(b) that income tax has already been increased twice since the war began and that a further drastic increase would be severely felt in a country where it is difficult to economise in one's standard of life and where the cost of living has increased;

(c) that unofficials were more severely penalised than officials, who had pensions on retirement, while unofficials had only their savings which would be further reduced by this additional taxation;

(d) that there existed no local reason for an increase of taxation;

THE RIGHT HONOURABLE
LORD CRANBOURNE, P.C.,
SECRETARY OF STATE FOR
THE COLONIES,
LONDON, S. W. 1.

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(e) that there was no income tax in the Gold Coast;

(f) that unofficial advice had been asked for and subsequently ignored;

(g) that such persons as small-scale miners, who, to meet the demand for increased production, are working out their properties much faster than they otherwise would, would be penalised by this additional taxation;

(h) that if the money derived from this additional taxation is to be returned to the Nigerian government after the war the effect would be that future taxpayers in Nigeria would be relieved to this extent by a small number of existing taxpayers;

(i) that there would not be the same objection to the Bill if the money were to be presented as a free gift to the British government;

(j) that a Compulsory Savings law would be less discriminatory and produce more money;

(k) that it is extremely doubtful whether as much as the estimated £25,000 will in fact be obtained from this additional taxation;

(l) that it is only the interest, amounting to some £750 a year (if £25,000 is actually realised) which Nigeria would be contributing to the British exchequer, a trifling sum in view of the total war expenditure, but a heavy burden to the few who would provide the capital amount.

4. I was asked by unofficial members to withdraw the Bill from Council, or, alternatively, to allow official members to vote as they pleased; as the Bill carried out the policy of the substantive Governor, which had received your predecessor's approval, I was unable to agree to either request. The amendment was then put to the vote and lost, only four (African) unofficial members, out of a total of 21, voting with the officials against it. The Majority Report of the Select Committee was then adopted and the Bill passed through all its stages. It now awaits my consent.

5. There is no doubt in my mind that the proposed increase of income tax is extremely unpopular, and strongly resented, by those who will have to pay it. Income tax is never popular, but I have been surprised by the strength of the feeling against this particular Bill. In all my experience of Legislative Councils I have never before known official members openly express their agreement with arguments against a Government measure, and I submit that this action by a body of loyal officers is highly significant. There can be no doubt that if I had agreed to a free vote the Bill would never have been passed. The suggestion has been made to me that the Nigerian government is making a loyal gesture at the expense of a small body of

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persons who will suffer as a result, and I am bound to say that the value of this gesture is greatly reduced by the lack of unanimity accompanying it.

6. In these circumstances I have decided to withhold my consent to the Bill until Your Lordship has had the opportunity of reconsidering the matter; you will no doubt wish to consult Sir Bernard Bourdillon on the subject. I may say at once that, had I been the substantive Governor of Nigeria, I should have withdrawn the Bill from Legislative Council in consequence of the strong opposition to it, and my own doubts as to its desirability.

7. I should prefer to continue withholding my consent, which could be given by Sir Bernard Bourdillon on his return if he thought this desirable, but I am prepared to assent to the Bill immediately on receipt of a telegram from you, if, after consideration of my views and those of Sir Bernard Bourdillon, you consider that the law should be enacted. I feel that I should point out that early enactment would be more convenient in connection with the necessary assessments.

8. While I appreciate the reasons which led your predecessor to deprecate any free gift from Nigeria to the British government, I consider that the opposition to the present Bill would be greatly reduced if the proceeds were to be given instead of lent. If, therefore, it is decided that the Bill should be enacted I would suggest that the question should be reconsidered in deference to local public opinion.

9. If you agree with me that the present Bill should not be proceeded with, I would recommend that the East African governments should be asked to let Nigeria have the services for a few weeks of Mr. J.C. Mundy, Commissioner of Inland Revenue, to advise this government on the question of income tax, including the taxation of profits made by produce buying firms in Nigeria (in this connection see paragraph 15 of Sir Bernard Bourdillon's confidential despatch of the 13th of December), and to assist in the drafting of a new Income Tax law and a law for the imposition of an excess profits tax, which I consider of greater importance than any increase in income tax rates. I would further suggest that any grant or loan from Nigeria to the British government should have no connection with any particular taxation.

I have the honour to be
My Lord,
Your Lordship's most obedient humble servant,

Alan Burns

Officer Administering the Government.

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Published in Gazette No. 12 of 26th February, 1942

**A BILL
FOR**

AN ORDINANCE TO AMEND THE INCOME TAX ORDINANCE, 1940.

[1st April, 1942.]

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

Title.

Date of commencement.

Enactment.

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2 No. of 1942 *Income Tax*
(Amendment)

Short title and commencement. 1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance, 1942, and shall come into operation on the 1st day of April, 1942.

Amends section 15 (1) of No. 3 of 1940. 2. Sub-section (1) of section 15 of the Income Tax Ordinance, 1940, hereinafter referred to as the principal Ordinance, is hereby amended by repealing the expression "allowed a deduction of £200." occurring at the end thereof and substituting the following therefor:—

"allowed the following deductions:—

- (a) £200, if it be proved to the satisfaction of the Commissioner that, during the year preceding the year of assessment, such wife had not been resident in Nigeria;
- (b) £100, if such wife had, for the year preceding the year of assessment, been resident in Nigeria:

Proviso. Provided that if it be proved to the satisfaction of the Commissioner that during the year preceding the year of assessment such wife had been resident partly in Nigeria and partly out of Nigeria then the Commissioner may allow the deduction to be calculated in proportion to the period spent as a resident or non-resident; in any such calculation any part of a month spent out of Nigeria shall be deemed to be a month."

Insertion of a new section in No. 3 of 1940. 3. The principal Ordinance is hereby amended by the insertion, immediately after section 15, of the following section:—

Deduction for dependent relative. "15A. In ascertaining the chargeable income of any individual who proves to the satisfaction of the Commissioner that at any time during the year preceding the year of assessment he had dependent upon him one relative to or for whom he had actually paid specific allowances during that period there shall be allowed a deduction of the amount so paid up to a maximum of £100:

Proviso. Provided that nothing in this section shall operate to entitle a person to claim in respect of any child in excess of the number of children for which deduction may be claimed under the provisions of section 16;

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Provided further that no such deduction shall be allowed in respect of any such relative whose chargeable income exceeds the amount which would otherwise be allowed."

4. Sub-section (2) of section 16 of the principal Ordinance shall be amended by substituting for the expression "but does not include an adopted or illegitimate child" the expression "and a child adopted in accordance with any statutory provision relating to adoption but does not include an illegitimate child". Amends section 16 (2) of No. 3 of 1940.

5. Paragraph (a) of the proviso to section 53 is hereby amended by substituting the word "rules" for the word "regulations" appearing in the first line thereof.

6. The First Schedule to the principal Ordinance is hereby repealed and the following Schedule substituted therefor:—

.. FIRST SCHEDULE.

(SECTION 22).

Chargeable Income	Rate of tax		
	£	s	d
For every pound of the first £200	0	0	3
.. .. next £100	0	0	6
.. £100	0	1	0
.. £400	0	2	0
.. £400	0	4	0
.. £800	0	6	0
.. £1,000	0	8	0
.. £2,000	0	10	0
.. £5,000	0	12	6
.. .. exceeding £10,000	0	15	0

Objects and Reasons.

The main increase in income tax which is to be devoted as set out in paragraph 5 of these Objects and Reasons is effected in clause 6 by the substitution of a new First Schedule wherein is set out revised rates of tax. Putting it briefly the effect of these revised rates will be that the tax upon the incomes of the following persons will remain the same:—

- A single man with an income of not exceeding £300;
- * A married £500;
- * A married man with one child with an income of not exceeding £600;

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4 No. of 1942 *Income Tax*
(Amendment)

*A married man with two children with an income of not exceeding £800;

*A married man with three children with an income of not exceeding £900;

(* These are calculated on the assumption that the person's wife is not resident in Nigeria.)

but that the amounts of tax at present payable by an unmarried man with a chargeable income in excess of £500 per annum, and, at the end of the above scale, by a married man with three children with a chargeable income in excess of £1,000 per annum, will be doubled.

2. By clause 2 it is proposed to reduce the permissible deduction in respect of a wife from £200 to £100 per annum if she be resident in Nigeria, while maintaining the allowance if she be resident outside Nigeria. By a proviso it will be possible for such deduction to be apportioned where the residence of the wife does not extend to the whole tax year.

3. It is proposed by clause 3 to afford some relief to those persons on whom a relative is dependent. This clause inserts a new section permitting an allowance not exceeding £100 per annum for expenditure actually incurred on the maintenance of one dependant provided that the dependant is not a person whose own chargeable income exceeds the allowance which would otherwise be permitted.

4. In view of the fact that a child adopted in accordance with any statutory provision relating to adoption becomes to all intents and purposes a member of the adoptor's family and must be maintained, the definition of "child" in section 16 has by clause 4 been amended to include such adopted children but subject to the original provisions whereby deductions may not be allowed in respect of more than three children.

5. It is the intention of Government that the additional revenue, estimated approximately at £25,000 per annum, accruing from the proposed increases be lent free of interest to His Majesty's Government for the duration of the war.

6. Clause 5 corrects a misnomer in section 53.

7. A table showing the tax payable by individuals on different rates of salary and whether married with children or not is being prepared and will be published separately.

H. C. F. COX,
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
17th February, 1942.

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Report of the Select Committee appointed by His Excellency the President of Legislative Council on Tuesday, 17th March, 1942, to consider and report on a Bill entitled "An Ordinance to amend the Income Tax Ordinance, 1940."

The Committee unanimously recommends that the Bill should be amended as in annexure I. to this Report.

2. The draft Bill in the enclosure differs from the original Bill in the following respects :-

(a) The duration of the Bill is limited to the duration of the present war.

(b) The deductions in clause 2 of the original Bill are increased from £100 to £200, in the case of an individual whose wife is resident in Nigeria, and from £200 to £400 in the case of the wife being resident outside Nigeria, provided that in the latter case the relief occasioned by the deduction in respect of the additional £200 allowed shall not exceed £50. The effect of this will be that married persons will be required to pay less than under the original Bill (in no case is the difference more than £50), that the relief will be proportionately greater for lower incomes than for higher, and slightly greater in the case of individuals whose wives are not resident in Nigeria. Examples are given in Annexure II.

(c) In clause 3 of the original Bill provision was made for the deduction from chargeable income of allowances paid to a dependent relative. The allowance which might be deducted was limited to £100 and to one dependant. It is recommended that allowances to two dependants should be deductible, subject to a maximum of £100 each

3. The Committee approves of the additional revenue accruing from the proposed increases being lent free of

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interest to His Majesty's Government for the duration of the war, at the end of which repayment would be made to the Government of Nigeria.

4. In coming to this decision the Committee was moved by the common desire of the people of Nigeria to assist the mother country during this critical time of war and to make sacrifices similar, so far as possible, to those being made by the people of Great Britain. At the same time they were influenced by the wish of His Majesty's Government, as expressed in the despatch of the Secretary of State of the 5th of June, 1941, that the monies now to be lent to His Majesty's Government should be returned to the Nigerian Government at the end of the war, when there will be considerable development in Nigeria beyond the resources of the local Government, and so requiring assistance from the Imperial Treasury. In the words of the Secretary of State's despatch mentioned above "such a policy would have the advantage of placing the resources at the disposal of His Majesty's Government, without charge, during the period in which they are required, while permitting the dependencies concerned to resume the use of them when they are required for post-war purposes".

5. The Commercial Member for Lagos dissents from the view of the other members of the Committee that the proceeds of this taxation ordinance should be returned to the Government of Nigeria at the end of the war. A minority report by him; insofar as the recommendations of the Committee on this point are concerned, is attached as

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Annexure III.

(Signed) A.W.G.H. GRANTHAM (Chairman)
Chief Secretary to the Government.

T. S. ADAMS
Chief Commissioner Northern Provinces.

C. R. LOCKHART
Financial Secretary.

S. B. RHODES,
Member for the Rivers Division.

E.H.L. RICHARDSON
Commercial Member, Lagos.

H. S. A. THOMAS
First Lagos Member.

LAGOS.
23rd March, 1942.

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**A BILL
FOR**

**AN ORDINANCE TO IMPOSE CERTAIN OTHER TAXES UPON INCOMES AND TITLE.
TO EFFECT CERTAIN AMENDMENTS TO THE INCOME TAX
ORDINANCE, 1940.**

[1st April, 1942.]

Date of
commence-
ment.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

Enactment.

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3. In ascertaining the chargeable income of any individual who proves to the satisfaction of the Commissioner that at any time during the year preceding the year of assessment he had relatives, whether resident in Nigeria or not, dependant upon him, to or for whom he had actually paid specific allowances during that period there shall be allowed in respect of not more than two of such relatives a deduction of the amount so paid up to a maximum of £100 each:

Deduction for dependant relative.

Provided that nothing in this section shall operate to entitle a person to claim in respect of any child in excess of the number of children for which deduction may be claimed under the provisions of section 16 of the Income Tax Ordinance, 1940:

Provisos.

No. 3 of 1940.

Provided further that no such deduction shall be allowed in respect of any such relative whose income for the year preceding the year of assessment exceeds one hundred and fifty pounds.

For the purposes of this proviso the expression "Income" includes the total income from any source whatsoever whether accruing or received within or without Nigeria or whether derived from Nigeria or not.

4. Sub-section (2) of section 16 of the Income Tax Ordinance, 1940, shall be amended by substituting for the expression "but does not include an adopted or illegitimate child" the expression "and a child adopted in accordance with any statutory provision relating to adoption but does not include an illegitimate child".

Amends sec. 16 (2) of No. 3 of 1940.

5. Paragraph (a) of the proviso to section 53 of the Income Tax Ordinance, 1940, is hereby amended by substituting the word "rules" for the word "regulations" appearing in the first line thereof.

Amends sec. 53 of No. 3 of 1940.

6. The reference in the provisions of section 22 of the Income Tax Ordinance, 1940, and any other reference to the First Schedule contained in the said Ordinance shall be construed as if the said references to the said First Schedule were references to the Schedule to this Ordinance.

Substitution of new First Schedule.

No. 3 of 1940.

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SCHEDULE

Chargeable Income		Rate of tax		
		£	s	d
For every pound of the first	£200	0	0 3
" " " " next	£100	0	0 6
" " " " "	£100	0	1 0
" " " " "	£400	0	2 0
" " " " "	£400	0	4 0
" " " " "	£800	0	6 0
" " " " "	£1,000	0	8 0
" " " " "	£2,000	0	10 0
" " " " "	£5,000	0	12 6
" " " " exceeding	£10,000	0	15 0

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Annexure 2.

Tax Payable under the New Schedule of Income Tax Rates.

Income (less W.O.P.S., Provident Fund contributions and deductions in respect of children, dependent relatives and life assurance premiums).	Present Bill		As recommended by Committee.	
	Tax payable with wife in Nigeria.	Tax payable with wife outside Nigeria.	Tax payable with wife in Nigeria.	Tax payable with wife outside Nigeria.
£ 400	£ +	£ +	£ +	£ +
600	20	+	+	+
800	40	30	30	30
1,000	70	50	50	50
1,200	110	90	90	90
1,400	160	130	130	140
1,600	220	190	190	200
1,800	280	250	250	260
2,000	340	310	310	320
2,200	410	370	370	400
2,400	490	450	450	480
2,600	570	530	530	560

IMPORTANT NOTE: Special attention is invited to column 1. This does not show gross income but income after deducting the allowances mentioned at the head of the column.

+ Tax payable at minimum of 5d in £ on gross income less W.O.P.S. and/or Provident Fund contributions. (Proviso to Section 22 of the Income Tax Ordinance, 1940.)

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Annexure 3.Minority Report.Income Tax Bill Select Committee.

Your Excellency,

1. I accept in principle the proposal of increased Income Tax in all colonies.
2. I accept in principle the proposal of increased Income Tax, based on equality of sacrifice.
3. I do not believe the Colonial Office representing H.M.G. desires inequality of sacrifice.
4. I believe this bill is a reply to the late Secretary of State for the Colonies' Circular Despatch of the 5th June 1941.
5. I quote the following extracts from the Despatch :-

"Para. 7. I wish to emphasise that the essential objective of economic policy must be the saving of actual material resources including resources in personnel; and, in the strict sense, the saving of money is only subsidiary to that primary objective I consider, therefore, that an increase of taxation, above what was thought necessary before the war, should be a definite object of policy; Extra revenue from taxation may well be needed to replace the revenue lost, owing for example to reduced imports: or to meet additional charges on the Governments concerned, arising out of the war The primary object of these proposals is not to obtain taxation for taxations sake, nor to raise revenue, for the sake of raising revenue, but to make a considerable cut in purchasing power during the war.

"Para. 11. In these circumstances, I think that Colonial Governments should regard as a first call upon any surplus which may be realized the building up of reserves adequate to meet demands which might reasonably be expected in the period of post-war reconstruction In present conditions I suggest that reserves accumulated during the war might very well be lent to H.M.G. free of interest, on condition that repayment will be made at the end of the war"

6. In regard to paragraphs 7 and 11, quoted above, I must point out (i) Nigeria has for some time taken steps to conserve material resources and personnel.
 - (ii) Saving of money, subsidiary to above, has and will continue to be achieved through imports control and Nigerian War Saving Certificates.
 - (iii) Taxation, direct and indirect, has already been imposed at a considerably higher level than pre-war, and neighbouring West African Colonies.
 - (iv) This additional Taxation has fully replaced revenue lost, and met all additional charges arising from the war.

(v)

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- (v) If the primary object is not Taxation and revenue for the sake of such, but to reduce purchasing power, then the answer lies in still more imports control, and compulsory savings for all communities.
- (vi) The proposal to devote reserves adequate to meet reasonable demands of post war reconstruction certainly should not refer to reserves derived through additional war-time taxation for post-war purposes.
- (vii) The despatch suggests quite plainly that reserves accumulated during the war might very well be lent to H.M.G., free of interest, on condition that repayment will be made after the end of the war. There is no suggestion on the part of the Government to lend all or part of the surplus of £250,000 or more expected in 1941/42, or the future surplus that may be expected by reason of the increasing demand for the products of this country for war purposes.
- (viii) Arising from (vii), it is open to question whether Government is escaping its obligations by the alternative of a 'token' loan collected from a small body of taxpayers. Post war, the Government purposes to utilise the taxpayers' loan, while retaining in addition the reserves and surpluses referred to in (vii).

7. I attended the meeting of the select Committee appointed to consider the Ordinance to amend the Income Tax Ordinance 1940.

8. I opposed the bill because its application, (not the principle) was unjust - that is there was inequality of sacrifice owing to the generally different basis of retirement between officials and non-officials.

9. I agreed with the amendment to increase the allowance in respect of wives, resident and non-resident in Nigeria, and in respect of relatives and dependents.

10. I was not able to agree that the proceeds of this tax should be given to the Nigerian Government after the war.

11. I consider if the H.M.G. are to refund this interest-free loan, that it should be refunded to the payers of the tax, and not to the Nigerian Government.

12. My reason for this is because the proceeds of the tax are not a loan from the general revenues, surpluses, or reserves of the Nigerian Government, but from a discriminatory piece of legislation which affects the non-official community very much more severely than officials owing to different conditions of retirement which exist generally between officials and non-officials.

13, 194

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13. It is so necessary officials and non-officials should co-operate in the common war effort, and I consider the Bill, in its present form, will cause resentment which is highly undesirable in time of war.

14. The question of resentment will not arise if the tax proceeds loaned free of interest to H.M.G., are returned to the payers of the tax.

15. I consider Government's honesty of purpose is open to question in deciding itself to utilise, post war, the proceeds from discriminatory legislation.

16. The Hon. the Financial Secretary, when introducing the bill declared he did not desire the incidence of this tax to affect the health, the standard of living, or the education of children. That only deals with the present and the near future.

17. But this Tax directly affects the retirement of non-pensionable non-officials, because they have to save towards retirement. And it will have a direct bearing on the health, standard of living and education of children, when in retirement.

18. I consider the proposal for the Nigerian Government to pocket the proceeds, post-war, imposes a grave and unanswerable injustice in that it seeks to deprive non-pensionable Tax payers of savings, which are directly connected with and necessary for their retirement after arduous years of work in a climate where a career is limited by unhealthy conditions.

19. I hesitate to believe that Government has fully weighed the injustice in Paragraph 18, which is eliminated under a compulsory savings scheme.

20. I consider a Compulsory Savings Bill taken in conjunction with Paragraph 6 (i) - (vii) fully meets the wishes of the late Secretary of State's circular despatch.

21. I consider the Ordinance to amend the Income Tax Ordinance 1940 should be withdrawn, and replaced by Compulsory Savings Legislation which, when enacted, should be retrospective from 1st April 1942.

22. I submit such a measure would receive warm approval from all communities regardless of class and creed, as well as provide a much larger loan than £25,000, to H.M.G.

MOI.

E. H. J. RICHARDSON

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DRAFT.
Recd in ltr 4/3 P4
F. J. Pedler 5/3
at once

3023/42

Loaded & Sent
12:00 hrs
4/3/42 J.D.
Addressed to Nigeria No. 268

Secret
~~No~~ Repeated to
Gambia No 97 230

Code tel
OAG
Lagos
Copy to Bureau of Finance

Your telegram No 195.
Companies Tax. I agree
that rate should remain
at 5% for the present.
When it is possible to
consider the question of
Company taxation from
point of view of West
Africa as a whole this
figure may require
reconsideration. Secer

- 5 MAR 1942
6-

FURTHER ACTION.

Rec'd to
Sir A. Dawe

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C.D.
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25.2.42

C. O.

Mr. Pedler 23/2

Mr. Williams 24/8

Mr.

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT. Desp Conf

OAG

Lagos

FURTHER ACTION
Recive. when desp
has gone
over

Sir,

I have etc to advise the receipt of Sir B. Bourdillon's conf. desp. of 7th Jan 1942 ~~forwarding a message from the Assocⁿ of European Civil Servants of Nigeria.~~ ^{I should be glad if you would inform the Association that the message has been received and considered;} that I greatly appreciate the loyal spirit in which the members of the Assocⁿ are bearing the sacrifices imposed by the war; and that I trust that they will feel that their main point, namely that officers in receipt of salaries not exceeding £560 a year who maintain dependants in the UK shd not have their tax increased, has been substantially met

I have etc

(SIGNED) GRANBOISE

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COPY FOR REGISTRATION

Conf. Code Telegram

Received
in
Registry



21 FEB 1942

FROM NIGERIA

FROM: Officer Administering the Government.
TO: Secretary of State for the Colonies.

D. 20th February, 1942.
R. 20th " " " 18.15 hrs.

No. 195 Secret.

39

Your telegram No. 120.

Formal differentiation against foreign companies is not, of course, proposed, but it would be necessary to make clear in introducing amending bill that U.K. companies are not affected.

If companies tax were increased to 10/-, there would be a marked differentiation between rate of tax on foreign companies in Nigeria, and that prevailing elsewhere in West Africa, or in British Africa generally.

If the oil companies enquired as to why their business in Nigeria was subjected to much higher taxation than elsewhere in Africa, I should find it difficult to advance considerations peculiar to Nigeria. For this reason, I am not in favour of increase and, as it is necessary to publish the bill at once, I propose that companies tax should remain at 5/-.

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FJ Pedler 2/2
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C.D.
R XXFEB
D 20 -

21.2.42

41 S.B.

Saving No 37 Secret
Excess Profits Tax.

OAG
Nig

(31)
(35)

My tel No 1251 of Dec 18th,
last paragraph. Sir B.
Boudillon's tel No. 76.
For the purpose of further
consideration it would be
useful if you could furnish
any information as to what
profits, actually being earned
by companies not liable to U.K.
Excess Profits Tax, would become
liable to ~~that~~ ^{Excess Profits} tax if
corresponding legislation were
enacted in Nigeria.
Sear.

Recirculate
to Mr Pedler

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Mr Campbell

COLONIAL OFFICE

and

DOMINION'S OFFICE

BULLETIN.

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441-150 WL 45767-63 30,000 2/40 T.S. 695

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Coded sent.
22.00 hrs
30.1.42

ansd 42

C.O.

Mr. Pedler 38/1

Mr. Cairns 36/1

Mr.

Sir A. Burns.

Mr. G. L. M. Clouston.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

(36)

(37)

(30)

attn Sec No 120 Since
Sending my tel No 112
I have seen para 14 of
Your conf desp of Dec
13th. I had not 235
understood from para 7
of your tel No 1196
that formal differentiation
against foreign companies
was contemplated. I
assume that this is
not the case, for it
would clearly be open to
objection. It is realised
of course that differentiation
treatment
may occur in fact
through the working of
arrangements for relief from
double taxation. Secer.

DRAFT.

Code tel for conson

Gov
Lago

30 JAN 1942
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FURTHER ACTION.

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30231/4238

NIGERIA.

CONFIDENTIAL.

RECEIVED
23 JAN 1942
SECRETARY
GENERAL
GOVERNMENT HOUSE
LAGOS

Government House,
Nigeria.

236

7 January, 1942.

Wait return of file

My Lord,

Dupl

37 With reference to my confidential despatch of the 13th of December, 1941, containing proposals for increasing the incidence of income taxation in Nigeria in accordance with the directions contained in Your Lordship's circular (2) despatch of the 5th of June last, I have the honour to transmit for Your Lordship's consideration a Memorandum drawn up by the Association of European Civil Servants of Nigeria.

58836/18/4

Copy attached

2. I do not consider it necessary to comment on the Memorandum as Your Lordship is already in possession of my detailed views on the subject.

Ans (43)

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble Servant,

B. H. Thurman

GOVERNOR.

The Right Honourable
Lord Moyne, P.C., D.S.O.,
Secretary of State for the Colonies,
London, S.W.1.

SEA.

Reference:-

CO 583/259/30231

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No.AECSN.11.P.O.Box 330,
Lagos, West Africa,

25th October, 1941.

Sir,

I am directed by the Council of the Association of European Civil Servants of Nigeria respectfully to ask that His Excellency will transmit to the Secretary of State, either by telegram or air at the expense of the Association, together with such comments as he may see fit, the following message :-

"The Council of the Association of European Civil Servants of Nigeria submit with the highest respect that members of the Association have considered Lord Moyne's despatch of 5th June, 1941, and beg to assure His Lordship that they welcome any opportunity whereby they may further assist the war effort. Subject to the considerations hereinafter set out, it is generally agreed that in certain cases, e.g. Europeans on the higher salary scales and bachelors and widowers without dependants on the lower scales of salary, increased taxation is justified, provided that steps are taken to ensure that the proceeds are applied to ends similar to those to which increased taxation is applied in the United Kingdom. On the other hand it is well known that certain European public officers are heavily in debt and becoming increasingly desperate because of the inadequacy of their incomes to meet expenses in present circumstances. Already it has been suggested to Government that relief is urgently required in these cases and it is earnestly requested that steps be taken to ensure that no increased taxation whatsoever shall be imposed on officers in receipt of salaries not exceeding £560 per annum who maintain dependants in the United Kingdom. Regarding other officers it is pointed out that the introduction of uniformity of salary scales in West Africa failed to have due regard to the heavier burden of taxation then borne by officials in Nigeria and that war taxation has since been imposed here to a degree not approached in any other British West African territory. Members of the Association are doing their utmost to assist the war effort by means of voluntary contributions and it is strongly felt that compulsory alternatives should not be introduced in Nigeria which will bring taxation in this territory to a level higher than that to which taxation may be raised in other British West African territories".

I have, etc.

(Sgd.) A. E. V. Barton

Council Chairman.

The Honourable
The Chief Secretary to the
Government, LAGOS.

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Air Mail.

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NIGERIA.

CONFIDENTIAL.

Government House,

238

Nigeria.

26 JAN 1942

13 December, 1941.

O. O. REGY

My Lord,

Dupl

15836/H/41

With reference to your circular (2) despatch of the 5th of June, 1941, I have the honour to inform Your Lordship that having now had an opportunity of considering in detail the practical application to Nigeria of the principle expressed in sub-paragraph (d) of paragraph 8 of your despatch that "income tax should be brought much closer to the United Kingdom level where it already exists", I am now in a position to put before you my proposals.

*104 on
30498/41*

2. My considered recommendations were promised in the eighth paragraph of my despatch No. 441 of the 17th of July in which I also described briefly the history of income taxation in this dependency and ventured the preliminary opinion, which subsequent examination has tended to substantiate, that while there is doubtless room for a heavier scale of taxation in Nigeria the additional revenue which can be derived from this source is limited. I have since conveyed to Your Lordship, in my confidential telegram No. 1154 of the 19th of November, the gist of the final proposals submitted for discussion in Executive Council and in my confidential telegram No. 1196 of the 28th of November I have indicated briefly to what extent these were subsequently modified.

*21
30*

3. I should explain that my final recommendations are made with the advice of my Executive Council not only after careful examination of the proposals of the Gambia Government (contained in Sir W. Southorn's confidential despatch of the 18th of August addressed to you) but after consulting British unofficial opinion in Nigeria as represented by a committee comprising all the main commercial, shipping and banking interests in Lagos.

*4 on
33083/2/41*

4. I brought to the notice of this unofficial body certain considerations which had been suggested, or had suggested themselves, to me. These I asked the members of the unofficial committee to bear in mind when formulating their views on the general question of increasing the incidence of income taxation in Nigeria, at the same time making it clear that it was not my intention that they should confine their observations to an expression of opinion on these aspects alone. The particular points to which I invited consideration were as follows :-

- (a) that the normal reasonable standard of living for the British middle classes is far less flexible in the Colonies than in the United Kingdom and far less susceptible of reasonable reduction;
- (b) that certain expenses which are unessential in the United Kingdom are essential in tropical Colonies;
- (c) that nevertheless the gap between United Kingdom and existing Nigerian rates of income tax is enormous;

The Right Honourable

Lord Moyne, P.C., D.S.O.,

Secretary of State for the Colonies,

LONDON, S. W. 1.

(d)

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- (d) that there are undeniably many British residents in Nigeria who could pay substantially higher amounts without feeling any real hardship, while comparatively few feel the pinch to anything like the same extent as residents in the United Kingdom;
- (e) that there is no income tax in the Gold Coast where, owing to lower import duties, the cost of living is said to be considerably below that in Nigeria;
- (f) that there is no income tax in Sierra Leone;
- (g) that the Gambia Government contemplate an increase in existing rates of tax to a level considerably above the present Nigerian scale;
- (h) that a married man with an income of £1,000 a year resident in Nigeria and with children to support in the United Kingdom cannot, it has been suggested, afford to pay a higher rate of tax than at present (a married man with three children is at present assessed at £12. 10/- per annum);
- (i) that throughout the Colonial Empire the call upon the British community should be measured not by local needs but by reasonable capacity to pay;
- (j) that the British community in Nigeria would accept an added burden with greater readiness if the proceeds of extra taxation were credited direct to His Majesty's Government and not to Nigerian revenue ;
- (k) that if a special war-time surtax were imposed, the proceeds to be credited to His Majesty's Government, the question arises whether it should be paid

- (i) by the whole British community, or
- (ii) by the British official community only ?

5. The committee's considered views were submitted to me in the form of a memorandum in which the main recommendations may be summarised as follows :-

- (i) that all the West African Colonies should bear an equal share of the burden of taxation, whether direct or indirect;
- (ii) that the burden of taxation should be measured by the capacity of individuals to pay rather than by the relative solvency of the Colony in which they are resident;
- (iii) that there should therefore be a standard income tax throughout British West Africa; and
- (iv) a standard customs tariff on which should be superimposed an additional war surtax on all imported goods except foodstuffs, the proceeds of the surtax to be remitted direct to His Majesty's Government.

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6. The committee were of the opinion that actual or potential criticism of Nigeria on the grounds that present conditions and standards of life shew little superficial change were unjustified having regard to the fact that, while the irreducible minimum standard of life in Nigeria is comparatively higher than that obtaining in the United Kingdom, that standard is yet insufficiently high to permit of much reduction. It was urged, moreover, that a fair comparison between conditions ruling in the United Kingdom and in Nigeria is impossible while the United Kingdom is in, and Nigeria remains outside, the main theatre of war. Again, although the incidence of taxation has risen sharply in the United Kingdom basic wages there have also risen, whereas there has been no off-setting increase in wages in Nigeria.

7. With these general considerations in mind the committee reached the conclusion that while few are in a position to make greater contributions to the war effort by way of direct taxation, a number could do so by means of compulsory savings and it was advocated that persons in receipt of nett taxable incomes not exceeding £800 per annum should make compulsory contributions to a war-savings scheme, the proceeds being lent to his Majesty's Government free of interest for the duration of the war, while those in receipt of nett taxable incomes above £800 per annum should in addition pay a war surtax on a graduated scale, the proceeds of which would be credited direct to His Majesty's Government. There was no support for any system of taxation which would discriminate between the official and the unofficial communities but, although no specific proposal was made, it was suggested that differentiation for the purposes of taxation between pensionable and non-pensionable employees would be justified.

8. The committee criticised the recent amendment of sub-section (f) of section 8 of Ordinance No.3 of 1940 whereby the first £200 of the personal income of a woman is exempted from tax, the effect of which, when taken in conjunction with section 15(1) of the Ordinance, is to grant a married couple living together in Nigeria a tax-free allowance on their joint incomes of £400 per annum.

9. I have thought it advisable to convey these unofficial views in some detail for Your Lordship's information, not only because I regard them as representative in the main of informed public opinion in Nigeria but also because the principles enunciated are, generally speaking, sound.

10. Questions affecting the modification of the customs tariff are not strictly relevant to the subject of this despatch, although I expressed the view in the eighth paragraph of my despatch No.441 of the 17th of July that indirect taxation imposed by means of import duties can properly be regarded as an equivalent of income tax. After further consideration however, I intend, for the present at any rate, to adhere to my earlier decision not to introduce any general increase in the import tariff, which is already high and substantially higher than in the other West African Colonies.

11. As I have informed Your Lordship in my confidential telegrams referred to in paragraph 2 above I propose that the Schedule to the Income Tax Ordinance should be amended with effect from the 1st of April 1942 so as to double the amount of tax now payable by an unmarried man with an income in excess of £500 per annum and by a married man with three children with

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30498/41

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an income in excess of £1,000 per annum. I append a Schedule illustrating the effect of these recommendations and comparing proposed future rates of tax with those now in force.

12. The rates now suggested are considerably less than those which the Gambia Government has proposed but they appear to me to represent the maximum which the income tax-paying community can reasonably be expected to afford. In recommending the new scale for Your Lordship's approval I can express confidence that it has been so devised as to distribute the extra burden as fairly and evenly as possible amongst those who can afford to bear it and that the burden will be borne all the more willingly in the knowledge that, if Your Lordship concurs, the additional yield will be lent by this Government to His Majesty's Government free of interest for the duration of the war. I regard this as particularly important in view of the strong popular desire to afford concrete evidence of direct assistance to the war effort.

13. The final outcome of discussion in Executive Council of proposals to modify existing family allowances was that no alteration should be made to the first proviso to section 16 of the Ordinance which allows a deduction of a maximum of £100 per annum each in respect of the maintenance and education outside Nigeria of children, not exceeding three in number. It was however decided to amend section 15(1) of the Ordinance so as to reduce the permissible deduction in respect of a wife from £200 to £100 per annum if she is resident in Nigeria and, in response to persistent representations in the past, to introduce a clause permitting a deduction not exceeding £100 per annum for expenditure actually incurred on the maintenance of one dependant relative, other than a wife or child for whom provision is made in the Ordinance, subject to the proviso that no deduction should be allowed in respect of any such dependant whose chargeable income exceeds the amount which would otherwise be allowed.

14. In the seventh paragraph of my confidential telegram No. 1196 of the 28th of November I asked for Your Lordship's advice in regard to the expediency of differentiating for the purposes of Company taxation between Companies which are liable to United Kingdom tax and those foreign concerns operating in Nigeria which escape it and therefore pay at a rate which is the equivalent of only half the United Kingdom rate. The suggestion that foreign Companies such as the Oil Combines should be taxed locally at the full rate of 10/- in the £ was made in the eleventh paragraph of the memorandum which formed an enclosure to Sir W. Southorn's confidential despatch of the 18th of August. I recommend this expedient for Your Lordship's favourable consideration.

15. There is one other aspect of Company taxation which I wish to mention here. I have now received your despatch No. 338 of the 10th of November, 1941, in which Your Lordship expresses agreement with the conclusions I have reached in regard to the non-liability to Nigerian income tax of profits which non-resident Companies derive from the purchase and export of local produce. While it is apparent that in law and according to the established canons of income tax practice the immunity from local taxation enjoyed by such Companies is unassailable I confess that I regard as anomalous a situation in which the Imperial Exchequer benefits exclusively from the taxation of income arising from trade in the Colonies, particularly where the produce concerned is subjected to little or no processing before sale and before consumption outside Nigeria: I have in mind especially taxation of the profits arising from the sale of bananas grown in the Cameroons. I do not desire to pursue this point in present circumstances

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but I consider it advisable to inform Your Lordship now of my view that the matter is of sufficient importance to warrant further examination at some future date.

16. One other question received consideration when the general revision of the Income Tax Ordinance was discussed in Executive Council. I refer to the relief at present afforded under section 17 in respect of life insurance premiums which in the higher grades of income is disproportionately generous when expressed in terms of tax at the highest rate. By comparison with the United Kingdom where revenue is derived both from taxation of the profits of the Insurance Companies and from the imposition of death duties on the capital sum, Nigeria is at a marked disadvantage in this respect. No definite conclusion was reached in this matter but I propose to examine further the possibility of following the United Kingdom practice and of introducing a system whereby relief would be afforded in terms of tax, reckoned at the average rate which would be payable if the allowance were not made.

17. To revert for a moment to the views of the unofficial committee which I have reviewed in paragraphs 5 to 7 of this despatch, my Executive Council and I found ourselves unable to support the proposal that additional taxation should apply to all incomes, taking the form of compulsory savings in the case of nett taxable incomes not exceeding £800. We felt that the lower incomes could not bear any additional taxation, while in the case of the higher incomes we agreed that such additional taxation as we considered possible should not be repaid to the tax-payer at the end of the war.

18. As regards the committee's contention that the burden of taxation should be equalised throughout West Africa, and should be measured by the capacity of individuals to pay rather than by the financial situation prevailing in individual Colonies, I have already expressed my views, which are identical with those of the committee, in my confidential despatch of the 17th of April. I have received no reply to that despatch, but Your Lordship's despatch of the 5th of June encouraged me to believe that my views had received a measure of acceptance. As Your Lordship is aware, a copy of the Gambia despatch of the 18th of August was sent to the Deputy Chairman of the Governors' Conference with an enquiry as to whether other West African Governments would be prepared to introduce rates of taxation similar to those proposed by the Gambian Government. I did not feel that this was a matter with which the Conference should deal, and Sir Arnold Hodson and Sir Hubert Stevenson agreed with me, and stated that they would reply individually to Sir Thomas Southorn's question. I am not aware what replies they have sent. Although I do not conceive it part of my duty as Chairman of the Conference to concern myself with the internal taxation measures of the various Colonies, I do consider it my duty, as Governor of Nigeria, to inform Your Lordship that the inequality of sacrifice at present existing is most deeply resented by the whole European community of Nigeria, official and unofficial, and that any discontent that may be caused by the proposed increases in the rate of income tax will be seriously aggravated if no steps are taken to remove this inequality.

19. Your Lordship will observe that whereas the unofficial committee recommended that the yield of any addition to the income tax rates should be credited direct to His Majesty's Government I have merely recommended that it should be lent to His Majesty's Government without interest for the duration of

war

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war. Neither suggestion is in strict accord with the principles laid down in Your Lordship's despatch of the 5th of June. That despatch suggests that the yield of additional taxation should be given to His Majesty's Government only by Colonies which possess reserves adequate for the purposes of post-war reconstruction and development, and be lent only when the effect of the additional taxation is to increase the surpluses available to the Government concerned. In Nigeria the effect of the additional taxation, if credited to Nigerian revenues, would, I fear, merely have the result of minimising the inroad upon surplus balances which is otherwise likely to be necessary. Nevertheless, although the logic of Your Lordship's suggestions is impeccable, I venture to suggest that the workings of the human mind are not always in accordance with the strict rules of logic. That Nigeria should lend to His Majesty's Government with one hand while extending the other to receive assistance from the Colonial Development and Welfare Fund for schemes of development, is patently absurd. Nevertheless I recommend strongly that this absurdity be committed, for I am convinced that any increase in taxation will be accepted, at any rate by the European community (who, after all, are chiefly concerned) if they know that the immediate result will be to enable money to be sent to His Majesty's Government for the prosecution of the war. If, on the other hand they get the impression that they are being subjected to more stringent taxation in order, for example, that African clerks may receive a larger salary, an impression which will be greatly strengthened if the burden on the European inhabitants of richer Colonies continues to be lighter, they will feel a degree of resentment which, however illogical it may be, cannot but command a measure of sympathy.

10830/A/W

20. In this connection I ventured to mention to the unofficial committee, in confidence, the concluding passage of paragraph 10 of Your Lordship's despatch of the 5th of June, in which it is stated that "it is most undesirable that there should be any suggestion that taxation is being imposed at the instance of His Majesty's Government if its proceeds are in effect to be handed over to His Majesty's Government". They strongly dissented from that view, in so far as Nigeria is concerned, and I venture to assert that every British official in Nigeria would agree with them. I know of no European in this country who would not pay additional taxation more readily if the necessity for the extra sacrifice were indicated by His Majesty's Government than if it were the result of a decision by the local Government. And I venture to assert that the same would be true of most thinking Africans. The point is, however, to some extent academic, for your despatch of the 5th of June has been read as a clear demand by His Majesty's Government that extra taxation should be imposed, even if the proceeds are taken by His Majesty's Government.

21. In conclusion, I have the honour to request Your Lordship's approval of the measures now proposed for raising the incidence of Income Tax in 1942/43.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

R. H. ...

G O V E R N O R .

SEA.

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Income	Single	Married - wife not resident in Nigeria.	One child	Two children.	Three children
£100	£1. 5. 0 £1. 5. 0	£1. 5. 0 £1. 5. 0	£1. 5. 0 £1. 5. 0	£1. 5. 0 £1. 5. 0	£1. 5. 0 £1. 5. 0
£200	£2.10. 0 £2.10. 0	£2.10. 0 £2.10. 0	£2.10. 0 £2.10. 0	£2.10. 0 £2.10. 0	£2.10. 0 £2.10. 0
£300	£5. 0. 0 <u>£5. 0. 0</u>	£3.15. 0 £3.15. 0	£3.15. 0 £3.15. 0	£3.15. 0 £3.15. 0	£3.15. 0 £3.15. 0
£400	£7. 0. 0 £10.0. 0	£5. 0. 0 £5. 0. 0	£5. 0. 0 £5. 0. 0	£5. 0. 0 £5. 0. 0	£5. 0. 0 £5. 0. 0
£500	£11.5. 0 £20.0. 0	£6. 5. 0 <u>£6. 5. 0</u>	£6. 5. 0 £6. 5. 0	£6. 5. 0 £6. 5. 0	£6. 5. 0 £6. 5. 0
£600	£15.0. 0 £30.0. 0	£7.10. 0 £10.0. 0	£7.10. 0 £7.10. 0	£7.10. 0 £7.10. 0	£7.10. 0 £7.10. 0
£700	£20.0. 0 £40.0. 0	£11.5. 0 £20.0. 0	£8.15. 0 £10.0. 0	£8.15. 0 £8.15. 0	£8.15. 0 £8.15. 0
£800	£25.0. 0 £50.0. 0	£15.0. 0 £30.0. 0	£11.5. 0 £20.0. 0	£10.0.0 <u>£10.0. 0</u>	£10.0. 0 £10.0. 0
£900	£35.0. 0 £70.0. 0	£20.0. 0 £40.0. 0	£15.0. 0 £30.0. 0	£11.5. 0 £20.0. 0	£11.5. 0 <u>£11.5. 0</u>
£1000	£45.0. 0 £90.0. 0	£25.0. 0 £50.0. 0	£20.0. 0 £40.0. 0	£15.0. 0 £30.0. 0	£12.10.0 £20. 0.0
£1100	£55.0. 0 £110.0. 0	£35.0. 0 £70.0. 0	£25.0. 0 £50.0. 0	£20.0. 0 £40.0. 0	£15. 0.0 £30. 0.0
£1200	£65.0. 0 £130.0. 0	£45.0. 0 £90.0. 0	£35.0. 0 £70.0. 0	£25.0. 0 £50.0. 0	£20. 0.0 £40. 0.0
£1300	£80.0. 0 £160.0. 0	£55.0. 0 £110.0. 0	£45.0. 0 £90.0. 0	£35.0. 0 £70.0. 0	£25. 0.0 £50. 0.0
£1400	£95.0. 0 £190.0. 0	£65.0. 0 £130.0. 0	£55.0. 0 £110.0. 0	£45.0. 0 £90.0. 0	£35. 0.0 £70. 0.0
£1500	£110.0. 0 £220.0. 0	£80.0. 0 £160.0. 0	£65.0. 0 £130.0. 0	£55.0. 0 £110.0. 0	£45. 0.0 £90. 0.0
£1600	£125.0. 0 £250.0. 0	£95.0. 0 £190.0. 0	£80.0. 0 £160.0. 0	£65.0. 0 £130.0. 0	£55. 0.0 £110. 0.0
£1700	£140.0. 0 £280.0. 0	£110. 0. 0 £220. 0. 0	£95.0. 0 £190.0. 0	£80.0. 0 £160.0. 0	£65. 0.0 £130. 0.0
£1800	£155.0. 0 £310.0. 0	£125. 0. 0 £250. 0. 0	£110.0. 0 £220.0. 0	£95.0. 0 £190.0. 0	£80. 0.0 £160. 0.0
£1900	£170.0. 0 £340.0. 0	£140. 0. 0 £280. 0. 0	£125.0. 0 £250.0. 0	£110.0. 0 £220.0. 0	£95. 0.0 £190. 0.0
£2000	£185.0. 0 £370.0. 0	£155. 0. 0 £310. 0. 0	£140.0. 0 £280.0. 0	£125.0. 0 £250.0. 0	£110. 0.0 £220. 0.0

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Income	Single	Married -wife not resident in Nigeria.	One child.	Two child- ren.	Three child- ren.
£3000	£385.0.0. £770.0.0	£345. 0. 0 £690. 0. 0	£325.0.0 £650.0.0	£305.0.0 £610.0.0	£285. 0. 0 £570. 0. 0
£4000	£635.0.0 £1270.0.0	£585.0.0 £1170. 0. 0	£560.0.0 £1120.0.0	£535.0.0 £1070. 0. 0	£510. 0. 0 £1020. 0. 0
£5000	£935.0.0 £1770.0.0	£875. 0. 0 £1670. 0. 0	£845.0.0 £1620.0.0	£815.0.0 £1570.0.0	£785. 0. 0 £1520. 0. 0
£10000	£2810.0.0 £4895.0.0	£2735. 0. 0 £4775. 0. 0	£2697.10.0 £4712.10.0	£2660.0.0 £4650.0.0	£2622.10. 0 £4587.10. 0
£15000	£5310.0.0 £8645.0.0	£5210. 0. 0 £8495. 0. 0	£5160. 0. 0 £8420. 0. 0	£5110. 0. 0 £8345. 0. 0	£5060. 0. 0 £8270. 0. 0
£20000	£7810.0.0 £12395.0.0	£7710. 0. 0 £12245. 0. 0	£7660. 0. 0 £12170. 0. 0	£7610. 0. 0 £12095. 0. 0	£7560. 0. 0 £12020. 0. 0

SEA.

Figures in black indicate tax payable under the Schedule to Ordinance No.35 of 1941 (section 21).

Figures in red indicate the rates of tax proposed for 1942/43.

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C. O.

Mr. Pedler 29/1
at once

Mr.

Mr.

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT. Code tel

Gov

Lagos

Secret
No 112

Your telegram No 1196
para 7 and your
tel No 76. Company
box. I should be
prepared to approve
the raising of the rate
to a sum not
exceeding that payable
in the United Kingdom.
Secer.

C. D.
P29 JAN 1942
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FURTHER ACTION.

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by EPD 9 34

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COPY FOR REGISTRATION

Code telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 20th January, 1942.
R. 20th " " 21.10 hrs.

No. 76 Secret.

31 Your telegram No.1251 paragraph 4.

Taxable profits of foreign companies operating in Nigeria are estimated for the purposes of current year's assessment at about £160,000, of which about £146,000 represents profits of oil companies incorporated in America.

2. The effect of raising the rate of tax on such companies to 10/- in the pound would be to produce an additional potential yield of £40,000. United States companies concerned are Socony Vacuum, Atlantic West African and Texas Overseas.

Reference:-

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NIGERIA.
NO. 680

dupl
My Lord,

RECEIVED
JAN 1942

Government House,
Nigeria. **34**²⁴⁸
21 November, 1941.

20/11/41
I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 62 of 1941, entitled "An Ordinance to amend the Income Tax Ordinance, 1940", together with the usual report thereon by the Attorney-General.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

B. H. Amadi

G O V E R N O R .

Amadi (40)
THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S.W.1.
10/11

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 21st day of October, 1941.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 62



1941

Colony and Protectorate of Nigeria.

IN THE FIFTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE INCOME TAX ORDINANCE, 1940

Title.

[23rd October, 1941.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

Enactment.

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Short title.

1. This Ordinance may be cited as the Income Tax (Amendment No. 2) Ordinance, 1941.

Amendment
of section
8 of No. 3
of 1940.

2. Section 8 of the Income Tax Ordinance, 1940, is hereby amended by:—

(1) the deletion of paragraph (f) and the substitution therefor of the following paragraph—

“(f) notwithstanding any other provisions of this Ordinance, the first two hundred pounds of the income of any woman:

Provided that the Commissioner is satisfied that such income is the personal property of the woman;”;

(2) the addition at the end thereof of the following paragraph—

“(g) pensions granted to any person or persons under the provisions of the Widows' and Orphans' Pensions Ordinance.”.

Amendment
of section
14 (4) of
No. 3 of
1940.

3. Sub-section (4) of section 14 of the principal Ordinance is hereby amended by re-lettering paragraph (c) as paragraph (d) and inserting after paragraph (b) the following paragraph:—

“(c) The provisions of this sub-section shall not apply to gains or profits arising from the business of shipping carried on in inland waters only and by means of ships to which the provisions of section 24 of the Shipping and Navigation Ordinance apply.”.

Amendment
of section
23 of No.
3 of 1940.

4. Section 23 of the principal Ordinance is hereby amended by substituting the words “five shillings” for the words “four shillings and threepence” occurring therein.

Amendment
of section
24 (1) of
No. 3 of
1940.

5. Section 24 of the principal Ordinance is hereby amended by substituting the word “incorporated” for the word “registered” occurring in the first line of sub-section (1) and the second line of proviso (ii).

Amendment
of section
35 of No. 3
of 1940.

6. Section 35 of the principal Ordinance is hereby amended by deleting the words “four shillings and threepence” where they occur in the fifth line of sub-section (1) and in the sixth line of the proviso to that sub-section and substituting therefor the words “five shillings”.

7. Sub-section (2) of section 46 of the principal Ordinance is hereby repealed and the following shall be substituted therefor:—

Appeals to
the Board of
Commissioners
against
assessments,
and the
constitution
of the
Board.

Proviso.

“(2) (a) In lieu of an appeal to the court under sub-section (1) a person aggrieved may appeal against the assessment to a Board of Commissioners who shall be appointed by the Governor for such period and at such remuneration as may be prescribed.

(b) The Board shall consist of three persons, none of whom shall be a public officer:

Provided that if during any period owing to absence or inability to act from illness or any other cause any of such persons shall be unable to exercise the powers or perform the duties of a member of the Board the Governor may appoint some other person, who is not a public officer, to exercise the said powers and perform the said duties for so long as he may consider necessary and such other person may receive the remuneration prescribed for a member of the Board during that period.

(c) The Board shall appoint one of the members to be chairman and every decision of the Board shall be signified under the hand of the chairman.

(d) The Governor shall appoint some person to be secretary to the Board and all notices and documents other than decisions of the Board may be signified under the hand of the secretary.

(e) Any decision made by the Board shall be that of the majority of the Board and shall be final and binding upon all parties.

(f) The provisions of paragraphs (b), (d), (e), (f), (g) and (h) of the preceding sub-section shall apply to appeals to the Board under this sub-section in the same way that they apply to appeals under sub-section (1) as if references to a judge in the said paragraphs were references to the Board.

(g) Notice of an appeal shall be given in writing to the Commissioner within fifteen days from the date of the refusal of the Commissioner to amend the assessment as desired.

Amendment
of section
46 of
No. 3 of
1940.

References—

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(h) Notwithstanding the lapse of such period of fifteen days, any person may appeal against the said assessment if he shows to the satisfaction of the Board that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(i) The Governor may make rules prescribing the procedure to be followed in the conduct of appeals before the Board."

Amendment of section 53 of No. 3 of 1940. 8. Section 53 of the principal Ordinance is hereby amended by the substitution of the words "two months" for the words "forty-two days" occurring in the third line thereof.

Amendment of section 65 of No. 3 of 1940. 9. Section 65 of the principal Ordinance is hereby amended by:—

(a) the deletion of the last line of paragraph (b) of sub-section (1) and the substitution therefor of the following words—

"Nigerian Railway or any native authority or from the funds of any township;"

(b) the insertion after paragraph (b) of sub-section (1) of a new paragraph (c) as follows—

"(c) for the recovery of due and unpaid tax out of any monies in the hands of the Government, the Nigerian Railway or any native authority or township due to any officer or pensioner, or out of any gratuity payable in respect of the service or death of any public officer;"

(c) the re-lettering of paragraphs (c), (d) and (e) as (d), (e) and (f);

(d) the deletion of sub-section (2) and renumbering sub-section (3) as sub-section (2).

Retrospective effect of certain provisions. 10. (1) The provisions of sub-paragraph (2) of section 2 of this Ordinance shall be deemed to have come into operation on the 1st April, 1940.

(2) The provisions of sections 4, 6 and 7 of this Ordinance shall be deemed to have come into operation on the 1st April, 1941.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

P. F. CAMPBELL,
Clerk of the Legislative Council.

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on

A BILL FOR AN ORDINANCE TO AMEND THE
INCOME TAX ORDINANCE, 1940.

The short title of this Bill is the Income Tax (Amendment No.2) Ordinance, 1941, and in my opinion the assent of His Excellency may properly be given thereto.

2. The Income Tax (Amendment) Ordinance, ¹⁴³⁵ 1941, provided that the income of a woman up to £200 should be exempt from tax but that this exemption should be subject to the provisions of section 20 of the Ordinance relating to the calculation of the income of and the tax payable by married women which in effect meant that a man with an ^{? character} income of £40 with a wife with an income of £190 had to pay tax on an income of £230 i.e. £3.5.0 instead of only paying a flat rate of 5/- !! It is now proposed to exempt the first £200 of any woman in any case if such an amount is her personal property. It is also desired to exempt pensions granted under the Widows' and Orphans' Pensions Ordinance (Chapter 28). The provisions of clause 2 effect these amendments and by the provisions of clause 10(1) of the Bill the amendment relating to Widows' and Orphans' Pensions is given retrospective effect to the 1st April, 1940.

3. The exemption to tax granted by the Ordinance in section 14 as originally passed by the Legislature was intended for the benefit only of ocean-going shipping. Doubts arose as to the construction of the section in this respect and after some consideration it has been decided to amend the section again in order to have no doubt that the gains or profits arising from the business of shipping carried on in the

See Nos
27 & 28

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the inland waters of Nigeria are not exempted.

4. The rate of tax upon companies is now raised to five shillings in the pound, which is half the standard rate in the United Kingdom. This increase is effected by clause 4. In clause 6 a consequential amendment has been made also to section 35 of the principal Ordinance; by virtue of clause 10(2) these increases will be operative from the beginning of the current financial year.

5. Experience of application of section 24 of the principal Ordinance as regards deduction of tax at the source from company dividends has revealed that it is effective only in the case of companies incorporated in Nigeria instead of companies registered in Nigeria. Clause 5 makes the necessary amendment to bring the Ordinance into line with practice.

6. The Provisions of the Ordinance relating to appeals to a Board of Commissioners instead of the Court have been clarified; clause 7 of the Bill makes the required alterations.

7. The time within which the first instalment of tax becomes payable is extended from forty-two days to two months with the result that monthly servants have two pay days from which to collect the moiety of tax after the date of assessment. Clause 8 makes this amendment, and clause 10(2) renders it operative from the beginning of the financial year.

8. In clause 9 of the Bill provision for the making of rules under section 65 of the Ordinance has been clarified as regards rules for recovery of tax from public officers, thus rendering sub-section (2) redundant and it is accordingly repealed.

J. H. O.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
27th September, 1941

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C. O.

Mr.

Mr.

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

45
Revised sent 22.15 hrs 30/12/41
JH.

254

M
30.7.11.41
30 DEC 1941
31

DRAFT. TELEGRAM
(CYPHER)

GOVERNOR, *J8* (32)
NIGERIA.

No. *1295* Secret.

Your telegram No. 1287 Secret.

1. I approve your proposal that additional income tax yield should be lent to H.M.G.
2. It seems to me that you have in some degree misinterpreted my telegram No. 1235. What I wished to indicate in that telegram was that if, as seemed to be the case, ^{*most of the*} projects for local production put forward in your despatch No. 441 were economic propositions and simply required short term finance, the money could not properly be granted from the Vote but should be provided from Nigerian funds. In such cases there would be no question of Nigeria being compelled to find considerable sums in the sense that the money found would be irrecoverable

or

(16 on
30498/41)

(4 in 30498/41)

FURTHER ACTION.

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or indefinitely locked up. Nigerian money would in fact only be used for those projects on which Government would see its money back, possibly with interest, at an early date. If, on the other hand, you can show ^{contrary to} ~~(which is not stated in your despatch)~~ ^{the impression gained from your despatch.} that these projects or any of them are really schemes for development which require assistance by way of grant or long term loan, I see no reason why they should not be considered for assistance from Colonial Development and Welfare Vote. In these cases all that is necessary for you to do is to resubmit them in the form laid down and with the necessary financial particulars. I should then hope to be able to obtain for you the help required.

Secer.

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30231/41 32
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Cypher Telegram

Received
in
Registry



FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 20th December, 1941.
R. 20th " " 13.35 hrs.

No. 1287 Secret.

(31) Your telegram No. 1251. 30496/41
(10) - 30496/41 While your telegram No. 1235 is a serious disappointment to me, and makes it clear that this Government cannot rely to the extent promised by Dawe on speedy assistance from Development Fund for urgent development schemes connected with the war, and may be compelled to find considerable sums to finance future schemes, I do not wish to reconsider suggestion that additional income tax yield should be lent to H.M.G. While I realise that such a loan may be illogical in our financial circumstances I consider psychological effect of proposal on the Europeans, who will provide practically all the additional money, to be of the first importance. In fact all will be disappointed that money is only to be lent and not given.

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30231/41

257

C. O.

Mr. Grossmith 10/12/41

Mr. Williams 11/12

Mr. Caine 11/12

W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

CYPHER
DRAFT. CONF. CODE TELEGRAM.

*Mr. A. J. Dawe. 12.12

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Handwritten: M
18.11.41
No. 1251

19 DEC 1941
P

Handwritten: Replied
22.30 hrs
18/12/41

(30)

Your telegram No. 1196

GOVERNOR,

confidential. Income Tax.

NIGERIA.

I approve your proposals

I warmly appreciate the

response of Nigeria to the suggestions put forward in my circular despatch of the 5th June.

Company rate of tax. By increasing the rate above 5/-, the total tax payable by those companies liable to United Kingdom and Colonial income tax will not be increased, nor will Nigerian revenues benefit. The reply to paragraph 7 of your telegram, therefore,

turns

Handwritten notes:
Subject to reconsideration in the light of my telegram No 1235 of 10.11.41 your generous suggestion that the additional yield of approximately £25,000 should be set aside for the duration of the war.
WAR ©

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turns upon the question of the extent of the profits of the companies which escape United Kingdom tax. Can you give me an estimate of this? // Excess profits tax (Paragraph 8 of your telegram). This matter is also bound up with the question of how much the profits of non United Kingdom companies are and will be considered in connection with your reply to the above.

Secer.

(Handwritten mark)

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INCOME TAX.

1941/42

1942/43.

259

Rates for persons with taxable incomes exceeding £50.

		s. d.			s. d.
For every £ of first £200 ...		3	For every £ of first £200 ...		3
" " " " next £200 ...		6	" " " " next £100 ...		6
" " " " " £200 ...		9	" " " " " £100 ...		1. 0
" " " " " £200 ...	1. 0		" " " " " £400 ...		2. 0
" " " " " £400 ...	2. 0		" " " " " £400 ...		4. 0
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" " " " " £1000 ...	4. 0		" " " " " £1000 ...		8. 0
" " " " " £1000 ...	5. 0		" " " " " £2000 ...		10. 0
" " " " " £1000 ...	6. 0		" " " " " £5000 ...		12. 6
" " " " " £5000 ...	7. 6				

For every £ exceeding £10,000... 10. 0

For every £ exceeding £10,000 ... 15. 0

Married Allowance £200 -

no change.

Children's Allowance £25 each, up to 3 in number
When living outside Nigeria the actual cost of maintenance may be allowed up to £100 each and up to 3 in number

- no change.

Dependent's allowance.. This is new. It is proposed to allow up to £100 for expenditure incurred on maintenance and one dependant relative other than wife or child under specified age

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Orig. on 33083/2/H/Gambia

260

Cypher Telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 28th November, 1941.
R. 29th " " 01.05 hrs.

No. 1196 Confidential.

- 29 My confidential telegram No. 1154 of 19th November.
Income tax proposals for next year.
2. Scale of rates as in paragraph 4 thereof now recommended for approval.
 3. Proposal to reduce allowance for second and third child dropped, but propose instead to reduce allowance for wife to £100, at the same time retaining existing allowance of £200 where wife not resident in Nigeria.
 4. Propose to introduce new allowance, not exceeding £100, for expenditure incurred on maintenance of one dependent relative other than wife or child under specified age.
 5. Overriding minimum rate of 3 pence in the pound on taxable income will be retained, family allowances notwithstanding. This is essential for political reasons in view of direct taxation in the Protectorate.
 6. Difficult to estimate additional yield, tentatively put at £25,000, which propose should be lent by this Government to H.M.G. free of interest for the duration. Psychological effect of this considered important.
 7. I should be glad to have your advice whether, having regard to the statutory provisions for relief from double taxation, it would serve any useful purpose to raise company rate of tax above 5 shillings, with a view to increased taxation of those companies which escape the U.K. tax, for instance oil companies. Other local companies practically negligible. Your secret telegram No. 140 of 4th February refers.
 8. Reference second paragraph of your secret telegram No. 237 of 4th March regarding Excess Profits Tax, the considerations which led to deferment of such legislation appear to be unchanged except possibly as regards the oil companies referred to above and no action is proposed unless you direct otherwise.
 9. Explanatory despatch follows.

Proviso to
Section 22
2 Ord'ce
No 39 1940

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Orig. on 33083/2/H
Gambia

29
261

Cypher Telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 19th November, 1941.
R. 19th " " 23.30 hrs.

IMPORTANT.

No. 1154. Confidential.

Your confidential telegram No. 979 of 15th October.

Income tax.

Consider Gambia proposals too severe to apply to Nigeria, especially for incomes around £600, having regard to high indirect taxation and because income of many Europeans is at or near to reasonable subsistence level for West Africa.

Proposals now under consideration for next year and calculated to double the amount of tax on incomes over £500 unmarried and £800 married with children. Details provisionally as follows:-

first £200 threepence, next £400 sixpence, next £100 shilling, next £400 two shillings, next £400 four shillings, next £800 six shillings, next £1,000 eight shillings, next £2,000 ten shillings, next £5,000 twelve and sixpence, and over £10,000 fifteen shillings.

Propose to reduce allowance for second and third child to £50 each instead of £100, but allowance of £100 for one dependent relative.

These tentative proposals will be discussed in the Executive Council on 25th November and I hope to be able to telegraph my final proposals a few days later.

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27

3023 262

Conf. Code Telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 25th July, 1941.
R. 25th " " 23.25 hrs.

IMPORTANT.
No. 720 Secret.

25 Your secret telegram No. 683 Taxation of Internal Shipping Profits.

I propose to amend section 14(4) of Ordinance by inserting the following sub-section after sub-section (b).

"(c) The provision of this sub-section shall not apply to gains or profits arising from business of shipping carried on by means of ships granted a certificate of survey under Shipping and Navigation Ordinance for service in inland waters only".

2. I shall be grateful if you will inform me by telegram if you approve of these amendments as I am anxious to submit them to the Legislative Council meeting soon to be convened.

Received
in
Registry

26 JUL 1941

References -

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EXTRACT from Summary of Conclusions reached at a discussion with 263 the Secretary of State on the 17th June regarding various subjects proposed for discussion by Mr. Dawe during his forthcoming visit to West Africa.

30231/41.

* * *

18. Increase of taxation in Nigeria.

It was not clear what points Sir Bernard Bourdillon wished to raise but it seemed not unlikely in view of what was known of his general attitude that he would wish to discuss the desirability of a further increase in taxation, particularly income tax.

The Secretary of State thought it desirable that Mr. Dawe should discuss the question of taxation, with special reference to income tax, in all the Colonies concerned. As regards the Gold Coast he wished Sir Arnold Hodson pressed to lose no time in getting on with the introduction of an income tax Bill which could be based on the Colonial model. He wished the matter to be pressed on quickly.

Copy Aug. 21. 31080/3/41 G. Coats.

* * *

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23 30231/41

17 JUL 1941
U K

25

C. O.

Mr. Barton 16/7 see minute

Mr. A. J. Dave.

Miss G. Blake 16

Sir J. Shuckburgh.

Mr. Williams 16.7

Permt. U.S. of S.

Sir A. Burns

Parly. U.S. of S.

X Mr. G. L. M. Clauson 17/7

Secretary of State.

Mr. C. J. Jeffries

Ans'd 27

boxed & sent
16.30 hrs 17/7/41
J.H.

264

DRAFT.

~~Secret & item in code.~~
Code for Governor. hazard. No. 683 Secret.
20 - Your secret despatch 11th June. Income
Tax @ 1/6th in connection with Inland
24 - Revenue Department I agree to amend-
ment of Section 14 (4) of Income
3 of 1940 but wish to examine draft
before enactment. See

FURTHER ACTION.

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T. 2015/5/40

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[The above number and letter should be quoted in any reply, addressed to—

The Secretary,
Inland Revenue,
Imperial Hotel,
Llandudno.



INLAND REVENUE,
IMPERIAL HOTEL,
LLANDUDNO.

with the word TAXES in the left-hand corner of the envelope.

RECEIVED
12 JUL 1941
C.C. REGY

12th July 1941

Sir,

21

With reference to your letter 2025/41 of the 20th July regarding the taxation in Nigeria of profits arising to non-residents from shipping operations on Nigerian inland waterways, I am directed to say that the Department appreciates the force of the arguments for imposing tax in such cases and has no further comments on the proposal.

I am, Sir,
Your obedient servant,

Amey

The Under Secretary
of State,
Colonial Office,
LONDON S.W.1

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c.o.

DRAFT AND RECORD COPY

23

LETTER SENT

REGISTERED No.

Downing Street,
3 July 1941.

266

Dear Barton,

DRAFT

MR. Williams, *7.41.*

MR. _____
MR. _____

addressee

I received your letter of the 18th of June and have forwarded the enclosure for you. I am afraid that I was not able to ask the ~~A.D.C.~~ to send his reply to me for transmission to you by air, as I am told that I am not allowed to make use of the air mail for this purpose. I am sorry for all this red tape, but we are hoping before long to be able to get some relaxation of the rule which at present confines the use of the air mail to official correspondence.

With very kind regards and all good wishes,

Yours sincerely,

O. B. R. Williams

ENCLOSURES

FURTHER ACTION

To
A.E.V. BARTON, ESQ., C.B.E.

(6094) Wt. 25403-113 40,000 ea. 2 sorts 9/40 T.S. 495

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ASSOCIATION OF EUROPEAN CIVIL SERVANTS OF NIGERIA

P. O. BOX 330, LAGOS, WEST AFRICA.

18th June, 1941.

267

Recd 30 June

Dear Williams,

In my capacity as Chairman of the Association of European Civil Servants in Nigeria I spent a fair slice of my leave getting expert advice on questions relating to double taxation following on the passing of the Nigeria Income Tax laws 1940-1. I brought back with me what I thought were complete answers to the questions raised, but find that the advice received on the most important question of all is directly opposite to the experience of the first victim. As the matter is urgent and affects the whole civil service, I have taken the liberty of enclosing a letter on the subject addressed to the expert who advised the Association in the hope that you will be good enough in the special circumstances not only to cause it to be delivered but also to request the addressee to send his reply to you for transmission by air.

I trust that all is well with you. Out here things flourish - only people are getting rather more conscious that somewhere there is a disturbance of the peace.

With kindest regards and a hope that I am not trespassing unduly on your kindness.

*Yours sincerely,
A. E. V. Davison*

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DRAFT AND RECORD COPY

REGISTERED No.

30231/41.

LETTER SENT

DATE

3 July 1941.

268

DR.

MR. *W. H. ...* Sir, *Ans of 24*

MR. *W. H. ...* (10)

11.6.41
(20)

With reference to your letter No. T. 2015/5/40 of the 10th of March, I am directed by Lord Moyne to transmit to you, to be laid before the Board of Inland Revenue, a copy of a despatch from the Governor of Nigeria regarding the question of amending the Nigeria Income Tax Ordinance so as to make the profits on shipping operations on inland waterways liable to Nigerian tax.

2. The Secretary of State is much impressed by the considerations adduced by the Governor, and he does not think that the consideration of uniformity with other Colonies should weigh very heavily in view of the exceptional extent of inland shipping operations in Nigeria. In any case, it is difficult to see how there can be any true reciprocity in this matter between a Colony such as Nigeria and the United Kingdom.

3. Unless, therefore, the Board of Inland Revenue wish to offer any further observations, Lord Moyne is now disposed to agree to the introduction of legislation as proposed.

I am,
Sir,
Your most obedient servant,

Signed S. Whitcombe

To
THE SECRETARY,
BOARD OF INLAND REVENUE.

ENCLOSURES

FURTHER ACTION

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NIGERIA.

SECRET.

AIR MAIL.

Government House,

Nigeria.

11th June, 1941.

269

20

RECEIVED
23 JUN 1941
C. G. ...

My Lord,

With reference to the second paragraph of your secret telegram No. 270 of the 13th of March in which you requested that the proposal to amend section 14(4) of the Income Tax Ordinance [No. 3 of 1940], so as to make profits arising from the operations of shipping on inland waterways liable to income tax, should be deferred, I have the honour to inform you that I have now had an opportunity of considering the points discussed in your secret despatch of the 20th of March.

no. 18 on
1940 file

12

2. While I am reluctant, particularly at the present time, to press for local legislation which would have a beneficial effect on Nigerian revenues at the expense of the United Kingdom Exchequer and while I appreciate the desirability of uniform practice in regard to the exemption of non-resident shipping profits throughout the Colonial Empire, I feel that acceptance of a principle for the sake of administrative convenience should be resisted when its practical effect would result in a disproportionate and unjustifiable loss of potential tax revenue. In this connection I would observe that the principle enunciated in the fourth paragraph of your predecessor's despatch No. 541 of the 4th of November, 1940, regarding the exemption of the profits of United Kingdom shipping from colonial income tax being dependent upon the exemption of colonial shipping profits from United Kingdom income tax, when applied to internal shipping appears to operate greatly to the disadvantage of a Colony like Nigeria upon whose vast inland waterway system the volume of shipping in the ownership of non-resident companies is considerable. Furthermore Your Lordship will realise that no compensating benefits accrue to Nigeria in respect of resident shipping companies operating services either on the ocean or on the internal waterways of the United Kingdom.

no. 2 on
20/1686/40
Genl

3. A logical extension of the existing conditions of reciprocal exemption would lead to the anomalous situation in which a company formed in the United Kingdom for the express purpose of operating an internal shipping service in Nigeria would escape local taxation on profits derived solely from Nigeria. In my own view it would be difficult to justify this situation on any grounds or in any circumstances. Moreover, consideration of the radical and increasingly apparent changes wrought by the war which is providing Africans with unparalleled opportunities for establishing and operating local industries and particularly transport services leads me to the conclusion that it is only a question of time before the differential treatment of African and European-owned companies for the purposes of taxation will raise well founded protests in the Press and in the Legislative Council against a system which arbitrarily subjects to taxation the indigenous African concern for the benefit of Nigeria, while safeguarding for the United Kingdom Exchequer taxation on the profits of the non-resident companies engaged in precisely the same sphere of activity.

copy sent to B. J. P.
(21)

4.

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S.W.1.

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4. As regards the suggestion by the Inland Revenue authorities that legislation was being aimed at individual tax-payers, e.g. John Holt and Company, Limited, Your Lordship is aware that other commercial interests are involved extensively in inland water transport in Nigeria. The obvious danger arising from the grant of exemption from tax of these commercial transport services is that profits which might otherwise accrue to trading companies can easily be diverted to the inland water transport undertakings by means of adjustment of transport charges, an adjustment which is scarcely susceptible of control, and affording a wide avenue for avoidance of tax which I am most anxious should be closed.

5. In the light of these considerations, I trust that Your Lordship will agree that the question is deserving of further examination with a view to the introduction of a Bill to amend section 14(4) of the present Income Tax Ordinance so as to make the profits of all shipping on inland waterways liable to Nigerian tax.

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble Servant,

B. H. A. ...

G O V E R N O R .

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Regulate for record.

3

19

BEFORE THE WAR	CHANGES DURING THE WAR.				271
1	2	3	4	5	
Colony: Ordce 4/1937 as amended by 2/1939)	Ordce 28/1939	Ordce 3/1940.	Ordce 14/1940	Ordce 35/1941	
Prot: " 21/1931 " " " 3/1939)	Imposed a supplementary tax on persons as follows:	Introduced a more elaborate system providing, inter alia for deductions in respect of			
Ordce 14/1939	Persons	Wife ... £200 Alimony .. not exceeding £200 Children . £25 each Life insurance premiums . subject to prescribed maximum.			
	Companies	and prescribed a new scale of rates:- Adult males with income not exceeding £50 ... 5. 0. All persons with chargeable income exceeding £50:- For every £ of first £200 ... 3. For every £ of next £200 6. " " " " £200 9. " " " " £200..1.0. " " " " £200..1.3. " " " " £400..1.6. " " " " £600..1.9. " " " " £1,000..2.0. " " " " £2,000..2.6. " " " " £5,000..5.0. For every £ exceeding £10,000 ...10.0. Companies. On every £1 of chargeable income ... 2.6.	Ordce 14/1940	Ordce 35/1941	
Adult non-natives (Col. and Prot.): Adult male natives (Col.)	Chargeable income or portion thereof not exceeding £200 ... Nil.	For every £ of first £200 ... 3. For every £ of next £200 6. " " " " £200 9. " " " " £200..1.0. " " " " £200..1.3. " " " " £400..1.6. " " " " £600..1.9. " " " " £1,000..2.0. " " " " £2,000..2.6. " " " " £5,000..5.0. For every £ exceeding £10,000 ...10.0. Companies. On every £1 of chargeable income ... 2.6.		prescribed new rates for persons with taxable incomes exceeding £50:	
Chargeable income not exceeding £50 (Col. only) ...	Portion of chargeable income -	Raised rate of tax on chargeable income of Companies to 4.0.		For every £ of first £200 s.d. ... 3. " " " next £200 ... 6. " " " " 200 ... 9. " " " " 200 ...1.0. " " " " 400 ...2.0. " " " " 800 ...3.0. " " " " 1,000 ...4.0. " " " " 1,000 ...5.0. " " " " 1,000 ...6.0. " " " " 5,000 ...7.6 For every £ exceeding £10,000 .. 10.0	
Chargeable income Exceeding £ 50 but not exceeding £ 100...15. C. " 100 " " " 200 1.10. 0. " 200 " " " 300 3. C. 0. " 300 " " " 400 4.10. 0. " 400 " " " 500 6. 0. 0. " 500 " " " 600 7.10. 0. " 600 " " " 700 9. 0. 0. " 700 " " " 800 10.10. 0. " 800 " " " 900 12. 0. 0. " 900 " " " 1,000 13.10. 0. " 1,000 " " " 1,100 15. 0. 0.	Exceeding £200 and not exceeding £400 ... 1% Exceeding £400 and not exceeding £700 ... 2% Exceeding £700 and not exceeding £1,000 . 3% Exceeding £1,000 and not exceeding £3,000 . 4% Exceeding £3,000 and not exceeding £4,000 . 11% Exceeding £4,000 ... 12½%	and raised rate of tax on chargeable income of Companies to .. 4.3			
and for every additional £100 of chargeable income or part thereof ... 1.10. 0.					
Companies					
On every £1 of chargeable income ... 2. 6.					

increase in Companies tax to 5/- in 1/- approved by S. J. S. S. on 4/12/41

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NIGERIA.
SECRET.

18
The Chief Secretary to the Government of Nigeria presents his compliments to the Under Secretary of State for the Colonies and, with reference to the Secretary of State's Secret telegram No. 270 of the 13th of March and His Excellency's despatch No. 242 of the 17th of April is directed to transmit herewith a report by the Attorney-General on Ordinance No. 35 of 1941. 272

NIGERIAN SECRETARIAT,

LAGOS, 17 APRIL, 1941.

RECEIVED
24 APR 1941
O.O. REG¹

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assessment. Generally speaking, under the law as it stands today, income tax, in any year of assessment, is imposed upon the chargeable income of the previous year. This is the meaning of the provisions of section 6 of the Ordinance. Now it is thought that in a country such as Nigeria with a somewhat shifting population liable to tax, this method works with some difficulty both to the taxpayer and to those persons responsible for the tax collection. For example an individual on first arrival in this territory at, say, the middle of a financial year cannot properly be assessed upon the previous year's income (as described in section 5 of the Ordinance) for he has not yet received any; but if that individual leaves Nigeria in, perhaps, three years time he is liable for income tax for the year prior to departure and the incidents of collection of that tax are difficult for the collector and provide more inconvenience than really necessary to the person concerned. In short what is considered more desirable is that when an individual or person becomes liable to income tax he shall be called upon to pay that tax on the chargeable income only for the actual years or period during which his business or employment began and ended in Nigeria. The following table may serve to explain; the instances would be applicable to an individual earning a salary in Nigeria:-

Year of assessment.	Period.	Months of salary	Proposed basis of tax assessment.	Months of salary chargeable to tax.
1940-41	Arrives 1.10.40	6	1.10.40-31.3.41	6
1941-42	Whole year	12	1.10.40-30.9.41	12
1942-43	Whole year	12	1. 4.41-31.3.42	12
1943-44	Leaves 30.9.43	6	1. 4.43-30.9.43	6

It will be readily seen from this that the individual under the

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the proposed scheme will be able to complete his payments for the periods during which he actually drew the salary in question and can be finished with the whole question on his departure. Applying the same facts to the present method it will be observed that the individual will pay no tax for the first period, for the second he will be due for six months, for the third and fourth for twelve months with a balance of six months becoming due some considerable period after the date of departure.

5. Clause 3 of the Bill which repeals and re-enacts sections 6 and 7 of the Ordinance is designed to effect the change over. Sub-sections (9) and (10) of the proposed new section 6 are inserted to deal with the consequent change relating to deceased's estates and beneficiaries. The new section 7 is inserted to cover the question of apportionment of profits under the new basis. The new sections 6 and 7 are taken from the Ceylon Ordinance.

6. In order to remove any doubts as to the meanings of the words "income" as opposed to "chargeable income", and also to have a generic word applicable to representatives of a deceased's estate in whatever capacity, the word "income" has been defined; the definition of "chargeable income" clarified and the word "executor" inserted and defined. See clause 2.

7. It is proposed to amend the exemptions contained in section 8 of the Ordinance in two respects (a) to exclude from the fifty pounds allowed to non-residents, dividends, etc., taxed at source, and (b) to exempt from tax the first £200 of a woman's income. Clause 4 of the Bill makes this change and also admits incomes of trade unions and interest from Nigerian Savings Certificates to the list of exemptions.

8. By exempting the first £200 of an unmarried woman's

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woman's income it means that a woman's income only becomes taxable after the first £200 and thus she will in effect receive some allowance which she should not otherwise be able to obtain. Salaried/unmarried women are as a rule paid lower than men because they are not supposed to have the same responsibility; they cannot in common decency claim children's allowances yet in point of fact they frequently have to assist in the support of their parents. By exempting the first £200 of an unmarried woman's salary she will be given indirectly some consideration in lieu of the responsibility which she may have but for which no provision is made in the Ordinance. This exemption will affect many African women and a certain number of European missionaries and other charitable workers.

9. Section 11 will be seen to have been repealed and re-enacted by clause 5: the substance is the same but by an error "profession and vocation" was omitted in the first instance thereby possibly rendering the allowance inapplicable. The proviso has been reworded, also to remove doubts, and it was thought best to insert a new section.

10. "Super-tax" used in paragraph (g) is no longer the correct description of the tax. The proper word is "sur-tax" and the paragraph is amended by clause 6.

11. Clause 7 re-enacted sub-sections (3) and (4) of section 14. In sub-section (4) there was a power providing that the section should not apply to gains or profits arising from the business of shipping by means of ships granted certificates of survey under the Shipping and Navigation Ordinance for service in inland waters only but this provision was deleted in consequence of the Secretary of State's Secret telegram of the 13th of March. The two sub-sections were, however, nevertheless re-enacted

because

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because in the existing law the reference was to a "company"; that is now being changed to "person" which term includes companies and individuals.

12. In defining the word "income", referred to in paragraph 6 herein, that definition could not be made to suit either the use of the word in the proviso to section 19 or to section 22 and in the latter the words "chargeable income" were clearly wrong. It is considered therefore that the words "aggregate" and "taxable" are more suitable to the respective provisos and clauses 9 and 10 contain the amendments.

13. Due to the desirability of increasing revenue from income tax it has been considered necessary to raise the rate of tax both upon persons and companies. The Schedule to the Ordinance has therefore been repealed and re-enacted to contain the revised rates. It will be observed that increases are not imposed upon chargeable incomes of less than £800 and that the rate upon companies is to be increased by three pence. Clauses 11 and 21 of the Bill effect these increases.

14. The amendments effected by clauses 12, 13 and 14 to sections 26, 33 and 34 of the Ordinance are consequential upon the introduction of the new section 6.

15. By clause 15 a consequential amendment has been made in section 25; this section should also have been amended when section 23 was amended by Ordinance No. 14 of 1940 but it was overlooked; it is now correct.

16. By clause 16 there is added a new sub-section enabling the agent of the Commissioner in the United Kingdom to sign on his behalf.

17. Clause 17 is designed to clarify the provisions of section 40 relating to the service of notices upon the various persons or companies concerned.

18. By section 44 it is possible to apply for
permission

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permission to pay any tax to the appointed agent in the United Kingdom but it is considered of importance that the Commissioner should retain the right to say where the tax is to be paid even although assessment may be made in England. It is also convenient in the present state of communications that the Commissioner be empowered to direct service of notices in the United Kingdom but at the same time it is desired that by such procedure it shall not be possible for a corporate body to avoid penalty for non-payment through being beyond the jurisdiction of Nigerian Courts. The amendments effected to section 45(1) in clause 18 are designed to cover these points.

19. The amendment in clause 19 is consequential upon that to section 45(1).

20. Clause 20 corrects an error in sub-section (2) of section 55 and clause 21 which substitutes the new ^{of tax} Schedule of rates/has already been referred to in paragraph 13 of this report.

J. H. O.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
29th March, 1941.

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NIGERIA.

No. 242

RECEIVED
28 APR 1941
O.O. REGD

Government House,
Nigeria.

17 April, 1941.

17 279

My Lord,

I have the honour to transmit herewith,
for the signification of His Majesty's pleasure
with respect thereto, two authenticated and ten
ordinary copies of Ordinance No.35 of 1941,
entitled "An Ordinance to amend the Income
Tax Ordinance, 1940".

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

B. H. A. A. A.

G O V E R N O R.

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S. W. 1.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 5th day of April, 1941.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 35



1941

Colony and Protectorate of Nigeria.
IN THE FIFTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE INCOME TAX ORDINANCE, 1940.

Title.

[1st April, 1941.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

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to derive income from such trade, business, profession, vocation, or employment for the year of assessment following that in which the cessation occurs.

"(7) Where any person on a day within a year of assessment commences to draw income from a source not being a trade, business, profession, vocation, or employment to which sub-sections (3) and (4) apply, his income from that day to the end of such year shall be income for such year of assessment. Where a person on a day within the year preceding a year of assessment commences to draw income from a source not being a trade, business, profession, vocation, or employment to which sub-sections (3) and (4) apply, his income for such year of assessment shall be the income therefrom for one year from such day.

"(8) The income of any person ceasing to draw income from any source not being a trade, business, profession, vocation, or employment to which sub-section (6) applies, shall, for the year of assessment in which he ceases to draw such income, be the income for the period beginning on the 1st day of April in that year and ending on the date on which he ceases to draw such income, and he shall not be deemed to derive income from such source for the year of assessment following that in which he ceases to draw such income.

"(9) Where any person dies on a day within a year of assessment, his income for such year shall be the amount of income of the period beginning on the 1st day of April in that year and ending on that day, and the income arising from his estate from such day to the end of the year of assessment shall be income of his executor for that year of assessment, and for the following year of assessment the income of his executor from the estate shall be the income of one year from that day.

"(10) Where on a day within a year of assessment a beneficiary of the estate of a deceased person receives the capital amount of his interest in such estate, his income from that day to the end of the year of assessment from sources which formed part of the estate shall

be income of such beneficiary for that year of assessment, and his income from such sources for the following year of assessment shall be the income therefrom for one year from that day. The income of the executor from such estate as from the date on which the beneficiary receives the capital amount of his interest shall not include any such attributable to sources in respect of which the beneficiary is chargeable.

Apportionment of profits.

"7. Where in the case of any trade, business, profession, vocation, or employment it is necessary in order to arrive at the profits or losses of any year of assessment or other period to divide and apportion to specific periods the profits or losses of any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods."

4. Section 8 of the principal Ordinance is hereby amended by:—

- (1) the addition to paragraph (e), after the words "fifty pounds", of the words "other than dividends and mortgage and debenture interest subject to tax by deduction at the source in accordance with sections 24 and 35";
- (2) the deletion of paragraph (f) and the substitution thereof of the following paragraph:—
" (f) subject to the provisions of section 20, the first two hundred pounds of the income of any woman;";
- (3) the deletion of paragraph (o) and the substitution thereof of the following paragraph:—
" (o) the income of any trade union registered under the Trade Unions Ordinance, 1938 in so far as such income is not derived from a trade or business carried on by such trade union;";
- (4) the deletion of paragraph (p) and the substitution thereof of the following paragraph:—
" (p) interest paid or credited to any person by the Nigerian Post Office Savings Bank or in respect of any Nigerian Savings Certificates."

No. 44 of 1938.

Amendment of section 8 of No. 3 of 1940.

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of his chargeable income, the tax payable by him, and the place at which such payment should be made, and informing him of his rights under the next sub-section:

" Provided that where a person has applied under section 44 to be dealt with through the agents in the United Kingdom, and has applied for and been granted permission to make payment of the tax to such agent the Commissioner may direct that the notice of assessment shall be served by the agent in the manner above prescribed:

" Provided further that nothing in the above proviso shall affect the responsibility of the manager of any corporate body under section 41 for the payment of tax."

Amendment of section 53 of No. 3 of 1940.

19. Section 53 of the principal Ordinance is hereby amended by inserting after the words " shall be payable ", occurring in the second line thereof, the words " at the place stated in the assessment notice ".

Amendment of section 55 (2) of No. 3 of 1940.

20. Sub-section (2) of section 55 of the principal Ordinance is hereby amended by substituting the word " person " for the word " individual " wherever it occurs.

Repeal and re-enactment of First Schedule to No. 3 of 1940.

21. The First Schedule to the principal Ordinance is hereby repealed and the following substituted therefor:—

FIRST SCHEDULE.

(SECTION 22).

Chargeable Income.	Rate of Tax.
	£ s. d.
For every pound of the first £200	0 0 3
" " " " next £200	0 0 6
" " " " " £200	0 0 9
" " " " " £200	0 1 0
" " " " " £400	0 2 0
" " " " " £800	0 3 0
" " " " " £1,000	0 4 0
" " " " " £1,000	0 5 0
" " " " " £1,000	0 6 0
" " " " " £5,000	0 7 6
" " " exceeding £10,000	0 10 0

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

A. G. DALGLEISH.
Clerk of the Legislative Council.

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NIGERIA.

NO. 170

RECEIVED
25 APR 1941
O.O. REG^d

16 286
Government House,
Nigeria.
6 March, 1941.

My Lord,

Dupl.

I have the honour to transmit herewith, for the signification of His Majesty's pleasure, with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 14 of 1940, entitled "An Ordinance to amend the Income Tax Ordinance, 1940" together with the usual report thereon by the Attorney-General.

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble Servant,

Henry Marshall
GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
LORD HOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S. W. 1.

My

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 18th day of September, 1940.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 14.



1940.

Colony and Protectorate of Nigeria.
IN THE FOURTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE INCOME TAX ORDINANCE, 1940.

Title.

[1st April, 1940.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

Enactment.

Reference:-

CO 583/259/30231

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Short title and commencement.

1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance, 1940, and shall be deemed to have come into operation on the 1st day of April, 1940.

Amendment of section 23 of No. 3 of 1940.

2. Section 23 of the Income Tax Ordinance, 1940, is hereby amended by substituting the words "four shillings" for the words "two shillings and sixpence" appearing therein.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

A. G. DALGLEISH,
Clerk of the Legislative Council.

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R E P O R T
ON
A BILL ENTITLED "AN ORDINANCE TO AMEND THE
INCOME TAX ORDINANCE, 1940".

The short title of this Bill is the Income Tax (Amendment) Ordinance, 1940, and in my opinion the assent of His Excellency may properly be given thereto.

2. This Bill raises the rate of income tax payable by companies from twelve and a half to twenty per centum with effect from the beginning of the current financial year. The subject was referred to in the Secretary of State's telegram of the 31st August, 1940.

J. H. C.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
4th September, 1940.

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14 H

290

No.14. This is a device, is it not, for shifting the burden of taxation from Nigeria to the United Kingdom. The policy of allowing Colonies to raise company taxation to half the standard rate in this country, irrespective of their own rates, seems to have been approved, but I suggest that it needs reconsideration.

*He keeps at least
note on everything
over £3,000 p.a.
Sc*

My mathematics do not run to enabling me to do an accurate sum, but it is clear, is it not, that an individual in Nigeria would not pay at the rate of 5/- in the pound unless he had an income of well over £5000 a year. Now if this company tax was directed to Nigerian companies it would mean that nearly every shareholder would be entitled to a refund of the amount by which 5/- in the pound exceeds the rate at which he pays, and ~~nothing~~ *little* would be gained from the point of view of Nigerian finances.

It is, of course, directed at United Kingdom companies who will obtain at the expense of the Treasury here the whole of the 5/-. In other words, Nigeria will get the money and the taxpayer in the United Kingdom will pay it.

When Parliament made this generous gesture to the Colonies in respect of double taxation it was meant, I am sure, to apply to a normal and sound income tax scheme. A company tax under a scheme which contains a scale for individuals should be somewhere about the rate which the majority of individuals would pay. When you see the company tax put up to superscale heights you know it is done for an ulterior motive, and the motive if it be the one which I think it is, seems to be a mean one and not one to be encouraged.

H.B. 24.4.41.

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30231/41
14

COPY FOR REGISTRATION

Cable Telegram

FROM NIGERIA

FROM: Governor (Sir B. Bourdillon)
TO: Secretary of State for the Colonies.

D. 19th April, 1941.
R. 20th " " 02.00 hrs.

No. 365 Secret.

3 Your telegram 140 of
4th February Secret.

In view of increase of standard rate of taxes in the United Kingdom request approval to raise company rate of tax to 5/- at the next meeting of the Legislative Council, to be effective from 3rd April 1941.

Received
in
Registry

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30231/41.

(4232-150) WL 3585-61 25,000 12/39 I.S. 695
(5444-150) WL 45767-68 30,000 2/40 I.S. 695

19 MAR 19 - 12

292

C. O.

Mr. Sidebotham. 18/3/41.

Sir P. Abraham 18/3/41

Mr. Evans 18/3

Mr. Williams 19/3/41

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Daise.

Sir J. Shuckburgh.

Perm. U.S. of S.

Partly U.S. of S.

Secretary of State.

DRAFT *insert*

NIGERIA.

GOVERNOR.

Downing Street,
March, 1941.

SECRET.

20
ANSO 20

Sir,

I have the books

With reference to my Secret

telegram No. 270 of the 13th March

relative to the proposals contained

in your secret telegram No. 147 of

the 7th February for amending the

provisions of the Nigerian Income

Tax Legislation, I have, etc. to ^{inform} inform

you that my telegram under reference

above was despatched after consultation

with the Inland Revenue authorities

in this country. ^{with regard to} As regards paragraph

2 of my telegram, it has been pointed

out ^{by the Board of S.R.} that while it is quite true that

the essential object of double

taxation agreements regarding shipping

profits in the case of non-resident

shipping is to relieve the profits

of sea-going shipping, agreements

made by the United Kingdom with other

countries have never been limited to

sea-going as opposed to river shipping

and the United Kingdom would allow

exemption in respect of inland

shipping on the terms of the standard

agreement.

3. If Nigeria were to limit her exemption to sea-going shipping, the cost of relieving the double taxation

in

h Pa

FURTHER ACTION.

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in the case of inland shipping would fall. as it does now, on the United Kingdom Exchequer.

The Inland Revenue authorities have further urged that it is very desirable to have uniformity in Colonial legislation regarding the exemption of ^{non-resident} ~~non~~-shipping profits, and the question has also been raised whether it is desirable to introduce legislation aimed at individual tax-payers, ^{namely} eg. John Holt.

4. I should be glad if you would give these points further consideration and if, in the light of the above observations, you consider it desirable to pursue the proposal made in your telegram of the 7th ^{Feb} March, you will no doubt address me further. (4)

5. So far as paragraph 3 of my telegram of the 13th March is concerned, I may add that the ^{Board of} ~~Inland Revenue~~ authorities here have made the further comment that the Nigerian Law does not contain and does not require ^{specific} ~~subsequent~~ provisions dealing with the treatment of such foreign taxes as those referred to in that paragraph of my telegram. (11)

It has been pointed out that, in the case of a foreign company making profits in Nigeria, the Nigerian branch profits would be computed without any deduction for taxes subsequently payable in the foreign country; in the case of a Nigerian company making profits in a foreign country, the point would not normally arise, for foreign income is chargeable only to the extent that it is received in Nigeria, and the income available for remittance would normally be the net amount remaining after payment of the foreign taxes. It is considered that the National Defence Contribution should be dealt with on similar lines, and it is ^{further} observed that the prohibition of the deduction of National Defence Contribution might possibly be held to affect the bases of charge in the type of case referred to above.

For

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For these and for the reasons
stated in my telegram, I have expressed
the view that the amendment ^{which} ~~that~~ you
propose should not be made.

I have, etc.

(Signed) MOYNE

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30231/41

Conf coded & sent
2030 13/3/41 295

ANSO 20/41

C. O.

Mr. Litchman } 13/3

Mr. Evans

Sir J. Williams } 13/3
Mr. G. J. Jeffries

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

IMPORTANT.

No 270 Secret.

(9)

Your telegram 246. Income Tax.

(1) No objection to amendments proposed in para 1 of your secret tel 147.

(2) As regards para 2 of that telegram, agreements made with other countries by U.K. have never been limited to sea-going as opposed to river shipping and such legislation if enacted in Nigeria would be unique. In cases would prefer amendment to be deferred pending receipt of despatch which follows.

(3) National defence contribution is not part of U.K. Income Tax & provision is made for its deduction as an expense in computing profits or gains from trade or business.

Such contributions does not come within scheme for double income tax relief. In Nigeria it should be treated in same way as taxes of countries outside H.M.'s dominions in which no provision for double income tax relief exists. Proposed amendment therefore not to be adopted.

DRAFT. Conf. Code. (4)

for Lagos.

C. D.
R 13 MAR 1941
D 15

FURTHER ACTION.

Remi for 5/12/41

~~Copy to [unclear]~~

Am advised that

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T. 2015/5/40.

19

[The above number and letter should be quoted in any reply, addressed to—

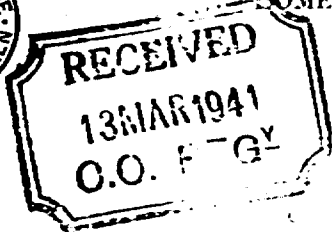
The Secretary,
Inland Revenue,
Somerset House,
London, W.C.2.

with the word Taxes
in the left-hand corner of the
envelope.]



INLAND REVENUE.

IMPERIAL HOTEL, LLANDUDNO,
SOMERSET HOUSE, LONDON, W.C.2.



10
296

10th March, 1941.

Sir,

5 1. I am directed to refer to your letter 30241/41 of the 15th February regarding proposed changes in the Income Tax law in Nigeria.

2. The Department has no comments on the proposal to charge tax on the basis of the income of the year of assessment for the commencing and ceasing years of trades and employments.

3. The second proposal relates to the reciprocal exemption from tax of the profits of non-resident shipping. It is quite true that, as the Governor suggests in his telegram, the essential object of double taxation agreements regarding shipping profits is to relieve the profits of seagoing shipping. Agreements between European countries have sometimes been expressly limited to seagoing (as opposed to river) shipping. On the other hand, agreements made by the United Kingdom with other countries have never been so limited, and the United Kingdom would allow exemption in respect of inland shipping on the terms of the standard agreement. If Nigeria limits her exemption to seagoing shipping she will be the only dependency to do so, and of course the cost of relieving the double taxation in the case of inland shipping will fall (as it does now) on the United Kingdom Exchequer.

4. It is very desirable to have uniformity in Colonial legislation regarding the exemption of non-resident shipping profits, but the Department cannot say that the limitation of the Nigerian exemption would violate any accepted principle. If the Secretary of State approves the proposed amendment he will presumably make it clear that the restriction should only affect shipping which is exclusively inland shipping - i.e. that it should not affect seagoing shipping which incidentally sails in inland waters. The only other point is whether it is desirable to introduce legislation aimed at a single taxpayer, as is apparently the case here; but this is outside the province of this Department.

5. The third proposal is to add National Defence Contribution to Section 12 (g) (not 12(c) as in the telegram) of the Ordinance, but the object of this proposal is not clear. Section 12 (g) prohibits any deduction for United Kingdom Income Tax and sur-tax merely as an incident of the scheme for relief from double taxation within the Empire. The National Defence Contribution is not part of the income tax of the United Kingdom and provision is made for the deduction of the amount of National Defence Contribution payable as an expense in computing profits/

Copy of paras 4 & 5 to Pallen (4/5873/4/41 Pal)

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profits or gains arising from the trade or business for the purposes of United Kingdom income tax. The National Defence Contribution does not come within the scheme for double income tax relief within the Empire.

297

6. For the purposes of Nigerian Income Tax, therefore, the National Defence Contribution should be treated in the same way as the taxes of countries outside His Majesty's Dominions for which no provision for double income tax relief exists. The Nigerian law does not contain, and does not require, specific provisions dealing with the treatment of such foreign taxes. In the case of a foreign company making profits in Nigeria the Nigerian branch profits would be computed without any deduction for taxes subsequently payable in the foreign country; in the case of a Nigerian company making profits in a foreign country the point would not normally arise, for foreign income is chargeable only to the extent that it is received in Nigeria and the income available for remittance would normally be the net amount remaining after payment of the foreign taxes.

National Defence Contribution should be dealt with on similar lines. The prohibition of the deduction of National Defence Contribution might possibly be held to affect the basis of charge in this latter type of case.

7. The volume of Ceylon Ordinances is returned herewith.

I am, Sir,
Your obedient Servant,

R. Lewis

The Under Secretary of State,
Colonial Office,
London.

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30231/41 G

COPY FOR REGISTRATION 298

CYPHER TELEGRAM

FROM Governor NIGERIA

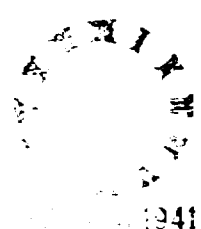
D. 11th March, 1941.
R. 12th " " 07.05 hrs.

No. 246

6 Your telegram No. 183.

4 Income tax. Legislative Council meets on the 17th March. Bill containing proposals explained in my telegram No. 147 of 7th February is being introduced and unless I receive instructions to the contrary I propose to proceed with enactment.

Received
in
Registry



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30231/41 Nigeria *Nig*

C. O.

Mr. Williams 28.2.41.

Mr. Caine 1.3.41.

Mr.

Sir A. Burns.

Mr. G. L. M. Clouston.

Mr. C. J. Jeffries.

X Mr. A. J. Dawe. 3.3.41.

Sir J. Shuckburgh.

X Permt. U.S. of S. 4/3/41

Parly. U.S. of S. D.

Secretary of State.

4-MAR
D L

Coded & Sent
18.30 hrs
4/3/41
RFB

299

No. 237 Secret.

DRAFT. TEL. (CODE).

GOVERNOR,
LAGOS.

conson. (v. minutes).

(1)
(u 1682/21/41)
1 Gen
7A⁰¹
then
file

Your telegram No.110 confidential.

I note increases in income tax rates proposed. Though it may be necessary for me to reopen the matter later I will not at this stage press for increased rates on lower incomes. In putting your proposals before the Legislative Council you will no doubt warn them that further sacrifices may be required as the war goes on.

In my telegram No.140 secret, proposed to raise rate of income tax on companies was approved.

FURTHER ACTION.

- (1) Copy to go on 1682/21/41 Gen. (3) on 30231 Nig.
- (2) Action as in para. 3 of Mr. Dawe's minute of 3.3.41
- (3) Recirc. for ~~mt.~~ reply to (2) and reply to (1) on 1682/21/41 Gen.

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CO 583/259/30231

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1	2	3	4

approved. Further consideration will be given to practical objections raised as regards excess profits tax and no action on that need be taken for the moment.

300

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71
Orig. on 1682/21/41 Gene.

301

CODE TELEGRAM

FROM

Governor

NIGERIA

D. 29th January, 1941.

R. 30th " " 02.30 hrs.

No. 110 Confidential.

Desirability of increasing revenue from Income Tax was already under review when your confidential circular telegram No. 252 regarding direct taxation arrived.

11 on 1682/40 Genl
20031/6/40
-sig.

1. Following proposals to increase tax on higher incomes during the next financial year have now been approved for submission to March session of the Legislative Council: (a) To 2/- on every £ of chargeable income over £800 but not over £1,200. (b) To 3/- between £1,200 and £2,000 (c) To 4/- between £2,000 and £3,000 (d) To 5/- between £3,000 and £4,000 (e) To 6/- between £4,000 and £5,000 (f) To 7/6 between £5,000 and £10,000, rate on incomes in excess of £10,000 will be 10/- per £ as hitherto. Estimated additional revenue resulting from these changes will be about £10,000 per annum. After full consideration of all factors particularly in view of high indirect taxation Executive Council has unanimously advised that the rate of tax on lower incomes is high enough and should not be increased. See paragraph 7 of my telegram No. 161 Saving of 12th November.

2. Excess profits tax. There are in my opinion insufficient companies operating in Nigeria not already subject to U.K. excess profits tax to justify setting up necessarily elaborate machinery for collection. In addition there would be considerable difficulty in determining pre-war standard of profits. Introduction of excess profits tax in Nigeria would only divert similar revenue from the U.K. and I feel that Nigeria is not a suitable field for application of such a tax. I have already reported in my telegram No. 94 of 27th January proposals to raise the rate of tax on companies from 20% to 25% and I think this should suffice.

3. Death duties. A bill for an estate duty ordinance has been in draft for several years but has never been proceeded with as there are numerous strong local and administrative objections to it. I am doubtful whether imposition of duties on estates would bring real benefit to the Exchequer and whether the time is yet ripe for taxation of realty outside Lagos. Present procedure is to make a charge on estates by means of a fee by rule of court under supreme court ordinance. This is not satisfactory and the whole subject is now being further examined.

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Personal

GOVERNMENT HOUSE,
LAGOS, NIGERIA.

Feb 7th

302

My dear Parkinson,

I hope that you will not think that our very modest proposals in regard to increase of Income Tax are inadequate, particularly in regard to the enormous sacrifices being borne by the tax-payer at home. But the financial benefit that would arise from any possible increase would be out of all proportion to the hardship inflicted. We could not get anything appreciable without hitting the lower paid people very hard - and I have just turned down an application from the European Civil Servants' Association for a cost of living bonus for those on less than £560 a year! The increased taxation on incomes over £800 is little more than a gesture, but I felt that this was demanded - in spite of the fact (which we all view with some amazement) that the European in the Gold Coast pays no income tax at all and, as a result of very light import duties, can still get his bottle of whisky for 12/6. Quite frankly, we regard this as a scandal!

Yours etc

R. H. B. Allen

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Pat
rs.
C. D.
14 FEB
14
(15972-150) WL 29406-96, 5,000 7/4 T.S. 695

30241/41. NIGERIA.

303

C. O.

Mr. Sidebotham. 13.2.41.

Mr. Evans 13/2

Mr. Williams 14.2

Mr. McAine 14/5
Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

15 February, 1941.

Sir,

With reference to your letter, T.2015/5/40 of the 8th of August, 1940 relating to the Nigeria Income Tax Ordinance, I am etc. to transmit to you, to be laid before the Board of Inland Revenue, the accompanying copy of a telegram from the Governor of Nigeria ^{on the subject of} ~~regarding~~ contemplated changes in the income tax legislation of that Dependency.

2. In connection with the proposed substitution of section 11 of the Ceylon income tax legislation for the existing sections 6, 7 and 34 of the Nigeria Ordinance, it has been noted that, in paragraph 2 of the memorandum which accompanied your letter under reference above, the Board saw no objection to an amendment of the Nigerian law to provide that there should be liability ^{to tax u. the form now} ~~to tax in periods,~~ ^{proposed,} and, subject to any further comments which the Board of Inland Revenue may desire to offer, it is proposed to approve the contemplated amendments.

2 DRAFT. S.
Important
THE SECRETARY,
BOARD OF INLAND REVENUE.
(25 on '40 file)

No. 147. 7.2.41.
(4)

Ceylon (Cap. 188.)

FURTHER ACTION.

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CO 583/259/30231
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A copy of the Ceylon legislation referred to is enclosed for perusal and return.

3. As regards the proposal in the second paragraph of the Governor's telegram, Lord Moyne would be glad to learn whether it is considered that its adoption would create any difficulties as regards the application of reciprocal arrangements with certain foreign Powers, whose vessels might conceivably use these "inland water ways" for the exemption from tax of shipping profits.

4. The proposal in the concluding paragraph of Sir Bernard Bourdillon's telegram does not appear to be open to any objection.

5. It is necessary to publish ~~the~~ draft legislation ~~making such amendments~~ in Nigeria prior to ^{its} enactment, and ~~in these circumstances~~ ^{as it is desired to introduce these changes with effect from the 1st April next} Lord Moyne would be grateful if an early reply could be sent to this letter.

I am, etc.,

O. G. R. WILLIAMS

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1682/41

COPY FOR REGISTRATION

Received
in
Registry



305

CONF. CODE TELEGRAM.

FROM

Governor

NIGERIA.

D. 7th February, 1941.

R. 7th " " 15.55 hrs.

No. 147. SECRET.

1682/2/41. My Confidential telegram No. 110 Income tax.

1682/40 file
Copy to 1682/41
As foreshadowed in paragraph 17 of my Secret despatch of 30th March, 1940, I propose to introduce at next meeting of the Legislative Council amending Ordinance providing for cancellation of present Sections 6, 7 and 34 and substitution therefor of provisions of Section 11 of Ceylon Ordinance No. 2 of 1932 so as to enable the tax to be assessed on actual chargeable income of persons and companies for the year of the beginning and cessation of business or employment in Nigeria. This together with consequential amendments will meet complaints of pensioners and others on whom rigid provisions of present law bear heavily and will eradicate other anomalies and difficulties which have been apparent particularly in the assessment of companies.

20/1682/41
3145
I also propose to amend Section 14(4) so as to make profits arising from shipping used on inland waterways liable to tax. John Holt's who own fleet of steamers on inland waters have invoked this Section to claim exemption from the tax on their profits from this source. Contents of your despatch No. 841 of 4th November, 1940, being used to reject claim but it is obvious from Colonial Office despatch No. 102 of 18th January, 1935, that reciprocal exemption is only intended to benefit ocean going shipping.

Propose to add National Defence Contribution to Section 12(c) of Ordinance. Request telegraphic approval to proceed with the above changes to have effect from 1st April next.

Reference:-

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(3449-15) WL 46252-29 22,000 3/39 T.S. 695
 (4717-150) WL 21863-31 10,000 8/39 T.S. 695

30231.

3

*Added sent
 18.15
 2/14/41*

C. O.



Mr. Wilson 4.2.41

Mr.

Mr. Cairne 4/1/41

Mr. A. J. Dawe.

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Amnd 14

MTC

14 FEB 1941

306

No. 140 Secret

(1) you tel No 94 Secret

I'm advised w
 increase of tax above
 four shillings and three
 pence would be ineffective
 suggest ~~an~~ increase to
⁵/₃ which could be
 reconsidered in event
 of U.K. rate being
 advanced.

DRAFT. Tel (Code)

*Proprietor
 farmer*

Lagos

FURTHER ACTION.

*copy to go on
 16/2/41 gen*

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COMMUNICATIONS SECTION

307

CODE TELEGRAM

FROM

Governor

NIGERIA

D. 30th January, 1941.
R. 30th " " 22.45 hrs.

Unnumbered.

~~11 302314~~ telegram No. 94.

No. 1. Reference should read your circular telegram Confidential No. 252 of 27th December 1940. Regret previous omission. *1/82/40*

Recd
in
Rec

31 JAN 1941

Reference:-

CO 583/259/30231

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COPY FOR REGISTRATION

308
END.

Received
in
Registry
28 JAN 1941

CODE TELEGRAM
Governor

NIGERIA

FROM

D. 27th January, 1941.
R. 27th " " 16.25 hrs.

No. 94 Secret.

1692/40
3039/40
1027/40
1040
3034/40
Am replying separately to your confidential telegram No. 252 regarding direct taxation, explaining proposals for increased income tax. Among the proposals is one for increase of tax on profits of companies which now stands at four shillings as advised in your telegram of the 31st August last No. 1051. It is desired to raise this to five shillings but as this is in excess of half the U.K. standard rate effect of section 48 of income tax ordinance No. 3 1940 would presumably be to render increase ineffective above four shillings and threepence in the pound. Shall be grateful for advice as to this as early as possible by telegram.

Reference:-

CO 583/259/30231

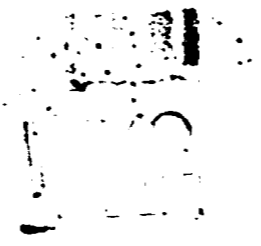
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30231

CLOSED
UNTIL



30231

1

Income Tax

Representations by Pensioners

Previous

1940.

M. OGR Williams

Mr. Sumner (P)

98

6/1
1/3

Subsequent

R35

Mr. Sidwell

Mr. Williams

Mr. Sidwell

Mr. Williams

9/5
4/3

13/5

15 1/5

Mr. Sidwell

Mr. Williams

Mr. Williams

Mr. Williams

6/6

6/6

4/6

6/6

30231/1

CLOSED UNTIL

1992

1942

NIGERIA

30231/1

Income Tax

Representations by Pensioners

Previous	R98 Mr Pedler Mr O.R Williams	3/1/42 6/1 12/1
1940.	R98 Mr Sumner (P)	4/3 11/3
Subsequent	98	
	R98	8/5
	Mr. Sidebottom	9/5
	Mr. Evans	13/5
	Mr. Sidebottom	13/5
	Mr. Williams	15/5
	C.D.	15/5
	R95 L	17/5
	98	5/6
	Mr Sidebottom	6/6
	Mr Evans	6/6
	Mr Williams	7.6
	R94	13.6
	Mr. Williams	14/6
	R295 (A) + (P)	17/6
	295D	2/0

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C. of.
Taxation

1 Bird.

5. 5. 41.

2

(I would prefer to
omit for reasons
explained to Mr.
Siddham)
Culver

I do not see what we can do about this
man's case see No 18 on Bureau file
[beyond pointing out that as already
been explained to him that double payment
of tax will not be ordered], what we
tell him that the I. P. has no power
to remit the sum due but that a
copy of his letter is being forwarded
to the Gov. In reading it we
might I think draw attention to A
in para 3 of our copy dated of the 4th
Jan 1940 (No 43 on 30231/1/39)
in which we suggested the spreading
of tax over a period, and to which so
far as I can trace no reply has ever
been received with the result that
Sir R Smith to Cunningham &
his Dewley have never had any further
reply from here [It may of course
be that my own has communicated
with them direct as they have not apparently
approached us further].

J. R. Smith
Culver 9/5
12/5

2 to E. C. S. Bird

17/5/41

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3 To the Comf (copy 1 encl 2) was ^{19/8} 2A
19/5/41

MM

4 Sir W. Buchanan Smith — 1. 6. 41.

I think we must bear Nigeria's losses
this (These must be many others quite
as to the ^{placed with this country} ~~of~~ Sir W. Buchanan Smith,
as the result of air raid damage).

I should send to the Nigeria asking
what reply it is desired should be
made, & tell Sir W. Buchanan
Smith that his letter is being
referred to the Nigeria for comment
& promise a further reply when
the final answer is received.

J. B. Smith
6/6

~~Let me see it~~
Always
7/6

Let me see it

O.G.R.W. 7.6.41 closed
5 Sir W. Buchanan Smith — 17.6.41

6 To Nigeria 206 (w/c 4) ^{20/10} cons 20.6.41.

MM

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R602

PP put up
App. Ref in
Para 7

W 1/2

Nigeria Conf(A)

24. 7. 41.

Mr. Barton

2 B

X of para 1 of No. 7. reads rather oddly against 18 on 30231/1/40 admits that the year 1939/40 was exceptional owing to the imposition of a heavy sur-tax. I do not see how Mr. Bird could have foreseen his total liabilities and made arrangements in advance to meet them, even if he had wished to do so. We cannot, I think, use this argument in replying, but simply inform him in answer to No. 1. that the Governor has now replied sympathising with Bird's reluctance to meet his obligations by selling his War Savings Certificates, but observed that Bird is no more unfavourably placed than other pensioners retiring at about the same time, and that he cannot consider that he is entitled to receive special treatment, and has therefore requested that ~~he~~ should pay his Income Tax without further delay.

✓

✓

As to Mr. Bird's argument about "no taxation without representation", add something on the lines of X of No. 26 on 30231/1/39.

✓

As regards the other persons to whom replies are outstanding - see para 6 of No. 7, Sir Robert Smith, M.P., last wrote in November 1939, and we have heard nothing from him following No. 26 on the 1939 file. We can I think wait for him to raise the matter again if he wants to.

✓

Mr. Cunningham wrote in November 1939 - see No. 27 on the 1939 file - and we answered in December saying that his representations as regards payment of tax in one instalment was being referred to the Governor. The Crown Agents informed ~~him~~ that he had actually paid up his tax in November 1939, and they have since collected some further amounts from him. I think we might leave that case well alone.

A/

As regards Mr. Bewley's question - see No. 30 on the 1939 file - I suppose we had better ask the B.I.R. what the position is as between the U.K. and Eire unless the point has already risen in connection with the Income Tax Leg. of some other Colony, as there may possibly be need for some special arrangement for Nigeria.

Can you please advise ?

B/

On the general question of the Governor's refusal to undertake payments by instalments, I can sympathise with the administrative difficulties, but I feel there are circumstances in which instalments ought to be allowed. Unless however we have insisted on instalment arrangements for the payment of Income Tax in other Colonial Dependencies, I am doubtful whether we can press Nigeria on the matter.

Can you please advise ?

J. B. Lockhart

26. 8. 41.

K. H. P.
Any info on A/ or B/ above?
J. H. M. Taylor
28. 8. 41

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not in the Dept. reports on amorphous 2^c
predecessors. Max Dalton
8-9-41.

Mr. Sideman

Your memo of 26.8.41, I agree with
the action you propose. As regards
A/ & B/ we can find no info re
predecessors; & I think:-

A/ should go to the BIR for the
information you suggest.

B/, unless there are strong reasons
to the contrary, we should ask the
Governor to allow payment by
instalments in genuine individual
cases. There is no point in being
harshly administering to some
tax law, & I know that in
the U.K. collection is often by
instalments as it is in other
countries.

Max Dalton
8-9-41.

In the first instance Mr. Cresswell of BIR
put the print ^{reproduced} in para 6 of the memo
drop to them with a copy of Mr.

Bowling's letter no 30 in the 1939 file
asking for their views on comments
to the India. (Mr. Dalton to Mr. Cresswell).
Also Mr. Cresswell to Mr. Bird of no 1

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on the file) applying on the lines proposed
in the last 2 paras of my minute of 25/8
above. (Mr. Bartons was with 27/5)
The point at 4 in Mr. Bartons minute should be
considered further J.B. Smith
when the above letter has gone off & file
should refer to this.

- 8 To E. C. Bird ————— 23.9.41.
- 9 To B. J. R. ————— W.C. to 30 on — 23.9.41.
30231/1/39.

10 Nigeria 521 ————— 29.8.41.

Recirc. u. draft
2/8

The answer to Sir W. Buchanan Smith's
representation is, I suppose, what
was to be expected.

I imagine it is impossible to
speed up the payment by UK
Authorities of rebate in
respect of the Colonial I.T.
paid by the pensioners.

? Convey the substance of No 10
to Sir W. Buchanan Smith as
fully as possible

C.H. Parnwell
24/9/41
K.W. Blaxter
30/9

Sir Walter has had a very unfortunate
experience, but so have many others
& I do not think that any other reply

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Calls recently to expected.

Let me see if

at once

O.G.R.W. 1. 10/41

11/11/41 at once

3

11 To Sir A.B. Smith _____ 10/10/41.

12 To Nigeria - No 322 - (W/C 11) - C/1c 13 OCT 1941
L/H

13 Bird _____ 26. 9. 41.

14 J.R. _____ 16. 10. 41.

No 13. Mr Bird has been in & out of town from time to time about J.P. He doesn't expect a reply to No 13. But the point at X in his letter can be looked up at leisure, from the Red Nigeria Handbook.

No 14. Let us ^{not} discuss + dispose of the J.P. point raised in para 6 of No 7. The question about payment by instalments can be raised by Mr Barton on 1/9/41 can be taken up as a general matter later.

C. J. [unclear]
3/10/41
at once

15 To Boy J.R. (14 and). 12. 11. 41.

16 To Nig boy (we q w/mt end. C 14 and.)
13/11/41

Recd

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C0 583/259/30231/1

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Revised draft for comment on the question
of payment of I.T. by instalments.
Perhaps Mr. Dept would assist
with a description of the method
used in the case of Post Offices
in the U.K.

C. J. Foxworth
17/11/41
at

I have added a para. to the despatch
explaining the problem as regards some built
dwelling and premises. If it is desired
to give the Governor greater details of
the practice in this country it would
probably be better to refer him to the
legislation on the subject. This does not,
however, seem to be necessary. It would probably
be more helpful to send copies of Colonial legislation
(eg. Ceylon: S.S.).

H. J. G. Jones
15/12/41.

I suspected that any system of monthly
deductions might involve additional work for the
Crown Agents. They confirm that it would, and that
it would completely upset their system of payments
and would not fit in with the forms they use. These
payment forms are prepared on machines and the whole
process is mechanical. Mr. Abbott said that with
their present staff they would not be able to cope
with monthly instalments.

Nigeria used to collect quarterly, but for
some reason (perhaps because they did not get the
assessments ready in time) they are now doing it
half-yearly. In no Colony is a monthly deduction
made. In West Indian cases the tax for the whole
year is deducted in one lump sum; Kenya, Uganda,
Tanganyika Territory, Zanzibar, Northern Rhodesia
and Nyasaland have quarterly deductions, and Crown
Agents could manage quarterly deductions for Nigeria.
I feel, therefore, that before sending this despatch
to the Governor we should consult the Crown Agents
as to the effect on them of payments by instalments,
otherwise, if Nigeria agrees, we are likely to be told
by the Crown Agents that they cannot do it without
extra staff. I am inclined to think that quarterly
deductions is as far as we should go.

J. H. G. Jones.

19th December, 1941.

Lead to Mr. Abbott, Crown Agents, by
minute, an extract from No 7
(paras 4 & 5) & a copy of the proposed

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resp. to Nigeria, & say that we
should be grateful for his comments

C. A. Foxworth
20/12/41

5

14 To Abbott C. R. M. / copy extract from no. 4 & draft despatch -
29.12.41

1942

18 C. A. P. 1690/14. % 2.1.42.

Nos. 7 and 18 read together establish
a very strong case for taking no further action
with regard to payment by instalments. With
regard to the Crown Agents' suggestion that
'complainants do not return to the charge', it is
significant that the last complaint received by
us is No. 4 dated June 1st. The deductions
made at the end of October and at the end of
December have passed without bringing any further
correspondence. ? Put by.

F. J. Pedler

6.1.1942.

Discussed with Mr. Pedler. Put by as proposed
about O. G. R. D. 12.1.42

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P/690/14.

18

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C. A. Grossmith, Esq.,

Colonial Office.
(Park Street)

17

Your minute dated the 29th December, No.30231/1/41, enclosing an extract from a despatch from the Governor of Nigeria regarding the question of allowing Nigeria pensioners to pay their Nigerian income tax by instalments and also the draft of a despatch in reply to the Governor on which our comments are invited.

2. We have studied the text of the draft despatch and we should like to offer the following comments. Our experience is that the volume of complaint excited by the method of collection adopted in Nigeria has been small, and the arguments almost always based on a misapprehension. After having been given an explanation of the provisions for relief from double taxation, and still more, after having experienced the promptitude with which Dominion relief is allowed by the Inland Revenue here, complainants do not return to the charge. It is in fact difficult to feel that any real hardship exists.

5.14 on
1939 file

3. The reason why collection in one annual instalment was originally adopted in the case of Nigeria was explained in our minute to the West African Department dated 27th September, 1939, to which we had a reply dated the 17th October, 1939, No.30231/3/39. Subsequently, the rate of tax was raised, and it was suggested by the Government of Nigeria, and accepted by us, that collection should be made in two instalments annually instead of one.

4. It is true that, in the case of Ceylon, Kenya and some other Colonies quarterly collection has been agreed as a reasonable compromise between the claims of pensioners and those of administration; and if it were decided that quarterly collection was desirable in the case of Nigeria also we should feel obliged to agree, although our opinion that the additional work involved would be out of proportion to the degree of hardship of bi-annual collection coincides with that of the Governor.

5. We could not in any case in present circumstances undertake collection by monthly instalments because of the further disturbance which this would cause in the mechanical process of preparing forms. The expense of this work, for which no charge is made (we refer not to the business alone of collecting income tax but to the whole undertaking of paying pensions, allotments and salaries, with ancillary deductions and adjustments) makes it necessary for it to be simplified and mechanised

/to

mu
11

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to the greatest extent possible. Monthly deduction would mean making additions by hand to mechanically produced payment forms every month instead of twice or at most four times a year, and a corresponding increase in labour in balancing and bringing to account the proceeds of collection, none of which could be undertaken with the staff available at present.

6. There would not be, so far as we are concerned, any particular objection to monthly collection as a special concession in a few genuine individual cases, if such occur, but we are convinced that on the whole the alleged hardship is far more apparent than real, and the comparison with the practice as regards the heavy basic liability to United Kingdom tax, referred to in paragraph 3 of the draft despatch, is perhaps rather misleading.

Amthor

Pay Department,
Crown Agents' Office,
2nd January, 1942.

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C. O.

Mr. WHITCOMBE. 12.12.41.

Mr. Bryant 15/12/41

Mr. De Groot

Mr. Grosmith

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Wait.

Downing Street,

December, 1941.

DRAFT. DESPATCH.

CONFIDENTIAL.

NIGERIA.

GOVERNOR.

Sir,

I have the honour to refer to previous correspondence on the subject of the liability of pensioners for Nigerian Income Tax on the pensions paid to them from Nigerian Funds, and, in particular, to the 4th and 5th paragraphs of your confidential (A) despatch of the 24th July regarding the question of allowing payment of the tax to be made in instalments.

2. I note that you do not feel able to recommend any modification of the present arrangement whereby pensioners are required to pay tax in one or two lump sums according to whether they draw their pensions quarterly or monthly.

I appreciate the considerations which have led you to this conclusion; but I cannot help feeling that rigid adherence to the system of lump sum payments, while of little or no advantage to Government, will, in the prevailing conditions and cost of living, almost inevitably cause avoidable hardship in the case of persons with small incomes.

in all cases

I think, therefore, that notwithstanding the additional administrative and accounting work involved, some modification of the existing system of collection should be adopted so as to permit of payment being spread over a period in genuine individual cases. I shall accordingly be glad if the position may be re-examined

FURTHER ACTION.

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re-examined with this object.

9

3. I am advised that methods of collection by instalments have been successfully adopted in other Colonies, and the method is also in general use in the Home Service. ^{in this country} ~~is also in general use in the Home Service.~~ For the guidance of your advisers, I enclose a Note which has been prepared in the Colonial Office outlining the method of collection in the Home Service.

~~I have etc.,~~

Home Civil Servants and pensioners are concerned, approximately one quarter of the liability of the year is deducted each quarter, the monthly issues to the officer being one third of the net salary or pension due for the quarter after the deduction of the tax. In the case of weekly paid staff the collection of the amount due for the quarter is spread evenly over the thirteen weeks of the quarter. The liability of colonial Civil Servants paid through the Crown Agents of the Colonies is spread as evenly as possible over the year. The practice in all cases is to ensure that the full liability of the year has been covered by the end of the financial year although in cases of exceptional hardship it is possible to arrange to spread the liability over the period to the following 30 September.

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30231/1/41. Nigeria.

16 10

C. O.

Mr. Whitcombe

10/11/41.

Mr. Gossett

Mr.

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dave.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.D.
R 11 NOV
D 11 -

DRAFT. DESPATCH. CONF.

GOVERNOR,
NIGERIA.

Downing Street.

13 November, 1941.

Sir,

(7)
(9) without enclosure.
14 with enclosure.

I have the honour to refer to the 6th paragraph of your Confidential (A) despatch of the 24th of July on the subject of the liability for income tax of pensioners of the Government of Nigeria, and to transmit to you the enclosed copies of correspondence with the Board of Inland Revenue regarding the question of relief from double taxation in the case of persons resident in Eire.

I have, etc.,

(signed) MOYNE.

FURTHER ACTION.

Reserve v. min

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30231/1/41.

C. O.

Mr. Whitcombe
10/11/41.

Mr. Gorman

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dave.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 11 NOV.
D 11 -

11

DRAFT.

The SECRETARY,
Board of Inland Revenue,

Downing Street,

12 November, 1941.

Sir,

I am etc. to acknowledge
the receipt of your letter T2015/21/41
of the 16th of October regarding the
question of relief from double taxation
in respect of persons resident in Eire,
and to request you to convey to the
Board of Inland Revenue, an expression of
his thanks for their assistance in this
matter.

I am, etc.,

Appt. C. G. R. Williams

20/11/41
FURTHER ACTION.

*Review
v. min*

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T 2015/21/41

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14 12

[The above number and letter should be quoted in any reply, addressed to—

The Secretary,
Inland Revenue,
Imperial Hotel,
Llandudno.



INLAND REVENUE,
IMPERIAL HOTEL,

LLANDUDNO.

with the word "REPLY" in the top-hand corner of the envelope.]

RECEIVED
17 OCT 1941 16th October, 1941
C.O. REGY

Sir,

9

apply to reg 11 & 12
and 13

In reply to your letter 30231/1/41 of the 23rd September, I am directed to inform you that the question of relief from double taxation as between the United Kingdom and Eire is governed by the Agreement reproduced in the Second Schedule to the Finance Act 1926 and the amending Agreement reproduced in the Fourth Schedule to the Finance Act 1928. The effect of these Agreements is that—

- (a) a person resident in the United Kingdom and not resident in Eire is exempt from Eire tax;
- (b) a person resident in Eire and not resident in the United Kingdom is exempt from United Kingdom tax;
- (c) a person resident in both countries receives double taxation relief from both countries on lines somewhat similar to the relief provided by Section 27 of the Finance Act, 1920.

The/

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The Eire Finance Act of 1941 has altered the position regarding double taxation relief for Eire residents deriving income from sources within the Empire (other than the United Kingdom or in the United States of America).

A Copy of Section 3 of the Act is enclosed, from which it appears that a person in Mr. Bewley's position may, for 1941/42 onwards, be entitled to a measure of relief from Eire tax on account of the payment of Income Tax in Nigeria. Whether in the particular circumstances of this case he is in fact entitled to relief, and if so to what relief, is of course, a matter for the Eire authorities.

I am, Sir,
Your obedient Servant,

The Under Secretary of State,
Colonial Office,
London S.W.1.

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Gen. The Librarian

Sep. 26 1941 13

RECEIVED
26 SEP 1941
C. O. REGY

P.C.

15

Sir,

1. I have to acknowledge receipt of your letter No. 3023/1/41 of the 22nd inst and will, as I remain respectful, pay to the Nigerian Government the money which they claim is due from me.

2. May I be allowed to correct a wrong impression which appears to have been gathered by you from this correspondence. It is that I desired that special consideration should be given to me personally.

I did not so desire, but I wanted to ventilate a grievance under which many persons from the Colonies suffer, viz. that because they are persons from the Colonies they pay more income tax on an equal pension than they would if they were persons from any the service of the Colonial Office. This matter remains a grievance.

3. I am sure that the Financial Secretary of Nigeria believed he was stating a fact when he said, on the introduction of this Bill into the Legislature, that the final income of pensioners would not be affected by its provisions. I am also sure that that was the intention. That it is not the case is an error.

X

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which must, at some future date, receive
correction.

I am, Sir,

Your obedient servant.

Wm. Bird

The Under Secretary of State.
Colonial Office.

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30231/1/41.

(*5972-150) WL 19406-96 5,000 7/40 T.S. 695

C. O.

Mr. S. Whitcombe. 4/10
Mr. G. G. Smith 7/10
Mr. Williams 7.10.41
Sir A. Burns v. m. m.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

X Permt. U.S. of S. 10.41
X Parly. U.S. of S. 9.10.41

Secretary of State.

C. D.
R 10 Oct.
D 10 -

17

Mr. G. L. M. Clouston.

X Mr. C. J. Jeffries. 8/10

10 October, 1941.

Sir,

DRAFT. Letter. (5)

With reference to ^{the} ~~our~~ letter ^(in this Dept.) of the

Sir Walter Buchanan Smith,
C.M.G., M.C.,
Constitutional Club,
Northumberland Avenue,
W.C.2.

17th June, I am directed by Lord Moyne to inform you that he has now received a reply from the Governor of Nigeria with regard to the representations contained in your letter of the 1st ~~ix~~ June on the subject of the liability to income tax of pensioners of the Government of Nigeria.

(4)

2. The Governor feels that the facts and circumstances which you describe are exceptionally unfortunate, and that they would merit the most sympathetic treatment, if such a course were expedient on general grounds. He is of opinion, however, that to make an exception in your favour would not be justified unless some general relaxation of the law were contemplated, since, as you yourself remark in ^{your} ~~the~~ letter, you are financially in a better position to meet your liabilities in respect of Nigerian taxation than the majority of the Nigerian pensioners.

FURTHER ACTION.

Copy to Mr. J. (17)
Ref 10

3. The Governor observes that the taxation of pensions by the Government out of whose revenues the pensions are paid is in accordance with the accepted canons of income tax practice, and he expresses the view that the principle of such taxation is of more importance than/

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than the actual amount by which the revenue benefits, instancing the case of Nigeria where the yield is only £7,000 per annum out of a total annual revenue from this source of approximately £80,000.

4. The Governor adds, with reference to the fourth paragraph of your letter in which you mention that you received no warning as to your liability for Nigerian income tax, that it has been ascertained that an assessment notice was sent to you simultaneously with notices sent to other pensioners through the Crown Agents for the Colonies and that there is no record of any complaints of non-delivery of the notice in other cases.

5. Lord Moyne regrets the financial circumstances of the Dependency which made it necessary to bring pensions within the scope of Nigerian income tax and he sympathises with pensioners in the difficulties with which they may in consequence have been faced. *In present*

~~to ever disagree with the Governor's views and he regrets that there is no prospect of amending the law in this respect.~~
however, he is unable to hold out any prospect of an early amendment of the law in this respect.

I am

While deeply sympathetic with you in the losses which you have suffered from every action, ~~the~~ much regrets that he is not in a position to secure to you and to other Nigerian pensioners the relief for which you ask in respect of Nigerian income tax.

Regd. C. G. R. Williams

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Air Mail.

NIGERIA.

No. 521

Government House,
Nigeria.

19

29 August, 1941.

RECEIVED
15 SEP 1941
G.O. HQ

My Lord,

6 I have the honour to acknowledge receipt of your despatch No.206 of the 20th of June transmitting a copy of a letter addressed to you by Sir Walter Buchanan Smith in which he makes representations in regard to the incidence of Nigerian income tax on pensioners of this Government.

2. The facts and circumstances which Sir Walter describes appear to me to be exceptionally unfortunate and would, I consider, merit the most sympathetic treatment were such a course expedient on general grounds. In my opinion, however, to make an exception in Sir Walter's favour would not be justified unless any general relaxation of the law were contemplated for, as Sir Walter himself admits, he is financially in a better position to meet his liabilities in respect of Nigerian taxation than the majority of the pensioners of this Government.

3. The taxation of pensions by the Government out of whose revenues the pensions are paid is in accordance with the accepted canons of income tax practice. I believe that Your Lordship shares my view that the principle of such taxation is of more importance than the actual amount by which the revenue benefits - in Nigeria the yield is only £7,000 per annum out of a total annual revenue from this source of approximately £80,000. I shall be grateful if a reply may be sent to Sir Walter in these terms and that it may be added that there is no present intention of amending the law in this respect.

4. With reference to the fourth paragraph of Sir Walter's letter, I have ascertained that an assessment notice was sent to him simultaneously with notices sent to other pensioners through the Crown Agents for the Colonies and that there is no record of any complaint of non-delivery from other sources.

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble Servant,

B. A. Ainslie

G O V E R N O R .

The Right Honourable
Lord Moyne, P.C., D. S. O.,
Secretary of State for the Colonies,
London, S.W.1.

ha
SEA.

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30231/1/41.

20

C. O.

Mr. Whitcombe.

4/9/41.
Mr. Greenish 28/9/41

Mr. ~~White~~ ~~Smith~~
Sir A. ~~Smith~~ ~~Caine~~ 22/9/41

Mr. G. L. M. Clouston.

Mr. C. J. Jeffries.

Mr. A. J. Dace.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 22 JEP
D 22 -

Downing Street,

23 September, 1941.

DRAFT.

SECRETARY,
BOARD OF INLAND
REVENUE.

Sir,

23.11.39.
No. 30 on 30231/1/39.

I am etc., to transmit to you, to be laid before the Board of Inland Revenue, a copy of a letter from a pensioner ^{4.} ~~son~~ the Government of Nigeria, regarding his liability for Nigeria income tax on the pension paid to him from Nigeria funds. It will be seen that he represents that as he is resident in Eire, he is unable to obtain relief from double taxation.

2. For his guidance in considering these representations, the Governor of Nigeria has asked whether he can be furnished with information as to the attitude and practice adopted/

FURTHER ACTION.

Draft

copy sent to Mr. Caine 1/10/41

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30231/1/41.

20

C. O.

Mr. Whitcombe.

4/9/41.

Mr. *Green* 20/9/41

Mr. *Widdelton*

Sir *A. Davis* *Caine* 22/9/41

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 22 SEP
D 22 -

Downing Street,

23 September, 1941.

DRAFT.

SECRETARY,
BOARD OF INLAND
REVENUE.

23.11.39.
No. 30 on 30231/1/39.

Sir,

I am etc., to transmit to you, to be laid before the Board of Inland Revenue, a copy of a letter from a pensioner ^{y.} *2011* the Government of Nigeria, regarding his liability for Nigeria income tax on the pension paid to him from Nigeria funds. It will be seen that he represents that as he is resident in Eire, he is unable to obtain relief from double taxation.

2. For his guidance in considering these representations, the Governor of Nigeria has asked whether he can be furnished with information as to the attitude and practice adopted/

FURTHER ACTION.

copy sent to Mr. Noy

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oted by the United Kingdom income tax authorities
in regard to relief from double taxation accorded to
residents in Eire. The Secretary of State would
accordingly be grateful if the Board would favour
him with their observations on the matter for
transmission to the Governor of Nigeria.

21

I am etc
sgt C. Grossier B

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(6560-150) Wt. 44990-141 5,000 3/41 T.S. 695
(*7007-150) Wt. 13864-152 10,000 5/41 T.S. 695

30231/1/41..

C.O.

Mr. Whitcombe,
16/9/41.

Mr. *Groomer 2/9*

Mr. *Barton*

Sir *A. Burns*

Mr. G. L. M. Clauson. *per Caine 22/9/41*

Mr. C. J. Jeffries. *for London V. munn*

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

22

C.D.
R 22 SEP
D 22-

Downing Street.

23 September, 1941.

DRAFT.

E.C.F. BIRD, ESQ.,
"Packway",
Ware Lane,
LYME REGIS,
Dorset.

Sir,

With reference to the letter from this Department of the 17th May, I am etc. ² to inform you that ^{he has} ~~we~~ now received a reply from the Governor of Nigeria with regard to the representations submitted in your letter of the 5th May on the subject of your liability to income tax on the pension paid to you from Nigeria funds. ₁

² The Governor sympathises with you in your reluctance to dispose of your War Savings Certificates for the purpose of meeting your income tax obligations; but he observes that you are no more unfavourably placed than other pensioners who retired from the Nigeria

Government.

FURTHER ACTION.

*Recd
V. munn*

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Government service at about the same time as
yourself ^{and} he cannot consider that you are
entitled to receive special treatment. He requests,
therefore, that you should arrange to pay the amount
due without further delay.

The Secretary of State ^{is not prepared} ~~does not feel able~~
to accept your suggestion that since you are not
represented in the Nigerian legislature you should
not properly be subjected to taxation on income
derived from Nigeria, and he desires me to point out
that the recipient of income derived from the United
Kingdom who is resident, for example, in Kenya or the
West Indies, is equally subject to United Kingdom tax
on that account, although he has no representative in
Parliament.

I am etc., *Sgd C. A. Grosvenor*

23

Reference:-

C0 583/259/30231/1

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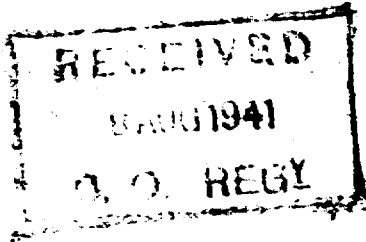
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NIGERIA.

CONFIDENTIAL. (A)

AIR MAIL.



Government House,
Nigeria.

7
24

24th July, 1941.

My Lord,

Supk

3 With reference to your confidential despatch of the 19th of May, 1941, enclosing for my consideration a copy of correspondence with Mr. E.C.F. Bird on the subject of his liability to Nigerian Income Tax in respect of the pension paid to him from Nigerian funds, I have the honour to inform you that while I sympathise with Mr. Bird's reluctance to meet his obligations by having recourse to the sale of War Savings Certificates, I am unable to agree that such action would have been necessary had Mr. Bird made adequate provision to meet the contingency of income tax in anticipation of his retirement from the service of this Government. In this respect, since he was no more unfavourably placed than other pensioners retiring at about the same time, I do not consider that he is entitled to receive special treatment and I recommend that he should be instructed to pay his Income Tax without further delay.

30231/1/41

X

2. The fallacy inherent in the argument, to which Mr. Bird resorts, that there should be "no taxation without representation" was exposed by Mr. Malcolm MacDonald in the antepenultimate paragraph of his letter of the 27th of November, 1939, to Sir Robert Smith, J.P., M.P., a copy of which formed an enclosure to Mr. MacDonald's confidential despatch of the 4th of January, 1940. Your Lordship will no doubt cause a reply to be sent to Mr. Bird in similar terms.

no. 26 on 1939 file
no. 43 on 1939 file

3. I much regret that the questions raised in the third paragraph of your predecessor's confidential despatch, to which reference is made above and in the second paragraph of your despatch under reply, have not hitherto been answered; that they were overlooked was due to preoccupation, at the time the despatch was received, with general considerations affecting the consolidation of Nigerian Income Tax law. Nevertheless measures have in fact been introduced in the meanwhile which go some way towards alleviating the difficulties which pensioners experience, particularly in the first year after retirement, in meeting the demands of the Tax authority. In this connection I would refer Your Lordship especially to section 3 of Ordinance No. 35 of 1941 amending section 6 of Ordinance No. 3 of 1940, the effect of which was fully described in paragraph 4 of the Attorney General's report on the Bill for the amending Ordinance.

no 17 on 30231/41

no 18 on 30231/41

4. With regard to the possibility of permitting payment of tax to be spread over a period, I have to inform you that the question has been carefully examined but that I am unable to recommend any modification of the present arrangements whereby pensioners

THE RIGHT HONOURABLE
LORD HOYNE, P.C., D.S.O.
SECRETARY OF STATE FOR THE COLONIES
LONDON S.W.1.

Y.M.

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pensioners who draw their pensions quarterly are required to pay tax in one lump sum in the month of December, while those who draw their pensions monthly pay in two instalments at the end of October and the end of February respectively.

5. I recently had under consideration a proposal that income tax due from Government officials serving in Nigeria should be paid by monthly or quarterly deductions from salary but after careful examination of the problems involved I decided, on the advice of my Executive Council, that the additional administrative and accounting work which such a scheme would entail was too great to warrant any amendment of the law in this respect. I believe that Your Lordship will agree that this conclusion, which applies with even greater force to the collection of tax from pensioners resident outside Nigeria, does not operate unjustly or cause unnecessary hardship when it is remembered that ample notice is given before payment becomes due of the amount of tax assessed. Pensioners normally receive their assessment notices before the end of August; those therefore from whom the first instalment of tax is due at the end of October receive more than the forty-two days' grace provided for in section 53 of the Ordinance, while those who pay in a single instalment in December are aware of the amount at which they have been assessed at least four months in advance. I should however mention in this connection that it is proposed to amend section 53 of Ordinance No. 3/1940, by substituting "two months" for "forty-two days" in the third line thereof, so as to allow two salary payments to intervene between the notice of assessment of tax and the date on which payment of the first instalment becomes due. The advisability of making a further concession, as regards payment by instalments will be considered if and when the rate of tax is substantially increased.

no 18 on 30231/40

6. With regard to the correspondence enclosed in Mr. MacDonald's confidential despatch of the 4th of January, 1940, the policy of this Government which I have described above will, I consider, provide adequate material for replies to the representations of Sir Robert Smith and Mr. C. A. Cunningham. To the question of principle raised by Mr. H. de B. Bewley, which is in a different category altogether, I find a suitable answer somewhat difficult to frame in the absence of information as to the attitude adopted by the Inland Revenue authorities in the United Kingdom in regard to the relief from double taxation accorded to residents of the Irish Free State. Before expressing an opinion on this point I should be glad to learn details of the United Kingdom practice and whether provision has been made in the legislation of any other Colonial dependency for exceptional treatment in such cases.

no 43 on 939

7. In conclusion I take this opportunity of informing you, with reference to the telegraphic correspondence beginning with Your Lordship's telegram No. 419 of the 30th of April, that rules under section 65(1)(b) of Ordinance No. 3/1940 have now been drafted and will shortly be considered in Executive Council.

129 on 1555 W.A.

Estimate placed on 18555/WA

I have the honour to be,
My Lord

Your Lordship's most obedient, humble servant,

C. C. Woodley
GOVERNOR'S DEPUTY.

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30231/1/41. Nigeria.

6 26

 DRAFT.

Mr. Whitcombe. 13/6/41.

Mr. Williams
(v. mini)

Answer
10

NIGERIA.
NO. 206

Colonial Office,
Downing Street,

20 June, 1941.

Sir,

1. 6. 41.
(4)

I have the honour to transmit to you for your consideration a copy of a letter from Sir Walter Buchanan Smith in which he submits representations regarding the position of pensioners of the Government of Nigeria in respect of their liability for income tax.

I shall be obliged if you will advise me of the reply which it is desired should be sent to Sir Walter's representations.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

GOVERNOR
SIR BERNARD BOURDILLON, G. C. M. G.,
K. B. E.,
&c., &c., &c.

O. G. R. WILLIAMS

Recd
13/6/41
20/6

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c.o.

DRAFT AND RECORD COPY

LETTER SENT
WMB

REGISTERED No.
30231/1/41.

DATE
17 June, 1941.

27

DRAFT

MR. Whitcombe
13/6/41.
MR. *Williamson* (4)
MR. *(V. min)*

Sir,

I am directed by Lord Moyne to acknowledge the receipt of your letter of the 1st of June in which you draw attention to the position of pensioners of the Government of Nigeria in respect of their liability for income tax, and to inform you that a copy of the letter is being sent to the Governor of Nigeria for his consideration.

A further letter will be sent to you when the Governor's reply is received.

I am,
Sir,
Your obedient servant,

Q. G. R. WILLIAMS

ENCLOSURES

FURTHER ACTION

Q. G. R. Williams

To

SIR WALTER BUCHANAN SMITH, C. M. G., M. C.

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TELEGRAMS
"CONSTES, RAND, LONDON."
TELEPHONE, "WHITEHALL 3801."

ACK ^{4/6} P.C. ¹⁷ 941

CONSTITUTIONAL CLUB.

4

NORTHUMBERLAND AVENUE,
W.C. 2.

RECEIVED
- 4 JUN 1941
C.O. 583/259/30231/1

28

The Under Secretary of State,
Downing Street

Sir

I trust that I may be permitted for bringing
attention to Nigeria's income tax on its pensioners
who, in spite of the fact that they now pay away
half their pension in British income tax, & are
subject to much unnecessary expenditure, seem to
be taxed in Nigeria at the same rate as if they
were still in that country. In existing
circumstances this must hit the smaller pensioner
very severely.

Though I am one of those who draw their
pension at a higher rate than most, my own
case may well serve as an illustration of what
must often happen in other instances.

Last September I lost practically all my
belongings including furniture, a large library &
much else, owing to enemy action. Since then
in the last two months I have been severely

copy to Nigeria (6)

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bombed twice & have lost more. A certain amount, but I fear very much less than the value of my possessions, which presumably be recoverable from Government at the end of the war, but not before, and in the meantime certain inevitable replacements have to be made.

Last year, owing possibly to enemy action again, I received no warning as to Nigerian income tax and at the end of one month had £30. suddenly deducted from my monthly pension. This happened again later in the year.

I have calculated that this year, what with the monthly deduction for British income tax, the monthly payments of life insurance premium & of assistance to a relative, who is not a dependent, but needs help, in the months when I have to pay Nigerian income tax, my pension, nominally £110 per month will bring me in exactly £5. In any event without Nigerian income tax it would not now be more than £35.

The situation for the smaller pensioners in such circumstances must be difficult indeed, and there must be many who have suffered from enemy action and who

owing to that and/or, exposure due to service with the ARP or Home Guard, have like myself incurred heavy medical bills. 29

Lastly I gather that the Nigerian Government authorities are under the illusion that the Colonial income tax rebate is immediately recoverable. That is I believe & in theory; in practice it is by no means the case. My own rebate was recovered at the end of the financial year.

The circumstances and British income tax being what they are now, I hardly think that it is fair to assess Nigeria's pensioners & residents as if they were similarly placed, and if, as I am informed, the return to Nigeria of the income tax from pensioners, produces a negligible sum, comparatively speaking, there would seem to be good reason for not further aggravating the already difficult lot of those pensioners who are hard hit by British income tax & war conditions generally, at any rate for the time being.

I have the honour to be,

Sir
Your obedient servant
W. Boncharan Smith

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30231/1/41. Nigeria.

C. O.

- Mr. Evans. 13/5
- Mr. Sidebotham. 13/5
- Mr. Wilson 15.5/8
- Sir A. Burns
- Mr. G. L. M. Clouston.
- Mr. C. J. Jeffries.

- Mr. A. J. Dave.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

30

53

C. D.
R 15 MAY
D 15

Colonial Office,
Downing Street.
May, 1941.

2 DRAFTS

NIGERIA.
CONFIDENTIAL.
GOVERNOR.

(18) in
30231/1/40.

5. 5. 41.
(1) and enclosure.

5. 5. 41.
comp. dft.

FURTHER ACTION.

Sir,

With reference to Mr. Woolley's despatch No. 411 of the 16th of May, 1940, regarding the correspondence with Mr. E.C.F. Bird on the question of his liability to income tax in respect of pension paid to him from Nigeria funds. I ~~am directed by Lord Moyne~~ ^{have the hon} to transmit to you, for your consideration, the accompanying copy of further correspondence with Mr. Bird.

2. I would observe that a reply
does

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does not appear to have been made to the questions raised
in paragraph 3 of ^{my predecessor's} Mr. MacDonald's confidential despatch of (43) in
the 4th of January, 1940, ^{and I shall} I should be glad to learn ^{to inform of 30231/1/39.} the
position.

^{has}
I ~~am~~ etc.

(signed) MOYNE

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30231/1/41. Nigeria.

32

C. O.

- Mr. Evans. 13/5
- Mr. Sidebotham. 13/5
- Mr. Williams (S? S?)
- Sir A. Burns
- Mr. G. L. M. Clauson.
- Mr. C. J. Jeffries.

- Mr. A. J. Dave.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

C. D.
R 15 MAY
D 15 -

S4

Colonial Office,
Downing Street,
S.W.1.

17 May, 1941.

DRAFT.

E.C.F. BIRD, ESQ.

Sir,

I am etc. to acknowledge the receipt of your letter of the 5th of May regarding the demand of the Income Tax Authorities of Nigeria for the payment by you of £44. 4. -- and to inform you that the Secretary of State has no power to remit payment on your behalf. A copy of your letter, however, is being sent to the Governor of Nigeria for his consideration.

I am etc.

signed O. E. R. Williams

FURTHER ACTION.

copy 1/1/41 (3)

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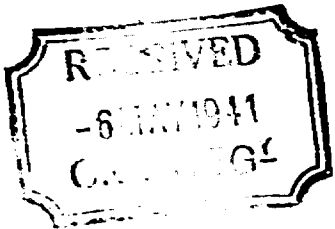
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Packway
Ware Lane,
Lyme Regis
Dorset.
May 5th 1941

33

ACKD BY P.G.
6/5



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Sir, I have the honour to enclose herewith a letter in original received to-day from the Government of Nigeria. In this connection may I refer you to my letter of the 2nd Feb. 1940, and to your letters of the 23rd Feb. and 16th May of that year.

on 40 file
no. 30231/1/40
3+12 on 40 file

I had assumed that this matter had been settled in my favour for I felt that you would not permit this 'exemption without representation' to continue, and that the burden of taxation being what it is in the United Kingdom we persons, who are particularly hardly hit, would not be called upon to shoulder any of the burden of Nigeria's economy.

(3)
1941 57 1/2

I still hope that this is so, for I am quite unable to pay this demand out of income and the only readily negotiable securities I have are War Savings Certificates which I should very much dislike parting with for the benefit of the Nigerian Treasury.

I have the honour to be, Sir,
Your most obedient servant.
C.F. Bird.

The Under Secretary
of State for the
Colonies.

All Communications to be addressed to
D. P. STEWART, **COMMISSIONER OF Income Tax.**
Inland Revenue Department,
Broad Street, Lagos.



No. O. B. 32/
Inland Revenue Department,
Tax Office,

Lagos.

13th February, 1941.

By *Commissioner* Telephones:
Office 105
Asst. Accountant and
Assessment Officer (Taxation) } 295
Lagos Municipal Area

E. C. F. Bird, Esq,
"Packway"
Ware Lane,
Lyme Regis,
Dorset.

Sir,

I have the honour to refer to your letter of the 12th of May, 1940, and to inform you that as I have received no intimation that the Secretary of State is prepared to interfere in the matter of your assessment to tax for 1939 - 40 early settlement of the outstanding sum of £44. 4. Od. is requested. Payment may be made either to me or to the Crown Agents, but in the latter case I should be advised direct at the time.

I have the honour to be,

Sir,

Your Obedient Servant,

Deputy Commissioner of Income Tax.

Robbin

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30231/6

CLOSED
UNTIL
1972

NIGERIA

30231/6

Native Direct Taxation (Protectorate) Legislation.

Previous		R. 98. 302	26/4		
30231/40.		Mr. Parkinson			
		Mr. Parkinson	16/8		
		Mr. Alison Maynard	20/8		
		Mr. Wilson	21/8		
Subsequent		Mr. Parkinson	23/8		
1943	15/98.	Mr. Maynard	24/8		
		R 216 (D)	25/8		
		302	25/8		
R 98.	22/8	Mr. Maynard	26/8		
1. Library Legal.	24	R 216 (D)	26/8		
2. Mr. Sidebottom	25/3.	302	26/8		
Tel. Sec. In.	26/3	Library (Legal)	28/8		
Tel. C. D.	26/3	302	X		
R 98.	27/4	1. Library (Legal)	29/11.		
Mr. Sidebottom	27/4	2. R 323			
R 98.	16/4				
Mr. Sturrock	5				
L 98	2/4				
Mr. Sidebottom	9/9				
R 98	17/12				
Library	8/1				
R 98	13/3				
Library	14/3				

FILE A.

(1345) W.L. 25737/PS. 24,000. 6/30.
N.P. Co. G. 48277a

Reference:-
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C.O.
Taxation
Title

DESTROYED UNDER STATUTE No. 4 of 1940 extracted
from Gazette No. 16 of 28. 3. 41.

Libry

Rel. put up Nigeria 62 _____ 5. 2. 41.
rel. leg. (Spares to Libary).
Wm. 22/3.

Ordinance no. 4 of 1940 has not been
officially received in C.O.

All numbered despatches from Nig. for
year 1940 have been received.

W Martin
R98
22/3.

As we have not yet signed our disallowance
(I have checked this from library)
of the original ordinance for can hardly
proceed to do so with the case of an
amendment to it. Tel. in

D/H. W.

J.B. Smith
25/3 above

DESTROYED UNDER STATUTE Nigeria tel. no. 313 - cons -
18/4 - 26/3/41

W

4 Nigeria Tel. 318 _____ 2. 4. 41

Despatch 142 of 26/2 not yet
received

W Martin
shp

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I have explained to Mr. Sidbotham that this mail need not yet be presumed lost. Ocean mails of the 31st January and the 8th February arrived respectively on the 11th and 20th March. The despatch referred to in (b) may therefore arrive anytime up to the 15th April.

Kurtman.

H. Ashworth
5/6/41
at once.

147

mm

Re circ. re your min. about

W. Martin

16/4.

See further telegram sent on 30474/41 Nigim (No 19) (Mail file) asking for ~~the~~ missing despatches to be sent of which the above is included.

W. Smith 18/7

5 Nigeria 142 — 26.2.41

Encls to S not yet recd

15/4
8/9.

Inclosures (ordinances) are being asked for by tel. on 30474/41 Nig. W. Sidbotham 9.9.41

Wait for ordinances.

J.B. Smith
9/9 atue

150
30/10

MSJ

Have copies of ordinance been recd. yet
W. Sidbotham 7/11/41

No loose copies received. We have now the annual volume for 1940 attached, please, contains the Bill.
W. Sidbotham 8/1/42

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Library

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Have copies of Ordinance
been rec'd yet

B.H. Cooper.
13/3

Please see Nos. 2+5 - ? G. 3. required.

J. Knoff
26-7-43

The dispatch in (S) has had an
unfortunate career. The original appears
to have been lost by enemy action and
the duplicate was apparently sent away
in error early last year so that
although the Ordinance has now been in
force well over three years non-disallowance

Library received
Library 14/3/43
copy of
Mr. Parker
by your note
affairs - this file
had been put away
inadvertently in a
folder of outstanding
business
The 1942
J. Knoff
30-7-43

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I have no comments to make on either of these Ordinances : No 4 of 1940 and No 10 of 1941. I hardly think it is necessary to wait for authenticated copies of No 4 of 1940 - we have an official print of the Ordinance - but authenticated copies should be obtained.

A. Russell.
20.8.43.

It is felt that after all this delay to have 2. Comms.

I think we can proceed as in Sir A. Russell's minute

ABC

S.3 (2) and (5) and ask for authenticated copies of (5) by 3-p.a.

A. Russell
27/8/43

2/8 a.m.

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21/8/43 To Nigeria N° 274 - (93) - (2+5 Amd) - 25/8/43 7

26/10 To Nigeria 3 PM _____ com - 26/8/43

5 to 4 y
no authenticated
copies of books
No 4/1900 get
received in
Library 27/8/43

Library
Have the
above arrived
yet?
R 323
27/11

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Mr. Maynard 26/8/43.
at once

30231/6/41.

*Ans'd 4
on 30231/6/43,*

7 8

(5)

The Under-Secretary of State for the Colonies presents his compliments to the Chief Secretary to the Government of Nigeria and, with reference to the Acting Governor's despatch No. 142 of the 26th of February 1941, is directed to inform him that authenticated copies of Ordinance No. 4 of 1940 entitled "An Ordinance to regulate the Levying and Collection of a Direct Tax in Nigeria" do not appear to have been received in the Colonial Office. It is requested that copies may now be furnished.

Colonial Office,
Downing Street,
26th August, 1943.

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NIGERIA.
NO. 142.

RECEIVED
GO. REC.

Government House,
Nigeria.
26 February, 1941.

My Lord,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and five ordinary copies of Ordinance No. 4 of 1940, entitled "An Ordinance to regulate the Levying and Collection of a Direct Tax in Nigeria," together with the usual report thereon by the Attorney-General.

I have, etc.,

(Sgd) T. Hoskyns Abrahall
Governor's Deputy.

And (6)

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S.W.1.

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ON

AN ORDINANCE TO REGULATE THE LEVYING AND
COLLECTION OF A DIRECT TAX
IN NIGERIA.

The short title of this Ordinance is the Direct Taxation Ordinance, 1940, and I advised His Excellency the Officer Administering the Government that his assent could, in my opinion, properly be given thereto.

2. The Native Revenue Ordinance (Chapter 74 in the 1923 edition of the Laws of Nigeria) was passed originally as Ordinance No.1 of 1917 and then applied solely to the Northern Provinces. In 1918 it was amended to enable its provisions to be applied by Order in Council to the whole or any part of the Southern Provinces and it was so applied to different divisions in the Southern Provinces. Subsequently in 1927 it was made applicable to the whole of Nigeria other than the Colony.

3. In that Ordinance as originally drafted phraseology was used applicable to the machinery then existing in the Northern Provinces and the gradual application of the Ordinance to divisions in the South and then to the whole of the Southern Provinces without alterations in the text of the Ordinance created considerable difficulties and certain absurdities, e.g. the position was reached of communities in the South being appointed "adistrict headman" so as to enable the provisions of the Ordinance to be properly applied within many areas of the Southern provinces.

4. The Ordinance for years required amendment in different respects and it was also considered advisable to settle by statute (but not in an aggressive manner) the argument which had been proceeding for years as to whether the money collected unde the Native Revenue

Ordinance

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Ordinance was King's tax or Emir's tax. It is clear that it is King's tax although contrary opinions had been firmly held in the Northern provinces.

5. The amendments necessary to the Ordinance to enable it to work smoothly throughout Nigeria were so many that it was considered advisable to re-enact the Ordinance and an effort was made to re-enact it under the name of the Native Direct Taxation Ordinance, 1940, at the same time as the Income Tax Ordinance, 1940, in view of the fact that the Income Tax Ordinance, 1940, now No.3 of 1940 as originally proposed was a Taxation Ordinance in respect of Europeans throughout Nigeria and non-Europeans in Lagos Township not earning more than £50 a year, it was decided to try and let this Ordinance be in effect the non-European Taxation Ordinance for the whole of Nigeria exclusive of those non-Europeans earning less than £50 in the Township of Lagos, and the principle was accepted that non-Europeans earning not less than £200 per annum should be taxed throughout Nigeria on the same lines and upon the same principles as those contained in the European Income Tax Ordinance in respect of non-natives but not at such a high rate. This decision gave rise to difficulties, the most important being that it appeared to draw racial discrimination and moreover in certain few cases, a European claiming all possible allowances would pay less than an African drawing the same emoluments - that naturally was observed and commented on, the fact that the normal European paid infinitely more than his opposite number actually being overlooked !!

6. The two Bills, the one for this Ordinance and that for the Income Tax Ordinance, 1940, were submitted to a Select Committee of the Legislative Council consisting of

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of all the Unofficial Members and four or five of the Official Members. After considerable trouble it became possible to deal with this general subject and grant allowances to non-Europeans on the lines now set out in the Income Tax Ordinance, 1940, providing nevertheless that the tax should not by reason of deductions fall below a certain small percentage of taxable income. In consequence there were enacted the Income Tax Ordinance, 1940, which applies to everyone in the Township of Lagos and all Europeans elsewhere throughout Nigeria, and this Ordinance, the Direct Taxation Ordinance, 1940, which applies only to natives in Nigeria elsewhere than in the Township of Lagos.

7. The Ordinance now under report is very different to the Bill presented to the Legislative Council, it has reverted to the main principles existing in the Native Revenue Ordinance but the phraseology has been worded so as to make the Ordinance applicable to both the Northern and the Southern provinces.

8. An important change in the terms employed in the Ordinance is that of a "district headman" which means a person appointed to be a district headman by a native authority; in this way it is possible for those native authorities which are entrusted with the collection of tax to appoint "district headmen" in different areas so that these headmen can, in compliance with their duties under the Ordinance, collect the tax for and on behalf of the native authority.

9. The main difference in the Ordinance itself will be found in section 17 which takes the place of the old section 15. Under section 15 the head chief on the receipt of tribute and tax had to pay and deliver to the Resident for the general revenue of Nigeria such proportion of the revenue collected as was determined by the Governor and

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and the remainder was then paid into the native treasury. Needless to say this money was never in fact paid to the Resident, it was all in fact paid into the native treasury and then allocated. Under the new section 17 it is provided that the tax collected shall be deposited in a native treasury in the area in which the tax was collected; this deposit being purely a means of keeping the money in safe custody. After that the native authority shall pay into the Government treasury the amount required as general revenue and the balance then remaining shall be transferred to and shall form part of the revenue of the native authority for the area in which it was collected. As this transfer of actual ownership does not take place until the Governor has said what is to be paid to general revenue it is clear that the tax when collected is not part of the native revenue and does not so become until transferred to the native authority for that purpose. It is not Emir's but King's tax.

10. It will also be observed that the term "tax collection authority" is used throughout the Ordinance and this term is used so as to enable "tax collection authorities" to be appointed; these authorities may be individuals or communities and thus those provisions of the Ordinance become flexible for adaptation to different communities without introducing new methods.

11. Section 13 is also an important one. Under section 9 of the Native Revenue Ordinance there was provision for the Resident to appoint chiefs or other suitable persons for the purpose of supervising the collection of tribute and taxes; in actual fact this power of actual appointment had hardly ever been used; the various chiefs and native authorities simply carried on as they had been doing for years before the Native Revenue Ordinance of 1917, and even its predecessor, was enacted. When the Ordinance now

under

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14

under report was in draft form exception was taken to the ^{for the} appointment of these various chiefs, more especially the more important chiefs, to be tax collection authorities and for the first time those provisions of the old Ordinance, come under careful review and it appears had not been acted upon previously at all. It was pointed out that no matter what had happened in the past these appointments were necessary as the law had stood but further consideration resulted in section 13 of this Ordinance as it now stands being drafted. The really important modification will be found in the first few words of sub-section (1) under which the Governor may recognise any native authority to be by custom and tradition the tax collection authority in respect of a specified area. Under this the Governor may recognise the important first class chiefs in the North to be by custom and tradition the tax collection authorities in respect of their respective areas. This recognition does not convey any further authority or power on them but it avoids any loss of prestige which, e.g., the Emir of Kano or Sultan of Sokoto might suffer in the eyes of their people if they were now to be appointed to do something which they had been doing for a large number of years and which was recognised by their people as their rightful prerogative.

14

12. Sub-section (2) of section 13 provides that these native authorities so recognised or others which have been approved may themselves, with the approval of the Resident, appoint tax collection authorities for smaller areas within their jurisdiction; the effect being that the native authorities themselves can, under the guidance and control of

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of the Resident, see to the entire collection of tax under the Ordinance.

13. Sections 3, 4, 6, 7 and 8 have either been repealed and re-enacted or amended by Ordinance No.10 of 1941 and I would invite attention to the report on that Bill which has already been written and which explains in detail the reasons for those amendments and also for the two new sections 5A and 5B which have been inserted between sections 5 and 6.

14. Section 11 which provides for appeals against assessment takes the place of the old section 13 which was woefully inadequate in its provisions. Under the existing section, unless the Resident otherwise directs, an appeal is first to be made to the immediate authority fixing the tax and if that appeal is not successful the appellant may then appeal to the Resident. In either case the assessment made may be varied, cancelled or confirmed and where the appeal is dealt with by the intermediate authority the Resident may on his own motion further vary or cancel the amount decided upon.

15. The other provisions of the Ordinance follow to a great extent the provisions of the Native Revenue Ordinance and also of the Colony Taxation Ordinance (The Native Direct Taxation (Colony) Ordinance, 1937) and do not call for comment in detail.

16. To sum up therefore the position is that the Income Tax Ordinance, 1940, and the Direct Taxation Ordinance, 1940, together cover every one in Nigeria and take the place of the old Income tax ordinance applicable to Lagos and to non-natives in the protectorate, the Native Revenue Ordinance applicable to non-Europeans in the protectorate and the Native Direct Taxation (Colony) Ordinance, 1937, applicable to non-Europeans in the colony other than the township of Lagos which together

with

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with their many and various amendments total altogether no fewer than sixteen Ordinances and amending Ordinance.

17. I must apologise for the delay in submitting this report. I wished to deal with this at the same time as the Income Tax Ordinance, 1940, and upon the report on that Ordinance being delayed for the reasons referred to in the report thereon I am afraid this was also delayed.

(Sgd) H.C. F. Cox
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
19 February, 1941.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 28th day of March, 1940.

C. C. WOOLLEY,
Officer Administering the Government.

(L.S.)

No. 4.



1940.

Colony and Protectorate of Nigeria.
IN THE FOURTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

C. C. WOOLLEY, C.M.G., O.B.E., M.C.
Officer Administering the Government.

AN ORDINANCE TO REGULATE THE LEVYING AND COLLECTION OF A DIRECT TAX IN NIGERIA. Title.

[1st April, 1940.] Date of commencement. Enactment.

BE IT ENACTED by the Governor of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

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Short title,
application
and com-
mencement.

1. This Ordinance may be cited as the Direct Taxation Ordinance, 1940, it shall apply to natives in Nigeria elsewhere than in the township of Lagos and shall come into force on the 1st day of April, 1940.

Definitions.

2. (1) Definitions:—

"commu-
nity"

"community" means any group of individuals residing, carrying on business or being within any town, village or settlement or in any locality therein and includes a band of nomad herdsmen;

"district
headman"

"district headman" means a person appointed to be a district headman by a native authority;

"Resident"

"Resident" means the officer appointed by the Governor to be in administrative charge of the particular province in question and includes any other administrative officer authorised by the Resident to perform any duties imposed upon the Resident by this Ordinance;

"tax",
"the tax"

"tax", "the tax" means the tax payable under this Ordinance;

"year of
assess-
ment"

"year of assessment" means the period of twelve months commencing on the 1st of April, 1940, and each subsequent period of twelve months.

(2) References to a province shall be deemed in respect of the Colony to be references to the Colony and the powers conferred and the duties imposed on a resident under this Ordinance in respect of a province shall in the Colony be exercised and performed by the Commissioner of the Colony in respect of the Colony.

3. There shall be levied and paid in each province in manner hereinafter provided, such sums as, in accordance with the provisions of this Ordinance, the Resident with the approval of the Governor, shall fix and assess as tax payable in respect of any year of assessment by any native community or any native residing, carrying on any business or being therein.

Taxes may
be levied.

Submitted
by 10/41

4. (1) In making an assessment, the Resident, acting in co-operation with the chiefs or elders or other persons of influence in each district, and as far as circumstances may permit in accordance with native custom and tradition, shall first estimate or compute:—

Estimate of
annual
profits for
assessment
purposes.

Submitted
by 10/41

- (a) the amount of the annual profits or gains derived from the lands and rentals thereof and the amount of the annual profits of the produce thereof used, occupied or enjoyed within the province by any native community or individual native taxable under this Ordinance;
- (b) the amount of the annual profits or gains from any trade, manufacture, office or employment within the province in which any native community or individual native taxable under this Ordinance may be engaged;
- (c) the amount of the annual profits or gains derived from:—
 - (i) any pension, annuity, dividend or interest by any individual native; or
 - (ii) any dividend or interest by any native community, taxable under this Ordinance;
- (d) the value of all livestock owned by each individual or by each community within the province.

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deleted by 10/41
 (2) The Resident may appoint a committee to inquire into the annual profits, gains or value required to be estimated or computed by sub-section (1) and may accept, alter or amend any estimate or computation made by the committee and may fix the amount to be paid as tax thereon.

Valuation of lands and produce.

5. The annual profits, gains or value referred to in section 4 shall be deemed to be those which can be annually obtained from such lands by a native cultivating and using the same in the manner and up to the average standard of cultivation and use prevailing in the neighbourhood.

SA, 5B → (added by 10/41)
 Assessment.

6. (1) The assessment of the tax shall be based upon the estimate or computation arrived at in accordance with the provisions of section 4 and the amount of tax payable by any native community or individual native in any province shall, subject to the approval of the Governor, be fixed by the Resident thereof in accordance as far as circumstances will permit, with native custom and tradition:

Proviso.

Provided that where no estimate or computation has been made under section 4 in the year of assessment the Resident may base the assessment of the tax to be paid by any native community for that year upon the most recent estimate or computation of the profits, gains or value of that community made under section 4 in any year previous to the year of assessment and may take into consideration any increase or decrease of population in such community which may in his opinion justify an increase or decrease in the amount of the assessment.

Substituted by 10/41

(2) The Governor may alter or amend such assessment in such manner as may appear to him to be just or expedient.

7. Notwithstanding anything contained in sections 4, 5 and 6 the Resident, with the approval of the Governor, in lieu of making an assessment as therein provided may assess the tax payable in respect of any year of assessment by each of the individuals of any specified class or community of natives in the province or any part thereof at such sums as he may specify.

Assessment of individuals, specified classes and communities.

8. In addition to or in lieu of any assessment of any individual native or native community made under sections 4, 5, 6 or 7 the Resident may cause a count to be made of all cattle in the possession of any such individual native or of each of the individuals of any specified class or community of natives, who shall on demand pay tax at such rate as the Governor may prescribe on each head of cattle in the possession of such individual:

Cattle tax.

Provided that no person shall be assessed under this section in respect of cattle the value of which has been taken into account in an estimate made under paragraph (d) of sub-section (1) of section 4.

Proviso.

deleted by 10/41

9. When an assessment by the Resident shall have been approved by the Governor, the Resident, in such manner as he may think fit, shall publicly make known to each community and to all persons concerned the amount at which such community or persons have been assessed for tax, and the date on or before which such tax shall be paid.

Assessments to be notified.

10. Where any native community is assessed for tax, the native authority, or, by direction of the native authority, a tax collector, acting in co-operation with the village councils or such other persons as the native authority, or the tax collector, may think fit to consult, shall fix and apportion such amount of the total sum as may be just and equitable for each member of the community to pay having regard to his wealth.

Assessment of tax payable by members of a community.

* "Estimating or computing the assessed annual income" (Ord 10/41)

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Appeal. 11. (1) Any person assessed for tax who objects to the amount he is required to pay as tax or denies that he is chargeable with tax under this Ordinance may appeal to the Resident who may vary, cancel or confirm the amount fixed to be paid as tax:

Proviso. Provided that unless the Resident shall in any specified area otherwise direct appeals under this section shall first be heard and determined:—

(a) by the district headman or the subordinate or other native authority within whose jurisdiction the appellant resides, or

(b) by such district headman or subordinate native authority and subsequently, if the appellant is dissatisfied with the determination of the district headman or the subordinate native authority, as the case may be, by the native authority to which the district headman or subordinate native authority is subordinate,

before an appeal shall lie to the Resident.

(2) Any district headman or native authority to whom an appeal is presented in accordance with directions issued under the proviso to sub-section (1) may vary, cancel or confirm the amount against which the appeal is made:

Proviso. Provided that when a district headman, or a subordinate native authority or a native authority has varied, cancelled or confirmed the amount against which the appeal is made the Resident may on his own motion, if he thinks fit, further vary, or cancel or confirm any such amount.

(3) The decision of a Resident under this section shall be final.

12. The Governor may exempt:—

Governor may grant certain exemptions.

(a) any individual, class of persons or area from the operation of this Ordinance, or

(b) the profits or gains from, or the value of, any particular property in any specified area from the operation of section 4,

either for a specified or unspecified period as he may think fit.

Tax Collection Authorities and Tax Collectors.

13. (1) The Governor may recognise any native authority to be by custom and tradition the tax collection authority in respect of a specified area and if no native authority has been so recognised the Resident may in writing appoint any native authority, village council, district headman or other suitable person or group of persons to be a tax collection authority in respect of any specified area.

Tax collection authorities and tax collectors.

(2) The tax collection authority so recognised or appointed, may, with the approval of the Resident, appoint any village council, district head or other suitable person or group of persons to be a tax collector within any part of such specified area or for any community within that area.

(3) Where the tax collection authority so recognised or appointed fails so to appoint the necessary tax collectors or where no tax collection authority has been so recognised or appointed, the Resident may appoint any native authority, village council, district head or other suitable person or group of persons to be a tax collector in respect of any specified area or for any community within that area.

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Duties of tax collection authorities.

14. (1) It shall be the duty of every tax collection authority:—

- (a) to give information at such times as the Resident may require as to the numbers and names of taxable persons at the time being within the area for which he has been recognised or to which he has been appointed;
- (b) to supervise the collection of the tax in such area;
- (c) to receive from the tax collectors in such area the amounts of tax assessed to be payable by the native communities and natives therein respectively;
- (d) to render to the Resident returns of amounts so received by him at such times and in such form as the Resident may direct.

(2) In addition to the preceding provisions of this section it shall also be the duty of a native authority which is recognised or appointed to be a tax collection authority to receive from the tax collectors in the area of its jurisdiction all sums collected by them under this Ordinance.

Duties of tax collectors.

15. It shall be the duty of every tax collector:—

- (a) to furnish orally or in writing to such native authority as the Resident may direct a nominal roll of all members of the community to which he has been appointed who are liable to pay the tax;
- (b) to collect and receive from each member of the community to which he has been appointed the amount of the tax payable by each such member;
- (c) to pay all amounts so collected to the tax collection authority recognised for or appointed to the area in which the community is situated or to such other person as the Resident may direct:

(d) to report to such tax collection authority the name of any person who has failed to pay the amount due by him for tax.

16. Natives shall continue liable to pay the tax notwithstanding that they may for the time being be resident on lands alienated to or occupied by non-natives, and any tax collection authority or tax collector or their agents may at any time enter upon such lands for the purpose of collecting any such tax.

Natives resident on lands occupied by non-natives are liable to tax.

17. (1) Every tax collection authority in the receipt of taxes under this Ordinance shall, unless otherwise directed by the Resident, deposit such tax in the native treasury for the area for which the tax was collected.

Amount collected to be deposited and then paid into revenue.

(2) Every native authority shall pay into such Government treasury as the Resident shall direct to the credit of the general revenue of Nigeria as and when directed by the Resident either generally or specifically such proportion as the Governor may from time to time determine of the amounts deposited in the native treasuries as tax and the remaining portion of such amounts shall be transferred to and shall form part of the revenue of the native authority for the area for which it was collected.

Offences and Legal Proceedings.

18. Any:—

- (a) tax collection authority or tax collector being an individual; or
- (b) individual member of a tax collection authority or tax collector; or
- (c) employee of a tax collection authority or tax collector,

Penalty for failure to deposit or pay tax collected.

Reference:-
CO 583/259/30231/6 PT1

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17A

whose duty it is to deposit with or pay to any native treasury or other person in accordance with the provisions of section 15 or section 17 any tax which is in the custody or possession of or has been collected by the tax collection authority or tax collector of which he is sole member, member or employee, and who fails so to deposit or pay such tax, shall be liable to a fine of two hundred pounds or to imprisonment for two years or to both.

Penalties in respect of offences by tax collectors.

19. Any person who being a tax collection authority or a tax collector, or a member of a tax collection authority or a tax collector, or a person employed by a tax collection authority or a tax collector, in connection with his duties under this Ordinance:—

- (a) demands from any community or any person an amount in excess of the duly assessed tax;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) renders false returns, whether orally or in writing, of the amounts of tax collected or received by him;
- (d) wilfully misrepresents the taxable capacity of the community or person from whom he is authorised to collect tax;
- (e) defrauds any person, steals or in any way uses his position to the prejudice of the Government, the tax collection authority, or any individual, or the individuals of any community;
- (f) fails to carry out any duty imposed upon him, other than the duty referred to in section 18 either individually or as a member of a tax collection authority or a tax collector,

shall be liable to a fine of fifty pounds or to imprisonment for one year or both.

10A

20. Any person who:—

- (a) not being authorised under this Ordinance or by a tax collection authority or a tax collector so to do, shall collect or attempt to collect any tax under this Ordinance; or
- (b) collects or attempts to collect any tax other than tax described in this Ordinance or authorised by any other Ordinance,

Penalty for unauthorised collection of tax.

shall be liable to a fine of two hundred pounds or to imprisonment for two years or both.

21. When a group of persons is collectively appointed to be a tax collection authority or a tax collector proceedings may be taken against all or any members of such group, either together or separately, in respect of any act or default punishable under section 19 and upon proof of the commission of an offence by such group every member thereof shall individually be liable to the penalties prescribed unless he shall satisfy the court that he was in no way responsible for or a party to the commission of the offence.

Proceedings may be taken against members of a tax collection authority collectively or separately.

22. Any person whose authority and control is recognised by a section of a native community or any employer or any head of a family or any householder or any person who may be required so to do shall give all such information, orally or in writing, as may be required of him by the Resident or by any tax collection authority or tax collector with a view to obtaining information for the assessment or collection of the tax.

Duty to give information.

23. Any person having been required to give information under the provisions of the preceding section who shall neglect or refuse to give such information or who shall wilfully mislead or attempt

Penalty for refusing to give information.

Reference:—

CO 583/259/30231/6 PT1

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to mislead the Resident or any tax collection authority or tax collector or their agents on any matter connected with the assessment or collection of the tax shall be liable to a fine of one hundred pounds or to imprisonment for one year or both.

Penalty for failure to pay tax.

24. Any person who, without lawful justification or excuse, the proof of which shall lie on the person charged, shall refuse or neglect to pay any tax payable by him under this Ordinance on or before the date on which it is payable, or who shall incite any person so to refuse, or who shall conceal or fail to produce or notify any taxable property which he may possess or wilfully misrepresent in any way his taxable capacity, or who shall incite or assist any person so to conceal or fail to produce or notify any taxable property or so to misrepresent his taxable capacity shall be liable to a fine of one hundred pounds or to imprisonment for one year or both.

Penalty for fraudulent use of receipts.

25. Any person who forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token indicating payment of the tax shall be liable to a fine of one hundred pounds or to imprisonment for one year or both.

General penalty.

26. Where a person is guilty of an offence against this Ordinance for which no special penalty is provided he shall be liable to a fine of one hundred pounds or to imprisonment for six months.

Legal proceedings

27. Proceedings either to enforce payment of the tax or for the imposition of penalties under this Ordinance may be taken in the name of the tax collection authority or tax collector, as the case may be, before the court of a magistrate or a commissioner of the Supreme Court or, to the extent of its jurisdiction, before a native court.

MISCELLANEOUS.

28. (1) The Resident may remit, wholly or in part, the tax payable by any person on the ground of poverty and may also for like reason refund the tax or any part thereof.

Remission of tax.

(2) The Governor in Council may remit, wholly or in part, the tax payable by any person if he is satisfied that it will be just and equitable to do so.

29. (1) The Governor in Council may from time to time make regulations generally for carrying out the provisions of this Ordinance and may, in particular, by those regulations provide:—

Regulations.

- (a) for the form of returns, claims, statements and notices under this Ordinance;
- (b) for the deduction and payment of tax at the source in respect of emoluments and pensions payable out of the general revenue of Nigeria, the Nigerian Railway or from native authority funds;
- (c) any such matters as are authorised by this Ordinance to be prescribed.

(2) Regulations made under paragraph (b) of the preceding sub-section may provide:—

- (a) for the recovery of the tax by monthly deductions, such deductions being in equal amounts spread over the full period of a year or varying amounts for such lesser periods as may be provided therein either generally or in any particular case;
- (b) for the recovery out of any monies in the hands of the Government due to the officer or pensioner of the amount of tax not yet recovered by instalments where the Resident on information received believes that such person is about to leave Nigeria and not return;

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(c) for the recovery of the amount of the tax subject to such general or special exemptions as may be provided therein out of any gratuity payable by Government or a native authority in respect of the service or death of a public officer or of a person employed by a native authority respectively.

(3) If any person fails to comply with or contravenes the provisions of any regulation made under this Ordinance he shall be guilty of an offence against this Ordinance.

Repeal.

Chapter 74.
No. 17 of
1927.
No. 41 of
1937.
No. 45 of
1933.

30. The Native Revenue Ordinance, the Native Revenue (Amendment) Ordinance, 1927, the Native Direct Taxation (Colony) Ordinance, 1937, and the references to the Native Revenue Ordinance in the Third Schedule of the Protectorate Courts Ordinance, 1933, are hereby repealed.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

A. G. DAIGLEISH,
Clerk of the Legislative Council.

Reference:-

CO 583/259/30231/6 PT1

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30231/6/41 Lt
Taxation Order

COPY FOR REGISTRATION

CODE TELEGRAM

25

FROM Governor NIGERIA

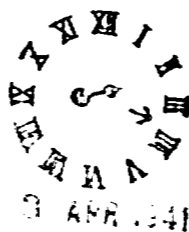
D. 2nd April, 1941.
R. 3rd " " 05.30 hrs.

No. 318.

3 Your telegram No. 313 of
26th March. Authenticated copy(ies)
of direct taxation ordinance No. 4
of 1940 forwarded with despatch No. 142 (5)
of 26th February 1941.

Not received yet.

Received
in
Registry



Reference:-
CO 583/259/30231/6 PT1

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NIGERIA.

NO. 62

RECEIVED
20 MAR 1941
O.O. REQ

Government House,
Nigeria.

5 February, 1946.

My Lord,

30231/41

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 10 of 1941, entitled "An Ordinance to amend the direct Taxation Ordinance, 1940" together with the usual report thereon by the Attorney-General.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

B.A. Au du

Governor.

The Right Honourable
Lord Lloyd of Dolobran, P.C., G.C.S.I., G.C.I.E., D.S.O.,
Secretary of State for the Colonies,
London, S.W.1.

and (6)

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R E P O R T

27

on

A BILL FOR AN ORDINANCE TO AMEND THE DIRECT
TAXATION ORDINANCE, 1940.

The short title of this Bill is the Direct Taxation (Amendment) Ordinance, 1941, and in my opinion the assent of His Excellency may properly be given thereto.

2. The object of this amending Ordinance is to bring the text of the Direct Taxation Ordinance, 1940, into line with the methods which experience has shown to be the most satisfactory means of administering it and also to avoid the use of the word "assessment" in two different ways.

3. The Ordinance at present provides for an assessment of the property or income of individuals and communities to be made and then the tax is assessed on that assessment. The use of the word "assessment" in two different ways causes confusion and therefore it is proposed that instead of using the word "assessment" in respect of income the "annual income" will be ascertained and then upon that figure tax will be assessed.

4. The Bill does not in any way alter the incidence of the tax or affect any of the principles of the existing law.

5. In the new section 6 in clause 5 will be found provisions by which the Governor can state by notice in the Gazette that certain assessments need not have his approval. This is necessary because in certain parts of Nigeria, owing to difficulties of communication, His Excellency's approval to the assessment cannot be conveyed for some considerable time and in many cases this makes it more difficult for the parties paying the tax to be able to pay it. This new provision does not mean that such assessments will not be carefully examined but it does mean that what

has

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has been shown in the past to be unreasonable delays
can be avoided in the future.

W.C.B.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
18th January, 1941.

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CO 583/259/30231/6 PT1

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 30th day of January, 1941.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 10.



1941.

Colony and Protectorate of Nigeria.
IN THE FIFTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE DIRECT TAXATION ORDINANCE, 1940.

Title.

[30th January, 1941.]

Date of commencement.

BE IT ENACTED by the Governor of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

Enactment.

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CO 583/259/30231/6 PT1

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shall not be necessary in respect of any specified province or area) and in accordance so far with native custom and tradition as circumstances will permit fix:—

(a) a sum in respect of any specified native community or native;

(b) a percentage of the ascertained annual income of any native community or native,

to be paid by such native community or native aforesaid and such sum or percentage shall be the amount assessed to be paid as tax by the said native community or native:

Provided that where the ascertained annual income of a native community or an individual native has not been estimated or computed under section 4 in the year of assessment, the Resident may assess the tax to be paid by such native community or individual for that year upon the most recent estimate or computation of the ascertained annual income of that community or individual and in the case of a native community may take into consideration any increase or decrease in the population of, and the general state of prosperity in, such community which may in his opinion justify an increase or decrease in the amount of the assessment.

- (2) The Governor may alter or amend any assessment in respect of a native community made in accordance with the proviso to sub-section (1) in such manner as may appear to him to be just and expedient."

Amendment
of section 7
of No. 4 of
1940.

6. Section 7 of the principal Ordinance is hereby amended by deleting the words "making an assessment" in the third line and substituting therefor the words "estimating or computing the ascertained annual income".

Amendment
of section 8
of No. 4 of
1940.

7. Section 8 of the principal Ordinance is hereby amended:—

- (1) by deleting the words "any assessment" in the first line thereof and substituting therefor the words "estimating or computing the ascertained annual income"; and

- (2) by deleting the words "of sub-section (1)" in the proviso thereto.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

A. G. DALGLEISH,
Clerk of the Legislative Council.

Reference-	
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1943

30231

CLOSED
UNTIL
1972

30231

NIGERIA A

NATIVE DIRECT TAXATION (PROTECTORATE)

LEGISLATION

Previous		Library (Legal)	26/7.		
	1941	302.	25/10		
		Mr. Parkinson	26/10		
		302	26/11		
		Mr. Parkinson	26/11		
Subsequent		Mr. Parkinson	29		
	30586 / 1944	216(D)			
		C.D.	3/12		
		216 D	6/12		
	Room 301	302	7/12		
	Mr. Vawter	Mr. Parkinson	6/12		
	Library legal	302	8/12		
	Mr. Vawter	Library (Legal)	8/12		
	302	302.			
	Mr. Parkinson				
	Mr. Carr				
	Sr. Sidney Abraham				
	Mr. Cohen				
	Mr. Parkinson				
	Mr. Maynard				
	Mr. Cohen				
	C.D.				
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FILE A.

(1512) WL 51212/122 10 000 11/60
N.P.Co. G.982/77a

Reference:

CO 583/259/30231/6 PT2

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C.I. Financial
State Library

Nigeria 217

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19.5.43

W.A. Registry.

This file should not be registered as an income tax paper. In Nigeria there are 2 distinct ordinances: one is Income Tax and the other is Direct Taxation. Please revise this accordingly.

R. B. Bawilk.

and then re-submit to me 13/7/43

Stankin
13/7/43

This proposal is embodied in the 1943/44 Estimates which have been approved.

G.3.

Stankin
13.7.43

I see no financial objection to this change. I assume, however, that these changes in the relationships between the central Government and the native authorities are being carefully watched for their wider effects. I am very ignorant of how the native authorities work, but I always have the feeling that if they are to develop in a really independent way and become the kind of training ground for self-government, which the Secretary of State has suggested (e.g. in his speech yesterday) local Government authorities ought to be, they must develop rather greater discretion in the fixing of their own revenue as well as in the expenditure of it. This present change is a move in that direction in that it would be comparatively simple to change the present direct tax into a tax composed of two parts, one uniformly fixed for the whole country and going wholly to the central Government, and the other variable between the areas of different native authorities and going wholly to those authorities.

Stankin
14.7.43.

No legal objection

Stankin

12/7/43

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Mr. Parkison

In ~~response~~ ^{reply} to your
2nd. disallowance we might ask
to be informed in due course of
the making of this. We might
say that we must have an
administrative note.

ATK pl.
Dec
16/10
4 hrs

any letter
to be sent
at 10.10.43

2 To Nigeria N^o 230 (1 am) 24/10/43

see note
to Mr. Knoff
25.10.43

No reply to No. 7 on '41 file.

S. Knoff
25.10.43

Wait a mark

26/10 done

Still no reply to No. 7 on '41 file.

S. Knoff
26.11.43

Remind by 3-p.c.

26/11 done

3 To Nigeria 3PN

6/12/43

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Punby 6/12/43
Check to go to take sealed copies

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NIGERIA.

m '41
file.
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m '41
file

The Acting Chief Secretary to the Government of Nigeria presents his compliments to the Under Secretary of State for the Colonies and, with reference to his note No. 30231/6/41 of the 26th of August, 1943, is directed to inform him that the authenticated copies of Ordinance No. 4 of 1940 entitled "An Ordinance to regulate the Levying and Collection of a Direct Tax in Nigeria" were forwarded under cover of the Governor's despatch No. 142 of the 26th of February, 1941, but were lost by enemy action. Two copies, certified to be true copies of the original which is in the custody of the Supreme Court of Nigeria, are forwarded herewith.

Nigerian Secretariat,
Lagos, 11th November, 1943.

[Handwritten signature]

RECEIVED
30 NOV 1943
C. C.

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CO 583/259/30231/6 PT2

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30231/6/43.

3 6

C. O.

MRS. Mikoyolu 26/11

Mr. Pilbeam. Grace

Mr. ~~Sturges~~

Mr. G. E. J. Gent.

Mr. G. L. M. Clauson.

Sir C. Jeffries.

Sir A. Dawe.

Sir W. Battershill.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.O.
R 30 NOV
D 3/12

see H 52

DRAFT. 3 p.

Nigeria
Chief Secretary.

The U.S. of S. for the Colonies presents his compliments to the Chief Secretary to the Government of Nigeria and with reference to his Minia personal note 30231/6/41 of the 26th of August 1943 is directed to state that authentic copies of Ordinance No 4 of 1940 entitled "An ordinance to regulate the levying and collect of a Direct Tax in Nigeria" have ~~not~~ not been received in the Colonies office.

(17)

FURTHER ACTION.

6th December 1943

Reference:-

CO 583/259/30231/6 PT2

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30231/6/43.

[13702] Wt. 32385 242 10m. 10'42 C.N.Ld. 748
[13966] Wt. 39977 249 50m. 12'42 C.N.Ld. 748

C. O.

Mr. Hargold. 227

Mr. Cohen. 22/7 ps

Mr.

Mr. G. E. J. Gent.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Sir A. Dawe.

Sir W. Battershill.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

23
23

24th July, 1943.

53

DRAFT.

Trigeria.

No. 230

O.A.G.

Sir,

I have the to ack. the

(1) receipt of your despatch
no. 217 of the 19th of May,
and to inform you that
the power of disallowance
will not be exercised in
respect of the Direct Taxation
(Amende) Order NO. 2 of 1943.

2. I consider that the
proposed change in the

Mr. [unclear]

FURTHER ACTION.

Lib (Legal)

to note.

Reference:-

CO 583/259/30231/6 PT2

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form of taxation & method of allocation by the
relationships between the central government

and the native authorities as ~~is~~ ^{should be} a

admirable move in the development

~~of the country~~ ^{of Nigeria} by useful move, and

I shall be glad to receive, in due

course, a report on the working of

the Ordinance.

I have etc

(Sgd) OLIVER STANLEY.

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NIGERIA.

NO. 217

RECEIVED
2 JUL 1943
C. O. REGY

Government House,
Lagos, Nigeria.
19th May, 1943.

Sir,

I have the honour to transmit herewith for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No.2 of 1943, entitled "An Ordinance to amend the Direct Taxation Ordinance, 1940," together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

[Signature]
OFFICER ADMINISTERING THE GOVERNMENT.

Encl (2)

THE RIGHT HONOURABLE
OLIVER STANLEY, M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

[Signature]

Reference:-

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on

AN ORDINANCE TO AMEND THE DIRECT
TAXATION ORDINANCE, 1940.

The short title of this Bill is the Direct Taxation (Amendment) Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. This Bill is intended to insert into the Native Direct Taxation Ordinance, 1940, a new section, 17A, under which the Governor may by order fix the actual amount of tax to be paid to general revenue instead of as at present a percentage of the actual tax collected. It is thought that if the individuals concerned, and of course the native authorities in question, are aware that all tax collected over and above a fixed amount will go into the local native treasury and be spent on local native authority affairs, the former will the more readily and cheerfully pay his tax while the latter will have more incentive to see that the amount available is actually collected.

3. The new section is elastic so that an abnormal state of affairs can be met if and when necessary and the new provision may be made to apply to all the tax collected or to all tax collected except from certain sources the remainder being dealt with as heretofore.

4. The Bill has in addition to the above merits the further advantage that it will result in a very considerable saving of clerical work and simplify book-keeping as between the Central Government and the various native authorities.

H. C. Cox
Attorney-General.

Attorney-General's Chambers,

Lagos, Nigeria,

26th. March, 1943.

Reference:-

CO 583/259/30231/6 PT2

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 24th day of April, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)



No. 2

1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO AMEND THE DIRECT TAXATION ORDINANCE, 1940 Title.

[29th April, 1943.]

Date of commencement.

BE IT ENACTED by the Governor of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

34767/S. 3

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11A

2 No. 2 of 1943 *Direct Taxation (Amendment)*

Short title. 1. This Ordinance may be cited as the Direct Taxation (Amendment) Ordinance, 1943.

Amendment of Ordinance 4 of 1940 by addition of new section 17A. 2. The Direct Taxation Ordinance, 1940, is hereby amended by inserting after section 17 thereof the following new section as section 17A:—

17A. (1) In lieu of the Governor determining that a proportion of the amounts collected and deposited as tax in the native treasuries shall be paid to the credit of the general revenue of Nigeria in accordance with the provisions of section 17, the Governor may by order annually require each or any specified native authority to pay, out of the amounts collected as tax under this Ordinance for any area, a specified amount to the credit of the general revenue of Nigeria and all the balance remaining thereafter out of the total amounts collected as tax from any particular area for the year in respect of which the order is made shall be paid into the native treasury and form part of the revenue of the native authority for the area for which it was collected.

Governor may require lump sum payments to revenue instead of proportion of amounts collected.

(2) Where a specific amount is required by the Governor by order in accordance with the provisions of sub-section (1) the Governor, in any case in which he considers it advisable so to do, may state that such amount shall not include any amounts paid as tax in respect of:—

- (a) any particular profit or gain;
(b) any livestock; or
(c) any cattle in respect of which a tax is paid under section 8.

and where the Governor has stated that the proceeds of any such tax is not included in the amount specified in the order the proceeds of such tax shall be dealt with in accordance with the provisions of section 17.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so

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12
END

Direct Taxation (Amendment) No. 2 of 1943

3

far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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30231/7

CLOSED UNTIL

1992

1941

30231/7

Income Tax.

Protest by Messrs. Cocoa Manufacturers Ltd.

Previous

Subsequent

15857/3/42

R98

Mr Evans	18/6	Mr O'Connell	21/7
98	11/6	C.D.	27/7
Mr. Huddle (R98)	24/6	295	30/7
R.98.	26/6	98.	31/8
Mr. Cairne	28	Miss Lawrence	1/9
Sir G. Burke	5/7	Mr. Farmer	1/9
Revising R98	21/10	R.98.	13/9
1. Library Legal	23/10	Mr. Farmer	15
2. Mr. Rosemilk	28/10	99A	5/9
Sir K. Poyser	29/10	295	16-9
Mr. Cairne	30	R98	13/10
Mr. Williams	31/11	Mr. Farmer	16/10
R 94	6	Mr. Cairne	
CD 11099A	7	Reg's (Winnings) 17/9, 3	
295 (D)	11/11	Mr. Sweeney (D.H.)	
R 48	3/11		
Mr. Pedler	3/7		
Mr. Cairne	7/7		
R Cairne	17/7		
Sir K. Poyser	14/7/42		
Th. O.G.R. Williams	17/7		
Mr. Cairne	20		
W.A. Cairne	21/7		
Mr. Pedler	21/7		
Mr. Mayhew	22-7		
1. Secretary Legal	10		
2. Mr. O'Connell	12		
Mr. Cairne	2/5		
Sir G. Burke	8/5		
Mr. Cairne	22		
Sir G. Burke	11		
Th. O.G.R. Williams	29		
Mr. Dawe	29		
C.D.	3/6		
295 (D)	5/6		
1754	4/6		
C.D.	7/6		
295	9/6		
R98	10/6		

FILE A.

(1945) W.L. 2373/25. 2,000. 8/39. N.P.Co. G.682/72

Reference: **CO 583/259/30231/7**

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discussed at very considerable length in minutes by Mr. Bowyer, myself, Mr. Vennix and Sir G. Bushe in 44086/35 and in correspondence with the Board and with the Nyasaland Government at Nos. 3,4,11 and 13 in the 1935 file, Nos. 1,2 and 3 on the 1936 file, and Nos. 1,2 and 3 in the 1937 file. The last item summarised the final upshot of the argument which was that we successfully resisted the contention of the Board of Inland Revenue that it could not be held that a business was carried on in a particular country, giving rise to a taxable income, unless sale of the product was made within that country; but on the other hand we agreed that ~~the fact that~~ carrying on a business was not established by the mere act of purchase but required also that other things should be done within the country which added to the value of the product. It was left somewhat vague as to what precisely were the processes or operations which might be held to add to the value and therefore to give rise to a taxable product, but I think it is fairly clear from the correspondence that the people then responsible in this office were inclined to include a much wider range of such processes than the Board of Inland Revenue would have liked us to do.

The letter comes from the (1939) shows that it would be possible to administer the Nyasaland provisions in practice. SC

We appreciated at the time of the Nyasaland discussion that this issue might be even more important in the event of introduction of income tax in West Africa, where the business of purchasing native produce for sale outside the Dependencies concerned plays a much greater part in the general economy than in any other important Colonial territories. Nobody I imagine would suggest that the United Africa Company derived no taxable income from their enormous business in the export of West African produce. It may be, however, that the particular concern which has raised the issue in Nigeria is much more in the position of a mere purchaser and does not do anything in the way of processing, grading or other operations which could be regarded as adding to the value of the product before it leaves Nigeria. It is clearly important, however, that the Nigerian Government should make no departure from the principle that where there is such an addition to the value of the product a taxable profit arises and my inclination would therefore be to scrutinise very carefully any claim that no such taxable profit exists. I should be inclined in fact to the general presumption that if a concern maintains an agent in Nigeria for the purchase of produce there it must be because it derives an income or profit from that agency. If it was not advantageous in that way the concern could adopt the alternative of buying in this country or even buying on f.o.b. terms from a trading concern in Nigeria. In other words I should regard the onus of proof as on the trader.

The Comm: - Yes. But not 17. Bowyer Memoranda which are too controversial, and not in all respects - B. S.

I think therefore that we might send Nigeria copies of the correspondence with the Nyasaland Government, drawing attention to the final decision reached there and pointing out that it is a matter for decision on the facts of the individual cases that a particular concern is or is not liable, but that we should be inclined to the view expressed in previous paragraphs. Before replying, however, it might be as well to get a little further information about the New Zealand case referred to. (Perhaps with some presumption I am not inclined to attach vital importance to the case of Sulley versus Attorney-General in view of the considerations referred to in my minute attached as No. 12 in 44086/35 and of the fact that the Board of Inland Revenue abandoned their reliance on that case, by implication.) In the brief account which is given of the New Zealand case it is stated that it

was

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was decided that the company was not liable on the whole of the profits on timber exported from New Zealand and that phrase rather suggests to me that it was held that they were liable on a part of the profits, which is precisely our position. I should therefore be interested to see a fuller report of it if it is available.

SV
2.5.41.

The New Zealand case is not reported in the 18th Volume, nor is it reported in the Volume of 1904, so I cannot find it. We do not take the Law Times Reports, but I borrowed the Volume from the Ministry of Health, and I attach copies of the judgment. One copy should be attached to the file, and another should go to Nigeria.

I cannot help thinking that the Attorney General has been misquoted in the marked passage in paragraph 5 of the despatch since the statement is quite untenable. It would apply, for example, to a philatelist in the Strand here making a profit on the sale of Nigerian stamps, since if Nigeria did not exist there would be no such stamps.

To return to this particular case, the relevant words in the charging section of the Ordinance are "the income of any person derived from Nigeria in respect of profits from any trade or business". This seems to be the same as the relevant words in Sulley's case, namely, "on the profit accrued to any person wheresoever he may reside from any trade exercised within the United Kingdom".

The proposition that tax is payable in the Colony in respect of profit made on the sale of goods outside the Colony which have been brought from the Colony and in respect of which the Company has done no more than purchase the goods, is, in my view, not arguable.

The Nyasaland papers are very relevant, but we must remember that what was being considered there was not the construction of the Ordinance but the policy of amending the Ordinance so as to make it of wider effect.

If, when Nigeria has read all these papers, they still wish to maintain their view, the proper course is to tell the Company so, and let them appeal and have the matter contested in the courts.

The Nyasaland papers which are so relevant would not have been discovered except for

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for the fact that Mr. Caine and I happened to remember them. There seems to be something wrong about this. Generally speaking, the whole of the income tax law in the Colonies is based on the model Ordinance, and years ago when I saw that this was going to happen, I arranged with G.D. that they should keep a special register in which should be noted and indexed all the advice which we or the B.I.R. gave the Colonies, and ^{to} local judgments upon the model Ordinance, etc. I think we asked the Colonies to send us copies of any judgments and, in addition to that we have several times, at the request and expense of a Colony taken advice from Counsel here on the Ordinance.

I hope sincerely that all these precedents are not lost.

Lastly, is it not a little odd that income tax which is about the most centralised subject there is, should still be registered geographically?

HB 8.5.41.

The Library have at last succeeded in finding a copy of the report in the New Zealand case referred to which is at page 18 in Volume 24 of New Zealand Law Reports for 1905. In that case it was not disputed that tax was due in respect of any profit arising out of the addition in value to a commodity produced in New Zealand prior to its export from that country, although the sale took place elsewhere. What was decided was that the New Zealand authorities could not bring within their scope the whole of the profit on sales of New Zealand produce where part of such profit arose from processes and operations carried on outside the country. It appears from the report that there was a previous Australian case, the Commissioners of Tax versus Kirk, which went to the Privy Council and in which it seems to have been decided in effect that income was earned in New South Wales in respect of processes carried on there for the extraction and treatment of ore although the sale took place elsewhere.

These cases are not decisive with regard to the exact interpretation of the Nigerian Law, the wording of which is not identical with either the New Zealand or New South Wales provisions, but they do lend general support to our thesis that a taxable profit or gain does arise when produce is purchased in a country and subjected to any sort of process which adds to its value before export even although that value is not converted into cash by sale within the country. I think therefore, that it would be useful in communicating with Nigeria to let them have a full copy of the report of the New Zealand case as well as a copy of the case of Sulley versus the Attorney-General.

Draft despatch herewith.

J. Caine
22.5.41.

X
This has been discussed before. Review will be made. (See "or" "Exhib") when over action has been taken
1188/40 bstab

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This on the face of it is rather obvious ⁶
 as it might be very difficult to show that
 a company like the U.A.C. was in a
 difficult position, in respect of the purchase of
 produce from the Co-operative Ltd., or also
 difficult to show that any substantial
 profit value was added to the produce by
 the simple process of wrapping, packing &
 boxing which is about all that is done &
 it by the purchasing company. Of course
 the U.A.C. may not believe their heads
 about the point as they get relief from
 double I.T. but then we, I believe,
 subsidiary companies in W.A. which
 do not pay U.K. income tax & there
 is always the possibility of the substantial
 quantities of produce being ~~substantially~~
 bought direct from by America from
 dealer/merchants in W.A.

We are of course to outcome, but
 I think you will see in view of the
 possible effect of I.T. yields in W.A.
 O.G.R.W. 29, 5.49

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10 Neg 338 (4 ans) - 10/11/41 8

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desp. & accept your proposal to
inform Messrs Coeva Manufacturers
Ltd. that their claim to non-
liability is not now contested

(signed) J. J. J.

10

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AIR MAIL.

NIGERIA.

Government House,

Nigeria.

No. 610

RECEIVED
21 OCT 1940
G. O. RESY

14 October, 1941.

My Lord,

30251/1/41 2

I have the honour to acknowledge receipt of your despatch No.171 of the 5th of June on the subject of the liability to colonial income tax of companies whose business consists solely in the purchase of produce for export and to inform you that I have now considered the position of such companies operating in Nigeria in the light of the decisions recorded in the reports of the cases - Sulley versus Attorney-General and the Tax Commissioner versus the Kauri Timber Company Limited - copies of which were transmitted with your despatch, and in the light of the correspondence between your Department and the Governor of Nyasaland, which also formed an enclosure thereto.

2. After a very careful study of these papers and of their application to local conditions I have reached the general conclusion that profits derived by non-resident companies from the purchase and export of Nigerian produce cannot properly be subjected to tax unless those products are processed or improved before leaving Nigeria, and then only, perhaps, to the extent of the proportion which the cost of such processing or improvement bears to the sale value of the produce.

ann 5

3. In regard to the particular liability of Messrs. Cocoa Manufacturers Limited to Nigerian income tax, my Attorney-General has recorded his opinion that a profit made by the purchase locally of cocoa beans and their shipment to the United Kingdom to be converted into chocolate or sold at a profit does not constitute income accruing in or derived from Nigeria in respect of gains or profits from a trade or business carried on in Nigeria within the meaning of section 5 of the Income Tax Ordinance [No.3 of 1940]. It appears probable therefore that if Messrs. Cocoa Manufacturers Limited were assessed to tax an appeal to the Courts against assessment would be decided in their favour and I propose that the Company should be informed that their claim to non-liability is not now contested.

4. With reference to the fifth paragraph of Your Lordship's despatch, while it is true that the issues involved are potentially of vital importance to Nigeria the conclusions now reached fortunately will not necessitate either the refund of tax already collected or any downward revision of the revenue estimate for the current year, since profits of the kind in question have never in fact been assessed for tax.

5. I have considered whether, in the light of the conclusions which I have now reached in this matter, it would be expedient to enact a proviso to section 5(a) of the Income Tax Ordinance similar to that adopted in Nyasaland, but I am doubtful whether such an amendment

The Right Honourable
Lord Moyne, P.C., D.S.O.,
Secretary of State for the Colonies,
London, S. W. 1.

would

SEA.

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would serve any useful purpose and for the present I should prefer to leave the law as it stands.

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I have the honour to be,
My Lord,

Your Lordship's most obedient, humble Servant,

B. H. Hall

GOVERNOR.

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30231/7/41 Nigeria.

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4252-1501 WL 35815-61 12,000 12/39 T.S. 695
15844-1501 WL 45767-68 30,000 2/40 T.S. 695

C. O.

- Mr. Caine. 22/5
- Mr. E. G. Burns 24/5
- Mr. O. G. R. Williams 29.5
- Sir A. Burns.
- Mr. G. L. M. Clauson.
- Mr. C. J. Jeffries.
- X Mr. A. J. Dawe. 29.5
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

St

Downing Street, S.W.1.

Sir,

I have etc. to acknowledge the

receipt of your despatch No. 166 of the 3rd March in ^{regarding} which arises the question of liability to income tax of companies which carry on business in Nigeria solely by the purchase of produce for export. An analogous question was considered some years ago in correspondence with the Government of Nyasaland, of which copies are enclosed for your information. In that case special legislation had been passed making provision for the taxation of concerns which purchased produce in Nyasaland but sold it elsewhere, and after discussion with the Board of Inland Revenue it was agreed that it was equitable that taxation should be levied in cases where, by the application of processes or other operations within the country of production, the value of the product was increased before export even although that value was not realised by sale within the country.

2. Whether such a profit exists in ^{any particular} case can obviously only be settled by consideration of the individual facts of that case, but the general criterion is clear in

June 1941
G.D. 1941
R. 30 MAY
D 3/6

DRAFT.

NIGERIA.

NO. 141

GOVERNOR.

- ✓ Nyasaland Conf. of 1.8.35 ✓
(1 in 44086/35)
- ✓ To " 60 of 3.3.36 ✓
(13 in 70.)
- ✓ Nyasaland Conf. of 30.6.36 ✓
(1 in 44086/36)
- no encl To N'land Conf. of 29.7.37 ✓
(3 in 44086/37)
- done Report of Sulley v. Ats. Court ✓
(1 in file)
- Make copy for this file { Report of Comm. of Tax. Revenue ✓
Timber Co. Ltd ✓
(No. 18-37 in N.2 ✓
Law Report, Vol. 14, 1905)

FURTHER ACTION.

? D
Copy 10 this (with encl.) to D.I.R., L.F. [unclear]
Mr. Evans to me
& note precedent

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principle, that is that something must have been added to the value of the product before export. ^{NY} It does not follow ~~either~~ ^{however} that ~~the~~ liability would exist in the absence of special

provisions such as was made in Nyasaland; ^{that would depend on the precise interpretation of the provisions of the relevant law.} ~~For your information I enclose copies of the reports of the two cases quoted by~~ ^{9 enclos, however, for your info} ~~copies~~

Messrs. Cocoa Manufacturers Limited, that is, Sulley versus Attorney-General and the Tax Commissioner versus the Kawrie Timber Company Limited. In the first case it was established that purchase alone does not constitute the carrying on of a business and cannot be regarded as producing a taxable profit. In the second it was established that while ~~a~~ tax might be due in respect of any increase of value resulting from processes carried on in ^{the} country of production the authorities of that country could not properly tax the whole profit arising from operations in the product concerned if the sale took place outside the country of production.

4. If, after consideration of the Nyasaland correspondence and the reports of the two cases referred to, your advisers are of the opinion that the circumstances under which Messrs. Cocoa Manufacturers Limited carry on business are such as to make them liable to tax under the Nigerian Ordinance, I would suggest that they should be informed that that is the view of the Nigerian authorities and that if they are willing to accept that view the matter should be left to be settled by an appeal to the Courts.

5. I fully appreciate of course, that the decision of this question may be of very considerable importance to Nigeria since so much of the export trade is conducted by firms which

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not

which purchase produce from the growers but make no sale of it within Nigeria, so that the principles upon which the profits arising from their operations, ~~which are probably~~ ^{are to be} assessed ~~on~~ ^{for Nigerian} United Kingdom income tax, ~~would~~ ^{may} have considerable influence on the yield of that tax.

I have, etc.

(signed) M3YNE

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Held, per Williams, Denniston, Edwards, and Cooper, J.J. That the company could not be said to be occupying and actually using, for the sole purposes of its business (within the meaning of section 68 of the above Act), any part of its forest lands, whether (b) or (c), and was entitled to the deduction of 5 per cent, on the capital value, under section 68, only in respect of its business premises, under (a). Per Stout, C.J.: The company was entitled to the deduction on any part of its forest lands used continuously in the process of cutting and storing the timber.

G. A.
1904.
--
Commissioner of
Taxes
v.
Kauri Timber
Company.

This was a special case stated, and removed into the Court of Appeal for argument, in an action in which the Commissioner of Taxes sued the Kauri Timber Company (Limited) for income-tax alleged to be due by it upon certain amended assessments made by the Commissioner of the income derived by the company during the years ending the 31st of March, 1901, and the 31st of March, 1902. The facts of the case are sufficiently stated in the headnote and also in the judgments. The following are the questions put by the special case for the decision of the Court:-

(a) Is the company taxable in New Zealand on the total amount of net profits ultimately made on kauri timber, wherever the same may be sold or paid for, or however it may be treated inside or outside New Zealand by the company?

(b) Is the company taxable in New Zealand for any further profit on any of its kauri timber forwarded by it from New Zealand and disposed of by it outside of New Zealand, and the profits whereof are not received in New Zealand, than the profits made by it ascertained by estimating (1) the value of such timber at the time it is forwarded from the Colony of New Zealand, and deducting therefrom (2) the market value thereof when in its natural or unmanufactured state, and (3) such cost of felling, transporting, and converting the same into the state or condition in which it is at the time it is forwarded from New Zealand as is allowable by law?

(c) Should the £5 per centum deduction for the value of land actually used and occupied solely for the purposes of the company's business be allowed under section 68 of "The Land and Income Assessment Act, 1900," on (1) the business premises in the various districts, as per list, valued at £33,077 or (2) the said business premises, valued at £33,077 plus the timber lands from which the company is clearing the kauri timber, valued in 1901 at £73,626, and valued in 1902 at £62,450, or (3) the whole of the forest lands, including the lands mentioned in (1) and (2), held by the company, valued in all at £244,232, in 1901 and at £222,911 in 1902?

(d) If question (a) is answered in the affirmative, should the Commissioner, in ascertaining the company's net taxable income, allow as a deduction the expenses of the head office of the company, which is situated outside New Zealand?

It was stated during the argument that it had been agreed in the Assessment Court that the Magistrate should not decide

the

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Here at least the two first of the processes mentioned in Commissioners of Taxation v Kirk (1) take place in New Zealand. It is well settled that if a trade is either wholly or partially carried on in England the profit is assessable in England; San Paulo (Brazilian) Railway Company v. Carter (2). The only distinction is that there the head office was in England. But the other cases show that that makes no difference, as Commissioners of Taxation v. Kirk (1). In Erickson v. Last (3) the appellants were a foreign company, and the point on which the case was decided was that they were carrying on business in England. In Commissioners of Taxation v. Kirk(1) the Privy Council held that In re Tindal (4) ought to have been decided the other way. In that case the taxpayer resided out of New South Wales, the meat was killed and pressed in New South Wales and put into tins there, the tins were put into cases, and the meat was sold in London. According to the Privy Council, tax was payable in New South Wales. Next, as to the deduction under section 68. The allowance under that section is an allowance in lieu of rent. There is a deduction under the proviso to subsection 7 of section 59 of the value of the kauri-trees at the moment of severance. These forest lands are not occupied and used for the purpose of the taxable business, which is the business of a sawmiller. The income of that business begins to be earned as from the felling of the timber. Section 68 is interpreted by subsection 12 of section 66. The same principle has to be applied to a coal-mine under subsection 6, (b), of section 59. It cannot be said that a deduction is to be allowed on the capital value of the whole of the coal in a mine. The same principle must be applied as would have to be applied in the case of a sawmiller purchasing the logs, when felled, from the owner of the land. All classes of persons must be placed upon an equality in this matter. The company is not using the land, except the mill-sites, &c., for the purposes of the business; it is using the timber for the business. Gillatt & Watts v. Colquhoun (5) throws some light. As to the head-office expenses, they are not deductible, because they are an expense incurred outside of New Zealand within the meaning of subsection 2 of section 66.

Thomas Cotter and MacCormick, for the defendant company:-

In all the cases in which profits made outside have been held taxable, the ground has been either that the inception of the business - i.e., the contract - was made in the country, or that the actual profits were received there; Attorney-General v. Alexander (6). In In re Tindal(4) the claim made by the taxpayer was that the business from which the profit came home was carried on in London, and that no tax was payable in New South Wales, although the meat was produced and preserved and tinned in New South Wales. Commissioners of Taxation v. Kirk(1) does not go so far as claimed. The judgment of the Privy Council only went to show that a part of the profit derived by the company was taxable in New South Wales. The grounds of appeal from the assessment, and the questions put to the Supreme Court of New South Wales(7), show that the question was whether the company had any income taxable in New South Wales. The question is stated in the same way in the report of the case in the Privy Council(8). It is so stated also in the judgment delivered by Lord Davey(9). And on page 593 it was said that so far as related to the two processes carried on in New South Wales the income was earned and arising

- (1) [1900] A.C. 588. (5) 33 W.R. 258.
 (2) [1895] A.C. 31. (6) L.R. 10 Ex.20.
 (3) 8 Q.B.D. 414. (7) 19 N.S.W.R.(1) 294, 297.
 (4) 18 N.S.W.R.(1) 378. (8) [1900] A.C. at p. 588.
 (9) Ibid. at pp. 590, 592.

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arising and accruing in New South Wales. That is the real judgment of the Privy Council. The case shows that the process of manufacture or production may be divided into stages, and the income held taxable in each country according to the stages which take place in each. Double taxation only occurs where the whole profit is earned in one country but the recipient resides in another country and receives and spends it there. That is equitable. None of the cases are conclusive on this case: Colquhoun v. Brooks (1); Grainger & Son v. Gough (2). Sulley v. Attorney-General (3) strongly supports the defendant company's case. The line of demarcation is where the New Zealand territory ends and the New Zealand Government can no longer either give protection or claim a tax: Attorney-General v. Alexander (4); Kodak (Limited) v. Clark (5); Ericksen v. Last (6). It is admitted that, if the local board of the company were to enter into a contract in New Zealand for the sale of timber in London, the whole profit on that transaction would be taxable here: Watson v. Gandie & Hull (7); Cesena Sulphur Company v. Nicholson (8). In Commissioner of Taxes v. Eastern Extension Company (9) the business on which the profit was earned originated in New Zealand, the contracts to send the messages were made in New Zealand. In section 3 of the Act "profit" is interpreted as including "gain." The gain made during the year must be ascertainable, and gain need not be in coin of the realm. There can be a gain without a sale. As regards stock-in-trade the value has constantly to be looked to in order to arrive at the gain, although there has been no sale. Timber may be felled and cut into a marketable commodity, and so taken into stock; it may be kept on hand; it may afterwards be sold at an undervalue or given away; or it may be built by the company into a building of its own. The value it had at a given date must be looked to to get the "gain." In view of Commissioners of Taxation v. Kirk (10) and the interpretation of "profit" as "gain", section 51 must be read as providing that "income" shall be deemed to include "all gains arising or accruing in New Zealand from such business", and section 59 as providing that "income derived from business" includes "gains derived by any taxpayer, in or out of New Zealand, from business in New Zealand." The Legislature has used different language in section 64 - apt language when intending to include profits made on business originating in New Zealand but carried on outside. The inference is that where it has not used such language it has not intended to include such profits. If subsection 2 of section 66 is read literally it excludes the allowance of a deduction of any loss or outgoing not actually incurred in New Zealand, even though wholly arising out of the taxable business. It is unfair to ask the company to pay upon income earned outside of the colony, if the expenses of earning it are not deductible. Next, as to the deduction under section 68. The whole forest lands are occupied and used for the purposes of the business. "Business" is given a wide definition in section 3. The company carried on a large business in New Zealand. Kauri timber cannot be grown in a short time. To justify a company in embarking in such a business it is necessary for it to acquire material by which it can carry on for a number of years. The whole area is in this sense used for the purposes of the business. The company is at all events entitled to the deduction on blocks from which timber is being cut at the time. The deduction

- (1) 14 App. Cas. 493. (2) 77. (6) 8 Q.B.D. 414.
(2) [1897] A.C. 325, 331. (7) [1898] 1 Q.B. 326.
(3) 5 H.L. & N. 1711; 29 L.J. Ex. 464. (8) 1 Ex. D. 428, 456.
(4) L.R. 10 Ex. 20. (9) Under appeal. Not yet reported.
(5) [1902] 2 K.B. 450; [1903] 1 K.B. 505. (10) [1900] A.C. 588.

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deduction under subsection 7 of section 59 is no deduction. The company would get that in estimating profit in any case. The value of the tree is capital, and not part of the profit. At the very least the company is entitled to 5 per cent. on the land which it actually clears during a year. As to the head-office expenses: "Income" means profits, and "profits" means gain. Clearly, therefore, all expenses actually attendant upon and actually necessary in earning a profit should be deducted unless the Act plainly excludes it. The words "or not" in subsection 2 of section 66 should be read as "nor". Subsection 2 must be read subject to subsection 6.

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H. D. Bell, in reply:-

Eriksen v. Last (1) and Commissioners of Taxation v. Kirk (2) show that it is immaterial whether the taxpayer is resident in the country or not. Eriksen v. Last (1) shows that it is immaterial that the whole profit is earned outside of the taxing country. This is profit derived by a taxpayer out of New Zealand from the cutting of timber in New Zealand, within the meaning of subsection 7 of section 59. Colquhoun v. Brooks (3) was commented on and distinguished in London Bank of Mexico and South America v. Apthorpe (4). See also Tischler & Co. v. Apthorpe (5) on the same point as Eriksen v. Last (1). As to the use-and-occupation point, land which is under subsection 7 of section 59 is not under section 68. As to the head-office expenses, a similar point was decided by Richmond, J., in 1893 in Commissioner of Taxes v. Bank of Australasia (6), on subsection 6 of section 11 of "The Land and Income Assessment Acts Amendment Act, 1893."

Cur. adv. vult.

Stout, C. J. :-

The defendant is a company registered and having its head office in Melbourne. It carried on business in New Zealand as a sawmiller, cutting and preparing timber for sale in New Zealand and for export.

The main point in dispute between the plaintiff and the defendant is put in question (a), and it is whether the defendant company should pay income-tax on the total amount of net profits made on kauri timber, wherever the same may be sold or paid for, or however it may be treated, inside or outside of New Zealand, by the company.

It appears that the company export some of their timber in balk and some in logs to Australia and Europe. The company, on receipt of the timber at different places, cut it into smaller sizes, and partially manufacture it into doors, sashes, &c. A profit is made on such operations, and the plaintiff claims that such is taxable in New Zealand, even though the proceeds of the sale, or the profits, are not received in New Zealand.

This

- (1) 8 C. B. D. 414.
- (2) 1900 A. C. 588.
- (3) 14 App. Cas. 493.
- (4) 1891 1 C. B. 383
- (5) 52 L. T. 814.
- (6) Not reported.

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This contention is based on the following provision in "The Land and Income Assessment Act, 1900", sections 51 and 59: A company is liable to pay a tax on its income, and "income" is deemed to include all profits derived from or received in New Zealand from its business" (section 51). Section 59 states that income "derived from business" "includes, but without limiting the meaning of the words, "the profits derived from or received in New Zealand by any "taxpayer in or out of New Zealand from the following "sources"; Subsection 7 - "From the cutting, treatment, and "sale of timber or flax by any person, whether the owner "of such land or not". Then there is a provision allowing certain deductions. Sections 64 and 66 must be referred to in connection with these sections 51 and 59. Section 64 provides that, in case of shipping companies, "Income "derived from business in New Zealand shall be deemed to "include income derived or received from business originating "in New Zealand and carried on outside New Zealand". Section 66 enacts that no deduction shall be made in respect of any income "in respect of " [sub-section 2] "any loss "or outgoing not actually incurred in New Zealand, or not "exclusively arising out of such business", &c.

It was contended that, as the kauri timber came from New Zealand, the income derived from its treatment outside New Zealand was covered by sections 51 and 59. If this is so, it seems clear that the outgoings necessary to earn this income cannot be deducted. (Subsection 2 of section 66) The company must incur considerable expense in treating the kauri in Australia by sawing it, planing it, &c.; can it be that the income from such woodware-factories where such work is done can be claimed in the assessment of the income, and yet the expenses to earn the income not be deducted?

Further, was it necessary to make the provision in section 64 as to shipping companies if the income from business originating in New Zealand was liable to taxation if it was carried on elsewhere? In my opinion subsection 7 of section 59 must refer to the treatment and sale of timber in New Zealand. A statute passed by a Legislature is supposed to deal only with matters within its territorial jurisdiction. The income-taxing Act cannot be presumed to tax a company situated in England or Australia on its profits made there merely because the primary products used in its business came from New Zealand. It may be that a Legislature has power to tax a sawmiller in New Zealand on the profits he makes in England on the cutting-up of timber there and fashioning it into articles of furniture, &c., or to say that if the owner of wheat in New Zealand has a flour-mill in England, the profits made from such flour-milling, though never received in New Zealand, and though the grower lives in London, are taxable in New Zealand. Before, however, coming to the conclusion that the Legislature meant to impose taxation of this kind, the words of the law must be clear and precise. In my opinion it would be straining the language of sections 51 and 59 to so construe them, and these provisions must be read as only taxing the profits made in New Zealand up to the time of the finished product leaving New Zealand. The value of the kauri in balk or in boards when exported can easily be ascertained, and it is on that value that the balance-sheet must be made up to ascertain the profit.

It was contended, however, that the judgment of the Privy Council in *The Commissioners of Taxation v. Kirk* (1) was decisive of the meaning of the statute. In that case

(1) [1900] A.C. 588; 69 L.J. P.C. 87.

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it was only held that certain companies had some income in the meaning and operation of the New South Wales Land and Income Tax Assessment Act of 1895, and that such income was liable to taxation. The Privy Council did not decide that all the income derived from the ore after treatment was taxable; nor in overruling the decision of *In re Tindal* (1) was that decided. The New South Wales Court had held that no part of the income was taxable. Their Lordships said there were "four processes in the earning of the income - first, the extraction of the ore from the soil; secondly, the conversion of the crude ore into a merchantable product, which is a manufacturing process; thirdly, the sale of the merchantable product; fourthly, the receipt of the moneys arising from the sale". Their Lordships held that, so far as related to the first and second processes, the income was earned in New South Wales. The greater part of the ore when extracted from the soil was treated "by the company's concentrating plant at Broken Hill, in New South Wales". The case, in my opinion, is an authority for the view I have expressed. Their Lordships did not hold that income derived from processes followed out of the colony was taxable. It is true that section 27 of the New South Wales Taxing Act states, "No tax shall be payable in respect of income earned outside the Colony of New South Wales"; but, unless the words of our statute clearly import that income earned outside the colony is to be taxed, there will be no implication to that effect.

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The question in this case is what their Lordships said was the question in *Tindal's* case (1), "what income was arising or accruing from the business operations carried on by the company" in this colony? And the answer must be, only the profits derived from the business operations in the colony. If the timber is treated elsewhere, then that is not income derived from the business carried on in the colony.

The other questions raised in the case turn on the meaning of section 68 of the statute. In my opinion it cannot be said that the third exemption claimed - viz., timber lands held by the company - comes within the terms of that section. The timber reserves are not occupied and actually used for the sole purposes of the business, nor can it be said that all the land mentioned in the second exemption claimed is so occupied or used. I am of opinion, however, that part of the land referred to may be so occupied and used. Some may be used for dams, in the floatage of timber, and some for storage. The lands from which the trees are cut are not continually occupied and used, and in my opinion it must be a continuous occupation or user before what is equivalent to a rent can be deducted.

The questions should, in my opinion, be answered:
(a), No. (b), No. (c), Only on (1) and on any land used continuously in the process of cutting and storing the timber. (d), question (d) requires no answer, as question (a) is answered in the negative.

EDWARDS, J., delivered the judgment of himself, WILLIAMS, DENNISTON, and COOPER, J.J., as follows:-

The defendant company is an incorporated company which
has

(1) 18 N.S.W.R. (L.) 508.

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has its registered and head office in Melbourne. It carries on business there, and also in New South Wales and in New Zealand. In New Zealand it is the owner of extensive kauri forests, and has many timber-mills and timber depots. Its principal business in New Zealand is the conversion of its timber-trees into timber, partly in balk, partly in fitches and boards of various dimensions. A large part of the timber in this condition is exported by the company to Sydney, where parts of it are cut up into smaller dimensions. Part of the timber so exported is sold, either in balk or after being so cut up, in Australia and England. Part is manufactured in Sydney into doors, sashes, and other articles and is then sold in its manufactured condition. The purchase-moneys are received by the company, in Melbourne. Other portions of the timber are sold in New Zealand.

The plaintiff, the Commissioner of Taxes, claims that the company is taxable for income-tax purposes on the total amount of the net profits ultimately made by the company on the timber exported from New Zealand, wherever sold, and whether sold in the condition in which it is exported from New Zealand, or after being reduced to smaller dimensions, or being turned outside New Zealand into manufactured articles. The defendant company contends that it is not taxable in New Zealand in respect of profits made by it upon the timber exported by it from New Zealand after that timber has left the shores of New Zealand, and that the mode in which the income derived by it from such timber ought to be ascertained for the purposes of taxation under "The Land and Income Assessment Act, 1900," is to estimate the value of such timber at the time when it is exported from New Zealand, and to deduct therefrom the market value of such timber when in its natural and unmanufactured state, and the cost of felling, transporting, and converting the same into the condition in which it is when exported from New Zealand. The Commissioner of Taxes does not dispute that the deductions so claimed ought to be allowed. The only matter in controversy upon this branch of the case is whether the company must for income-tax purposes account for all the profits made by it in respect of timber exported by it from New Zealand, whether such profits are attributable to its dealings with such timber within New Zealand or outside New Zealand, or whether it must simply account for the value of such profits up to the time of the exportation of the timber.

The question arises upon the construction of the 51st section of "The Land and Income Assessment Act, 1900" which is in these words: "where the taxpayer is a company its income derived from business shall, except in so far as the meaning of 'income' is extended or modified by the five next succeeding sections, be deemed to include all profits derived from or received in New Zealand from such business in each year ending at the close of the thirty-first day of March, including therein all profits falling within the definitions of 'income derived from business,' and 'income derived from employment or emolument,' in sections fifty-nine and sixty hereof, and also all profits from investments of any kind other than investments in land, and including also all dividends earned, and sums carried to any reserve, sinking, or insurance fund, howsoever designated, and income-tax shall be assessed and levied on all such income accordingly."

The case has been argued at very great length, and many English decisions upon taxing-statutes have been cited. None of these is directly in point, and but little assistance is to be derived from any of them. The question in dispute must in our opinion, be determined upon a critical examination of the statute, unhampered by previous authority. We proceed therefore to that examination, reserving until later our remarks upon the only case which has an indirect bearing upon the matter.

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The difficulty seemingly apparent of ascertaining upon what income the company must pay tax unless the timber is followed to its ultimate realisation, in some form or another by sale, disappears upon an examination of the statute. The interpretation clause, section 2, defines "income" as meaning profits, and "profits" as including gain. The 65th section of the statute provides that "for the purposes of this Act a tax-payer (whether a company or not) shall be deemed to have derived income although the same has not been actually paid to or received by him, but has been credited in account, or reinvested, or accumulated, or capitalised, or carried to any reserve, sinking, or insurance fund, however designated or otherwise dealt with in his name or interest or on his "behalf." From these provisions it appears to be plain that a taxpayer who makes a gain by carrying on his business must pay income-tax upon it, whether his gain is in money, or in stock-in-trade which he has not realised, or in any other shape. In whatever form he has the gain, even though he may never turn it into money, he must pay tax upon it. If, for example, the company instead of selling its timber, were to build rows of houses upon its land, there can be no doubt that the value of the timber so used, less the prescribed deductions, must be treated as income coming within the concluding words of section 65 - as "income otherwise dealt with in its name or interest or on its behalf." So, also, if the company chooses to export its timber, in order to enable it to carry on an Australian trade, it must pay income-tax in respect of the value of the timber so exported, less the prescribed deductions, as income not actually paid to or received by it, but otherwise dealt with in its name or interest or on its behalf.

Counsel for the Commissioner relied in support of their contention upon the case of *The Commissioners of Taxation v. Kirk* (1). In this case the profits had been made by the extraction of silver-ore from the soil in New South Wales, by its treatment in New South Wales, and by its sale in Melbourne and London, where the purchase-moneys were received. No contract for the sale was made in New South Wales. The statute provided that income-tax should be paid on incomes "arising or accruing to any person, wheresoever residing from any profession, trade, employment, or vocation carried on in New South Wales, whether the same be carried on by such person or on his behalf wholly or in part by any other person." It also provided that "no tax shall be payable in respect of income earned outside the Colony of New South Wales." The full Court of New South Wales had held - *Commissioners of Taxation v. Broken Hill Proprietary Company* (2) - that no tax was payable. The Judicial Committee held that the question was whether any part of the profits had been earned or produced in the colony: that no special meaning was to be attached to the word "derived" which they treated as synonymous with "arising" or "accruing": that there were four processes in the earning or production of the income - 1, the extraction of the ore from the soil; 2, the conversion of the crude ore into a merchantable product; 3, the sale of the merchantable product; 4, the receipt of the moneys arising from the sale; that all these processes were necessary steps which terminated in money: and that the income was the money resulting, less the expenses attendant on all the steps. Their Lordships therefore held that, so far as related to the first two processes, which had taken place in New South Wales, the income was earned and arising and accruing in New South Wales. The only question submitted to the Courts was, had the company any income liable to taxation under the provisions of the statute? This question was answered in the affirmative, their Lordships expressly stating that this was all that they were called upon to say. This case is therefore an authority for no more than this: that in such circumstances some income-tax was payable. Neither the decision nor the reasoning leads to the conclusion that their Lordships were of opinion that income-tax was payable in respect of the whole income. The contrary, indeed, may be inferred. It is suggested that their Lordships

(1) [1900] A.C. 588.

(2) 19 N.S.W.R. (L.) 294

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did not hold the taxpayer liable for payment of tax upon the whole income on account of the provision that no tax should be payable in respect of income earned outside the Colony of New South Wales; but income-tax is not payable in respect of income earned outside New Zealand unless such income is received in New Zealand, which is not the case here. The question in this case, as in the case before their Lordships, is, therefore, was the income in respect of which the Commissioner claims tax earned or produced in New Zealand? So far as the company's income is attributable to its operations in New Zealand the case is therefore an authority to show that the company is liable to pay income-tax, but it is an authority for nothing more. To this extent the company admits its liability, and this admission, in our opinion, covers the full extent of its liability.

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In our opinion, therefore, the answers to questions (a), (b) and (d) put by the case should be in the negative.

The only remaining question involved in these proceedings arises upon the construction of the 68th section of the statute, which provides that "when any taxpayer occupies, and actually uses for the sole purposes of business, any land of which he is the owner, he shall be entitled, in any return of income derived from such business, to deduct as an outgoing a sum computed at the rate of five per centum per annum on the capital value of his interest in the land, or, as the case may be, in the improvements thereon."

The Commissioner has allowed to the company under this provision a deduction of 5 per centum per annum upon £33,077, the value of the lands actually used by the company for the purposes of its business in the ordinary sense of the words; but the company claims a similar deduction of 5 per centum per annum upon £73,626, the value of lands described in its notice of objection as "(b) Lands (not included in above) held and actually being worked for the sole purposes of the company's business"; and also upon £137,529, the value of lands described as "(c) Other lands held solely for the purposes of the company's business." The company contends that the whole of the forest lands acquired by it for the purpose of eventually converting the timber-trees thereon into timber are lands which it "occupies and actually uses for the sole purposes of business" within the meaning of the 68th section of the statute. In the alternative it claims that the lands under heading (b), upon which it is actually cutting timber, come within that section. It is admitted that none of the company's lands upon which timber is growing are in other than their natural state, and that such lands are not used for agricultural or pastoral purposes. The Commissioner has made to the company the allowance provided by the proviso to subsection 7 of section 59 of the statute, of the market value of all trees converted by the company into timber, amounting to £16,472:7s. and he contends that no further allowance can be made in respect of items (b) and (c).

Section 59, so far as it affects the question under consideration, is in these words: "Income derived from business includes, but without limiting the meaning of the words, the profits derived from or received in New Zealand by any taxpayer in or out of New Zealand, in each year ending the 31st of March from the following sources: . . . (7) From the cutting, treatment, and sale of timber or flax by any persons, whether the owner of the land or not: Provided that in estimating the amount of income which shall be liable to assessment to tax the Commissioner shall deduct from the gross profits the market value of the product when in its natural or unmanufactured state." In cases in which timberlike trees grow upon the land, the owner of the land has to pay land-tax upon the value of the trees, which are part of the land; and the company has so paid land-tax in the present case. The object of the proviso to subsection 7 of section 59

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if there were any doubt it would, we think, be removed by the fact that in respect of its actual dealings with the timber-trees the company is already exempted under the proviso to subsection 7 of section 59. There is therefore, in our opinion, nothing to justify the Court in reading section 68 as conferring any wider benefit upon the company than has already been allowed to it by the Commissioner.

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In our opinion, therefore, the answer to question (c) put by the case should be that the company is entitled to the deduction therein mentioned only in respect of the business premises mentioned in the list appearing in the case, and valued at £33,077.

Solicitors for the plaintiff: Napier & Smith (Auckland).

Solicitors for the defendant company: Dufaur & Laocormick (Auckland).

[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be the main body of the court's judgment or a detailed list of premises.]

The construction of section 68 is in our opinion not doubtful when a consideration of that section shows that

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SULLEY v. THE ATTORNEY-GENERAL.

EXTRACT FROM TIMES LAW REPORTS JUNE 16, 1860.

(2 T.L.S., p. 439)

The Act which grants the duty now levied imposes under Schedule D the tax - 1. On the profits accruing to any person residing in the United Kingdom from any trade wherever carried on. 2. On the profit accruing to any person, whether a British subject or not, and wheresoever he may reside, from any trade exercised within the United Kingdom. 3. On interest of money, annuities, and other annual profits not charged by virtue of any other schedule of this Act.

Cockburn, C.J. - With all respect for the judgment of the court of Ex., I must say, that after having given the best attention I could to the reasons set forth in the judgment, and to the argument which has been urged upon us on the part of the Crown, I cannot bring myself to entertain the slightest doubt whatever that the judgment of the Court of Ex. should be reversed, and that our judgment should be for the defendant below. The facts are simply these: There is a firm established at New York for the purpose of buying goods in this and other European countries, and conveying them to America for the purpose of being sold there, and upon the sale of these goods so purchased in Europe and America, all the profits of the partnership accrue. The principal firm being established at New York, it appears that they have branch houses in this and several other European countries for the purpose of purchasing goods manufactured in those countries, and sending them to America for the purpose of sale. Now the defendant is sought to be made chargeable in respect of income-tax accruing not only upon his own share as one of the members of this general firm, but in respect of profits accruing to the firm generally. Now the body of the firm are neither resident in this country, nor are they subjects of this country, but they are American citizens, and it must necessarily be admitted that they are only liable under the Acts of Parliament relating to the income-tax, which we are now called upon to interpret, in case profits accrue to them derived from a trade exercised by them or on their behalf in this country. The question is, and the whole turns upon that one simple narrow question, whether persons circumstanced as these American subjects are who constitute this firm, carry on under the circumstances of the case a trade in this country. I think that they do not, as the term is used in the 1st section of the Income-Tax Act, namely, a trade exercised in the United Kingdom properly with reference to the subject-matter of the charge. It is perfectly true that wherever a merchant is established in the course of his dealings in buying and selling, with a view to profit, the details of his trade must necessarily extend over various places. He buys in one place; he sells in another, and the place where he sells is not always that where his business is established. He buys in one country; he sells in another, but he has one given place of business, in which and at which he may be said to trade, and his profits always come home to himself wheresoever they may, in the first instance, be realised: that I take to be the true meaning of trading, or exercising a trade within the terms of this Act of Parliament, and it would lead to the most serious and the most unjust consequences if it were

otherwise.

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otherwise. If it were to be said that because a man in the course of a trading transaction touches at a variety of places - buys in one place, barter in a second, sells that for which he has bartered the goods originally bought at a third - that at every one of these he is carrying on a trade which would bring him within the income-tax of each particular country, if an income-tax were there established. That would seem to me fraught with consequences as unjust as they would be inconvenient. That I take it is not the true sense in which this ought to be construed; and, indeed, the argument of the Crown must be carried to this length, if it is good for anything - that the mere employment of an agent in another country to buy goods which the merchant requires for sale somewhere else, would make that a trading within the country which would subject the profits eventually realised to income-tax; as for instance, to try the case, suppose this defendant were not a member of the general firm buying here, but that the defendant were simply an agent of the firm, see what the consequence would be, that because the American merchant buys in this country, he is to be liable to have his profits which are realised in America taxed in this country as well as in that. In other words, we should be doing that which is about the most impolitic thing which as a nation we could do - taxing those who come as customers to this country. It never could have been the intention of the Legislature to do anything so impolitic or unjust. It is not merely when you look to the provisions of the first section, and see what is the meaning of exercising a trade in this country with reference to realising a profit, that this construction at once suggests itself as the just, equitable and proper one; but when you come to look at the rest of the machinery of the Act of Parliament, to which our attention was called by Mr. Mellish in his very lucid and able argument, the thing becomes clear beyond the possibility of a doubt. The foreign subject who carries on business in this country not being resident here, cannot possibly be made amenable to our law - personally he is not chargeable. Then by what machinery are the profits which accrue from a business which he actually carries on in this country to be made amenable to this fiscal law? Why simply by holding that whoever carries on his business for him and receives the profits shall be liable to make a return, and to be assessed and pay the income-tax. Well, but in this case that machinery could not by possibility apply, and for this simple reason: there is no one here who receives the profits, because they are not received in this country, which plainly shows that they are not profits accruing from a trade exercised within this country in the true sense of the word, because the profits are received in America. There is no one who receives them here, and who can be made responsible? I think, when the sections come to be looked at, if light were wanting, - which I do not think it is - they shed an abundant light on the question in discussion, which is, whether the trade which is only so far incidentally carried on in this country that they buy here as they might buy anywhere else, for the purpose of that which is the main object of their business - selling in America - whether such a trading can be a trading within the meaning of this section of the Income-tax Act. I think, therefore, that in point of what is the reasonable construction of this Act, it clearly must be the policy of the law, and it certainly is the equity of it - especially when you come to look at all the other sections in the Act of Parliament, and the machinery to which our attention has been called - that there is only one construction which we can put on this Act of Parliament, which is, that the profits to the firm in America did not

accrue

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accrue to them in respect of any trade exercised in this country, but they accrued in respect of a trade exercised at the place where the firm is established, where its main and principal establishment is fixed, and where its main business is carried on, and where the eventual profits accrue and are realised, and where therefore alone they can be considered as forming a portion of the income of the country and therefore are chargeable to the income-tax. The profits which come home here as the share of the individual partner in the business - who is established here more as agent than as a partner, performing the duties of an agent far more than of a partner, because he does not act for the general purposes of the house, but only for the purpose of buying the goods for them to sell - they coming home to this country as his individual profits, and forming a portion of the income of this country, are properly taxable here. Therefore, as far as regards his share, it is not disputed for a moment that he is properly made liable. With respect to the main profits of the firm, which go into the pockets of the partners in America, they are not, and ought not to be, subject to be taxed in this country; and therefore I have no doubt in my mind that the judgment of the Court of Ex. ought to be reversed.

Williams, J. - I am of the same opinion.

Willes, J. - I agree in everything which has been said, except in thinking that this is so very clear a case. If I had had to construe the Act of Parliament without the assistance of the able argument of Mr. Mellish, I should have come to the same conclusion which the Court of Ex. did. Having heard that argument, for the reasons stated by the Lord Chief Justice, I agree that the judgment of the court below should be reversed.

Byles, J. - I am of the same opinion. - My brother Crompton has been obliged to go to chambers, and he desires me to say that he also is of the same opinion, for the reasons assigned by the Lord Chief Justice.

Blackburn, J. - I am of the same opinion. I do not think it necessary to say anything more.

* * * * *

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AIR MAIL.

33

NIGERIA.

NO. 166

RECEIVED
5 APR 1941
O. O. REGY

Government House,
Nigeria.
3 March ~~February~~, 1941.

My Lord,

no 41 on
30231/39
30231/40
no. 2518

I have the honour to request your advice on a question of liability to Income Tax under the Companies Income Tax Ordinance, 1939, (No. 14 of 1939) and the present Income Tax Ordinance, No. 3 of 1940, of companies which carry on business in Nigeria solely by the purchase of produce for export. A particular company in this category is Cocoa Manufacturers Limited and the circumstances are briefly as follows.

2. In reply to a formal letter addressed to the Company on the 17th of August, 1939, asking for particulars of income accruing in or derived from Nigeria, a communication was received from a firm of Chartered Accountants in Birmingham in which it was contended that their clients are a company registered in England, and although they make purchases of cocoa in Nigeria they do not in fact trade in Nigeria or receive any income from Nigeria. It was ascertained by enquiry from the Manager of the Company's branch at Ibadan that the activities of the company in Nigeria consist solely in buying cocoa for shipment on their own account to England. The assertion that the company carries on no trade in Nigeria was repeated and the *raison d'etre* of the local branch was declared to be the maintenance of the quality of cocoa purchased by avoiding the employment of middlemen.

3. It has however been held by the local Commissioner of Income tax after taking the advice of the Law Officers that the company is actually operating in Nigeria and by purchasing cocoa which it sells elsewhere is obtaining a profit derived from Nigeria and that in order to arrive at a correct assessment of tax it would be necessary to apportion the overhead and other charges between the London and Nigerian offices of the company. This was conveyed to the Chartered Accountants acting for the company.

4. In reply they resist the assessment of the Company on the grounds that it has been held by both English and New Zealand Courts that companies in a position analogous to that of Messrs. Cocoa Manufacturers, Limited, are not liable for income tax. Two cases are quoted in support of this claim, - the first that of *Sulley versus Attorney-General* (1860) (2.L.T.439) in which it is alleged to have been held that a firm of merchants, having their principal establishment in a foreign country, who purchase goods in England by means of a branch establishment and sell these goods in a foreign country, do not exercise trade in England within the meaning of the Income Tax Acts. The other case is that of *Tax Commissioner versus The Kawrie Timber Company Limited* (1904) (New Zealand L.R.18) in which it is stated to have been held that a Company was not liable in New Zealand upon the whole of the profits made upon timber exported from New Zealand

THE RIGHT HONOURABLE
LORD HOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S. W. 1.

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ans (2)

2.

Zealand and sold elsewhere, but was liable only in respect of that part of the profit which was derived from the business carried on in New Zealand. Further it is contended that no amount of research has revealed a case in which a person or company has been held liable for Income Tax merely on the ground of having purchased goods in the country where the tax is imposed.

5. The Attorney-General is unable to assess the weight of support lent to the company's claim for exemption by the two cases quoted above since no record of them is available in Nigeria and it is by no means certain that the law referred to in these cases is identical with Nigerian law. In Mr. Cox's opinion the profit on the cocoa purchased by Cocoa Manufacturers, Limited, in Nigeria is profit derived from Nigeria, inasmuch as if Nigeria did not exist there would be no such profit because there would be no cocoa on which it could be made. A copy of the two communications from the Chartered Accountants referred to is attached.

6. I am submitting this for Your Lordship's advice because if the claim for tax is to be pursued the analogies quoted must be shown to be false, and the claim for exemption raises a point of fundamental importance which must have arisen elsewhere upon the Model Income Tax Ordinance. There are other companies operating in Nigeria who confine their business here to the purchase of produce for shipment abroad. I shall be grateful for an early reply.

7. I would add that since the above was drafted Cocoa Manufacturers, Limited, have paid under protest an arbitrary assessment to tax made upon them by the Deputy Commissioner, but there still remains the question of principle to be decided.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

S. H. K. ...
GOVERNOR'S DEPUTY.

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Impey, Cudworth & Co.,
Chartered Accountants.

26, Waterloo Street,
Birmingham, 2.
September 8th 1939.

The Commissioner of Companies Income Tax,
Inland Revenue Department, Lagos, Nigeria.

Dear Sirs,

Cocoa Manufacturers Ltd.

We have been asked by our clients to write to you with regard to your circular of August 17th, 1939, requesting certain particulars in accordance with the Companies Income Tax Ordinance, 1939.

We have read carefully through this Ordinance and do not find that it concerns this Company. The above Company, registered in England, does indeed make some purchases of cocoa in Nigeria but does not trade in Nigeria and receives no Income from Nigeria. In the circumstances we do not suppose that you will require the returns etc. set out in Sections 18, 21 and 22.

Yours Faithfully,

(Sgd.) Impey, Cudworth & Co.

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C O P Y.

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END

IMPEY CUDWORTH & CO.
Chartered Accountants.

26, Waterloo Street,
BIRMINGHAM, 2.
March 15th 1940.

Commissioner of Companies Income Tax,
Inland Revenue Department,
Lagos,
NIGERIA.

Dear Sir,

Cocoa Manufacturers Ltd. Reference CT.158/12.

We are in receipt of your letter of February 5th and note your views. While being anxious not to be obstructive we regret that we cannot see that your letter helps to explain why in your opinion the Company is liable for Nigerian Income Tax.

It has been held by both English and New Zealand Courts that Companies in similar positions were not liable.

We would refer you to the case of Sulley v. A.G. (1860) 2 L.T.439 where it was held that a firm of merchants having their principal establishment in a foreign country who purchase goods in this country by means of a branch establishment and sell those goods in a foreign country do not exercise trade in this country within the meaning of the Income Tax Acts.

The New Zealand case to which we would also refer you was Tax Commissioner v. The Kawrie Timber Co. Ltd. (1904) N.Z. L.R.18. In this case on rather similar facts it was held that a Company was not liable in New Zealand upon the whole of the profits made by it upon timber exported by it from N.Z. and sold elsewhere, but was liable only upon the part of the profit which was derived by it from the business carried on by it in New Zealand.

We can find no single case in which a person or Company has been held liable for Income Tax merely on the ground that they have purchased goods in a country where the tax is imposed.

We shall be glad if you will again consider the position of this Company.

Yours faithfully,
(Sgd.) IMPEY CUDWORTH & CO.

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C.O.
Tosation

For P.Q. by Sir Robert Gower for Weds. 16.7.41
see no. 1. on P.Q. file

2

1 To No. 123 (Jamaica Tel) ^(14/8) was 14/7/41
DESTROYED UNDER STATUTE

2 Nigeria Saving Unnumbered — 26.7.41.

Mr. Hall will now wish to reply further to Sir Robert Gower. I submit a draft for conson herewith. I don't think we need try to put Sir Robert Gower right about the petition of right, but simply leave it that no petition of right has been submitted in this case. On 30/22/240/40 above, Mr. Hall has himself received a direct 'squeal' from Sir Wm. Geary about the Ali Balogun petition right case.

M. S. White
12. 8. 41.

Sir R. Gower actually enquired about a flat rate tax! Doubtless he was misled by his correspondents handwriting or typing.

~~SECRET~~

The flat rate tax referred to is a form of direct tax which has for years been collected from African Communities in Nigeria which are still too primitive to have organization to permit of the application of a regular income tax with all its machinery of allowances etc. Experience suggests that the direct tax, which is levied in various ways according to the nature of the Communities affected, is by no means oppressive. The position is carefully watched by the British administrative officers who are ready enough to recommend alterations in rate or remission of part of tax amounts in cases

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See Section 24
Ordinance No. 4 of 1940
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same penalty was reproduced in Ordinance No. 4 of 1940.

The inference by Sir William Geary that a number of persons at Ilesha were imprisoned for not paying an illegal tax is also nonsense. Nobody was imprisoned for that offence, and the levying of the tax was not illegal. True it was necessary to take stern measures to deal with an outbreak of violence and rioting which arose primarily over the levying of the tax at Ilesha. 36 persons were convicted on charges of ~~theft~~, arson and malicious damage to property. One might interject here that it is perhaps a little odd that the first information of a ~~large sized~~ riot comes to light only through the representations of Sir William Geary.

There is a little more substance in Sir William Geary's next complaint that at Ibadan a District Officer threatened the people that if they didn't ~~buy~~ war savings certificates their tax would be increased. The D.O. thought he was correctly interpreting an instruction from Government. He really was not far short of the mark, and although I see no real harm in what he said (vide paragraph 6 of the despatch) it might have been better left unsaid to an African audience.

In his letter of the 1st of September Sir William Geary states that the Nigerian Government refused to tell him the average number of men imprisoned annually for non-payment of tax. This is a lie. The Government told him quite honestly that such information was not available for the country as a whole, but that statistics in regard to any particular Division could doubtless be obtained on reference to the D.O. or in the case of Lagos to the Deputy Chairman of Income Tax.

Sir William Geary next asks that clemency be granted to the Ilesha rioters. The Governor does not recommend this.

? the reply to Sir William Geary should be in the terms of the last sentence of paragraph 4 of the despatch and of paragraphs 6, 10 and 11.

C.A. Ross
31/10/41.

If this written as above would
die many hours of work every week
be saved in Nigeria & Co.

? as proposed.

OGRD 8.4.41

Atme A.O.
8.11

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6 To King Kong (5 ans) - 19/11/41
OK

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30231/8/41.

(5974-150) Wt. 15406-96 5,000 7/40 T.S. 695

C. O.

Mr. Grossmith. // 11.41.

Mr.

Mr.

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dave.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street.

19 November, 1941.

Sir,

I have the honour to acknowledge the receipt of your confidential despatch of the 13th of October transmitting letters addressed to me by Sir William Geary on the 5th of August and ^{1st} 5th of September respectively.

Sir William alleges

- (a) That the imposition of a flat-rate tax at Ilesha was illegal before the enactment of the Direct Taxation Ordinance. (No. 4/40)
- (b) That a number of persons were imprisoned for not paying an illegal tax,
- (c) That, at Ibadan, the District Officer threatened that if more War Savings Certificates were not taken out, income tax would be increased,
- (d) That Government refuse to furnish him with information regarding the number of persons imprisoned for non-payment of taxes.

Finally, Sir William asks that clemency may be granted to the persons convicted on charges of riot/

DRAFT. DESPATCH

NIGERIA

CONFIDENTIAL

GOVERNOR

FURTHER ACTION.

C.D.
R 11 NOV
D 12

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riot, ^{arson} ~~arson~~, malicious damage to
property, etc. in connection with
the Ilesha riot.

(2) I am obliged for the information
which you have given me concerning these
matters and ~~I agree with the replies which you~~
~~have suggested in the last sentence of paragraph~~
~~4 of your despatch and in paragraphs 8, 10 and~~
~~11. I shall accordingly~~ be glad if you would
cause Sir William Geary to be informed accordingly.

~~I have, etc~~
in the sense of the last sentence
of paragraph 4 of your despatch
and of paragraphs 8, 10 and 11.

(signed) MOYNE

7

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5. Sir William's next remark, that concerning examination of accounts, is a somewhat typical example of his habit of addressing this Government and your Lordship without taking the trouble to collect the facts. It is apparent from Sir William's letter that he has been instructed by the Omo-Ibile Ijesha Society to make these representations: this same Society was in September 1940 granted by this Government permission to examine the books and accounts at the Ilesha Native Treasury. They engaged a firm of auditors for the task and the resultant report was given a lot of publicity in the press, but I might add revealed none of the serious irregularities alleged by the Society to exist. The facts are that an Ilesha society, which cannot be held to represent the taxpayers in any sense, asked to see the accounts, and their request was granted.

6. Sir William's next question concerns a statement made by the District Officer to the Ibadan Council in July. The passage appearing in the daily Press ran as follows:-

"The Senior District Officer informed the Council of the report he received from the Manager of Barclays' Bank that no Africans in Ibadan had yet purchased Savings Certificates. In view of that the Senior District Officer wanted the Council to understand that, should Ibadan people fail to purchase what was considered a satisfactory number of Savings Certificates, income tax might have to be increased."

This is an accurate report of what the District Officer did say, and though he believed that he was correctly interpreting the wishes of Government as conveyed in a circular on the subject issued last May, he did not in fact do so, and it was unfortunate that he chose to make a public statement in this form.

7. I annex a copy of a minute which I wrote on the 13th May last which was circularised to the Chief Commissioners and which gave rise to the District Officer's statement. Your confidential despatch of the 15th August 1941 reveals that I had but anticipated your own views on this matter.

18872/41
E.C.M.

8. Reports received as a result of these instructions however have shown that increased wealth is not universal throughout the country, and that the necessity for immediate measures as described above is not so pressing, and I have accordingly postponed for the present the question of increasing taxation. The answer therefore to Sir William's query is (a) that the District Officer's statement as quoted in the press did not constitute, and was not intended to constitute, a threat that he personally would raise the tax in Ibadan, which is what Sir William apparently believes it to mean; (b) that all it meant was that Government might have to consider increasing taxation, not in Ibadan specially, and not directly because Savings Certificates were not being purchased, but because of increased wealth in certain places; and (c) that for the present Government has come to no decision on the question of increasing taxation.

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9. With regard to Sir William's remarks on the exemption of the Governor from income tax, I have informed Sir William privately in respect of my voluntary contributions to revenue; and he has asked that this paragraph in his letter may be deleted.

10. As to Sir William's second letter, the first sentence is a deplorable misrepresentation of the result of correspondence he has had with this Government on the subject mentioned therein. Copies of the correspondence are attached for your Lordship's perusal: the facts are that no statistics compiled in Nigeria provide this information, and it could only be secured by a search through every native court minute book in the country, which is an impossible undertaking. It will be observed that Sir William did not demand the information; he merely asked if it could be supplied.

11. The last sentence of Sir William's second letter refers to the convictions the particulars of which were stated in paragraph 4 above, and I do not recommend that clemency be shown.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

B. H. Pindar

GOVERNOR.

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From

No. 552/41

Sir William Nevill M. Geary Bart

BARRISTER-AT-LAW, ENGLAND
BARRISTER-AT-LAW & SOLICITOR, NIGERIA

5th August, 1941

ORANGE HOUSE -
19 Tinubu Street, - 11
Lagos.

Telephone No. 822.
English Address :-
Oxon Houth Tonbridge.

The Right Honourable,
The Secretary of State for the Colonies,
London
Sir,

ILESHA 7/- FLAT RATE POLL TAX

On 1st July I cabled to Sir A. Baillie Bart M. P. to inquire of you as to legality of the 7/- Ilesha Flat Rate poll tax, I had already on 5th June put the same question to the Secretariat, but not receiving a reply, I cabled to Sir A. Baillie Bart.

However on 28th July I received a letter from the Secretariat Reference No. 36713/S.1/123 " the legal authority for the flat rate to which you draw attention is section 6 of the Ordinance No. 4 of 1940 as amended by Ordinance 10 of 1941".

But in the Secretariat letter of 1st June 36713/S.1/109 it is stated "the truth is that the flat rate of tax at Ilesha has remained unchanged at 7/- since 1937."

Therefore the 7/- flat rate poll tax has been charged for three years before it was ~~legal~~.

A riot took place at Ilesha as to tax, and inciting not to pay tax, is it fair to imprison taxpayers for not paying an illegal tax?

The Taxpayers asked to see the accounts and were repulsed with great rudeness.

Will you please inquire herein.

2. At Ibadan, as reported in Press, the District Officer threatened if more war certificates were not taken to, to raise the tax. Is that legal, will you inquire also herein ?

It seems to me in effect, "levying a benevolence".

3. The income tax here has been raised, but the Governor is wholly exempt. I have the greatest respect for him, but is it fair that

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the highest official should be not liable; really with furnished house, he is much better off than the P. M. :- I presume Mr Churchill pays I. T.

4. In financial Economics it is recognised that a Poll Tax is an unfair form of taxation, it may be trifling for the rich but crushing for the poor.

I have the honour to be,

Sir,

Your most obedient Servant,

William Bullin Sears

Solicitor for Omoibile Ijesha

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From

602/41

No.....

Sir William Nevill M. Geary Esq

ORANGE HOUSE

19 Tinubu Street,

13

BARRISTER-AT-LAW, ENGLAND

BARRISTER-AT-LAW & SOLICITOR, NIGERIA. 1st September, 1941

Lagos.

Telephone No. 822.

English Address:—

Oxon Hoath Tonbridge.

The Right Honourable,
The Secretary of State for the Colonies,
London
Sir,

IMPRISONMENT FOR NON PAYMENT OF TAXES

I have endeavoured to obtain the number of persons imprisoned for non payment of taxes, but the Nigerian Government refuse this information.

I believe that in England non-payment of taxes is not and never was a criminal offence, is not that so ?

John Hampden was sued civilly but never prosecuted.

Of course any widespread and malicious non payment of taxes approximates to a rebellion and would have to be dealt with accordingly.

However when non payment is due to poverty is it fair to imprison.

At Ilesha, I have in mine to you of 5th August No. 525/41 pointed out that the Poll Tax is illegal.

My clients were indeed guilty of a riot, but they were goaded on by the conduct of the officials first promising to show the account and then treating the deputation with insolence.

The maj~~esty~~^{esty} of the law have now been ~~desplayed~~^{vindicated} and peace and order restored, and I suggest clemency.

I have the honour to be,
Sir,
Your most obedient Servant,

William Nevill M. Geary

Solicitor for Omoibile Ilesha.

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CO 583/259/30231/8

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Copy of Governor's minute of 13th May, 1941.

In the past an increase in the amount of money coming into the country has been followed with great regularity and with a surprisingly slow time - lag, by a closely corresponding increase in imports.

2. This normal course of events has now been completely upset by the inability, for various reasons, of the importing firms to replenish their stock to the requisite extent. A lot of money is coming into this country, owing to (a) the produce schemes (b) the necessity for paying a larger army and (c) the necessity for housing the said army and feeding the soldier much better than he used to feed himself in his civil life. Military expenditure will probably bring something like £2,000,000 a year into the country. In the meantime imports, instead of going up, are going down, and certain to go down still further.

3. There are two results.

- (1) The Government is not getting its fair share (in increased customs duties) of the extra money coming in.
- (2) The people have money to spend and nothing to spend it on. This is particularly the case in the North, since produce prices are more favourable than in the South and the bulk of the soldiers are recruited from and stationed in the North. I discussed the situation with some of the Emirs yesterday and they all agreed that their people were very well off and had not enough to spend their money on.

4. Result no (1) above is bad enough but result no (2) is really dangerous. The normal result of this state of affairs is inflation, prices and wages rising in a vicious spiral. Prices control can do a good deal, but it is impossible to make it 100% effective. In Dahomey, where the French have made the mistake of fixing the official price too low the price in the black markets is many times the official price. Throughout the Vichy colonies (which of course are much worse off even than we are for imports) the process of inflation has begun. The German has noticed this, and (not wanting the state of the Vichy colonies to compare too unfavourably with that of the Free French) are allowing France to export to A.O.F. up to 30% of the pre-war amount.

5. There appear to be three possible remedies.

- (a) To provide the people with something to spend their money on. The only way of doing this that I can see is to encourage them to build better houses and to feed themselves better (on local food). A slow process, but everything possible should be done.
- (b) To encourage them to save. The Nigerian Savings Certificate campaign must be pressed to the utmost.
- (c) To increase taxation. The possibility of this must now be seriously considered. Increase in

import

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2.

import duties is out of the question -
 it would only increase the evil. Increase
 in export duties (and in the case of groundnuts
 of rail freight) is an expedient which hits one
 class of persons whose income has increased.
 But it only hits the primary producer of exported
 produce, and other producers (and petty traders)
 have also benefited. It looks as if we shall have
 to consider increasing direct taxation (including
 jangali, for the Fulani are doing very well). If so,
 we must act quickly.

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8/6/1941.

19 Tinubu St.,
Lagos.

To The Honourable
The Chief Secretary,

Dear Sir,

I shall be much obliged if you can inform me of the average yearly number men imprisoned for non-payment of Native Revenue; I am not asking this from any captious motive, but with reference to my work and to judge whether the taxation is unduly heavy.

Are such persons treated as criminals or as judgment debtors.

Also what amount of taxes has to be realised by selling up the taxpayers goods

2. I had asked you to lend me official books, apparently there is some difficulty therein and perhaps I can consult them more easily in the "State Paper" room at the British Museum.

Yours faithfully,

(Sgd.) W. N. E. Geary

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16A

01753/C.4/5

11 June, 1941.

Sir,

I am directed to refer to your letter of the 8th of June and to state that the information you seek is not available for the country as a whole. Statistics in regard to a particular Division, however, could doubtless be obtained on reference to the District Officer or, in the case of Lagos, to the Deputy Commissioner of Income Tax.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) G. MILES CLIFFORD

for Chief Secretary to the Government.

Sir William Geary, Bart.,
Orange House,
19 Tinubu Street,
Lagos.

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From -

Sir William Nevill M. Geary Bart,
Barrister-At-Law, England
Barrister-At-Law & Solicitor, Nigeria.

Orange House
19 Tinubu Street,
Lagos.

23rd June, 1941.

The Honourable,
The Chief Secretary to the Government,
Lagos.

Your letter No.01753/0.4/5
NUMBER OF PERSONS IMPRISONED FOR NON PAYMENT OF TAXES.

I beg to acknowledge receipt of yours of 11th June reference No. as above stating that the information as to persons imprisoned for non payment of taxes is not available for the country as a whole.

I am rather surprised thereat for taking Whitaker for 1941 page 612, the prison statistics detail separately the offences wherefor persons are incarcerated as e.g. cruelty to children, manslaughter, bankruptcy offences, and I deemed similar statistics were available here for imprisonment for non payment of taxes.

I wished to use the information in order to show whether or not the taxation was too heavy or easily born.

However I daresay I shall obtain the information required through some other channel.

Yours faithfully,

(Sgd.) William Nevill M. Geary

Solicitor for Egbe Omobile Ijeshe.

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6560-150) Wt. 41990-141 5,000 3/41 I.S. 695
(7007-150) Wt. 13564-152 19,000 5/41 I.S. 695

30231/8/41.

18

C. O.

Mr. Sidebotham. 13/8

Mr. Williams 14/8

Mr.

Sir A. Burns.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dave.

Sir J. Shuckburgh. August. 1941.

Permt. U.S. of S.

X Parly. U.S. of S. 14/8/41 18

Secretary of State.

For Mr. Hall's signature.

Ben R. Hall

DRAFT.

SIR ROBERT GOWER, K.C.V.O.,
O.B.E., M.P.

With reference to your request in the House on the 16th of July, about the Poll Tax in the Ilesha district of S. Nigeria.

I am writing to let you know that we have now had a reply from ^{the Province of} Nigeria.

Sir Bernard Bourdillon reports that the flat rate tax of 7/- in the district in question was sanctioned by the Chief Commissioner Western Provinces - the Southern Provinces have now been divided into the Eastern and Western Provinces - under power delegated to him under Direct Taxation Ordinance 1940 (as amended by Ordinance No. 10 of 1941) section 6.

FURTHER ACTION.

The

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The tax is not of course a new tax and has been levied in the same manner under previous Ordinances for many years. The Governor adds that no petition of right has been submitted in this case.

G. H. Ham
(Signed) G. H. HAM

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1941-43.

NIGERIA.

1

No. 30232.

SUBJECT.

**CLOSED
UNTIL
1972**

ARMS LEGISLATION.

Previous

1940

Subsequent

1944.

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1947

29.11.47

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Mr Meeson.

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A preliminary point. Would you please say what is the position with regard to the Arms Traffic Convention. See

§ 3 of No 2
34A on 71244/30 Gen

FJ Pedley
6.2.42

The Arms Traffic Convention of 1919 was never ratified. The Convention of 1925 was ratified by H.M. in respect of the UK & the ^{Empire} but the ratification has never taken effect because the condition attached to it, viz ratification by 8 other States, has not been fulfilled. Apparently the only Convention binding H.M. is the Act of Brussels of 1890 which was ratified in 1892.

JR Fairclough
11/2

This despatch has been carefully prepared and is well put up, and, provided you agree, I think we should approve the enactment of the draft Ordinance and Regulations, subject to the following observations

2. We should tell the Governor what is the position with regard to the Convention, as explained by Mr. Fairclough, and send him a copy of the Circular (2) despatch of March 27th, 1926, which, from the terms of paragraph 3 of the despatch, does not appear to be available at Lagos.

3. Please see Articles 13 and 14 of the Convention (below 34A on 71244/30 General). The system envisaged by the Convention was that supplying countries should not issue export licences without evidence that the authorities of the importing territory are willing to admit the arms in question. For the convenient working of the Convention, therefore, importing territories in the special zones ought to have machinery for issuing import licences. The Governor explains in paragraph 3 of No.2 that part II of the draft Ordinance is intended to enable him by subsidiary

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subsidiary legislation to give effect to the International Convention if it comes into force. Part II, however, relates only to exports from Nigeria. The machinery for granting import licences, which exists under the present Ordinance, is not to be continued in the new Ordinance, for the reasons explained in paragraph 19 of the Committee's Report. But, in view of the terms of International Convention, powers ought to be taken in part II of the draft Ordinance to set up machinery for granting import licences if the Convention should come into effect.

4. With regard to the definition of "cap, pistol, etcetera in Clause 2 of the draft Ordinance, it seems that the Law would be very easy to evade by making the length of the barrel slightly greater than 1 foot. Clause 15 of the draft Regulations is interesting in this connection. I think, however, we may assume that the definition has been drafted after careful consideration, and that we need not mention it.

5. The definition of "inland navigation" seems odd, since it attributes to the term a meaning quite different from that which the words would ordinarily bear.

6. Clause 18 (6) of the draft Ordinance appears to involve the repeal of Cap. 99, Section 6, but this is not shown in Clause 42.

7. Clause 24 (1) (c) seems rather unfair and illogical. I should have thought that the licence (as distinct from the permit) ought to be transferable. It is true that under item 7 of the second Schedule to the draft Regulations the transferee of a small arm would only be required to pay half the annual licence fee if he acquired the small arm in the second half of the year, but even so, this does not quite seem to meet the point.

8. Clause 26 of the draft Ordinance. Paragraph 27 of the Committee's Report. Clause 36 of the draft Regulations. The proposed procedure seems to be rather complicated. There must be many cases in which the heir of a deceased person, upon whom the ownership of the deceased person's small arm devolves, is clearly a suitable person to hold a permit and licence. In such circumstances the Government would seem to be imposing unnecessary work on its officers, and unreasonable inconvenience on the heir, and in requiring the small arm to be deposited in a public warehouse, possibly at some distance. I think we might suggest to the Governor that, in view of the above considerations, it might be left to the discretion of the Administrative Officer whether he deposits the small arm in a public warehouse or arranges forthwith for the issue of a permit.

9. Clause 40 (c) of the draft Ordinance. Clause 10 of the draft Regulations. These provide alternative methods for altering, or adding to, the fees which have to be paid. While this would probably not matter if the Legislation were already in force, it seems desirable when enacting new Legislation to decide which procedure is the more appropriate and to stick to it.

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10. I have looked up the Explosives Ordinance Cap. 1833, to see whether any complications might arise through certain commodities becoming subject of the provisions of both these Ordinances; but there does not appear to be any danger of this.

FJ Pedh

14th February, 1942.

I have the following observations to make on the draft legislation.

(1) As regards the terms of the Convention relating to imports, I quite agree that suitable control should be exercised in this respect as well as in respect to exports. However, paragraph 19 of the Committee's Report explains why the import licence should be abolished and replaced by a possessory permit, and such provision should, I think, establish an adequate measure of control over the importation of small arms.

(2) Definition of "inland navigation". This is certainly an odd definition, but presumably by a process of inference it means movement into Nigeria by river or lake. The map shows that craft can enter Nigeria from French territory by travelling down the Niger or across Lake Chad. I don't think it is worth while commenting on what is in substance a drafting point.

(3) Definition of "cap pistol": I think the question must be left to those who have to administer the legislation.

(4) Clause 18(6): This does not actually repeal Section 6 of Cap. 99, it modifies it inasmuch as any collector or trapper of birds (if such exist in Nigeria) would have to take out a bird licence if he did not want to carry a shot gun. I think, however, it is somewhat out of place where it is and could more suitably appear as an amendment to Cap. 99.

(5) Clause 24(1)(c): Unless I have misunderstood the comment I do not find the provision unfair and illogical. The licence in this instance is a revenue-making impost and it is personal to the holder. I can see no ground for the transfer of a licence nor for exemption from payment for the licence.

(6) Clause 26. The person upon whom the ownership devolves immediately on death is the legal representative of the deceased and not necessarily the heir to the estate. A rifle or pistol is part of the estate and the legal representative may have eventually to sell it in payment of debts of the deceased. I think we might leave it to the Government of Nigeria to ascertain by experience whether any inconvenience is occasioned by this scheme of custody and disposal.

(7) Clause 40(c): Regulation 2 gives effect to this provision. I have no criticism to make on this, but it seems to me that Regulation 10 is ultra vires as purporting to confer a legislative power

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B | power on the Governor which by Clause 40(c) is exercisable by the Governor in Council. In other words, the delegate purports to delegate. Presumably it is a time-saving expedient, but it is not legally permissible.

(8) Clause 34(4): This sub-clause seems to be inaccurately worded. There is no predicate to the subject "any person who". Perhaps the intention of the provision would be carried out if the words from "unless" to "prove" were replaced by "is unable to prove".

(9) Clause 33(2). The word "such" in the first line appears to be irrelevant.

C. (10) Clause 34(2): It would appear that the word "and" should be inserted between "section" and "who".

(11) Regulation 22(2) Proviso. I very much doubt whether the regulation-making powers of the Governor in Council extend to the making of a provision which can affect a prosecution under Clause 18(3) of the Bill either by precluding a defence or enabling a defence to be set up.

S. Labalaca
24.2.42.

R. 94

Dkt. for comm. - through Sir S. Abraham - approving enactment and adding for Governor's consideration comments in line of A. B. C. in Sir S. Abraham's minute.

Arthur Dyer
26-2.
J. J. J.

3 To Nigeria 74 - 2 Ausd — 5/3/42

H. Nigeria — J. J. J. — 26.10.42

The Bill as enacted contains 2 important variations from the draft, under Part II, Orders in Council and under Clause 26(2); also various minor variations. We would be grateful for the views of Sir Sidney Abraham before signifying disallowance -

H. Lawrence
1/3

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In view of the remarks in para 4 of the Legal
Dept. Com unable to understand why ⁵
there is no reference to 'regulations' in
Sections 30 + 31 the effect of such an
omission appears to be that no provision
is made for the punishment of contravention
of regulations made under Section 40.

No other observations

S. Chakrabarti

1/3/43

Signify non-disallowance
& comment as above. Sir P. Abraham's
to be draft.

Harinder / P. Chak

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Notes added
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Noted - 66.
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To Nigeria 62 (4 Ansd)

4-3-43

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6 Nigeria 260

8.6.43

Dr Sidney Abraham

Any comments, please?

Abraham
17.8.43

~~no comments which~~

no comments which
it is worth while sending

Abraham

18/8/43

the form by

Abraham
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NIGERIA.

NO. 260

30232/47

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GOVERNMENT HOUSE,

NIGERIA

RECEIVED

10 AUG 1943

8 June, 1943.

Sir,

C. O.

I have the honour to refer to your despatch No. 62 of the 4th of March and to inform you that the Attorney General has commented as follows on the point raised by you:-

" As 'regulations' are included within the meaning of the word 'Ordinance' according to part C.-General Definitions:- 'in section 3 of the Interpretation Ordinance, 1939, (No.27) there was no necessity to insert 'regulations' at all in the Ordinance but the draft submitted to England contained in clause 36 references to the ordinance and also to regulations and proclamations made thereunder but it contained no reference to Orders in Council made under section 3. Now 'Orders in Council' being 'orders' also come within the meaning of the term 'Ordinance' and therefore it was necessary either to insert 'Order in Council' in clause 36 in two places or to delete the references to regulations or proclamations where they were contained therein, but it was thought that by following the exception in this particular instance it would assist the non-legally trained individuals who would be required to perform the work of prescribed officers and registrars under that section by giving them a better idea of where their duties might be found. Having considered that clause in this light it would, I must admit, have been more consistent to have deleted the references to 'proclamations' in the draft of sections 30 and 31 rather than put in a reference to 'Orders in Council' and fail to insert a reference to 'regulations'; but 'Orders in Council' were inserted in sections 30 and 31 because of the very great effect which might flow from the existence of an Order in Council under section 3 or of a proclamation under section 14; in the former case the Order in Council might almost take the place of an Ordinance in view of what may be its very wide provisions to give effect to an international convention.

2. In spite of the above I do not think that the omission of the word 'regulation' in sections 30 and 31 will give any difficulty in the interpretation of the sections as that will be performed by trained officers and it is, I think, quite clear that the offences specified in section 31 in respect of the conditions contained in permits, licences, or authorisations are matters which will be far more extensively dealt with,

THE RIGHT HONOURABLE
 OLIVER STANLEY, M.C., M.P.,
 SECRETARY OF STATE FOR THE COLONIES
 &c., &c., &c.

cf.

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"even possibly in some cases exclusively dealt with, by regulation and not by the Ordinance itself. Accordingly it should be obvious to the trained individual that the word 'Ordinance' in sections 30 and 31 is used in the Interpretation Ordinance sense and is intended to include regulations - accordingly breaches thereof can be punished.

3. A reference to this matter was intended to be made in paragraph 4 of my report on the bill but I now see that it was not clearly expressed, as I did not make sufficient reference in that paragraph to clause 36. Personally I have no fear of the Interpretation which will be put on these two sections; the ordinance, however, is not likely to be brought into force yet a while and if in the meantime while details are being prepared for the proper working of the Ordinance it is found that other provisions of the Ordinance require clarifying the opportunity should then also be taken to clarify this."

2. I have to add that it will not be possible to introduce this legislation earlier than the 1st of January 1945 as the officers of the Police Department, who are mainly concerned, have so many extra duties arising out of the war that they would be unable to cope adequately with the additional work which this legislation imposes on them.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

H. K. ...
GOVERNOR'S DEPUTY.

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30232/42/NIGERIA.

10

C. O.

Mr. Haynard. 13

Mr. Sir Salomon 4/3

Mr. Ferris 4/13

Mr. G. E. J. Gent.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Sir A. Dawe.

Sir W. Battershill.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Us.

83

4 March 1943.

DRAFT. DESPATCH

GOVERNOR

NIGERIA

No. 62

Sir,

(4)

I have the honour to acknowledge the receipt of your despatch No.448 of the 20th October, 1942, and to inform you that the power of disallowance will not be exercised in respect of Ordinance No.20 of 1942 entitled "An Ordinance to make provision for the regulation of matters relating to Arms and Ammunition".

2. I note, however, that in Sections 30 and 31 of the Ordinance, no reference is made to the Regulations which the Governor in Council may make under Section 40, and the effect of this omission would appear to be that no provision

FURTHER ACTION.

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NIGERIA. *Specimen to*

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Government House,
Nigeria.
20th October, 1942.

My Lord,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No.20 of 1942 entitled "An Ordinance to make provision for the Regulation of Matters relating to Arms and Ammunition" together with the usual report thereon by the Attorney-General.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

B. H. Theodor
GOVERNOR.

THE RIGHT HONOURABLE
THE VISCOUNT CRANBORNE, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
etc., etc., etc.

Ansall (5)

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R E P O R T

on

A BILL FOR AN ORDINANCE TO MAKE PROVISION
FOR THE REGULATION OF MATTERS RELAT-
ING TO ARMS AND AMMUNITION.

The short title of this Bill is the Arms Ordinance, 1942, and in my opinion the assent of His Excellency may properly be given thereto.

2. The draft for this Bill was submitted to the Secretary of State and his approval of its enactment, subject to certain minor criticisms, was conveyed in Secretary of State's despatch Number 74 of 5th March last.

3. The amendments necessary to clauses 31(4)(now 31(d)), 32 and 34(2) to give effect to the criticisms directed against those clauses have been made but clause 18(b), however, has not been varied as it was considered advisable, due to local experience, to retain those provisions relating to shot guns within the Arms Ordinance and the necessary amendment was made to the Wild Animals Preservation Ordinance, (Chapter 99) at the same meeting of Legislative Council.

4. The Bill as enacted contains, however, certain variations from the draft approved by the Secretary of State; only two of them, however, affect the main structure of the Bill the others being variations in drafting.

As to the former. Under Part II Orders in Council can be made for the purposes set out therein, but there was no reference to these Orders in Council in clauses 30(1) and (2), 31(a), (b) and (c) and in two places in clause 3b; accordingly the necessary references have now been made therein. It may be argued that as the word "Ordinance" in the Interpretation Ordinance, 1939 (No. 27) includes "orders" this was unnecessary. In view, however, of the fact that "Ordinance" also includes "regulations" amendment

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necessary in any event either to insert the reference to Orders in Council or to take out the references to Regulations and as the former appears to be the course more likely to achieve general correct interpretation of the Ordinance, that course was adopted. In view of the fact that an offence against the matters referred to in clause 31 becomes according to the last line of the clause "an offence under this Ordinance" the reference to Proclamation in clause 32(1) is deleted otherwise it would have been necessary to make specific references to Orders in Council in that clause and to Orders in Council, Proclamations and Regulations in clauses 33, 34(1) and 35.

5. The second amendment affecting the substance of the Bill will be found towards the end of clause 2b(2) which relates to the withdrawal from a public warehouse of the small arms and ammunition of deceased persons deposited there.

As the Administrator-General is not of necessity the "legal representative" of deceased European Officials in its strict legal interpretation it was considered advisable to make provision in the sub-clause for him also to give his authority to the withdrawal of arms belonging to deceased European Officers.

6. The other amendments made are solely in drafting; the words "hereby repealed" have been inserted in clauses 37(1) and 39 after the words "Arms Ordinance" to make the context quite clear and to come into line with clause 37(3). In view of the interpretation of the words "section" and "subsection" which will be found in the last paragraph on page A 236 of the 1939 Volume of the Laws the words "of this Ordinance" and "of this section" are in many cases unnecessary and accordingly for that reason, and to be consistent with recent legislation, these words

are omitted save in those cases where it is considered

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considered advisable to retain them to avoid confusion, e.g. the last three words of clause 37. The words "of this Ordinance" have accordingly been deleted from clauses 7(4), 31(a) (after the number 14), 38(1) and (2) and the words "of this section" from clauses 18(5), 24(2) and 28(2).

7. The criticisms in Secretary of State's despatch 74 of 5th March last directed against the regulations will be given effect to when the regulations are made.

H. C. A. C.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria,
12th September, 1942.

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THE ARMS ORDINANCE, 1942.

ARRANGEMENT OF SECTIONS.

PART I.—TITLE AND DEFINITIONS.

1. Short title and commencement.
2. Definitions.

PART II.—APPLICATION OF INTERNATIONAL CONVENTIONS.

3. Prohibition of export of articles affected by international convention.
4. Application of Order in Council.
5. Export of articles on conditions.

PART III.—IMPORTS AND EXPORTS OF ARMS AND AMMUNITION.

6. Control of arms of war and munitions of war.
7. Arms and ammunition in transit
8. Import of arms and ammunition.
9. Small-arms to carry maker's name and number.
10. Import by sea.
11. Small-arms, cap-guns, flint-lock guns and ammunition therefor to be deposited in public warehouses.

PART IV.—CONTROL WITHIN NIGERIA OF ARMS AND AMMUNITION.

Prohibitions.

12. Prohibition of manufacture.
13. Import and possession of certain arms prohibited.
14. Power of Governor to prohibit dealing in arms and ammunition.

Licences and Permits.

15. Gunsmith's licence.
16. Appointment of registrars.
17. Information to be supplied to a registrar.
18. Permits and licences for small-arms and ammunition.
19. Permits for rifle clubs.
20. Refusal or revocations of grants or permits, licences and authorisations and appeals thereon.
21. Free licences.

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Public Warehouses.

22. Withdrawals from public warehouses.
23. Disposal of arms abandoned in public warehouses.

Transfer of small-arms and ammunition.

24. Transfer of small-arms.
25. Transfer of small-arms ammunition.
26. Disposal of small-arms and ammunition of deceased person.

Loss of small-arms.

27. Notice to be given of any loss of small-arms.

PART V.—EXPORT OF SMALL-ARMS AND AMMUNITION

28. Permanent export of small-arms or ammunition.
29. Temporary export of small-arms.

PART VI.—LEGAL PROCEDURE AND OFFENCES.

30. Warrants to search for arms and ammunition unlawfully kept, transported or landed.
31. Offences.
32. Penalties.
33. Liability to forfeiture of arms and ammunition.
34. Power of courts to endorse or cancel permits, licences and authorisations.
35. Reward to prosecutors and informers.

PART VII — MISCELLANEOUS.

36. Power to prescribed authorities and registrars to execute the provisions of the Ordinance.
37. Small-arms and ammunition not licensed under the Arms Ordinance and arms prohibited by this Ordinance to be declared.
38. Deposit of unlicensed small-arms and ammunition in public warehouses.
39. Cap guns and flint-lock guns with unrifled barrels freed from control.
40. Regulations.
41. Savings.
42. Repeal.

Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 23rd day of September, 1942.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 20



1942

Colony and Protectorate of Nigeria.

IN THE SIXTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO MAKE PROVISION FOR THE REGULATION OF Title.
MATTERS RELATING TO ARMS AND AMMUNITION.

[, 194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

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PART I

TITLE AND DEFINITIONS

Short title and commencement.	1. This Ordinance may be cited as the Arms Ordinance, 1942, and shall come into operation upon a date to be notified by the Governor by notice in the Gazette.
Definitions.	2. In this Ordinance unless the context otherwise requires:—
"ammunition"	"ammunition" includes all munitions of war and small-arms ammunition and all material for loading cap guns, flint-lock guns, air guns, cap pistols, flint-lock pistols and air pistols whether in the form of made up cartridges or as component parts thereof, it also includes percussion caps, and pellets for air guns;
"arms"	"arms" includes all arms of war, small-arms, cap guns and flint-lock guns, cap pistols, flint-lock pistols and air pistols whether whole or in detached pieces;
"arms of war"	"arms of war" includes artillery of all kinds, apparatus for the discharge of all kinds of explosive or gas-diffusing projectiles, flame-throwers, bombs, grenades, torpedoes, machine guns and automatic rifles of all kinds, and anti-tank rifles and includes all parts of any such arms of war but does not include small-arms, cap guns, flint-lock guns, air guns, cap pistols, flint-lock pistols and air pistols;
"cap pistol" "flint-lock pistol" "air pistol"	"cap pistol", "flint-lock pistol" or "air pistol" means respectively a cap gun, flint-lock gun or air gun the overall length of the barrel of which does not exceed one foot;
"deal in"	"deal in" includes disposal or transfer by sale, barter, exchange, gift, or in any other manner whether with or without valuable consideration;
"export" "exportation"	"export" and "exportation" include reference to removal, conveyance or despatch from Nigeria beyond the territorial waters or, in the case of exportation overland, beyond the land limits of Nigeria;

"importer"	"importer" includes any owner or other person for the time being possessed of or beneficially interested in any arms or ammunition imported into Nigeria;	"importer"
"inland navigation"	"inland navigation" means transportation into or out of Nigeria other than by land, sea or air;	"inland navigation"
"licence"	"licence" means a current revenue licence for a small-arm;	"licence"
"munitions of war"	"munitions of war" includes all material for the loading of any arms of war whether in the form of made up cartridges or as component parts thereof;	"munitions of war"
"permit"	"permit" means a permit to possess or use a small-arm and small-arms ammunition such permit being issued by the prescribed authority;	"permit"
"public warehouse"	"public warehouse" means any place or building prescribed to be a public warehouse for any of the purposes of this Ordinance;	"public warehouse"
"registrar"	"registrar" means registrar of arms and, unless the contrary intention appear, includes a deputy registrar of arms;	"registrar"
"regulation"	"regulation" means a regulation made under this Ordinance and in force;	"regulation"
"rifle club"	"rifle club" means a club which has been granted a permit by the prescribed authority as a <i>bona fide</i> rifle club;	"rifle club"
"small-arms"	"small-arms" includes any rifle (other than an anti-tank rifle), shot gun, revolver, pistol or air gun with rifled barrel, whether whole or in detached pieces but does not include cap guns, flint-lock guns, air guns with unrifled barrels, cap pistols, flint-lock pistols or air pistols;	"small-arms"
"small-arms ammunition"	"small-arms ammunition" includes all material for loading small-arms whether in the form of made up cartridges or as component parts thereof, it includes pellets for air guns with rifled barrels but does not include percussion caps or common gunpowder known as 'trade powder'.	"small-arms ammunition"

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Small-arms, cap guns, flint-lock guns and ammunition therefor to be deposited in public warehouse.

11. Subject to the provisions of this Ordinance and any regulation, all small-arms, cap guns, flint-lock guns and ammunition therefor imported under the provisions of this Ordinance shall, in the first instance, be deposited by the importer at his own risk and expense in a public warehouse.

PART IV

CONTROL WITHIN NIGERIA OF ARMS AND AMMUNITION

Prohibitions

Prohibition of manufacture.

12. The manufacture and the assembling of arms and ammunition is hereby prohibited except at arsenals established by the Imperial Government or by the Government of Nigeria.

Import and possession of certain arms prohibited.

13. The importation into Nigeria or possession by any person of any flint-lock pistol, cap pistol, air pistol, cap gun with rifled barrel, or flint-lock gun with rifled barrel is hereby prohibited.

Power of Governor to prohibit dealing in arms and ammunition.

14. The Governor, if he thinks fit, may at any time by Proclamation prohibit the possession or transport of or dealing in any arms or ammunition, either absolutely or subject to such restrictions, limitations and conditions as may be specified in such Proclamation, and may in such Proclamation declare the towns, places, districts or areas to which such Proclamation shall apply.

Licences and Permits

Gunsmith's licence.

15. No person shall open or carry on an establishment for the repair of small-arms without a licence issued by the prescribed authority.

Appointment of registrars.

16. The Governor may appoint a registrar of arms and deputy registrars of arms who shall be responsible for the keeping of all prescribed records of registration.

Information to be supplied to a registrar.

17. Copies of all permits, licences and other documents issued in accordance with the provisions of this Ordinance or any regulation made thereunder shall be sent to a registrar in such manner as may be prescribed.

18. (1) No person shall own or have in his possession or use:—

Permits and licences for small-arms and ammunition.

(a) any small-arm unless he has been issued with a permit to possess such small-arm and is in possession of a licence in respect of the said small-arm, or

(b) any small-arms ammunition except in accordance with the terms of the permit authorising him to own or have in his possession a small-arm;

Provided that nothing in this section shall prevent the withdrawal of small-arms ammunition from a public warehouse by an importer to whom any holder has entrusted his permit for that purpose.

Proviso.

(2) A permit may be issued by the prescribed authority and shall not require renewal.

Permit not required to be renewed.

(3) A licence may be issued by the prescribed authority and shall expire on the 31st December in the year in which it is issued. The renewal thereof may be made subject to such modifications or conditions as the Governor in Council may prescribe either generally or in any particular case or cases.

Licence to expire on 31st of December.

(4) This section shall not apply:—

(a) to members of a rifle club using small-arms which are the property of the club in accordance with the rules of the club;

(b) in the case of a person with whom small-arms and ammunition therefor have been left in accordance with regulations providing for the safe custody of small-arms and ammunition therefor during the temporary absence from Nigeria of the owner.

(5) The provisions of sub-section (1) shall not apply in cases where the holder of a permit and licence to possess a small-arm shall lend such small-arm and ammunition therefor to another person for a period not exceeding twenty-eight days provided that such person has himself obtained a permit and licence for a similar type of small-arm.

Small-arms lent for temporary purpose.

(6) The grant of a licence to use a shot gun shall entitle the licensee to shoot birds of the species mentioned in the Third Schedule to the Wild Animals Preservation Ordinance.

Licence to include right to shoot game birds. Chapter 99.

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Permits for rifle clubs.

19. The prescribed authority may grant to any rifle club a permit authorising the Committee of such club to be in possession of such small-arms as may be indicated on the permit and subject to such conditions for the safe custody and use of such small-arms as may be prescribed in the permit:

Officers in charge of Police may inspect the premises of rifle clubs.

Provided that it shall be a condition to the grant of any such permit aforesaid that the officer in charge of Police at the place in which such rifle club is situate may at all times enter upon the premises of such club to ensure that the conditions prescribed in the permit are being observed.

Refusal or revocation of grants of permits, licences and authorisations and appeals thereon.

20. (1) No person or club shall as of right be entitled to the grant of any permit, licence, certificate or authorisation required under this Ordinance and the same may be refused or revoked by the authority granting the same, at any time without any reason being assigned therefor.

(2) Where any person has been refused the grant of any permit, licence, certificate or authorisation aforesaid or where such document has been granted and is subsequently revoked in accord with the provisions of this section such person may within one month from the date of such refusal or revocation and in the prescribed manner appeal to the Governor whose decision shall be final.

Free licences.

21. The prescribed authority shall grant free licences:—

- (a) for revolvers to administrative and police officers and to such other public officers as he may think fit;
- (b) for rifles to the secretary of a rifle club.

Public Warehouses

Withdrawals from public warehouses.

22. (1) No small-arms, cap gun, flint-lock gun or ammunition therefor shall be withdrawn from a public warehouse unless and until such withdrawal has been authorised by the officer in charge of the public warehouse.

(2) Every small-arm and all small-arms ammunition shall, on being withdrawn from a public warehouse for issue to an individual, be registered by the officer in charge of the public warehouse in the manner prescribed by the regulations.

(3) The authorisation for such withdrawal shall only be granted in the following circumstances:—

- (a) for despatch or transfer to some other public warehouse, or
- (b) in the case only of a cap gun or flint-lock gun and ammunition therefor to an individual named and described on the authorisation on payment of the prescribed fee;
- (c) to an individual named and described on the authorisation who must be in possession of a permit and of a licence for that particular small-arm or of a permit to obtain ammunition and then in addition, subject to such conditions relating to that ammunition as may be prescribed.

(4) When ammunition is issued to the holder of a permit under this section the officer in charge of the public warehouse shall record such issue upon the permit in the manner prescribed by the regulations.

23. The Governor may authorise the disposal by sale, destruction or otherwise of any small-arms, cap guns, flint-lock guns or ammunition therefor which have remained unclaimed in a public warehouse for a period of six months since the date of deposit therein or where any warehouse fees have remained unpaid for a period of three months from the date upon which such fees became lawfully due. The proceeds of any sale authorised under this section shall be paid into general revenue: Disposal of arms abandoned in public warehouses.

Provided that small-arms and ammunition therefor deposited pursuant to section 26 shall not be sold until such notice or notices have been given or published as may be prescribed. Proviso.

Transfer of Small-arms and Ammunition

24. (1) No small-arm shall be transferred by the person entitled to be in possession of that small-arm to any other person except upon the following conditions:— Transfer of small-arms

- (a) the transferee shall hold a permit to be in possession of the particular type of small-arm to be transferred;
- (b) the permit which is held by the transferor authorising him to be in possession of that small-arm together with the licence shall be returned prior to the transfer to the prescribed authority who issued the permit:

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(4) If no such presentation be made within the period allowed by sub-section (1) the deputy registrar shall forward the permit to the registrar for such action as he may think fit.

PART VI

LEGAL PROCEDURE AND OFFENCES

Warrants to search for arms and ammunition unlawfully kept, transported or landed.

30. (1) A Magistrate or Justice of the Peace if satisfied by information on oath that any arms or ammunition are being unlawfully kept, transported, landed, or dealt with in contravention of any of the provisions of this Ordinance or of any Order in Council made under section 3 or of any Proclamation issued under section 14 at any place whether a building or not, or in any ship or vehicle, may grant a warrant to enter at any time and if need be by force, on Sundays as well as on any other days, the place, ship, or vehicle named in such warrant, and every part thereof, and to examine the same, and to search for any arms or ammunition unlawfully kept therein, and to demand from the owner or occupier thereof the production of his permit, licence or authority for so keeping, transporting, landing, or dealing in the same.

(2) When the officer or other person executing such warrant shall have reasonable cause to believe that any arms or ammunition found by him in any such place, ship or vehicle, are being so kept, transported, landed or dealt in in contravention of any of the provisions of this Ordinance or of any Order in Council made under section 3 or of any Proclamation issued under section 14, he may seize and detain the same to await due process and determination of law in their regard.

Offences.

31. Any person who:—

- (a) does any act or makes any omission which constitutes or involves a contravention or constitutes or involves a non-compliance with any provision of this Ordinance or of any Order in Council made under section 3 or of any Proclamation issued under section 14 or of any condition in any permit, licence or authorisation issued under this Ordinance; or
- (b) does any act or makes any omission with intent to contravene or to evade compliance with any provision of this Ordinance or of any Order in Council made under section 3 or of any Proclamation issued under section 14 or of any condition in any permit, licence or authorisation issued under this Ordinance; or

(c) does any act or makes any omission which is in this Ordinance or in any Order in Council made under section 3 or in any Proclamation issued under section 14 declared to be an offence; or

(d) being the owner or occupier of any place or premises or the master of any ship or the driver of any vehicle, whereon or wherein was kept or transported any arms or ammunition contrary to the provisions of this Ordinance, is unable to prove that such arms or ammunition were deposited or transported therein without his knowledge or consent; or

(e) holding a licence for a small-arm fails on demand by an administrative or police officer or registrar to produce the small-arm described in the licence within fifteen days from the time of such demand or to produce a certificate granted under the provisions of section 27,

shall be guilty of an offence under this Ordinance.

32. (1) Except in cases where some lesser penalty is provided Penalties. any person convicted of an offence under this Ordinance shall be liable to a fine of five hundred pounds or to imprisonment for two years or both.

(2) Where any person is charged with an offence under this Ordinance, such offence appearing to be of such a nature that, if proved, it would be adequately punished either by such fine or by such imprisonment or by both such fine and imprisonment as a Magistrate has jurisdiction to impose in criminal cases, the charge may be tried and determined by a Magistrate and it shall not be necessary to obtain the consent of the person so charged to be tried by a Magistrate.

33. On the conviction of any person for an offence against this Ordinance, the court may, if it shall so think fit, order that any arms or ammunition in respect of and in connexion with which such offence has been committed shall be forfeited. On any such order being made, any arms or ammunition so ordered to be forfeited, shall, unless the court otherwise orders, be destroyed in such manner as the Commissioner of Police, or the officer in charge of Police of the area in which the court is situate, may direct:

Liability to forfeiture of arms and ammunition.

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Chapter 132. prosecuted for or convicted of any offence by reason of the fact that he has not obtained any licence to bear arms or permit to purchase or use ammunition as prescribed by the Arms Ordinance hereby repealed or a permit or licence as prescribed by this Ordinance or has contravened the provisions of section 13 of this Ordinance.

Deposit of unlicensed small-arms and ammunition in public warehouses.

38. (1) Any person in possession of a small-arm may, instead of obtaining a licence as provided by sections 18 and 24, deposit the same in a public warehouse or other prescribed place on such conditions as to the payment of rent or otherwise as may be prescribed.

(2) Any person who deposits ammunition in a public warehouse as provided in sub-section (1) of section 37 shall comply with such conditions as to the payment of rent or otherwise as shall be prescribed.

(3) If any person shall fail to comply with the prescribed conditions relating to the deposit of small-arms and ammunition, the small-arms and ammunition deposited by such person may be disposed of as if such arms and ammunition had remained unclaimed for six months in a public warehouse.

Cap guns and flint-lock guns with unrifled barrels freed from control. Chapter 132

39. From the date of the commencement of this Ordinance no person shall be prosecuted for or convicted of being in possession of a cap gun or of a flint-lock gun with unrifled barrel notwithstanding the fact that such possession may have contravened the provisions of the Arms Ordinance hereby repealed while such Ordinance was in force.

Regulations.

40. The Governor in Council may make regulations for the further, better, or more convenient carrying out of any of the provisions or purposes of this Ordinance; and in particular with respect to any of the following matters:—

- (a) the appointment of persons to be the prescribed authority under the Ordinance;
- (b) the forms to be used for any purpose under this Ordinance;
- (c) the fees to be charged and paid for permits, licences and authorisations under this Ordinance;
- (d) the prescription of anything which under this Ordinance requires to be prescribed;

- (e) the duties and powers of any person engaged or employed in the administration of the provisions of this Ordinance;
- (f) the rents to be charged and payable and method of payment thereof in respect of articles deposited under this Ordinance in any public warehouse;
- (g) permits, licences and authorisations under this Ordinance;
- (h) the landing, storage and transport of arms and ammunition;
- (i) the custody of small-arms and ammunition therefor during the absence from Nigeria of the owners thereof and the fees payable in connection therewith;
- (j) the limitation of the liability of the Government and of public officers for small-arms and ammunition therefor lost or damaged while in their custody during the absence from Nigeria of the owners thereof or otherwise;
- (k) the structural requirements and appointments of public warehouses;
- (l) the management, use and control of public warehouses and withdrawals therefrom;
- (m) the disposal of unclaimed arms and ammunition in a public warehouse;
- (n) the keeping and examination of books, records and registers in connexion with the administration of any of the provisions of this Ordinance;
- (o) the control of arms and ammunition in transit;
- (p) the dealing in arms and ammunition;
- (q) prescribing standards with which any specified arms or ammunition must comply before being imported into or used in Nigeria.

41. The provisions, restrictions and prohibitions in this Savings Ordinance declared shall not apply to any arms or ammunition intended for use by the naval, military, air or police forces of the Crown or of the Government of Nigeria or for the state defence of any part of the British possessions.

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18 No. 20 of 1942 Arms.

Repeal. 42. The Ordinances set out in the Schedule hereto are hereby repealed.

SCHEDULE

Number and year.	Short title.
Chapter 132 (No. 38 of 1922)	The Arms Ordinance.
No. 24 of 1927	The Arms (Amendment) Ordinance, 1927.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

P. F. CAMPBELL,
Clerk of the Legislative Council.

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R 3-MAR
D 4-

C. O.

Mr. Whitcombe
2/3/42.

Sir S. Abrahamo 2/3/42
Mr. Mayhew 3-3-42

Sir W. Battershill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

February, 1942.

S.S.
5 March

DRAFT. / DESPATCH.

NIGERIA.

74

GOVERNOR,

Sir,

(2)

Sir Bernard Bourdillon's

I have, etc., to acknowledge the receipt of ~~your~~ despatch No. 704 of the 29th of November last and to inform you that I approve the enactment of the Bill for an Ordinance to make Provision for the Regulation of Matters Relating to Arms and Ammunition, the draft of which was enclosed with the despatch.

2. I would, however, invite your attention to the following points of detail, to which consideration will, no doubt, be given before the Ordinance is enacted:-

(i) Clause 18(6), which does not actually repeal Section 3 of Cap. 99 but only modifies it, appears to be somewhat out of place in the proposed new Ordinance and might more suitably appear as an amendment to Cap. 99.

(ii) Clause 31(4) appears to be inaccurately worded since there is no predicate to the subject "any person ^{who}". The intention of the provision would perhaps be carried out if the words ^{from} "unless" to "prove" ^{VE} were replaced by "is unable to prove".

(iii) The word "such" in the first line of Clause 33(2) appears to be irrelevant.

(iv) In Clause 34(2) it would appear that the word/

FURTHER ACTION.

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^{and}
word ~~MAN~~ should be inserted between "Section"
and ~~Section~~ "who."

v) Regulation 10 appears to be ultra vires as
purporting to confer a legislative power on
the Governor which, by Clause 40 (c) is
exercisable by the Governor in Council. In
other words the delegate purports to delegate.

vi) Regulation 22 (2), Proviso. It seems very
doubtful whether the powers of the Governor
in Council to make regulations extend to the
making of a provision which can affect a
prosecution under ~~Section~~ ^{Clause} 18 (3) of the Bill,
either by precluding a defence or ~~enabling~~ enabling
a defence to be set up.

I have, etc.

(SIGNED) GRANBORNE

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NIGERIA.

No. 704

RECEIVED
28 JAN 1942
C. O. REGI

Government House,
Nigeria.

29 November, 1941.

My Lord,

In duplicate.

I have the honour to forward for Your Lordship's consideration copies of a draft bill for an Ordinance to make provision for the regulation of matters relating to arms and ammunition which has been prepared by a Committee appointed to consider the general question of the entry and registration of firearms, and which is intended to replace the existing Arms Ordinance, Chapter 132. Accompanying the draft Bill are copies of the Committee's report which, with the attached memorandum comparing the draft Bill with the present Arms Ordinance, sets out in full the reasons for the drafting of the proposed amending legislation and the degree to which it has been found necessary or desirable to depart from the provisions of the existing law. Copies of the draft Regulations designed to enforce the provisions of the draft Bill are also attached.

In duplicate.

2. Your Lordship will appreciate that before consenting to the complete revision of an Ordinance based on model legislation designed to give effect to the provisions of an International Convention, I satisfied myself that such a revision was not only desirable but necessary if adequate control over firearms of precision were to be maintained. Experience over the last twenty years has shown that the existing legislation is in many respects inadequate for the purpose of controlling the possession and distribution of arms of precision (e.g. shotguns, rifles and revolvers) while it is, perhaps, unduly oppressive if its terms are strictly applied to a class of weapons (e.g. flint-lock guns and cap guns of smooth bore) which cannot be described as arms of precision but which are in great demand by African farmers and hunters. Objections to certain other provisions of the present Ordinance and Regulations are set out in the Committee's report and, with the foregoing criticisms, were sufficient to convince me that a complete revision of the existing legislation was needed.

3. The bill has been drafted solely with a view to ensuring effective local control but I realise that Your Lordship will require to be satisfied that its terms are compatible with any International Conventions by which

Ans d (3)

THE RIGHT HONOURABLE
LORD HOYNE, P.C., D.S.O.,
LONDON, S.W. 1.

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being obtained
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which His Majesty's Government is bound. In this respect my information is incomplete but I have noted from Mr. L. S. Amery's despatch No.1554 of the 11th of December, 1925, that the Arms Traffic Convention 1919, on which the present Ordinance was based, was not ratified by His Majesty's Government and never came into force. Further, the new Convention, a copy of the text of which was forwarded under cover of Mr. Amery's despatch under reference, had not yet come into force on the date on which he wrote and, as no subsequent notice of ratification can be traced, I assume that this too, was never in fact ratified. My assumption is strengthened by information which the Attorney-General has brought to my notice concerning the Gibraltar Military Stores Ordinance (Chapter 64 of the 1935 edition of the Laws). Mr. Cox informs me that when re-enacting the legislation relating inter alia to the traffic in arms, the Government of Gibraltar was in doubt as to what provision should be made to cover any commitments by which His Majesty's Government might be bound in relation to the international trade in arms and ammunition; the difficulty was overcome by including, in Part IV of the Ordinance, special provisions under which the Governor could give effect by subsidiary legislation to any Convention to which Gibraltar had adhered or might be a party. I have accordingly made similar provision in Part II of the draft bill and trust that this will be sufficient.

4. To revert now to the major alterations to existing legislation: as I have already indicated, the present position has long been unsatisfactory in regard to the internal control of arms of precision (defined in the draft bill as "small arms") on the one hand and, on the other, in regard to the registration of those arms which are considered less dangerous by reason of their comparative inaccuracy but which are in great demand by Africans. The latter category is defined in paragraph 13(i) and the former in paragraph 13(iii) of the Committee's report and I propose, briefly, to review the position in regard to both.

5. As regards the actual control of "small arms", no real departure in principle from the terms of existing legislation is proposed but important alterations in the machinery of control have been considered necessary. These alterations include the setting up of central and provincial registries which will maintain a complete and up to date record of every small-arm in the country. It is probable that the setting up of these registries, particularly the central registry, will result in some increased expenditure but I am persuaded that any such increase will be more than off-set by increased revenue from licence fees which will certainly follow from stricter control, quite apart from any increase in the cost of certain licences which it may be decided to impose as a result of the recommendations contained in paragraphs 50, 51 and 52 of the Committee's report.

6. In the case of cap guns and flint-lock guns a radical change is contemplated. Paragraph 14 of the Committee's report advances arguments in favour of abandoning the present distinction between cap guns

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guns and flint-lock guns but does not go into the question of the necessity or otherwise for registration of either weapon. When the existing Ordinance was drafted the difficulties in regard to the registration of "Dane guns" (i.e. flint-lock guns) were brought to the notice of the Secretary of State for the Colonies by Sir Hugh Clifford in his telegrams dated the 29th of April and the 5th of July, 1920. Lord Milner replied in his despatch No. 1919 of the 21st of December, 1920, that he did not think that the enactment of legislation on the lines approved by him would make any practical difference to the purchase or possession of "Dane guns" as any individual native who satisfied the proper authority that he required a gun "for legitimate personal use" could be licensed to purchase and own one. It has, however, long been evident that since almost any adult native, except perhaps a resident in one of the larger townships, could make out a case for the legitimate possession of a flint-lock gun, the application of the provisions of the Ordinance did not in fact prevent any native who wished to possess such a gun from obtaining one. The only limiting factor to the number of flint-lock guns purchased was the comparatively high retail price of the weapon and it was considered that few if any natives would apply to purchase such a weapon who did not have a legitimate reason for so doing. The licence which every purchaser was compelled to take out was, in consequence, merely "revenue-producing" and was not in any way effective from the point of view of control since it applied only to new flint-lock guns the number of which entering the country could always be ascertained from Customs records, while the knowledge as to who became possessed of the weapons after sale was, and is, of no practical value to Government and is in any case impossible to obtain. In the new draft legislation this position is recognised and it is proposed to allow the withdrawal of flint-lock guns from public warehouses without requiring the issue of a licence in respect of each weapon. I trust that Your Lordship will feel satisfied that this modification of existing legislation will, in practice, have no appreciable effect on the numbers or distribution of flint-lock guns and further, for the reasons stated in paragraph 14 of the Committee's report, that there is no good reason why the provisions regarding the sale of cap-guns should be distinguished from those which it is proposed to adopt in the case of flint-lock guns.

7. The only other proposed alteration to which I wish to make special reference concerns the procedure under which permits to import a small arm may be obtained. The question is fully discussed in paragraphs 36-42 of the Committee's report and I feel sure that Your Lordship will be in general agreement with the conclusions there recorded.

8. I would refer, in conclusion, to the question of when the proposed legislation should take effect. As noted in paragraph 47 of the report, it is desirable that enactment should date from the 1st of January of the appropriate year and if Your Lordship is able to approve the draft Bill in principle I would endeavour to arrange for its passage through Legislative Council at same time prior to the 1st of January, 1943. The extensive powers granted to the Governor under the Emergency Powers (Defence) Acts have allowed me to introduce any measures I may consider necessary for the control of arms and ammunition

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Report of a Committee appointed to consider the general question of the entry and registration of firearms in Nigeria.

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Part I. Introduction.

A previous
Committee.

In May, 1933, the Governor (Sir Donald Cameron) appointed a Committee, with the Inspector-General of Police as Chairman, to report on the general question of entry and registration of firearms. That Committee decided that a new Arms Ordinance was necessary and produced a rough draft Bill before concluding its deliberations in October, 1935. The Law Officers, however, were unable to find time to draft new regulations and the 1933 Committee finally disintegrated in 1936 without ever submitting a report.

(C.S.G's
file 0680/
Vol II
p 82)

Appointment
of present
Committee.

2. The present Committee was appointed in July, 1938, by the Officer Administering the Government (Sir William Hunt) and consisted of the following members:-

The Commissioner of the Colony (Chairman)
The Solicitor-General
The Commissioner of Police
The Resident, Abeokuta Province
The Principal Asst. Secretary (Political), Nigerian Secretariat.
An Officer of the Customs Department (nominated by the Comptroller)
The Hon. A. Alakija, C.B.E.
Dr., The Hon. K.A. Abayomi, M.D.

The District Officer, Colony, acted as Secretary.

Terms of
reference.
C.S.G's
file 0680/
Vol II
p 167.

3. The Committee's terms of reference were contained in a letter No. 0680/Vol II/167 of the 5th of July, 1938, addressed to the Chairman. They were identical with those given to the 1933 Committee and read as follows:-

"to consider the general question of the entry and registration of firearms in Nigeria and in particular the adequacy of the present regulations in preventing arms of precision from getting into the hands of natives who are ignorant and irresponsible or into the hands of any person likely to use them for a nefarious purpose. The removal of any discrimination that may exist in present practice between Europeans and responsible educated Africans would also be considered."

Terms of
reference
exceeded.

4. At its first meeting, the Committee agreed in principle that a new Arms Ordinance and regulations were desirable and it therefore became necessary to exceed the terms of reference by considering the whole question of

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were new members, while Dr. The Honourable K.A. Abayomi was not re-appointed owing to absence in England. Mr. W.R.T. Milne, Assistant Secretary, Nigerian Secretariat, was appointed to act as Secretary.

More rapid progress.

6. Thereafter the work of the Committee progressed more rapidly and in the course of two months the draft Bill was further amended in the light of the comments of the Chief Commissioners, the Comptroller of Customs and the Commissioner of Police, and regulations, drafted by the Chairman, were also amended and approved.

Attachments to the Report.

7. It has already been stated, in paragraph 4 above, that new legislation is considered necessary and the following memoranda are attached to this Report:-

Attachment "A" draft of a new Ordinance which the Committee recommends should replace the Arms Ordinance;

Attachment "AA" memorandum comparing the draft Bill with the Arms Ordinance;

Attachment "B" draft regulations which the Committee recommends should replace the existing regulations;

Attachment "BB" memorandum comparing the draft regulations with those now in force;

Attachment "C" suggested notes for the guidance of the prescribed authorities empowered to grant permits for the possession of rifles, revolvers, shot guns and air rifles.

Part III. Findings and Recommendations.

Defects in the Arms Ordinance (Cap 132) and regulations.

8. After studying the existing Arms Ordinance and regulations, the Committee has come to the conclusion that they suffer from the following defects:-

(A) the general arrangement is bad and it is not always easy to discover what action is necessary and by whom it should be taken;

(B) certain definitions are confusing;

(C) the provisions for control over firearms in Nigeria are inadequate;

(D) the powers under the Ordinance are not in all cases granted to the most appropriate officers;

(E) there

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(E) there is unnecessary discrimination between Europeans and Africans.

It is convenient to deal with each of these defects separately.

A. General arrangement of the Arms Ordinance and Regulations.

9. A single example will serve to show that it is not always easy to discover exactly what the law requires. If anybody wished to know whether an African can possess a firearm, a scrutiny of the Ordinance would reveal no discrimination between Europeans and Africans, nor would reference to those regulations which deal with the import of firearms or their withdrawal from a warehouse. In regulation 7, however, tucked away under the sub-heading "Prescribed Authorities", it is provided that, before an African can possess a firearm, he must obtain a permit, which a Chief Commissioner or the Commissioner of the Colony can grant. No directions are given, however, as to the method of application for a permit.

Example of bad arrangement of the Arms Ordinance.

Laws Vol III p 872.

10. In the draft Bill (Attachment "A") and the draft regulations (Attachment "B") an attempt has been made to set out in detail exactly what is required and what steps should be taken by Government officers and members of the public. To this end, so far as is possible without frequent repetition of the same provisions, those sections and regulations which relate to the same subject are grouped together under appropriate sub-headings and, for purposes of easy reference, an index is provided.

Arrangement of draft Bill and draft regulations.

B. Confusing definitions and suggested classification of arms.

11. There is no clear distinction between the various classes of arms as the following extracts from the

Examples of confusing definitions.

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Laws Vol II
p 1262.

the definitions in section 2 of the Arms Ordinance will show;-

"arms of war" includes artillery x x x x and rifled small-bore breach-loading weapons x x x;

"firearms" includes any cannon, gun, rifle x x x x or other firearms.

From these definitions, it appears that a field gun or a rifle could be classified either as an "arm of war" or as a "firearm" as might happen to be convenient, and, under regulation 2, either could also be described as an "arm of precision", which means any firearm other than a flint-lock gun or pistol.

Laws Vol III
p 871.

Powers of
Collectors of
Customs too
wide.

12. Having thus failed to make any distinction between the various classes of arms, it is not surprising that the draftsman failed to arrange for different officers to deal with different classes. The result, however, is that there appears to be nothing in the Ordinance or regulations to prevent a Collector of Customs from allowing a European to import a field gun if he wanted to and this appears to the Committee to be entirely wrong.

Suggested
classifi-
cation
of arms.

13. In an attempt to remedy this defect, the Committee suggests that arms may conveniently be divided into the following four classes;-

(i) those arms which are not particularly accurate but which are in great demand by millions of African farmers and hunters, namely, cap guns and flint-lock guns which are fitted with unrifled barrels;

(ii) those arms which are not in common use and which are likely to be used for a nefarious purpose, namely, cap guns or flint-lock guns with rifled barrels and cap, flint-lock or air pistols;

(iii) those

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S.S.G's file
03620/Vol V
p 829.

Finally, in this connexion, it must be observed that the Chief Secretary's letter No.03620/829 of the 23rd of May, 1930, addressed to the Comptroller of Customs, shows clearly that, for the past eleven years, it has not been the policy of Government to insist that cap guns should be licensed annually. In all the circumstances, the Committee sees no good reason to distinguish between cap guns and flint-locks and considers that, if it were now decided to enforce rigorous licensing of the former, that section of the community which most needs a firearm and which can least afford any additional expenditure, would feel that an extra tax was being imposed on it and serious discontent would be caused. The Committee therefore strongly recommends that cap guns and flint-lock guns should be free from registration and annual licensing and, to that end, has provided in the draft legislation that such arms should be deposited in a public warehouse on first importation but that, thereafter, they may be withdrawn with no more formality than the payment of a withdrawal fee of 5/-.

Recommendation that cap guns and flint-lock guns with rifled barrels and cap, flint-lock and air pistols be prohibited.

15. Class II. The Committee believes that the needs of the poorer classes will be satisfied by allowing them to purchase freely smooth-bore cap guns and flint-locks and that it is therefore unnecessary, as it is also undesirable politically, to allow the import or possession of any which are fitted with rifled barrels. The latter would certainly not find favour with Europeans or responsible educated Africans and might be very dangerous in the hands of lawless and ill-disposed persons. Equally, there is unlikely to be any great legitimate demand for cap, flint-lock or air pistols, which could easily be concealed under the folds of a native gown by a person contemplating some nefarious act.

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The Committee therefore recommends that all these arms should be prohibited and has provided accordingly in the draft legislation.

16. Class III. Small-arms (rifles, revolvers or pistols, shot guns and air rifles) are in considerable demand by Europeans, Africans and other Nationals for sporting purposes or the protection of self or property and there is no reason why limited numbers should not be allowed in Nigeria, provided that they are registered and subject to strict control. It is, however, convenient to discuss the details of control which are recommended under the sub-heading of this Report which deals with the inadequacy of the existing regulations (see paragraphs 18-34 below).

Section 13.

Small-arms (rifles, revolvers or pistols, shot guns and air rifles) recommended for registration and annual licenses.

17. Class IV. There appears to be no good reason why any individual should be allowed to possess any arm of war and the Committee therefore recommends that arms of war should only be allowed into Nigeria if they are required by the Government or some other Government and then only under an authorisation granted by the Governor. The draft legislation provides accordingly but power is also reserved to a prescribed authority, whom it is recommended should be the Commissioner of Police, to authorise the import into and export from Nigeria of bulk supplies of any arms whatsoever in transit to some other territory.

Recommendation that arms of war be subject to control of the Governor.

C. Inadequacy of provisions for control over arms in Nigeria.

18. If the recommendations in paragraphs 14, 15 and 17 above, relating to arms in classes (i), (ii) and (iv), respectively, are acceptable, it is only necessary under this sub-heading to consider what control should be exercised over small-arms.

Discussion confined to small-arms.

19. Under section 5 of the Arms Ordinance, the first

Laws Vol II p. 1264.

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Recommendation that import licences be replaced by permits to possess small-arms.

first essential to the import of a small-arm is an import licence, which may be granted by a Collector of Customs. No fee is prescribed in the regulations unless the importation is by land or inland navigation when certain other prescribed authorities are named and a fee of 2/6 is charged. As an import licence is not necessarily obtained until the arm reaches Nigeria, it appears to serve no useful purpose and the Committee recommends that import licences should be abolished and replaced by permits to possess arms. A permit would authorise the holder to import or possess a particular type of small-arm and ammunition therefor and would be issued by a prescribed authority.

Laws Vol II p 1266.

Necessary that small-arms be deposited in public warehouses on first importation.

20. The next requirement, as the law stands at present, is that, under section 10 of the Ordinance, the small-arm must be deposited in a public warehouse, and this is very necessary so that it may at once be noted in the records relating to arms. To withdraw a small-arm from a warehouse, a European has only to take out a licence, which a Collector of Customs may grant, but an African must also produce a permit, granted by a Chief Commissioner or the Commissioner of the Colony, authorising him to be in possession of that particular type of small-arm. The Committee's recommendation is that such permit should be produced prior to withdrawal by any person and should not be confined to Africans.

Laws Vol II P 1267.

Laws Vol III p 874.

Present method of registration is inadequate.

21. Section 15 of the Arms Ordinance provides that every small-arm shall be registered on withdrawal from a public warehouse and regulations 14 and 15 require that registers should be kept of deposits and withdrawals and also of arms registered and licences issued. Copies of all entries of arms registered and licences issued have to be sent to the Commissioner of Police,

who

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and 1940 cases came to the notice of the police in respect of five shot guns and two revolvers. Owing to the provision that an African must have a permit, it is unlikely that one who is ignorant and irresponsible would obtain possession of a small-arm in the ordinary way but he might acquire one in any of the following ways:-

- (i) by smuggling;
- (ii) by transfer (gift or sale) by the lawful owner;
- (iii) by theft from the lawful owner including stealing by finding;
- (iv) by taking possession of the small-arm of a deceased relative or friend.

Smuggling.

23. (i) Smuggling. No amount of legislation can prevent smuggling and the Committee has no comment to offer.

Laws Vol II p 1267.

24. (ii) Transfer. Section 17 of the Arms Ordinance provides for the transfer of small-arms and it

Inadequacy of present provisions relating to transfer.

is an offence to do so without a permit. But, owing to the fact that it is nobody's duty to make periodical checks to see that every small-arm is still in the possession of its original owner, it is possible that many illegal transfers may have taken place. Even if a suspected illegal transfer were discovered, prosecution might prove difficult since the prescribed authority is not required to keep copies of any permits which he issues and it would not always be possible, therefore, to disprove a statement by the transferor that he had obtained a permit but had not thought it necessary to keep it after parting with the possession of his small-arm.

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25. To overcome this difficulty in future, the Committee recommends that copies of all permits, licences and authorisations issued by any prescribed authority should be sent to a registrar for arms and that such registrar should be required to ensure that all small-arms are licensed annually. It should also be a condition to the grant of any licence that the small-arm is actually produced before the licensing authority. The draft legislation makes provision for all this to be done and any future illegal transfer which may take place should therefore be noticed within a period of one year.

Recommendation that registrars should ensure that small-arms are licensed and produced annually.

Regulations 19, 22, 24, 27(7).

26. (iii) Loss or Theft. Section 20 of the Arms Ordinance requires the owner to report if his small-arm is lost, stolen or destroyed but is rendered ineffective by the failure to insist on the periodical production of each small-arm. This weakness would be overcome in future by the safeguard referred to in paragraph 25 above.

Laws Vol II p 1268.

Loss, theft or destruction of small-arms.

27. (iv) Small-arms of deceased person. Section 17(3) of the Arms Ordinance merely provides that the executor or administrator of the estate of a deceased person shall be subject to the provisions of the Ordinance which relate to transfer. It can safely be said that in a large number of cases where an African dies, no Government officer knows or troubles to ascertain whether he possessed a small-arm or not. Consequently, if a relative took possession of a small-arm and failed to license it, it is unlikely that the authorities would become aware of the fact unless the new owner was caught with it. Section 26 of the draft Bill (Attachment "A") requires any person (not merely the executor or administrator), who takes possession of the small-arms of a deceased person, to deliver them to an administrative officer or registrar and regulation 36 of the draft regulations

Laws Vol II p 1268.

Recommendation as to the disposal of small-arms of a deceased person.

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regulations (Attachment "B") provides the further action to be taken. If the small-arms are not delivered to an administrative officer or registrar, the latter, after making his annual check to find out any small-arms which have not been re-licensed, would commence enquiries which should result in the discovery of the present whereabouts of the small-arms and the prosecution of the offenders.

Protest by Commissioner of Police against proposal for a single registry for arms.

28. It will by now have become apparent that, in order to ensure that small-arms are produced periodically, there must be a registry or registries for arms in Nigeria in which must be kept detailed records of every transaction relating to each small-arm in the country. A suggestion that a single registry should be established, and that the Commissioner of Police should be the registrar for arms, resulted in a vigorous protest from that officer in a letter No. 2093/II/238 of the 27th of May, 1939, addressed to the Commissioner of the Colony. This protest was based on the following grounds:-

Copy at p 216 in C.S.G's file 0680 Vol III.

(i) that the suggestion was not in accordance with the present policy of the Force, which is to decentralise;

(ii) that the work could not be undertaken without additional staff, which he estimated would entail increased recurrent expenditure to a total of £750 per annum without taking into account the annual cost of stationery and the capital outlay on extra office accommodation and filing cabinets which would be necessary.

Recommendation that there should be provincial registries in addition to a central registry.

29. If control over small-arms is to be effective, the more rapid the official action, which follows any breach of the regulations, the better. As has already been explained in paragraph 25 above, it will be necessary for copies of all permits, licences and authorisations issued to go to a registrar and it will be essential for him to keep detailed records of all small-arms and to see that they are licensed annually. Licences will, normally, be due for renewal in January and it is provided in the draft legislation that copies of all permits

Regulation 24.

and

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and licences issued shall be sent to a registrar at the end of each month. As soon as a registrar receives the January returns, therefore, he will be able to check his records and discover any small-arms which have not, apparently, been re-licensed. He will then be in a position to notify the licensing authority concerned and the latter can proceed to prosecute offenders. If copies of licences from some of the more remote parts of the Northern and Eastern Provinces had to be sent to Lagos, it is clear that they might not arrive until some months had elapsed and, by the time the registrar had checked his records and notified the licensing authorities of small-arms which had not been re-licensed, some of the owners might have left Nigeria or changed their addresses thus making it difficult to ensure that the law was complied with. In all the circumstances, therefore, the Committee strongly recommends that there should be a registry for arms in each Province and one for the Colony, each under the supervision of a deputy registrar. At the same time the Committee considers that there should also be a central registry at Lagos, under the supervision of the Commissioner of Police, as registrar, to compile, from returns submitted by the deputy registrars, such information as the Governor may require and to supervise the work of deputy registrars, but not to keep duplicate records.

30. In any event, the establishment of a central registry at Police Headquarters is unlikely to result in any considerable increase in work, provided that provincial registries are also set up as is suggested above. Deputy registrars will, no doubt, seek advice in the problems which will confront them and the resulting correspondence and the compilation of returns for the Governor may render necessary the engagement of some

additional

Central registry envisaged would not involve much additional expenditure.

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additional subordinate staff. It is not thought, however, that any additional European staff will be necessary since the Police Headquarters office already keeps the following records:-

(a) lists, in the form of filed returns received from the Comptroller of Customs and Residents, of arms licensed;

(b) lists of certificates for export issued;

(c) record of confiscated arms.

Duties of
deputy
registrars.

31. On the other hand the duties of deputy registrars in some cases will be very heavy, particularly during the first three months after the introduction of the new Ordinance when all small-arms now in the country will be due for registration. They will have to keep records of licensed repairing establishments and inspect such premises periodically, and will also have to keep a card in a card index, or a folio in a register, for every single small-arm which comes into their areas. The records must show the number and place of issue of the permit relating to each small-arm, particulars of licences issued and its entire history until it is finally exported from Nigeria or is destroyed. Changes of ownership, temporary export, loss or theft, absence of owner from Nigeria, death of the owner and deposits in and withdrawals from public warehouses are amongst the items which they will have to record. Further, theirs will be the responsibility for ensuring that all small-arms in their areas are duly licensed each year.

Police protest
against pro-
posal that
police officers
should be
deputy
registrars.

32. While much of this work can be performed by subordinate staff, if control over small-arms is to be really effective, the deputy registrar, himself, will in some cases have to exercise a very great deal of supervision over the records, quite apart from having to deal, personally, with a considerable amount of correspondence.

In

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16.

In the circumstances it is not surprising to find the Police Representative (Capt. R. W. H. Ballantine), acting under the instructions of the Commissioner of Police, protesting strongly against the Committee's proposal that, wherever a superior police officer is stationed in a Province, such officer should be the deputy registrar. (Equally, it is to be anticipated that, in Provinces where no such officer is stationed, the Resident will protest against the proposal that the District Officer at the headquarters of the Province should be the deputy registrar). Yet in a letter No. 2093/73 of the 1st of June, 1936, addressed to the Chief Secretary, the then Inspector-General of Police (Major A. Saunders) requested that copies of all licences issued should be sent to provincial police officers. For, he said, unless a register of holders of licences and of firearms were kept at such offices, in times of disturbance it would be impossible for him to carry out any orders that the Governor might give for the withdrawal of firearms from any Province affected. In fact Capt. Ballantine agrees with the other members of the Committee that the control of small-arms is essentially, as it is in England, a police duty; but he has made it very clear to the Committee that, with all the extra duties thrown on police officers by the war, the management of a provident fund for some 3,500 men, and the control of explosives, recently imposed on it, in addition to normal police duties, a depleted European staff, however willing it may be, cannot possibly undertake to carry out efficiently the work which will be expected of deputy registrars.

C.S.G's file
0680 Vol II
p 88

33. In

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Committee considers that police officers should act as registrars but recognises present difficulties.

33. In the circumstances the Committee, while considering it proper to provide in the draft legislation that in normal times deputy registrars should be police officers, feels it necessary to draw particular attention to the submission made by the Police Representative and to record its full sympathy therewith in the present situation. Whether it may be possible for officers of some other Department, assisted by voluntary helpers, to undertake this work temporarily, or whether it may be possible to augment the European staff of the Police Force are questions which must be left to the Governor to decide. But the Committee must make it quite clear that, if the new legislation is to be introduced, it is in its opinion essential that the provisions thereof should be carried out in a thoroughly efficient manner from the start, otherwise there will be a grave danger that the new legislation will prove as ineffective as that which it is designed to replace. If, however, His Excellency considers that there is any likelihood that it will not be possible to ensure the appointment of deputy registrars who will be able to devote sufficient time to their duties, the Committee has no alternative than to recommend that the introduction of the new legislation should be postponed until after the end of the war. In any event, a request for at least one additional clerk to keep the records at some provincial registries must be anticipated and will be justified.

Effect of proposals.

34. If the provisions of the draft legislation are put into operation and the deputy registrars and prescribed authorities carry out their duties efficiently, the only ways in which it will be possible for small-arms to get into the hands of persons who are likely to use them for a nefarious purpose will be if they are smuggled or stolen, or if some person defies the law and wilfully

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18.

parts with possession. In the last event the breach of the law is bound to come to the notice of the authorities and the offender can be suitably punished.

35. Before leaving this sub-head, it is only necessary to observe that section 41 of the draft Bill frees from control any small-arms intended for the use of the naval, military, air or police forces of the Crown or of the Government or for the state defence of any part of the British Possessions.

D. Inappropriate grant of powers.

36. As the law stands at present, a Collector of Customs has power to decide whether any non-native may import a small-arm. In a letter No. 74/1940 of the 30th of January, 1941, addressed to the Chairman, the Acting Comptroller of Customs (Mr. J. MacLagan) expressed the view that a decision of this nature should rest with the administrative officer of the District in which the applicant resides and not with a Collector of Customs. The Committee agrees that this power is placed in the wrong hands at present but considers that it should rest with the Resident of the Province in which the applicant resides or with the Commissioner of the Colony, except in respect of Lagos Township, where it is considered that it should be in the hands of the Commissioner of Police. The present Commissioner of the Colony (Mr. G. B. Williams, M.C.) informed the Chairman verbally that he considered that, even in Lagos, the power to grant permits for the possession of small-arms should rest with him on the ground that, in considering applications from Africans, it is very necessary to take into account their status in the community, as to which the Commissioner of the Colony should be a better judge than the Commissioner of Police.

On the other hand Capt. J. J. Emberton, M.C. and Mr. I. W. E. Dods, who have both held the office of Commissioner of

New legislation will not affect arms for use of the Forces or State defence.

Prescribed authorities to grant permits.

C.S.G.'s file 0680 Vol III p 273.

(see para 138 in C.S.G.'s file 0680 Vol. II.)

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the Colony, have expressed the opinion that in a mixed community, such as is found in Lagos, the social position of an applicant is not so important as it may be elsewhere and agree with the Commissioner of Police that the latter officer should be the prescribed authority. The Commissioner of the Colony must be guided to a very considerable extent by the recommendation of the Superintendent of Police, Colony, and it is not unreasonable to suggest that in most cases, in which applications were received from non-natives, the knowledge of the Commissioner of Police would be greater than that of the Commissioner of the Colony.

Recommendation that Residents, Commissioner of the Colony and Commissioner of Police should grant permits.

37. On the other hand, Africans, residing in the Protectorate, at present have to obtain a permit from a Chief Commissioner. In the large majority of cases the Chief Commissioner must rely on the recommendation of the Resident of the Province concerned and it therefore appears that a great deal of unnecessary labour is involved in the preparation of returns and forwarding of recommendations by Residents, the submission thereof by the Secretariats to the Chief Commissioners and the conveyance of their decisions back to Residents. If it may be assumed as the Committee feels it should - that a Resident can be trusted not to grant permits to irresponsible persons, the only function of a Chief Commissioner would appear to be to ensure that parallel applications from different Provinces receive similar treatment. Certainly it would not be fair if in one Province a 2nd Class Clerk, for example, could obtain a permit when in a neighbouring Province nobody under the rank of 1st Class Clerk would be considered. But it does appear to the Committee to be unnecessary to trouble Chief Commissioners in the matter when the object could be achieved by the issue to Residents of rather more detailed advice, as to whom permits should

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be granted, than is available to them at present. To this end the Committee, tentatively, submits memorandum (Attachment "C") which might form the basis of any notes for the guidance of prescribed authorities which the Governor may consider it desirable to issue. Before proceeding to set forth the Committee's views as to whom should be regarded as eligible for such permits, it must be recorded that its final recommendation is that the Resident of each Province, the Commissioner of the Colony (for the Colony exclusive of Lagos) and the Commissioner of Police in respect of Lagos Township should be the prescribed authorities for the issue of permits. In this connexion it should be mentioned that in a letter No. 5747/48 of the 1st of March, 1941, the Secretary, Western Provinces, states that the Chief Commissioner (Mr. G. C. Whiteley, C.M.G.) supports and has anticipated this recommendation so far as the Western Provinces are concerned.

C.S.G's file
0680 Vol. IV
p 423.

E. Discrimination between Europeans and Africans.

38. It will already have become apparent to the reader of this Report that discrimination between Europeans and Africans not only exists in present practice but is actually enjoined by the law. When the law was drafted, such discrimination was, no doubt, justified by the following considerations:-

Possible reasons for discrimination in the past between Europeans and Africans.

(i) it was necessary to protect Europeans from the danger which would arise in times of disturbance if numbers of Africans were permitted to possess firearms which were as effective as those in the hands of Europeans;

(ii) Europeans, generally, had a greater sense of responsibility than Africans and were less likely to lose their firearms;

(iii) Europeans, generally, were more accustomed to firearms and were therefore less likely to be a danger to themselves or other persons;

(iv) African

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21.

(iv) African dwellings, generally, were more accessible to irresponsible persons than European residences and there was a greater danger of theft from the former;

(v) on the death of the owner, it was more likely that his arm would get into the hands of an irresponsible person if the deceased were an African.

To what extent these considerations apply to-day.

39. (i) above still holds good at the present day for, although the danger of general risings throughout the country is considered to be very remote, the fact remains that small local incidents do occur and if only one or two rioters managed to get hold of rifles they might be able to pick off the European officers in charge of any force despatched to deal with a disturbance. It is on this account, therefore, that, in paragraph 10 of the memorandum (Attachment "C"), the Committee suggests that an African should be granted a permit for a rifle only in the most exceptional circumstances with the approval of a Chief Commissioner. At the same time that paragraph also suggests that permits for rifles should only be granted to other applicants who genuinely desire to use them to shoot wild animals. The force in the other considerations set out above has diminished somewhat since the Arms Ordinance was enacted but the Committee is of the opinion that, generally speaking, the danger of a small-arm being lost or stolen, is greater if the owner is an African than if he is a European. While, therefore, the draft legislation removes any discrimination in the eyes of the law, in practice prescribed authorities may have to exercise a certain amount. But, if a single prescribed authority in each Province, the Colony and Lagos Township considers all applications from residents in his area, there is no reason to anticipate that any charge that

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that a permit had been granted to an unsuitable European and refused to an entirely suitable African could be supported.

General.

40. It will be observed that in paragraph 11 of the memorandum (Attachment "C"), it is suggested that permits for revolvers or pistols should be granted very sparingly and that the duties of the applicant, rather than his position or other qualifications, should be the guiding factor. In this connexion, in paragraph 3 of a letter No.0254A/Vol II/220 of the 14th of June, 1937, addressed to the Chief Secretary, the then Commissioner of Police (Major A. Saunders) wrote as follows:-

"The licensing of revolvers and pistols should be most severely restricted in my opinion. It may be desirable in certain "bush" stations to admit the necessity of an arm of this nature though personally I consider a shot gun is a far more effective and less dangerous weapon. I consider it highly undesirable that persons should be permitted to possess revolvers and pistols on the plea that they have to travel long distances with cash or merchandise, or for other reasons of a similar nature."

At the present time any Civil officer of the Government, by virtue of the proviso to item 5 of the Second Schedule to the regulations under the Arms Ordinance, is entitled to a free licence for a revolver and this has come to be interpreted to mean that any such officer has the right to possess a revolver. The Committee is of the opinion that the nature of their duties justifies the possession of revolvers by administrative and police officers and that the grants of permits to certain others, such as customs officers on preventive service, railway guards, etc., may be justified but should be left to the discretion of the prescribed authority concerned.

Provision has been made accordingly in the draft legislation. Section 21(a)

Recommendation that permits for revolvers should be granted sparingly.

C.S.G's file 0680
Vol.II p 124.

Laws Vol III
p 885

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23.

Committee not unanimous as to what classes of Africans should be allowed shot guns.

41. As regards grants of permits for shot guns or air rifles, in paragraphs 3-9 of the memorandum (Attachment "C") the Committee has suggested that so far as may be possible there should be no discrimination between Europeans, Africans and other Nationals. In order, however, to ensure so far as may be possible, that applications from similar classes of Africans will receive the same treatment throughout Nigeria, it appears to be desirable to give prescribed authorities rather detailed suggestions as to those who may be considered suitable to bear such arms. Unfortunately, the Committee is not unanimous in its view on this question.

C.S.G's file 0680 Vol II p 131.

42. In paragraph 2 of a letter No.S.P.3708/258 of the 26th of September, 1937, the Secretary, Southern Provinces, wrote as follows:-

Majority of opinion that status in the community does not merit consideration

"To the average permit-holder the possession of a shot gun is a mark of distinction rather than a means of hunting game".

Relying on that assertion, which he, himself, believes to be very true, the Chairman, in drafting the memorandum (Attachment "C"), was careful to suggest that all African applicants for permits for shot guns or air rifles should have at least the status of a 1st Class Clerk in the Government service. Col.Clifford, Capt.Ballentine and Mr.Miles, however, saw no objection to the grant of permits for shot guns to police constables, office messengers and other Government, native authority, town council, township or commercial employees provided that they had fifteen years service and were recommended by their employer. In the absence of Capt.Miller and The Hon.Alakija, and with Mr. Henderson refraining from voting, the draft was therefore amended to reflect the views of the majority. The Chairman, however, reserved the right to make an emphatic protest against the grant

of

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of permits to this class of people on the ground that, in his view, the possession of a shot gun is regarded by many Africans as a mark of distinction and that it is desirable, therefore, to ensure that the grant of a permit will not of itself raise the relative social standing of an applicant to a position above that which he would otherwise enjoy.

43. A word must now be written on the subject of warehouses, which are at present divided into two classes.

Recommendation that private warehouses be abolished.

(1) Private warehouses. The law provides for the licensing of private warehouses but the Committee understands that none is licensed at present. Certainly, control over small-arms will be easier and more effective if they only pass through public warehouses and, in the absence of a strong demand, the Committee considers that it is undesirable to provide for the licensing of private warehouses for arms and has therefore omitted all reference to them in the draft legislation.

(ii) Public Warehouses. The draft legislation requires that small-arms must be deposited in a public warehouse in certain circumstances and may be deposited in others. Consequently it seems desirable to provide a large number of public warehouses so that the general public will not be put to a great deal of unnecessary inconvenience. At present there are forty-three public warehouses, named in regulation 15(b) and (c) of the Arms (Amendment) Regulations, but they are not evenly distributed throughout Nigeria. There are six in the Owerri Province, five in the

Need for more public warehouses.

Warri

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1953 Suppt. pp 1275-7.

Warri Province, but only one each in the Benin, Onitsha and Oyo Provinces and in most of the Northern Provinces. The Committee is of the opinion that it would be unreasonable to expect persons to travel long distances merely to deposit or withdraw their small-arms and has therefore provided in the draft regulations (Attachment "B") that, in addition to a part of the customs premises at each prescribed port or aerodrome, the office of the officer in charge of police (i.e. the superior police officer where there is one, and elsewhere the District Officer) at every administrative station shall be a public warehouse.

Fourth
Schedule
Part III.

Certain
protests by
Customs Re-
presentative.

44. The Customs Representative (Mr. C. R. Miles), acting under the instructions of the Acting Comptroller of Customs (Mr. J. MacLagan), has protested against some of the provisions of the draft legislation. As the Committee understands it, the view of the Customs Department is that customs officers should have nothing whatsoever to do with small-arms except to see that they are deposited in public warehouses on first importation, that customs duties are paid and that customs regulations are complied with when they are exported. Mr. Miles therefore protests against the following provisions:-

- (i) that customs officers, as officers in charge of public warehouses, should have to licence small-arms;
- (ii) that customs officers should grant authorisations for the withdrawal from public warehouses of arms and ammunition;
- (iii) that customs warehouses are not distinguished from other public warehouses.

The Committee has given full consideration to these matters but (Mr. Miles dissenting) is unable to accept the point of view of Customs Department. If a person bound for, say, Kano arrived at Lagos with a small-arm and a permit therefor, he would be in illegal possession of that small-arm until he had got a licence for it and it would seem unreasonable

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reasonable to make him go to the office of the Superintendent of Police, Colony, to get the licence. For that reason, therefore, the Committee considers that Collectors of Customs should be empowered to grant licences. This does not mean, however, that they will do all the licensing, for it is provided that either a police or administrative officer at every administrative station shall also be a licensing authority. As to the grant of authorisations for withdrawal, the same argument applies. Collectors of Customs grant such authorisations at present and there appears to be no good reason why they should not continue to do so in respect of small-arms deposited in warehouses under their control. A Collector of Customs, as well as any other officer, should be capable of ensuring that the requirements of the law are complied with before he grants an authorisation and the Committee fails to see why another officer should have to take this responsibility off his shoulders. In fact, if a person who had imported a small-arm were made to apply to some other officer for an authorisation for withdrawal, that officer would have to enquire from the Collector of Customs whether customs duty had been paid and it seems entirely unnecessary to cause extra correspondence between Government officers in addition to inconvenience to the importer. No distinction has been drawn in the draft legislation between customs and other public warehouses for the reason that to do so would entail numerous provisos to certain sections and regulations which would only make the legislation more complicated. The Committee's view, however, is that any arms or ammunition, deposited in a customs warehouse on first importation should remain there until they are withdrawn or unless it is necessary to send them to another warehouse at some distant station. Similarly, any arms or ammunition which are to be exported should go direct to a customs warehouse. On
the

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the other hand, when small-arms or ammunition have to be deposited after first importation as, for example, when the owner dies or a permit is revoked, generally speaking customs warehouses should not be used.

Recommendation that persons who declare illegal possession of arms should not be liable to prosecution.

45. If the new legislation is introduced, it is most desirable that all small-arms and all prohibited arms should forthwith be declared. Owners, however, are not likely to declare such arms if they know that by so doing they may disclose past offences which will lead to their own prosecution. It is accordingly provided in section 37 of the draft Bill (Attachment "A") that any person who declares a small-arm or prohibited arm shall not be liable to prosecution if he does so within three months of the coming into force of the new Ordinance or, if he has been absent from Nigeria throughout that period, within one month from the date of his return. Air pistols have for some years been prohibited under the Customs Ordinance but the Comptroller of Customs has agreed that owners thereof shall not be prosecuted on that account during the three months period of grace provided that Customs Form 47 is signed. (Letter No. 31/1933 of the 5th March, 1941, in C.S.G.'s file 0680 Vol IV, p. 421 refers).

1933 Suppt. p 1253.

Propaganda desirable.

46. It is very desirable that the provision mentioned in paragraph 45 above should be made widely known and the Committee suggests that administrative officers should be given ample time, before the new legislation is enacted, to study all the provisions and make them known to the public. Another section which certainly should be brought to the notice of the public is section 35, which provides that rewards may be paid to informers, for it is possible that information may be obtained of arms which are in the hands of irresponsible persons

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persons, who would most certainly not declare them in the ordinary way.

47. Complications, leading possibly to treasury and audit queries, will certainly arise unless the new legislation comes into force on the 1st of January, or on any other date there may be persons who will already have taken out licences under the existing Arms Ordinance. Such licences would not be valid under the new Ordinance and the question would arise as to whether the fees paid could be set off against part of the new licence fees. In the circumstances, therefore, it is most desirable that the new Ordinance should become operative on the 1st of January, 1942, or some other year and that licensing authorities should have ample warning in advance.

Recommendation that new legislation should come into force on the 1st of January.

48. As stated in paragraph 5 above, certain comments on the draft Bill in its original form were received from the Chief Commissioners, the Comptroller of Customs and the Commissioner of Police. These comments have been considered by the Committee with the following results:-

Consideration given to comments of Chief Commissioners, Comptroller of Customs and Commissioner of Police.

(i) the Committee was unable to agree with the Comptroller of Customs that Part II of the draft Bill (Attachment "A"), which deals with the application of any international convention to which Nigeria may become a party, was superfluous because provision is already made under section 106(2) of the Customs Ordinance. The Legal Draftsman stated that there was no objection to the reproduction of any of the provisions of another Ordinance and, if it were necessary for the Governor to make any Proclamation relating to arms, it would be more convenient if the Law Officers could draft under the Arms Ordinance;

Laws Vol II p 1204.

(ii) the

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(ii) the Committee was also unable to agree with a suggestion by the Comptroller of Customs that imports and exports of arms should be dealt with only under the Customs Ordinance. Such an arrangement might be more convenient to customs officers but would only confuse other officers and members of the public, who would naturally expect to find in the Arms Ordinance and regulations every matter relating to arms;

(iii) the Committee agreed with the Commissioner of Police that a central registry for arms in Nigeria, functioning without assistance from deputy registrars, was not practicable and this subject has been discussed at length in paragraphs 28-30 above;

(iv) the Committee agreed with a suggestion by the Chief Commissioner, Northern Provinces, that provision should be made to enable the owner to export a small-arm and re-import it within a certain period. Provision has been made in section 29 of the draft Bill (Attachment "A") and the period fixed at nine months;

(v) the Committee agreed with a suggestion by the Chief Commissioner, Western Provinces, that it was desirable to make it quite clear that the owner of a small-arm must be in possession of a valid licence and not merely have obtained a licence in some previous year. Section 18(1)(a) of the draft Bill now makes this clear;

(vi) the Committee agreed with a suggestion by the Chief Commissioner, Eastern Provinces, that cap guns as well as flint-locks should be freed from the need for registration and annual licensing. This matter has been discussed in paragraph 14 above;

(vii) the Committee did not agree with a suggestion by the Comptroller of Customs of a minor amendment to section 22(3)(c) of the draft Bill (Attachment "A") for

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for the amendment proposed would have made applicable to small-arms conditions which it was intended should only relate to ammunition. The Committee, has, however, now made this more clear.

Part IV. Effect on revenue of Committee's proposals.

49. Some mention must be made of the probable effect of the Committee's proposals on the revenue of Nigeria which, so far as arms are concerned, is derived from the following sources;-

- (i) customs duties;
- (ii) fees for licences, authorisations, permits, etc.;
- (iii) warehouse rents.

50. (i) Customs duties. The existing duties are prescribed in the Schedule to Resolution and Order No. 2 of 1940, made under the Customs Tariff Ordinance, 1924, and are follows;-

Air guns	each	£1.	0.	0.
Cap guns and pistols	"	£1.	0.	0.
Flint-lock guns and pistols	"		16.	0.
Rifles, guns revolvers and pistols, other than cap guns and pistols and flint-lock guns and pistols.	"	£2.	0.	0. or
		16 ² / ₃ %	ad valorem	which-
				ever is higher

plus 25% surtax in the case of specific duties.

The amount realised from this source in 1940 was £31,246. The Committee recommends no alteration in the existing tariffs and its proposals are unlikely to affect customs revenue to any great extent. It is probable that the recommendation to free cap guns from control will lead to the import of more of them and fewer flint-locks and this would benefit Government. On the other hand the revenue fell by £11,500 compared with 1939 and further shortfalls

must

Sources of revenue from arms.

Proposals unlikely to affect customs duties.

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must be anticipated so long as the war lasts. Thereafter much will depend on the prosperity of the country.

Revenue from fees for licences, etc. likely to increase.

51. (ii) Fees for licences, etc. In 1940 a sum of rather less than £3,000 was obtained from this source, the bulk of which was derived from fees for licences, which cost 10/- each. If £2,500 was derived from licences, it would mean that only 5,000 small-arms had been licensed and the Committee believes that there must be many more than that in Nigeria. A majority of the Committee (Capt. Miller and Mr. Miles dissenting) recommend that the licence fee for a shot gun should be raised from 10/- to £1 and should include the right to shoot Game Birds, for which a 5/- licence is now required but seldom taken out. This recommendation conforms to the advice given by the Chief Commissioners, Eastern and Western Provinces, though the Chief Commissioner, Northern Provinces, recommended 15/-. If this increase is approved and it is possible to ensure that all small-arms are licensed annually, there should be a considerable increase in revenue under normal conditions in future years. New fees for permits to bear arms and for authorisations for export will also add to the revenue derived from this source and a total of at least £6,000 might be expected in a normal year.

C.S.G.'s file 36249 p 19.

Warehouse rents may increase slightly.

52. (iii) Warehouse rents. In 1940 only £169 was derived from this source. The proposal to increase rents slightly and to make them payable for each arm or specified quantity of ammunition, instead of by the case, should produce some increase, though the commercial firms may order more circumspectly in future and thus avoid the accumulation of large stocks on which rent would be payable.

The

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The Acting Comptroller of Customs has observed that, while the draft legislation provides that warehouse rents shall be paid monthly in advance, it is preferable to collect them when the arms or ammunition are withdrawn. Correspondence between the Acting Comptroller and the Chairman, at pages 424-9 in Chief Secretary's file 0680 Vol IV, explains why it has not been thought advisable to amend the draft legislation accordingly but it has been pointed out to the Acting Comptroller that the Committee can see no objection to the issue to customs officers of departmental instructions as to the time when rent should be collected in practice.

Part V. Summary of recommendations.

53. The more important recommendations of the Committee may be summarised as follows:-

Recommendations summarised.

(i) that cap guns and flint-lock guns with unrifled barrels should not be subject to registration nor annual licensing;

para 14.

(ii) that the import or possession of cap guns and flint-lock guns with rifled barrels and of cap, flint-lock or air pistols should be prohibited;

para 15.

(iii) that small-arms, as defined in section 2 of the draft Bill (Attachment "A"), should be subject to registration and annual licensing;

para 16.

(iv) that the Governor alone should be empowered to authorise the import or export of arms of war, save those in transit only;

para 17.

(v) that import licences should be abolished but that no person should be allowed to possess a small-arm unless he has obtained a permit from the prescribed authority;

para 19.

(vi) that there should be a central registry for arms and that the Commissioner of Police should be the registrar;

para 29.

(vii) that there should also be provincial registries supervised by deputy registrars, who should be police officers where possible;

para 29.

(viii) that Residents in charge of Provinces, the Commissioner of the Colony and the Commissioner of Police should be the prescribed authorities for the grant of permits for small-arms;

para 37.

(ix) that

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- para 37. (ix) that these prescribed authorities should be furnished with notes to guide them;
- para 40. (x) that permits for revolvers should be granted sparingly;
- para 43. (xi) that no provision should be made for the licensing of private warehouses;
- para 7. (xii) that a new Ordinance in the form of the draft Bill (Attachment "A") and new regulations in the form of the draft regulations (Attachment "B") should replace the existing Arms Ordinance and regulations;
- para 47. (xiii) that the new legislation should come into force on the 1st of January, 1942, or on the 1st of January in some subsequent year;
- para 46. (xiv) that administrative officers should give full publicity to the new provisions;
- para 47. (xv) that licensing authorities should have ample warning of the date on which the new legislation will come into force;
- para 51. (xvi) that the fee for a shot gun licence be raised to £1 and should cover the right to shoot Game Birds.

(Sgd.) I.W.E. Dods. Chairman

(Sgd.) A. Alakija.

(Sgd.) R.W.H. Ballantine.

(Sgd.) G. Miles Clifford.

(Sgd.) G.W. McL. Henderson.

(Sgd.) C.R. Miles.

(Sgd.) E.A. Miller.

Members

Date: 14th July, 1941.

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Arms

No.

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Arms Ordinance, 194

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A BILL
entitled

AN ORDINANCE TO MAKE PROVISION FOR THE REGULATION
OF MATTERS RELATING TO ARMS AND AMMUNITION

Date of
commencement.

[,19]

Enactment.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, as follows:-

Part I

Title and Definitions

Short title
application
and commence-
ment.

1. This Ordinance may be cited as the Arms Ordinance, 194 , and shall come into operation upon a day to be notified by the Governor by notice in the Gazette.

Definitions

2. In this Ordinance unless the context otherwise requires:-

"ammunition"

"ammunition" includes all munitions of war and small-arms ammunition and all material for loading cap guns, flint-lock guns, air guns, cap pistols, flint-lock pistols and air pistols whether in the form of made up cartridges or as component parts therefor, it also includes percussion caps, and pellets for air guns;

"arms"

"arms" includes all arms of war, small-arms, cap guns and flint-lock guns, cap pistols, flint-lock pistols and air pistols whether whole or in detached pieces;

"arms of war"

"arms of war" includes artillery of all kinds, apparatus for the discharge of all kinds of explosive or gas-diffusing projectiles, flame-throwers, bombs, grenades, torpedoes, machine guns and automatic rifles of all kinds,

and

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and anti-tank rifles and includes all parts of any such arms of war but does not include small-arms, cap guns, flint-lock guns, air guns, cap pistols, flint-lock pistols and air pistols;

"cap pistol", "flint-lock pistol" or "air pistol" means respectively a cap gun, flint-lock gun or air gun the overall length of the barrel of which does not exceed one foot;

"cap pistol"
"flint-lock pistol"
"air pistol"

"deal in" includes disposal or transfer by sale, barter, exchange, gift, or in any other manner whether with or without valuable consideration;

"deal in"

"export" and "exportation" include reference to removal, conveyance or despatch from Nigeria beyond the territorial waters or, in the case of exportation overland, beyond the land limits of Nigeria;

"export"
"exportation"

"importer" includes any owner or other person for the time being possessed of or beneficially interested in any arms or ammunition imported into Nigeria;

"importer"

"inland navigation" means transportation into or out of Nigeria other than by land, sea or air;

"inland navigation"

"licence" means a current revenue licence for a small-arm;

"licence"

"munitions of war" includes all material for the loading of any arms of war whether in the form of made up cartridges or as component parts thereof;

"munitions of war"

"permit" means a permit to possess or use a small-arm and small-arms ammunition such permit being issued by the prescribed authority;

"permit"

"public warehouse" means any place or building prescribed to be a public warehouse for any of the purposes of this Ordinance;

"public warehouse"

"registrar" means registrar of arms and, unless the contrary intention appear, includes a deputy registrar

of

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of arms;

"regulation"

"regulation" means a regulation made under this Ordinance and in force;

"rifle club"

"rifle club" means a club which has been granted a permit by the prescribed authority as a bona fide rifle club;

"small-arms"

"small-arms" includes any rifle (other than an anti-tank rifle), shot gun, revolver, pistol or air gun with rifled barrel, whether whole or in detached pieces but does not include cap guns, flint-lock guns, air guns with unrifled barrels, cap pistols, flint-lock pistols or air pistols;

"small-arms ammunition"

"small-arms ammunition" includes all material for loading small-arms whether in the form of made up cartridges or as component parts thereof, it includes pellets for air guns with rifled barrels but does not include percussion caps or common gunpowder known as 'trade powder'.

Part II

Application of International Conventions.

Prohibition of export of articles affected by international convention.

3. With a view to giving effect to any international convention relating to the international trade in arms and ammunition to which Nigeria may be a party, it shall be lawful for the Governor by Order in Council to prohibit the exportation or removal from Nigeria of any article to which the convention relates.

Application of Order in Council.

4. Any Order in Council under this Part of this Ordinance may relate to any particular article and may prohibit the exportation or removal thereof either generally or to any particular areas or to any particular country, place or sea.

Articles may be exported on conditions.

5. The Governor may, subject to such conditions, regulations, restrictions and directions as he shall think

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think necessary to give effect to any aforementioned convention, authorise any person specified in the authorisation to export or remove from Nigeria any article to which an Order in Council under this Part of this Ordinance relates.

Part III

Imports and Exports of Arms and Ammunition.

6. (1) No person, save as in this Ordinance provided, shall import into or export from Nigeria any arms of war or munitions of war.

Control of arms of war and munitions of war.

(2) The Governor may authorise the importation into Nigeria or the exportation from Nigeria of such arms of war and munitions of war as may be required to meet the needs of the Government of Nigeria or of any other Government.

7. (1) The prescribed authority may authorise the importation into and exportation from Nigeria whether by land, by sea, by inland navigation or by air of arms and ammunition in bulk in transit to any British Possession or to territories under the Sovereignty or Protectorate of another Power or to the territories administered by such Power under mandate from the League of Nations.

Arms and ammunition in transit.

(2) Before granting any such authorisation, the prescribed authority may require the production of a declaration from such Power that the arms and ammunition are solely for the use of the administration of such territories or for persons named in such declaration.

(3) Where any person having with him any small-arms or small-arms ammunition intended for his personal use arrives in Nigeria from any place en route for some other

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other territory he shall disclose such small-arms and small-arms ammunition to the nearest administrative, customs or preventive officer who shall take such steps as may be prescribed.

(4) The provisions of sections 10, 11, 18 and 22 of this Ordinance shall not apply to arms and ammunition in transit but an authorisation given under sub-sections (1) or (3) of this section shall be subject to the regulations concerning arms and ammunition in transit.

Import of arms and ammunition.

8. Arms and ammunition shall not be imported otherwise than by sea through a prescribed port or by air through a prescribed aerodrome:

Provided that the Governor may, in any authorisation granted by him under section 6(2) give specific directions as to the importation.

Provided further that arms and ammunition other than arms of war and munitions of war may be imported by land or by inland navigation when authorised specially in that behalf by the prescribed authority and subject to the provisions of any Customs Ordinance in force.

Small-arms to carry maker's name and number.

9. No small-arms shall be imported into Nigeria unless the same is marked on the metal portion thereof, prior to importation, with the maker's name and the maker's number.

Import by sea.

10. No small-arms, cap guns, flint-lock guns or ammunition therefor shall be landed from any ship unless any import duty which may be due thereon has first been paid:

Provided that this section shall not apply to any small-arms or ammunition therefor which are imported by a passenger as part of his personal effects and along with him in the same ship.

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11. Subject to the provisions of this Ordinance and any regulation, all small-arms, cap guns, flint-lock guns and ammunition therefor imported under the provisions of this Ordinance shall, in the first instance, be deposited by the importer at his own risk and expense in a public warehouse.

Small-arms, cap guns, flint-lock guns and ammunition therefor be deposited in public warehouse.

Part IV

Control within Nigeria of arms and ammunition.

Prohibitions.

12. The manufacture and the assembling of arms and ammunition is hereby prohibited except at arsenals established by the Imperial Government or by the Government of Nigeria.

Prohibition of manufacture.

13. The importation into Nigeria or possession by any person of any flint-lock pistol, cap pistol, air pistol, cap gun with rifled barrel, or flint-lock gun with rifled barrel is hereby prohibited.

Import and possession of certain arms prohibited.

14. The Governor, if he thinks fit, may at any time by Proclamation prohibit the possession or transport of or dealing in any arms or ammunition, either absolutely or subject to such restrictions, limitations and conditions as may be specified in such Proclamation, and may in such Proclamation declare the towns, places, districts or areas to which such Proclamation shall apply.

Power to Governor to prohibit dealing in arms and ammunition.

Licences and Permits.

15. No person shall open or carry on an establishment for the repair of small-arms without a licence issued by the prescribed authority.

Gunsmith's licence.

16. The Governor may appoint a registrar of arms and deputy registrars of arms who shall be responsible for the keeping of all prescribed records of registration.

Statement of central registry and appointment of registrars.

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Information to be supplied to a registrar.

17. Copies of all permits, licences and other documents issued in accordance with the provisions of this Ordinance or any regulation made thereunder shall be sent to a registrar in such manner as may be prescribed.

Permit and licence both necessary to possess or use a small-arm or ammunition therefor.

18. (1) No person shall own or have in his possession or use;

(a) any small-arm unless he has been issued with a permit to possess such small-arm and is in possession of a licence in respect of the said small-arm, or

(b) any small-arms ammunition except in accordance with the terms of the permit authorising him to own or have in his possession a small-arm;

Provided that nothing in this section shall prevent the withdrawal of small-arms ammunition from a public warehouse by an importer to whom any holder has entrusted his permit for that purpose.

Permit not required to be renewed.

(2) A permit may be issued by the prescribed authority and shall not require renewal.

Licence to expire on 31st of December.

(3) A licence may be issued by the prescribed authority and shall expire on the 31st December in the year in which it is issued.

(4) This section shall not apply;

(a) to members of ^a rifle club using small-arms which are the property of the club in accordance with the rules of the club;

(b) in the case of a person with whom small-arms and ammunition therefor have been left ⁱⁿ accordance with regulations providing for the safe custody of small-arms and ammunition therefor during the

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temporary absence from Nigeria of the owner.

(5) The provisions of sub-section (1) of this section shall not apply in cases where the holder of a permit and licence to possess a small-arm shall lend such small-arm and ammunition therefor to another person for a period not exceeding twenty-eight days provided that such person has himself obtained a permit and licence for a similar type of small-arm.

Small-arms lent for temporary purpose.

(6) The grant of a licence to possess a shot gun shall entitle the licensee to shoot birds of the species mentioned in the Third Schedule to the Wild Animals Preservation Ordinance.

Licence to include right to shoot Game Birds.

Chapter 99.

19. The prescribed authority may grant to any rifle club a permit authorising the Committee of such club to be in possession of such small-arms as may be indicated on the permit and subject to such conditions for the safe custody and use of such small-arms as may be prescribed in the permit.

Permits for rifle clubs.

Provided that it shall be a condition to the grant of any such permit aforesaid that the officer in charge of Police at the place in which such rifle club is situate may at all times enter upon the premises of such club to ensure that the conditions prescribed in the permit are being observed.

Officers in charge of Police may inspect the premises of rifle clubs.

20.(1) No person or club shall as of right be entitled to the grant of any permit, licence, certificate or authorisation required under this Ordinance and the same may be refused or revoked by the authority granting the same, at any time without any reason being assigned therefor.

Refusal or revocation of grants of permits, licences and authorisations and appeals thereon.

(2) Where

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(2) Where any person has been refused the grant of any permit, licence, certificate or authorisation aforesaid or where such document has been granted and is subsequently revoked in accordance with the provisions of this section such person may within one month from the date of such refusal or revocation and in the prescribed manner appeal to the Governor whose decision shall be final.

Free licences.

21. The prescribed authority shall grant free licences;-

(a) for revolvers to administrative and police officers and to such other public officers as he may think fit;

(b) for rifles to the Secretary of a rifle club.

Public Warehouses.

Withdrawals from public warehouses.

22. (1) No small-arms, cap gun, flint-lock gun or ammunition therefor shall be withdrawn from a public warehouse unless and until such withdrawal has been authorised by the officer in charge of the public warehouse.

(2) Every small-arm and all small-arms ammunition shall, on being withdrawn from a public warehouse for issue to an individual, be registered by the officer in charge of the public warehouse in the manner prescribed by the regulations.

(3) The authorisation for such withdrawal shall only be granted in the following circumstances;-

(a) for despatch or transfer to some other public warehouse, or

(b) in the case only of a cap gun or flint-lock gun and ammunition therefor to an individual named and described on the authorisation on payment of the prescribed fee;

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(c) to an individual named and described on the authorisation who must be in possession of a permit and of a licence for that particular small-arm or of a permit to obtain ammunition and then in addition, subject to such conditions relating to that ammunition as may be prescribed.

(4) When ammunition is issued to the holder of a permit under this section the officer in charge of the public warehouse shall record such issue upon the permit in the manner prescribed by the regulations.

23. The Governor may authorise the disposal by sale, destruction or otherwise of any small-arms, cap guns, flint-lock guns or ammunition therefor which have remained unclaimed in a public warehouse for a period of six months since the date of deposit therein or where any warehouse fees have remained unpaid for a period of three months from the date upon which such fees became lawfully due. The proceeds of any sale authorised under this section shall form part of the revenue of Nigeria:

Disposal of arms abandoned in public warehouses.

Provided that small-arms and ammunition therefor deposited pursuant to section 26 shall not be sold until such notice or notices have been given or published as may be prescribed.

Transfer of small-arms and ammunition.

24. (1) No small-arm shall be transferred by the person entitled to be in possession of that small-arm to any other person except upon the following conditions:-

Transfer of small-arms.

(a) the transferee shall hold a permit to be in possession of the particular type of small-arm to be transferred,

(b) the

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(b) the permit which is held by the transferor authorising him to be in possession of that small-arm together with the licence shall be returned prior to the transfer to the prescribed authority who issued the permit:

Provided that such a surrender shall not debar the grant of a fresh permit for a small-arm to the transferor in the discretion of the prescribed authority.

(c) the transferee shall within fifteen days of the obtaining of the necessary permit take out a licence for that small-arm for the remainder of the current year in default of which the permit shall be cancelled:

Provided that the prescribed licensing authority may in his discretion extend the period for the issue of the licence in any particular case.

(2) The permit and licence which are returned in accordance with the provisions of sub-section (1)(b) of this section shall be cancelled by the prescribed authority to whom they are returned and forwarded by him to a registrar.

Transfer of small-arms ammunition.

25. (1) No person in lawful possession of small-arms ammunition shall transfer the same to any other person unless the transferee is the holder of a permit to bear small-arms and ^{is,} at the time of transfer, entitled, in accordance with the conditions of such permit, to obtain possession of the ammunition which it is proposed to transfer.

(2) The transferor shall make such entry of the transfer upon the permit of the transferee as may be prescribed by the regulations.

26. (1) Any

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26.(1) Any person who takes possession of the small-arms or ammunition therefor of a deceased person shall forthwith deliver the same together with any permit or licence for the said small-arms to an administrative officer or registrar who shall thereupon deposit the said small-arms, ammunition, permits and licences therefor in a public warehouse. In the case of such delivery being made to an administrative officer he shall forward to the registrar such particulars as may be prescribed in the regulations.

(2) The officer in charge of a public warehouse shall only grant an authorisation to withdraw such small-arms or ammunition therefor in the circumstances mentioned in sub-section (3)(c) of section 22 after he has received the consent in writing of the administrative officer or registrar who deposited the small-arms and ammunition therefor or of the legal representative of the deceased naming the person to whom such authorisation may be granted.

Loss of small-arms.

27. The holder of a permit to possess a small-arm shall forthwith notify an administrative officer or registrar if the small-arm be lost, stolen or destroyed and the officer aforesaid on being satisfied that the small-arm has been lost, stolen or destroyed shall issue a certificate to that effect to the holder of the permit and shall take possession of the permit and licence in respect of the said small-arm and, after endorsing the permit in terms of the certificate, shall forward such permit and licence to a registrar for such action thereon as may be prescribed.

Disposal of small-arms and ammunition of deceased person.

Notice to be given of any loss of small-arms.

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Part V

Export of small-arms and ammunition.

Permanent export of small-arms or ammunition.

28. (1) Any person who desires to export permanently a small-arm or ammunition for which he holds a permit shall give written notice of such intention to the prescribed authority who issued the permit and shall at the same time deliver up the permit and the licence issued in respect of the small-arm to such authority.

(2) Any person who notifies a prescribed authority under sub-section (1) of this section shall furnish the prescribed authority with such evidence that the small-arm and ammunition has been exported as may be prescribed by the regulations.

Temporary export of small-arms.

29. (1) Any person who, with a view to re-importing within a period of not exceeding nine months, desires to export for such period a small-arm for which he holds a permit shall apply in writing to the prescribed authority who issued such permit for permission so to do and shall at the same time surrender his permit to such prescribed authority.

(2) On receipt of such notification and permit the prescribed authority, if satisfied as to the bonafides of the applicant and of his intention to re-import the small-arm within the said period, may issue an authorisation in the prescribed form.

(3) On the issue of such authorisation the prescribed authority shall send the surrendered permit to the nearest deputy registrar who shall retain the same until such time, within the period allowed by sub-section (1), as the small-arm shall be re-imported, when on presentation by the holder of the authorisation for the

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the small-arm and its licence the permit shall be returned to him.

(4) If no such presentation be made within the period allowed by sub-section (1) the deputy registrar shall forward the permit to the registrar for such action as he may think fit.

Part VI.

Legal Procedure and Offences.

30. (1) A Magistrate or Justice of the Peace if satisfied by information on oath that any arms or ammunition are being unlawfully kept, transported, landed, or dealt with in contravention of any of the provisions of this Ordinance or of any Proclamation issued under section 14 at any place whether a building or not, or in any ship or vehicle, may grant a warrant to enter at any time and if need be by force, on Sundays as well as on any other days, the place, ship, or vehicle named in such warrant, and every part thereof, and to examine the same, and to search for any arms or ammunition unlawfully kept therein, and to demand from the owner or occupier thereof the production of his permit, licence or authority for so keeping, transporting, landing, or dealing in the same.

Warrants to search for arms and ammunition unlawfully kept, transported or landed.

(2) When the officer or other person executing such warrant shall have reasonable cause to believe that any arms or ammunition found by him in any such place, ship or vehicle, are being so kept, transported, landed or dealt in in contravention of any of the provisions of this Ordinance or of any Proclamation issued under section 14, he may seize and detain the same to await due process and determination of law in their regard.

31. Any

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Offences.

31. Any person who;-

(1) does any act or makes any omission which constitutes or involves a contravention or constitutes or involves a non-compliance with, any provision of this Ordinance or of any Proclamation issued under section 14 of this Ordinance or of any condition in any permit, licence or authorisation issued under this Ordinance; or

(2) does any act or makes any omission with intent to contravene or to evade compliance with any provision of this Ordinance, or of any Proclamation issued under section 14 or of any condition in any permit, licence or authorisation issued under this Ordinance; or

(3) does any act or makes any omission which is in this Ordinance or in any Proclamation declared to be an offence; or

(4) being the owner or occupier of any place or premises or the master of any ship or the driver of any vehicle, whereon or wherein was kept or transported any arms or ammunition contrary to the provisions of this Ordinance, unless such owner, occupier, master or driver can prove that such arms or ammunition were deposited or transported therein without his knowledge or consent; or

(5) holding a licence for a small-arm fails on demand by an administrative or police officer or registrar to produce the small-arm described in the licence within fifteen days from the time of such demand or to produce a certificate granted under the provisions of section 27,

shall be guilty of an offence under this Ordinance.

32.(1) Except

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Offences.

31. Any person who;-

(1) does any act or makes any omission which constitutes or involves a contravention or constitutes or involves a non-compliance with, any provision of this Ordinance or of any Proclamation issued under section 14 of this Ordinance or of any condition in any permit, licence or authorisation issued under this Ordinance; or

(2) does any act or makes any omission with intent to contravene or to evade compliance with any provision of this Ordinance, or of any Proclamation issued under section 14 or of any condition in any permit, licence or authorisation issued under this Ordinance; or

(3) does any act or makes any omission which is in this Ordinance or in any Proclamation declared to be an offence; or

(4) being the owner or occupier of any place or premises or the master of any ship or the driver of any vehicle, whereon or wherein was kept or transported any arms or ammunition contrary to the provisions of this Ordinance, unless such owner, occupier, master or driver can prove that such arms or ammunition were deposited or transported therein without his knowledge or consent; or

(5) holding a licence for a small-arm fails on demand by an administrative or police officer or registrar to produce the small-arm described in the licence within fifteen days from the time of such demand or to produce a certificate granted under the provisions of section 27,

shall be guilty of an offence under this Ordinance.

32.(1) Except

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32.(1) Except in cases where some lesser penalty is provided any person convicted of an offence under this Ordinance or any Proclamation issued shall be liable to a fine of five hundred pounds or to imprisonment for two years or both.

Penalties

(2) Where any such person is charged with an offence under this Ordinance, such offence appearing to be of such a nature that, if proved, it would be adequately punished either by such fine or by such imprisonment or by both such fine and imprisonment as a Magistrate has jurisdiction to impose in criminal cases, the charge may be tried and determined by a Magistrate and it shall not be necessary to obtain the consent of the person so charged to be tried by a Magistrate.

33. On the conviction of any person for an offence against this Ordinance, the court may, if it shall so think fit, order that any arms or ammunition in respect of and in connexion with which such offence has been committed shall be forfeited. On any such order being made, any arms or ammunition so ordered to be forfeited, shall, unless the court otherwise orders, be destroyed in such manner as the Commissioner of Police, or the officer in charge of Police of the area in which the court is situate, may direct:

Liability to forfeiture of arms and ammunition.

Provided that in the case of arms of war and munitions of war the court shall report the matter to the Governor and shall order that such arms of war and munitions of war shall be detained by the said officer in charge of Police until the Governor's directions for the disposal of the said arms of war and munitions of war are received.

34. (1) On

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Court may endorse or cancel permits, licences and authorisations.

34. (1) On convicting any person of an offence against this Ordinance the court, if in its opinion the offence is of such a nature as to require or to make it expedient that any permit, licence or authorisation which such person may hold under this Ordinance should be suspended or revoked, may make an order to that effect and such permit, licence or authorisation shall thereupon be suspended or revoked according to the tenor of such order.

(2) Any person whose permit, licence or authorisation as aforesaid has been suspended or revoked in accordance with the provisions of this section, who shall fail to produce such document to the court within such time as the court may direct shall be guilty of an offence against this Ordinance.

(3) Any order by the court as aforesaid shall be reported to a registrar and the court shall also send to such registrar the permit, licence or authorisation aforesaid endorsed as to suspension or revocation as the case may be.

(4) Where a permit, licence or authorisation has been suspended and the period of suspension has expired, a registrar, upon the application of the person so convicted and if such permit, licence or authorisation is not already spent, shall return the same to such person.

Reward to prosecutors and informers.

35. The Governor may award to any person who shall prosecute to conviction any offender against this Ordinance or the regulations or who shall have contributed to such conviction by giving information or otherwise such sum, not exceeding one half of the fine imposed, as he shall think fit.

Provided

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Provided that where imprisonment is imposed as an alternative to or in default of the payment of a fine the Governor may award such payment to be made from the general revenue of Nigeria as he may think fit.

Part VII

Miscellaneous.

36. The prescribed authorities, officers in charge of public warehouses and registrars in Nigeria are hereby authorised and empowered to take all such necessary action and to do all such things as the efficient execution of any of the provisions of this Ordinance or of any regulation or of any Proclamation thereunder may reasonably require; and no action, suit or civil proceedings of any kind whatsoever shall, without the written consent of the Attorney-General, be brought against any person in any court for damages or compensation in respect of any measures or acts which may be taken or done in the execution or intended execution of the duties of any such prescribed authority, officer in charge of a public warehouse or registrar under this Ordinance or under any regulation or under any Proclamation thereunder.

Power to prescribed authorities and registrars to execute the provisions of this Ordinance.

37.(1) Any person who, at the date of commencement of this Ordinance, is in possession of a small-arm, or of ammunition therefor and who is not in possession of a licence to bear such small-arm or of a permit for the purchase or use of such ammunition, as prescribed by the Arms Ordinance, may within three months from the date of such commencement or, if he has been absent from Nigeria throughout that period, within one month of his return to Nigeria, either obtain the permit and licence prescribed by section 18 of this Ordinance or deposit such small-arm and ammunition therefor as provided in section 38 of this Ordinance.

Small-arms and ammunition not licensed under Chapter 132.

Chapter 132

(2) Any

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Arms prohibited by this Ordinance.

(2) Any person who, at the date of commencement of this Ordinance, is in possession of a cap gun with rifled barrel, flint-lock gun with rifled barrel, cap pistol, flint-lock pistol or air pistol shall, within three months from the date of such commencement or, if he has been absent from Nigeria throughout that period, within one month of his return to Nigeria surrender such gun or pistol to the officer in charge of any public warehouse who shall dispose of such gun or pistol in such manner as may be prescribed in the regulations.

? (3) No person who obtains a permit and licence or who deposits a small-arm, cap gun with rifled barrel, flint-lock gun with rifled barrel, cap pistol, flint-lock pistol or air pistol or small-arms ammunition as provided in this section shall be prosecuted for or convicted of any offence by reason of the fact that he has not obtained any licence to bear arms or permit to purchase or use ammunition as prescribed by the Arms Ordinance hereby repealed or a permit or licence as prescribed by this Ordinance or has contravened the provisions of section 13 of this Ordinance.

Chapter 132.

Deposit of unlicensed small-arms and ammunition in public warehouses.

38.(1) Any person in possession of a small-arm may, instead of obtaining a licence as provided by sections 18 and 24 of this Ordinance, deposit the same in a public warehouse or other prescribed place on such conditions as to the payment of rent or otherwise as may be prescribed.

(2) Any person who deposits ammunition in a public warehouse as provided in sub-section (1) of section 37 of this Ordinance shall comply with such conditions as to the payment of rent or otherwise as shall be prescribed.

(3) If

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(3) If any person shall fail to comply with the prescribed conditions relating to the deposit of small-arms and ammunition, the small-arms and ammunition deposited by such person may be disposed of as if such arms and ammunition had remained unclaimed for six months in a public warehouse.

39. From the date of the commencement of this Ordinance no person shall be prosecuted for or convicted of being in possession of a cap gun or of a flint-lock gun with unrifled barrel notwithstanding the fact that such possession may have contravened the provisions of the Arms Ordinance while such Ordinance was in force.

Cap guns and flint-lock guns with unrifled barrels freed from control.

Chapter 132.

40. The Governor in Council may make regulations for the further, better, or more convenient carrying out of any of the provisions or purposes of this Ordinance; and in particular with respect to any of the following matters;-

Regulations.

(a) The appointment of persons to be the prescribed authority under the Ordinance;

(b) The forms to be used for any purpose under this Ordinance;

(c) The fees to be charged and paid for permits, licences and authorisations under this Ordinance;

(d) The prescription of anything which under this Ordinance requires to be prescribed;

(e) The duties and powers of any person engaged or employed in the administration of the provisions of this Ordinance;

(f) The rents to be charged and payable and method of payment thereof in respect of articles deposited under this Ordinance in any public warehouse;

(g) Permits,

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21.

(g) Permits, licences and authorisations under this Ordinance;

(h) The landing, storage and transport of arms and ammunition;

(i) The custody of small-arms and ammunition therefor during the absence from Nigeria of the owners thereof and the fees payable in connection therewith;

(j) The limitation of the liability of the Government and of public officers for small-arms and ammunition therefor lost or damaged while in their custody during the absence from Nigeria of the owners thereof;

(k) The structural requirements and appointments of public warehouses;

(l) The management, use and control of public warehouses and withdrawals therefrom;

(m) The disposal of unclaimed arms and ammunition in a public warehouse;

(n) The keeping and examination of books, records and registers in connexion with the administration of any of the provisions of this Ordinance;

(o) The control of arms and ammunition in transit;

(p) The dealing in arms and ammunition;

(q) Prescribing standards with which any specified arms or ammunition must comply before being imported into or used in Nigeria.

Savings.

41. The provisions, restrictions and prohibitions in this Ordinance declared shall not apply to any arms or ammunition intended for use by the naval, military, air or police forces of the Crown or of the Government of Nigeria or for the state defence of any part of the British Possessions.

42. The

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22.

42. The Ordinances set out in the Schedule hereto **Repeal.**
are hereby repealed;-

Schedule.

No. and Year	Short Title
Chapter 132 (No. 38 of 1922)	The Arms Ordinance
No. 24 of 1927	The Arms (Amendment) Ordinance 1927.

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ATTACHMENT AAComparison of the draft Bill with the Arms Ordinance
(Chapter 132, Laws Volume II page 1262)

With reference to paragraph 2 of the Chief Secretary's circular No. 57/1939;-

(a) the nature of the proposed legislation is a draft Bill and regulations intended to replace the existing Arms Ordinance and regulations;

(b) the objects and reasons for the proposed legislation are set out in the Committee's report;

(c) the proposed legislation cannot be said to be based on any Model Ordinance or existing legislation in the United Kingdom or other parts of the Empire. It is rather a reconstruction of the existing Arms Ordinance in the light of present day needs;

(d) the Provincial Administration, Customs, Legal and Police Departments have been represented on the Committee and African unofficial opinion has been expressed by Dr. the Honourable K.A. Abayomi, M.D. (who, however, has been absent in England since the second meeting was held) and The Honourable A. Alakija, C.B.E. In addition the Chief Commissioners, Northern, Eastern and Western Provinces have been afforded the opportunity to comment on the draft Bill but not on the draft regulations;

(e) the enactment of the proposed legislation, though desirable at an early date, cannot be said to be urgent. In fact it would be a great advantage if the new Ordinance were made effective as from the 1st of January in any future year so that there will be no difficulty about re-licensing small-arms already licensed for the whole of the current year.

2. As regards paragraph 4 of the circular, since so many changes are to be effected, it is felt that an attempt to compare the draft Bill with the Arms Ordinance in a schedule would serve little useful purpose and that the following

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notes will be more helpful. The references, unless otherwise stated, are to the sections in the draft Bill.

Section 2. The definitions have been amended to classify under the designation of "small-arms" only those arms which will in future be subject to registration and strict internal control. "Convention", "High Contracting Parties", "Maritime Zone" and "Prohibited Areas" disappear since no international convention now exists. A definition of "British Empire" is unnecessary since reference can be made to the generally recognised term - "British Possessions". There is no definition of "Private Warehouses" since no provision is made for the licensing of private warehouses. On the other hand new definitions are inserted for "inland navigation", "licence", "permit", "registrar" and "rifle club".

Part II, Application of International Conventions. This Part provides for giving effect to any international convention to which the Government may become a contracting party.

Section 6 prohibits the import or export of arms of war and munitions of war but power is reserved to the Governor to authorise such imports or exports as may be required to meet the needs of Government or any other Government. Under section 5 of the Arms Ordinance, a Collector of Customs could authorise the import of arms of war but it seems preferable that such power should be in the hands of the Governor alone and then only in respect of such as may be required for Government purposes.

Section 7 empowers a prescribed authority (the Commissioner of Police is suggested in the regulations) to authorise the import and export of any arms or ammunition in bulk in transit through Nigeria. Under section 7 of the Arms Ordinance, Collectors of Customs and Residents had this power according as to whether the import was by

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sea or by other means. It is improbable that there will be much traffic through Nigeria and it seems desirable that such as there may be should be controlled by one officer. Provision, however, is also made for other prescribed authorities to authorise the transit of the personal small-arms of passengers arriving at Nigeria by sea, air, land or inland navigation since it would be unreasonable to delay them while the approval of a central authority was sought.

Section 8 provides that normally imports of arms and ammunition must be by sea or air through prescribed ports or aerodromes but permits the Governor to authorise the import of arms of war and munitions of war through other places and for a prescribed authority (Residents and the Commissioner of the Colony) to do likewise in respect of other arms and ammunition.

Section 9 requires small-arms to be marked with the maker's name and number as this is necessary for registration purposes.

Section 10 provides that arms and ammunition, except small-arms which are part of a passenger's baggage, may not be landed from a ship until customs duty has been paid. Otherwise there would be nothing to show when such duty must be paid and cases of flint-lock guns, for example, might lie in a transit shed, which is regarded as a ship's hold, for unnecessarily long periods. A similar provision is effective in the Gold Coast.

Section 11 provides that all arms and ammunition, other than arms of war and munitions of war, must be deposited in a public warehouse as soon as they are imported so as to ensure that the necessary control can be effected.

Section 12, prohibiting the manufacture, etc., of arms and ammunition except at arsenals established by Government or
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the Imperial Government, shows no change from section 18 of the Arms Ordinance.

Section 13 is new and prohibits the import or possession of cap guns or flint-lock guns having rifled barrels or of cap, flint-lock or air pistols.

Section 14 is similar to section 24 of the Arms Ordinance but gives the Governor the power to prohibit the transport as well as possession or dealing in arms and ammunition in such places as may be prescribed by Proclamation.

Section 15 is similar to section 19(1) of the Arms Ordinance but, in providing for the licence of repairing establishments, binds the prescribed authority to observe the regulations instead of imposing such conditions as he may think fit.

Section 16 is new and provides for the appointment of a registrar of arms and deputy registrars.

Section 17 is also new and requires copies of permits, licences and authorisations to be sent to a registrar.

Section 18. In so far as small-arms are concerned, this section lays down that a permit and licence are necessary instead of the old import licence coupled, in the case of Africans only, with a permit signed by a Chief Commissioner or the Commissioner of the Colony. It provides for prescribed authorities to issue permits and licences but exempts members of rifle clubs and custodians of small-arms, during the owner's absence from Nigeria, from the need to possess individual permits and licences. Sub-section 5 is similar to section 24 of the Arms Ordinance in providing that a small-arm may be lent to another person who holds a licence. Sub-section 6 provides that a licence for a shot gun shall include the right to shoot game-birds and the regulations provide for an increased fee. In practice few owners of a shot gun ever took out the Bird

Licence

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Licence prescribed in section 17(1) of the Wild Animals Preservation Ordinance (Chapter 99, Laws Volume I page 913). This section, however, by referring specifically to "small-arms", frees cap guns and flint-lock guns from further control after they have left a public warehouse.

Section 19 provides for the grant to rifle clubs of permits for small-arms and is new.

Section 20 is similar to section 23 of the Arms Ordinance but stipulates that an appeal to the Governor against the refusal or revocation of the grant of any permit, etc., must be made within one month.

Section 21 provides that free licences for revolvers may be granted only to administrative and police officers and to such other public officers as the prescribed authority may think fit instead of to all Government officers (item 5, Second Schedule to the regulations under Chapter 132, Laws Volume III page 885) and also for rifles to rifle clubs which is new.

Section 22 explains what is necessary before arms and ammunition other than arms of war and munitions of war can be withdrawn from the public warehouse in which they are deposited on first importation. This differs from section 11 of the Arms Ordinance in providing that cap guns and flint-lock guns may be withdrawn on the payment of the withdrawal fee without the additional requirement of the production of a permit bearing the name, usually fictitious, of the person permitted to bear such arms.

Section 23 is new and authorises the Governor to dispose of arms and ammunition which have remained unclaimed in a public warehouse for more than 6 months or where rent due has not been paid for 3 months. This is to avoid the accumulation of a quantity of abandoned and often useless material. A proviso ensures that the arms and ammunition of a deceased person

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person will not be disposed of until certain formalities have been completed.

Section 24 frees cap guns and flint-lock guns from any restriction as to transfer but, in the case of small-arms, requires the surrender (which section 17 of the Arms Ordinance did not) of the permit and licence of the transferrer. The transferee must be in possession of an appropriate permit.

Section 25 deals with the transfer of ammunition and requires the transferrer to enter on the permit of the transferee such particulars as are prescribed in the regulations and which are designed to ensure that the authorised quantity of ammunition is not exceeded.

Section 26 is more explicit than section 17(3) of the Arms Ordinance in the matter of the disposal of arms and ammunition of a deceased person and charges the officer who takes over such arms to deposit them in a public warehouse and notify a registrar of the particulars thereof. Sub-section 2 tells the officer in charge of the warehouse what is expected of him and further instructions are given in the regulations.

Section 27 differs from section 20 of the Arms Ordinance in that:-

(1) any loss, theft or destruction of a small-arm or ammunition may be reported to any administrative officer or deputy registrar instead of only to a prescribed authority;

(2) the permit and licence in respect of the arms or ammunition lost must be surrendered and forwarded to a registrar.

Section 28 is new and provides for the permanent export of arms and ammunition in such a manner as to ensure that the export will be registered.

Section 29 is also new and is designed to enable a person proceeding on leave to obtain an export and re-import certificate. A period of nine months is allowed.

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Section 30 is the same as section 25 of the Arms Ordinance except that a Justice of the Peace in addition to a Magistrate may grant a search warrant.

Section 31. Sub-sections (1) to (3) make no change in the provisions of sub-sections (a) to (c) of section 27(1) of the arms Ordinance. Sub-section (4) is new and provides that a master of a ship or driver of a vehicle in which arms or ammunition are illegally kept or transported may be guilty of an offence. Sub-section (5) is also new, making it necessary for a person to produce either his small-arm or a certificate of loss. This is very necessary so as to ensure that any loss is reported.

Section 32 is the same as section 27(2) of the Arms Ordinance except that it is made clear that it rests with a Magistrate whether to try a case summarily or not.

Section 33 is similar to section 27 (6) of the Arms Ordinance but, where a court makes no order as to the disposal of arms and ammunition forfeited, requires that such arms and ammunition shall be destroyed by the Police instead of troubling Chief Commissioners in the matter. A proviso requires the court to report to the Governor in the case of arms of war and munitions of war so that he can make an order for their disposal.

Section 34 is the same as section 27 (6) of the Arms Ordinance but sub-section (2) is new and makes it an offence if any person fails to produce his permit, licence or authorisation, when so ordered by the court, within the time allowed by the court. This is to ensure that suspensions or revocations considered necessary are endorsed on such documents. Provision is made in sub-sections (3) and (4) for the court to send the endorsed permits, etc., to a registrar and for the latter to return suspended permits, etc., to the owner when the suspension period expires.

Section 35

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Section 35 is similar to section 27(4) of the Arms Ordinance but makes it clear that the Governor may award to an informer a sum not exceeding one-half of any fine paid, or, if no fine has been paid, such payment from general revenue as he may think fit.

Section 36 is similar to section 26 of the Arms Ordinance but safeguards registrars in addition to prescribed authorities from claims for damages or other civil action without the consent of the Attorney-General.

Section 37 is new and is designed to encourage persons to declare within three months of the introduction of the Ordinance any small-arms which they may possess illegally so that registration can be effected. Clearly, it would be vexatious to punish such person as a result of their declarations. Sub-section (2) makes similar provision in the case of arms which will be prohibited when the new Ordinance comes into force.

Section 38 provides for the deposit in a public warehouse of any small-arm which an owner does not want to license. Rent will have to be paid except in certain circumstances noted in the regulations. Ammunition may also be deposited.

Section 39 frees persons now in illegal possession of cap guns or converted flintlocks from prosecution or conviction when the new Ordinance comes into force, since control of cap guns is not recommended.

Section 40 provides for the making of regulations. It is similar to section 29 of the Arms Ordinance except that provision is not made to enable regulations "to render more strict the operation of the provisions of the Ordinance" and the following new powers are added:-

(1) the custody of small-arms and ammunition therefor during the absence from Nigeria of the owners thereof and of the fees payable in connexion therewith;

(j) the

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(j) the limitation of the liability of the Government and of public officers for arms and ammunition lost or damaged while in their custody during the absence from Nigeria of the owners thereof;

(m) the disposal of unclaimed arms and ammunition in a public warehouse;

(o) the control of arms and ammunition in transit;

(q) prescribing standards with which any specified arms or ammunition must comply before being imported into or used in Nigeria.

Section 41 is the same as section 28 of the Arms Ordinance.

Section 42 provides for the repeal of the Arms Ordinance.

3. To complete comparison with the Arms Ordinance, it is necessary to draw attention to certain sections of that Ordinance which are not reproduced in the draft Bill. The sections of the Arms Ordinance concerned^{are} as follows:-

Sections 13 and 14 dealing with private warehouses have no counterpart. There appears to be no need for private warehouses since none are licensed at present and, in the absence of any strong demand, they are undesirable as control can be effected more certainly through public warehouses.

Section 19. Sub-sections (2) and (3) deal with the conversion of flint-lock guns into cap guns. Since cap guns are not recommended for control there is no objection to such conversion in future.

Section 22 dealing with Maritime Supervision may have been intended to conform to some international convention but in the absence of such convention appears to be unnecessary.

Section 27(5) provides that the Governor may remit a fine notwithstanding the claim of an informer but, since the Governor is not bound to make any payment to an informer, appears to be superfluous.

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Attachment B

Arms

No.

of 194

Regulations made under the Arms Ordinance 194

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12. Authorisation by Governor to export or import arms of war
and munitions of war.

13. Authorisation for arms and ammunition in transit.

14. Authorisation for import of arms and ammunition other
than through a prescribed port or aerodrome.

Standards for shot guns and cartridges.

15. Standard length of barrels of shot guns.

16. Standard contents of cartridges.

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Part V

Licences and Permits.

Repairing establishments.

17. Licence for establishment for repair of small-arms.
18. Licencee to keep register and submit monthly returns.

Registration of permits and licences

19. Records of small-arms to be kept at registries.
20. Return of small-arms to be submitted by deputy registrars.
21. Register of repairing establishments to be kept by deputy registrars.
22. Responsibility of deputy registrars to see that small-arms are licensed.
23. Responsibility of deputy registrars to see that repairing establishments are licensed.
24. Duplicates of permits and licences to be sent to deputy registrars.

Applications for permits for small-arms and ammunition

25. (1) Method of application.
- (2) Forwarding of application.
- (3) Power to prescribed authority to grant or refuse applications.
- (4) Prescribed authority to send copy of application to deputy registrar.
- (5) Prescribed authority may record reasons for decision.
- (6) References to applications to be kept by administrative and police officers.
- (7) Form of permit.
- (8) When a permit shall lapse.
- (9) Worn or mutilated permit may be renewed.
- (10) Loss of permit.

26. Permits for rifle clubs.

Applications for licences for small-arms

27. (1) Where licence should be applied for.
- (2)-(5) Procedure when small-arm is deposited in distant warehouse.

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(6) Form of licence.

(7) & (8) Duties of prescribed licensing authorities.

Part VI

Public Warehouses.

Withdrawals from public warehouses.

28. (1) Cap guns and flint-lock guns.

(2) Small-arms and ammunition therefor.

(3) Officer in charge to enter particulars of small-arm and ammunition on permit.

29. (1) Procedure on arrival in Nigeria with re-import certificate.

(2) Procedure on arrival in Nigeria without re-import certificate.

(3) Procedure when an undertaking to deposit small-arms and ammunition is not complied with.

(4) Procedure when an undertaking to deposit small-arms and ammunition is complied with.

30. Copies of authorisations for withdrawal to be sent to registrars.

Registers to be kept at public warehouses.

31. Arms and ammunition deposits register.

32. (1) Register of arms and ammunition seized, forfeited or abandoned.

(2) Return to be sent to registrar.

Disposal of arms and ammunition abandoned.

33. (1) Officer in charge to apply for authorisation for disposal.

(2) Information to be given in such application.

(3) Conditions of sales.

Part VII

Custody of small-arms and ammunition during absence of owner from Nigeria.

34. (1) During absence from Nigeria small-arms and ammunition may be left with an authorised custodian.

(2) Authorised custodian not to use small-arm.

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- (3) Deposit of small-arms and ammunition during temporary absence of owner from Nigeria.

Part VIII

Miscellaneous

- 35. Appeals to Governor.
- 36. Disposal of small-arms and ammunition of a deceased person.
- 37. (1) Certificates of loss, theft or destruction of a small-arm.
 - (2) New permit may be issued.
 - (3) Procedure when small-arm is recovered.
 - (4) Prescribed authority not bound to restore permit.
 - (5) Rights of owner when permit is not restored.
- 38. Permanent export of small-arms and ammunition from Nigeria.
- 39. Form of authorisation for export and re-import of small-arms and ammunition.
- 40. Destruction of prohibited arms which have been surrendered.
- 41. When warehouse rents become due.
- 42. Limitation of compensation payable by Government.

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N I G E R I A

No. of 194

REGULATIONS

MADE UNDER

THE ARMS ORDINANCE, 194

In exercise of the powers conferred upon the Governor in Council by section 39 of the Arms Ordinance 194 , the following Regulations are hereby made;-

Part I

Title

Short title

1. These Regulations may be cited as the Arms Regulations 194 , and shall apply to Nigeria and shall come into force on the day of 194 .

Part II

Fees and Rents

Fees

2. The fees to be paid for permits, licences, authorisations and certificates shall be the fees specified in the Second Schedule.

Rent

3. Rent at the rates set forth in the Third Schedule shall be paid monthly in advance in respect of arms and ammunition deposited in a public warehouse.

Part III

Prescribed Ports and Aerodromes, Public Warehouses, Prescribed Authorities and Registrars.

Prescribed ports.

4. The prescribed ports under the Ordinance shall be the ports named in Part I of the Fourth Schedule.

Prescribed aerodromes.

5. The prescribed aerodromes under the Ordinance shall be the aerodromes named in Part II of the Fourth Schedule.

Public ware-houses.

6. The buildings specified in Part III of the Fourth Schedule shall be public warehouses for all the purposes of the Ordinance.

7. The

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7. The prescribed authorities under the Ordinance shall be the officers named in Part I of the Fifth Schedule.

Prescribed authorities.

8. The Commissioner of Police shall be the registrar for arms.

Registrar

9. The officers named in Part II of the Fifth Schedule shall be deputy registrars for arms.

Deputy registrars.

10. The Governor may by notice in the Gazette amend or add to any of the Schedules to these regulations.

Governor may amend Schedules.

Part IV

Imports and Exports of Arms and Ammunition

Forms of authorisations

11. Any authorisation granted by the Governor to any person to export or remove from Nigeria arms or ammunition in accordance with the provisions of section 5 of the Ordinance, shall be in Form A1 in the First Schedule.

Authorisation by Governor to export arms or ammunition which are subject to an Order in Council. (Section 5).

12. Any authorisation granted by the Governor to any person to export from or import into Nigeria any arms of war or munitions of war in accordance with the provisions of section 6 of the Ordinance shall be in the Form A2 in the First Schedule.

Export or import of arms of war and ammunitions of war. (Section 6).

13.(1) Any authorisation granted by the prescribed authority to any person to import into and export from Nigeria any arms and ammunition in transit in accordance with the provisions of section 7(1) of the Ordinance shall be in the Form A3 in the First Schedule.

Transit of arms and ammunition through Nigeria. (Section 7(1)).

(2) Any

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Authorisation for transit of personal small-arms and small-arms ammunition through Nigeria (Section 7(3)).

(2) Any administrative, customs or preventive officer to whom small-arms or ammunition therefor are disclosed pursuant to section 7(3) of the Ordinance shall direct the owner thereof to the prescribed authority who, if he is satisfied as to the bona fides of such owner, shall issue an authorisation in the Form A4 in the First Schedule for the transit of such arms and ammunition through Nigeria. If the owner fails to present himself before such prescribed authority he shall be deemed to have committed an offence.

Import of arms and ammunition by land or inland navigation. (Section 8).

14. Any authorisation granted by the prescribed authority to any person to import arms or ammunition by land, by inland navigation or through a port other than a prescribed port or an aerodrome other than a prescribed aerodrome in accordance with the provisions of the second proviso to section 8 of the Ordinance shall be in the Form A5 in the First Schedule.

Standards for shot guns and cartridges.

Standard length of shot guns (section 40(q)).

15. The import into Nigeria of any shot gun having barrels less than twenty inches in length measured from the muzzle to the point at which the charge is exploded on firing is prohibited.

Standard contents of cartridges (section 40 (a)).

16. The import into Nigeria of any cartridge for use in a shot gun having less than five shots or which contains any shot exceeding nine twenty-fifths of an inch in diameter is prohibited.

Part V

Licences and Permits

Repairing establishments.

Gunsmith's Licence. (section 15).

17.(1) Any licence granted by a prescribed authority to any person to carry on an establishment for the repair

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repair of small-arms shall be in the Form B1 in the First Schedule.

No such licence shall be issued unless the prescribed authority is satisfied;-

(a) that the small-arms undergoing repairs will be kept in a substantial building which is not readily accessible to thieves.

(b) that the applicant for the licence or some responsible person will sleep on the premises or that a night watchman will guard the premises during the hours of darkness.

(c) that the applicant for the licence is capable of keeping the register and rendering the return prescribed in regulation 18.

(2) A licence issued under this regulation shall expire on the 31st of December in the year in which it was issued.

18.(1) Every person holding a licence to carry on an establishment for the repair of small-arms shall keep up to date a register in the Form B2 in the First Schedule and shall at the end of each month send a return in the Form B3 in the First Schedule to the deputy registrar named in his licence.

(2) Any such licensee who fails to comply with any of the provisions of this regulation shall be liable to a fine not exceeding twenty-five pounds or to imprisonment for one month or both for a first offence and to a fine not exceeding fifty pounds or to imprisonment for six months or both for each subsequent offence.

(3) Any administrative or superior police officer may at any time enter the establishment of such licensee and may search for small-arms and compare such small-arms with

Licence to be renewed annually.

Holder of gunsmith's licence to keep register and submit returns.

Penalty for failing to keep register or submit returns.

Power to search for small-arms and examine register kept in repairing establishment.

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with the particulars shown in the register.

Registration of permits and licences.

Records to be kept by deputy registrars. (Section 16).

19.(1) Every deputy registrar shall keep records in the Form C1 in the First Schedule in respect of each small-arm where any of the following conditions apply;-

- (a) the permit for such small-arm was issued by a prescribed authority in the area for which he is deputy registrar;
- (b) the owner of of any small-arm takes up residence in the area for which he is deputy registrar;
- (c) particulars are received from any other deputy registrar, prescribed authority or officer in charge of a public warehouse relating to any small-arm which is expected to arrive in the area for which he is deputy registrar.

Quarterly returns to be rendered by deputy registrars to the registrar of arms.

20. At the end of each quarter each deputy registrar shall send to the registrar a return in the Form C2 in the First Schedule:

Provided that the registrar may at any time direct that a return in the Form C2 shall be submitted to him by any or every deputy registrar:

Provided further that the registrar may at any time direct that additional information shall be submitted to him by any or every deputy registrar.

Register of licensed repairing establishments.

21. Every deputy registrar shall keep a register in the Form C3 in the First Schedule of all licensed establishments for the repair of small-arms in his area.

Deputy registrars to ensure that licences for small-arms are renewed.

22.(1) It shall be the duty of each deputy registrar to note all licences for small-arms which have not been renewed and to send to the prescribed licensing authority at each station in his area a list in the Form C4 in the First Schedule of such licences.

(2) The

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(2) The prescribed licensing authority shall on the receipt of such list cause the persons concerned to be prosecuted.

Prescribed licensing authority to prosecute for non-renewal of licences.

Provided that no person shall be prosecuted;-

(a) if he has lawfully transferred his small-arm to another person, or

(b) if he has lawfully exported his small-arm from Nigeria, or

(c) if he is in possession of a certificate in the Form L in the First Schedule signed by the prescribed authority certifying that his small-arm has been lost, stolen or destroyed, or

(d) if the licensing officer is satisfied that he has been prevented by illness or absence from taking out a licence and shall take out such licence within fifteen days of his recovery or return as the case may be, or

(e) if he is already in possession of a licence.

(3) The prescribed licensing officer shall within two months from the date on which the list in the Form C4 was sent to him, send to the deputy registrar a return in the Form C5 indicating the action which he has taken.

Prescribed licensing authority to report result of prosecutions to deputy registrar.

(4) If the deputy registrar is not satisfied with the action taken by the prescribing licensing authority in any particular case he shall report the facts to the registrar for such action as the registrar may think fit.

Deputy registrar may report to registrar.

23.(1) It shall be the duty of each deputy registrar to scrutinise the register of licensed repairing establishments and to report to the prescribed authority who issued the licence particulars of all such licences as are due for renewal.

Deputy registrars to furnish annually to prescribed authority list of repairing establishments.

24. (1) At

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Copies of permits to be sent to deputy registrar monthly.

24.(1) At the end of each month the prescribed authority shall send to the deputy registrar for his area a copy of each permit for a small-arm or ammunition granted by such prescribed authority during that month.

Copies of licences to be sent to deputy registrar monthly.

(2) At the end of each month the prescribed authority shall send to the deputy registrar for his area a copy of each licence for a small-arm issued by such prescribed authority during that month.

Copies of licences of repairing establishments to be sent to deputy registrars quarterly.

(3) At the end of each quarter the prescribed authority shall send to the deputy registrar for his area a copy of each licence for an establishment for the repair of small-arms issued by such prescribed authority during that quarter.

Deputy registrar to acknowledge receipt.

(4) The deputy registrar shall acknowledge the receipt of all such copies of permits or licences.

Applications for permits to possess small-arms and ammunition.

Applications for permits to possess small-arms and ammunition to be made to administrative officer. (Section 18 (2)).

25.(1) Any person who wishes to apply for a permit to purchase and/or possess and use a small-arm and ammunition must apply to the administrative officer in charge of the Division or District in which he resides permanently, or is permanently employed, for copies of Form D1 in the First Schedule and must complete the form in duplicate and return it to such administrative officer.

Administrative officer to forward applications to prescribed authority with recommendation.

(2) An administrative officer to whom such application is returned shall forward the application in duplicate to the superior police officer in charge of police in the Division or District and the police officer shall return the application with his recommendation to the administrative officer who shall add his own recommendation and

forward

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forward the application in duplicate to the prescribed authority for the area:

Provided that in Lagos Township application must be made direct to the Superintendent in charge of the Colony Police who shall make his recommendation and forward the application in duplicate to the Commissioner of Police.

Special procedure in Lagos Township.

(3) The prescribed authority may grant, on payment of the prescribed fee, or refuse, any application.

Prescribed authority may grant or refuse applications.

(4) The prescribed authority having made his decision on the application shall complete the particulars required at the foot thereof and shall forward one copy to the deputy registrar of the area and shall retain the other copy in his file.

Prescribed authority to forward one copy of application to deputy registrar.

(5) A prescribed authority is not bound to give any reasons either for the refusal or for the grant of a permit but may, if he considers it desirable for purposes of record to do so, note on the back of any application the reasons which led to his decision.

Prescribed authority may record reasons for his decision.

(6) Copies of applications will not be retained by administrative or police officers who are required to make recommendations but files shall be kept by them in which the dates of receipt and of forwarding such applications shall be recorded.

Administrative and police officers to record dates on which applications are received and forwarded.

(7) A permit shall be in the Form D2 in the First Schedule.

Form of permit.

(8) When nine months has elapsed since the date of the grant of any permit and the registrar to whom a copy of such permit was sent has not received a copy of a licence showing that the holder has obtained possession

When a permit shall lapse.

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of the small-arm authorised in such permit, such registrar shall send a notification in the Form D3 in the First Schedule to the prescribed authority who issued such permit and it shall thereupon be deemed to have lapsed. The prescribed authority on the receipt of any such notification shall call upon the holder to deliver up his permit and when he has done so shall endorse it as lapsed and shall forward such permit to the deputy registrar for final custody:

Provided that a permit shall not lapse if the holder thereof is in possession of a licence.

(9) Any holder whose permit has become worn or mutilated may send such permit to the prescribed authority who issued it and apply for a new permit to be granted to him free of charge. The prescribed authority who issues a new permit shall cause to be copied thereon any endorsements or suspensions which may have been noted on the old permit and shall certify the truth of such copies.

Worn or mutilated permit may be renewed.

Loss of permit.

(10) Any person who loses any permit granted to him shall report such loss to the prescribed authority who issued the permit. Such prescribed authority may in his discretion grant a new permit on payment of the prescribed fee and shall report the loss to the registrar for his area.

Permits for Rifle Clubs.

Grant of permits to rifle clubs (Section 19).

26.(1) An application by the committee of a rifle club for a permit to possess and use small-arms and ammunition shall be made in the manner prescribed in regulation 25 and the application form shall be accompanied by:-

- (a) a copy of the rules of the club;
- (b) a list of the officers and committee of the club;
- (c) a statement of the place or places in which the small-arms and ammunition will be kept and

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of the person or persons who will be responsible for such small-arms and ammunition.

(2) The prescribed authority may call upon the committee of such club to supply such further information as he may require.

(3) It shall be a condition to the grant of any permit to the committee of a rifle club that such committee shall cause the prescribed authority who granted such permit to be informed immediately of any change which may be made in the rules of such club.

Applications for licences.

27.(1) Any person who has obtained a permit for a small-arm is required to take out a licence as soon as he has acquired the small-arm authorised by such permit. Application for the licence must be made to the prescribed licensing authority in whose area the holder of the permit resides permanently or is permanently employed and the small-arm and permit therefor must be produced before such prescribed authority:

Provided that if the small-arm is deposited in a public warehouse situated in another area the holder of a permit may request the officer in charge of the public warehouse in the area in which he resides permanently or is permanently employed to arrange for such small-arm to be transported to such public warehouse and shall give an undertaking in writing in the Form E1 in the First Schedule to pay all the expenses involved by such transportation and to licence such small-arm.

(2) Any officer in charge of a public warehouse to whom such request is made shall send to the District Officer in charge of the administrative station in which is situated the public warehouse in which such small-arm is deposited a certificate in the Form E2 in the First Schedule.

(3) On

Rifle clubs to notify prescribed authority of changes in rules.

Licence to be obtained from prescribed authority for the area in which applicant resides permanently, or is permanently employed. (Section 18(3)).

Procedure when small-arms are deposited in a distant public warehouse.

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(3) On the production by the District Officer of the Form E2 the officer in charge of the warehouse shall hand over the small-arm to the District Officer together with a statement of any warehouse rent which may be due.

(4) The District Officer shall arrange for the transport of the small-arm to the officer in charge of the public warehouse who issued Form E2 and shall send to such officer a certificate in the Form E3 in the First Schedule stating the route by which such transport has been arranged and the charges to be collected in connexion therewith.

Provided that if it is not possible to forward such small-arm direct to the final destination it shall be forwarded through the District Officer at the station at which a change in the means of transport will be necessary and Form E3 shall be sent through such District Officer with a memorandum attached thereto requesting him to arrange for the further transportation of such small-arm. The District Officer shall arrange for transport to the final destination and shall complete Form E3 on the back thereof and forward it to the officer in charge of the public warehouse to which such small-arm is consigned.

(5) On the receipt of Form E3 and of the small-arm described therein the officer in charge of the public warehouse shall send to the holder of the permit a notification in the Form E4 in the First Schedule of the arrival of such small-arm and of the transport charges due. The holder shall pay such transport charges and shall take out a licence for such small-arm within fifteen days from the date of such notification and if he fails to do so within that period he shall be liable to pay the warehouse rents prescribed in these regulations:

Provided that the officer in charge of the public warehouse may in his discretion extend the time for the payment of such charges and the licensing of a small-arm in any particular case.

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(6) A licence shall be in the Form F in the First Schedule.

Form of licence.

(7) No licence shall be issued until the prescribed authority has seen the small-arm for which licence is sought and the permit authorising the owner to possess such small-arm.

(8) The prescribed licensing authority shall enter on the permit particulars of the licence issued.

Part VI

Public Warehouses

28.(1) Cap guns and flint-lock guns with unrifled barrels are not subject to registration and need not be marked with the maker's name and number. An authorisation in the Form G in the First Schedule for the withdrawal of such guns and ammunition therefor may be granted at any time by the officer in charge of the public warehouse in which they have been deposited on payment of the prescribed withdrawal fee and any rent due.

Withdrawal of cap guns and flint-lock guns and ammunition therefor. (Section 22 (3)(b)).

(2) An authorisation in the Form G in the First Schedule for the withdrawal of small-arms or ammunition therefor may be granted by the officer in charge of a public warehouse in the following circumstances;

Withdrawal of small-arms or ammunition on production of permit. (Section 22 (3)(c)).

- (a) the applicant for such authorisation must produce a permit granted by the prescribed authority authorising him to be in possession of the particular type of small-arm or ammunition which he wishes to withdraw;
- (b) the applicant shall first take out a licence, which the officer in charge of the public warehouse may issue, for such small-arm;
- (c) the prescribed withdrawal fee and any rent due must first be paid.

(3) Whenever any small-arm or small-arms ammunition is withdrawn from a public warehouse under this regulation

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regulation the officer in charge shall enter in the permit (Form D2) the name and number of the maker of such small-arm and particulars of the ammunition supplied.

Withdrawal of small-arms and ammunition under an authorisation for re-import.

29. (1) Where any person lands at a prescribed port or aerodrome and is in possession of an authorisation in the Form H1 in the First Schedule for the export and re-import of small-arms and ammunition which he has with him, the officer in charge of the public warehouse in which such small-arms and ammunition are deposited pursuant to section 11 of the Ordinance, being satisfied that such authorisation is valid, shall grant an authorisation in the Form G in the First Schedule for the withdrawal of such small-arms and ammunition in exchange for the authorisation (Form H1). The holder on arriving at his destination shall send the authorisation in the Form G to the registrar with whom his permit has been deposited and such registrar on receipt of the authorisation shall thereupon return the permit to the owner.

Withdrawal of small-arms and ammunition for transfer to another public warehouse.

(2) Where any person lands at a prescribed port or aerodrome and is not in possession of an authorisation in the Form H1 in respect of any small-arms and ammunition which he has with him, the officer in charge of the public warehouse in which such small-arms and ammunition are deposited pursuant to section 11 of the Ordinance may grant an authorisation (Form G) for the withdrawal of such small-arms and ammunition provided that :-

- (a) he is satisfied that such person is proceeding to another destination and that the time before his departure is insufficient to obtain a permit and
- (b) such person shall sign an undertaking in the Form H2 in the First Schedule whereupon such officer shall complete the particulars required in Part I of such Form and shall forward it

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it to the officer in charge of the public warehouse named therein.

(3) If the small-arms and ammunition described in the undertaking in the Form H2 are not deposited in the public warehouse named within the time prescribed there-
in
in the officer/charge of such warehouse shall notify the registrar for his area and such registrar shall take all possible steps to locate and prosecute the person who signed the undertaking.

Procedure when small-arms and ammunition are not deposited in accordance with an undertaking.

(4) If the small-arms and ammunition described in the undertaking in the Form H2 are duly deposited in the public warehouse named therein the officer in charge of such warehouse shall retain the undertaking until such time as such small-arms and ammunition are withdrawn when he shall complete Part II of the undertaking and send it to the registrar for his area.

Procedure when small-arms and ammunition are deposited in accordance with an undertaking.

30. Copies of all authorisations for the withdrawal of small-arms and ammunition therefor shall be sent by the officer in charge of the public warehouse to the registrar for the area in which such small-arms and ammunition will be kept.

Copies of authorisations to be sent to deputy registrars (Section 17).

Provided that in the circumstances set out in regulation 29(1) the copy of the authorisation (Form G) shall be handed to the holder of the authorisation (Form H1) in exchange for the authorisation (Form H1) and shall be surrendered by such holder to the deputy registrar in exchange for his permit.

Except when exchanged for a certificate in accordance with regulation 29(1).

Registers to be kept at public warehouses.

31.(1) At every public warehouse there shall be kept a register in the Form I1 in the First Schedule in which shall be entered particulars of all arms and ammunition deposited in such warehouse, the withdrawals of such arms and ammunition, the authorisations granted, the

Arms and ammunition deposits register.

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fees and rent paid and the receipt issued for such fees and rent. Whenever a withdrawal is made the withdrawer or his authorised agent must sign the register and such signature shall be proof of the delivery of such arms and ammunition to the owner thereof.

(2) File references shall refer to any correspondence relating to the arms and ammunition deposited and in particular to deposits of the small-arms and ammunition of deceased persons or persons temporarily absent from Nigeria.

Register of arms and ammunition seized forfeited or abandoned.

32.(1) At every public warehouse there shall be kept a register in the Form I2 in the First Schedule in which shall be entered particulars of all arms and ammunition forfeited or seized and to which shall be transferred particulars of all arms and ammunition entered in the deposits register (Form I1) which have remained unclaimed for a period of six months from the date of deposit. The register shall also show the circumstances which caused such arms and ammunition to be seized, forfeited or treated as abandoned, any rent due, the number of any authorisation given by the Governor for their disposal, the method of such disposal and, if sold, the amount realised and number of receipt supporting such sale.

(2) At the end of each month the officer in charge of the public warehouse shall send to the registrar for the area in which such warehouse is situated a return in the Form I3 in the First Schedule of any small-arms which have been finally disposed of during that month whether by sale or destruction or otherwise.

Disposal

Reference:-

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16.

Disposal of arms and ammunition
abandoned in a public warehouse.

33.(1) Whenever any arms other than arms of war or ammunition other than munitions of war have remained unclaimed in any public warehouse for a period of six months since the date of deposit or, where such arms and ammunition have been claimed, any rent lawfully due has remained unpaid for a period of three months, the officer in charge of such warehouse shall send through the usual channels an application for an authorisation by the Governor for the sale or destruction of such arms and ammunition:

Officer in charge to obtain authorisation from Governor (Section 23).

Provided that where any small-arm or ammunition has been deposited under the provisions of regulation 34(3) the period of six months shall not commence until nine months after the date of deposit.

(2) Such application shall give a full description of the arms and ammunition to be disposed of and an account of the circumstances in which they were deposited and shall state the reasons for seeking an authorisation for final disposal. The officer making such application shall add his recommendation as to whether such arms and ammunition should be sold or destroyed.

Information to be given in applying for authorisation.

(3) In the absence of any specific directions from the Governor to the contrary any sales authorised by the Governor or by the legal representative of a deceased person, in accordance with the provisions of regulation 36(2), shall be subject to the following conditions:-

Conditions of sales.

- (a) public notice by advertisement in the Gazette and by notice posted in a conspicuous place at the public warehouse shall be given of all sales of arms and ammunition;
- (b) no sales shall be held until fifteen days have elapsed since the publication of such public notice in the Gazette;
- (c) in

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- (c) in the case of small-arms and ammunition deposited pursuant to section 26 of the Ordinance no sale shall be held unless the officer in charge of the warehouse is in possession of a letter of consent to such sale written by the administrative officer or registrar who deposited such small-arms and ammunition or of the legal representative of the deceased;
- (d) a small-arm shall only be sold to a person who holds a permit to possess that particular type of small-arm and then only provided that the absence in the permit of any particulars of the issue of a licence shows that the permit has not already been used to obtain a small-arm of the type authorised;
- (e) in the absence of any specific instruction to the contrary all sales shall be held under the direction of the officer in charge of the public warehouse;
- (f) the arms and ammunition shall be sold by public auction or by tender;
- (g) the arms and ammunition may be sold either free or subject to duty and charges;
- (h) no bid or tender shall necessarily be accepted and the arms and ammunition may be re-offered until sold at a price satisfactory to the officer in charge;
- (i) the purchase money shall be paid in cash on the acceptance of the bid or tender. If not so paid the lot may again be offered but the person whose bid or tender was accepted shall be liable to pay to the officer in charge any loss sustained by reason of his failure to comply with this condition;
- (j) should

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18.

(j) should there be any discrepancy between the quantity stated in the notice of sale and the actual quantity available, the officer in charge shall not be bound to deliver more than the quantity available for delivery;

(k) the arms and ammunition shall be removed from the warehouse within three days of the sale and, if not so removed, shall be charged warehouse fees from the date of sale up to the date of delivery;

(l) all arms and ammunition remaining in the warehouse after the sale shall be at the purchaser's risk and expense.

Part VII

Custody of small-arms and ammunition during absence of owner from Nigeria.

34.(1) Any person who is in possession of a small-arm or ammunition and desires to leave such small-arm or ammunition with some other person during his temporary absence from Nigeria may apply in writing to the prescribed authority for the area in which he is residing for permission to do so and shall state in such application the name and address of the person with whom he desires to leave such small-arm or ammunition. If the prescribed authority is satisfied that the person named as custodian in such application is a fit and proper person to have the custody of such small-arm or ammunition he shall send the permit to the registrar for his area together with a memorandum stating the name and address of the person named as custodian and shall issue to the applicant a certificate in duplicate in the Form J1 in the First Schedule. The applicant shall retain one copy of the certificate and shall deliver the other copy together with his licence and small-arm

Prescribed authority may grant certificate for small-arms or ammunition to be left with another person during owner's absence from Nigeria. (Section 18(4) (b)).

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small-arm and ammunition to the person named. Thereafter the person in whose custody such small-arm and ammunition are left shall be responsible for observing all the duties imposed upon the owner of small-arms and ammunition by the Ordinance or any regulation.

Custodian not entitled to use small-arm.

(2) The person in whose custody any small-arm is left shall not be entitled to use such small-arm.

Owner may deposit small-arm and ammunition during temporary absence from Nigeria.

(3) Any person who is in possession of small-arm and ammunition and who intends to be absent from Nigeria temporarily may deposit such small-arm and ammunition in a public warehouse at his own risk and no rent shall be charged therefor if such small-arm and ammunition are withdrawn within nine months from the date of deposit. When any small-arm and ammunition are so deposited the permit in respect thereof shall be surrendered to the officer in charge of the warehouse who shall forward it to the registrar for the area in which the warehouse is situated. The officer in charge of such warehouse shall give to the depositor a certificate of such deposit in the Form J2 in the First Schedule. When the depositor returns to Nigeria he shall surrender the certificate to the officer in charge of the public warehouse in exchange for his small-arm and ammunition and such officer shall forward the certificate to the registrar for the area who shall then return the permit to the owner.

Part VIII

Miscellaneous

Appeals to Governor (Section 20(2)).

35. Appeals to the Governor under section 20(2) of the Ordinance must be submitted in writing in triplicate through the prescribed authority whose decision is disputed and shall conform to the rules relating to petitions to the Governor. The prescribed authority shall forward the appeal to the Governor through the normal channels for petitions.

36.(1) Any

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36.(1) Any administrative officer or registrar who takes possession of any small-arms or ammunition which were the property of a deceased person, pursuant to section 26 of the Ordinance, shall deposit such small-arms and ammunition in a public warehouse. Such administrative officer shall send to the registrar for the area in which the warehouse is situated and such registrar shall retain any permit or licence relating to such small-arms.

Small-arms and ammunition of deceased person (Section 26).

(2) The registrar shall ascertain the name of the legal representative of the deceased person and shall enquire from such representative his wishes as to the disposal of such small-arms or ammunition and if such representative desires that a sale shall be held by the officer in charge of the public warehouse shall obtain a written statement to that effect and shall send a certificate in the Form K in the First Schedule to such officer. The receipt of such certificate shall be a sufficient authority for the officer in charge of a public warehouse to sell such arms and ammunition in accordance with the provisions of regulation 33(3).

Deputy registrar to ascertain wishes of legal representative of deceased.

(3) Should the legal representative elect to dispose of such small-arms and ammunition by gift or sale by private treaty he shall so inform such registrar in writing and shall name the person or persons, being the holder of the necessary permits, to whom such small-arms will be given or sold. On the receipt of such notification the registrar shall send to the officer in charge of the public warehouse a certificate in the Form K in the First Schedule and such certificate shall be sufficient authority for such officer to deliver to the person or persons named therein such small-arms and ammunition subject to the requirements of regulation 28(2) and of the production of a letter from

Withdrawal of small-arms and ammunition of deceased person.

the

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21.

the legal representative of the deceased person identifying the person or persons named in such certificate:

Administrative officer may act in the capacity of legal representative in certain cases.

Provided that in any case where the legal representative of the deceased person cannot be traced or is illiterate or is for any other reason incapable of giving the directions required by this regulation any written directions given by the administrative officer in charge of the Division or District in which the public warehouse is situated shall be deemed sufficient authority to the registrar to whom such instructions are addressed.

Loss, theft or destruction of small-arm (Section 27).

37. (1) Any administrative officer or registrar to whom the loss, theft, or destruction of a small-arm is reported pursuant to section 27 of the Ordinance shall enquire into the facts of such loss, theft or destruction and, if he is satisfied that such small-arm has been lost stolen or destroyed shall give to the owner of such small-arm a certificate in the Form L in the First Schedule.

New permit may be issued.

(2) Any registrar who takes possession of a permit or licence under the provisions of section 27 of the Ordinance shall retain the same and shall notify the prescribed authority who issued such permit of the facts of the case and such prescribed authority may in his discretion issue a new permit for a new small-arm in which case the old permit shall be cancelled.

Recovery of small-arm lost or stolen.

(3) Should a small-arm which has been lost or stolen subsequently be recovered the owner thereof shall notify the prescribed authority and such authority may instruct the registrar to return the permit and licence therefor to the holder. If the permit has already been cancelled a new permit may be issued free of charge.

(4) If

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(4) If the circumstances of such loss or theft are such as to convince the prescribed authority that the owner of such small-arm is not a fit and proper person to be entrusted therewith he may refuse to order the return of the permit and licence and such small-arm shall thereupon be deposited in a public warehouse.

Prescribed authority not bound to restore permit.

(5) The owner of a small-arm which has been recovered after loss or theft and who has been refused the grant of another permit shall, unless such small-arm is liable to confiscation or forfeiture under the Ordinance, deposit such small-arm in a public warehouse whereupon the provisions of regulation 41 shall apply as if such small-arm had been deposited pursuant to section 37(1) of the Ordinance.

Rights of owner of recovered small-arm whose permit is not restored.

38.(1) Any prescribed authority who receives a notification pursuant to section 28 of the Ordinance from the owner of a small-arm or ammunition who wishes to export such small-arm or ammunition permanently from Nigeria shall, unless he has good reason for not doing so, give to the owner an authorisation for export in the Form M in the First Schedule on payment of the prescribed fee.

Authorisation for permanent export of small-arm and ammunition. (Section 28).

(2) Any person to whom such authorisation is given shall produce such small-arm and ammunition before the Collector of Customs at the port or aerodrome from which export is made and shall deliver such authorisation to the Collector who shall complete the certificate at the foot thereof and return it to the prescribed authority who issued it. The prescribed authority shall then forward the authorisation to the registrar for his area for final custody:

Duty of exporter.

Provided

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Provided that if export is authorised through a place other than a prescribed port or prescribed aerodrome production shall be made to the District Officer to whom the authorisation is addressed.

Authorisation for export and re-import of a small-arm. (Section 29).

39. An authorisation granted by the prescribed authority under section 29 of the Ordinance for the export and re-import of a small-arm shall be in the Form H1 in the First Schedule.

Destruction of guns and pistols surrendered. (Section 37(2)).

40. Any officer in charge of a public warehouse who takes possession of any cap gun with rifled barrel, flint-lock gun with rifled barrel, cap pistol, flint-lock pistol or air pistol shall give to the owner of such gun or pistol a receipt in the Form N in the First Schedule and shall forthwith destroy such gun or pistol:

Provided that if the owner desires permanently to export such gun or pistol from Nigeria and can satisfy such officer that he is in a position to do so such gun or pistol shall not be destroyed and the provisions of regulation 38 shall apply as if such gun or pistol were a small-arm.

When warehouse rents become due.

41. Any person who deposits any small-arms or ammunition in a public warehouse pursuant to section 38 of the Ordinance shall pay the rents prescribed in the Third Schedule as from the date of deposit:

Provided that if such small-arms and ammunition were deposited under the provisions of section 37(1) of the Ordinance and the owner thereof has been refused the grant of a permit therefor rent shall not be payable if the owner;-

(a) shall sell or give such small-arm or ammunition to a person who is the holder of an appropriate permit within six months from the date of deposit, or

(b) shall

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Provided that if export is authorised through a place other than a prescribed port or prescribed aerodrome production shall be made to the District Officer to whom the authorisation is addressed.

Authorisation for export and re-import of a small-arm. (Section 29).

39. An authorisation granted by the prescribed authority under section 29 of the Ordinance for the export and re-import of a small-arm shall be in the Form H1 in the First Schedule.

Destruction of guns and pistols surrendered. (Section 37(2)).

40. Any officer in charge of a public warehouse who takes possession of any cap gun with rifled barrel, flint-lock gun with rifled barrel, cap pistol, flint-lock pistol or air pistol shall give to the owner of such gun or pistol a receipt in the Form N in the First Schedule and shall forthwith destroy such gun or pistol:

Provided that if the owner desires permanently to export such gun or pistol from Nigeria and can satisfy such officer that he is in a position to do so such gun or pistol shall not be destroyed and the provisions of regulation 38 shall apply as if such gun or pistol were a small-arm.

When warehouse rents become due.

41. Any person who deposits any small-arms or ammunition in a public warehouse pursuant to section 38 of the Ordinance shall pay the rents prescribed in the Third Schedule as from the date of deposit:

Provided that if such small-arms and ammunition were deposited under the provisions of section 37(1) of the Ordinance and the owner thereof has been refused the grant of a permit therefor rent shall not be payable if the owner;-

(a) shall sell or give such small-arm or ammunition to a person who is the holder of an appropriate permit within six months from the date of deposit, or

(b) shall

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24.

(b) shall within six months from the date of deposit give notice under section 28 of the Ordinance of his intention permanently to export such small-arms and ammunition from Nigeria and shall export such small-arms and ammunition within eighteen months from the date of deposit.

42. No compensation shall be made to any importer, owner or consignee of any arms or ammunition deposited in a public warehouse by reason of any damage occasioned thereto by any natural or accidental cause, or for loss by theft or other unauthorised removal; provided that if such arms or ammunition shall be embezzled or stolen by or by means of the connivance of any officer in the service of the Government, and such importer, owner or consignee shall prosecute such officer to conviction, the value of the arms or ammunition, together with all duties of customs paid thereon, shall be repaid or made good to such importer, owner or consignee.

Limitation of compensation payable by Government in respect of arms and ammunition damaged in or lost from a public warehouse. (Section 40(j)).

Made by the Governor in Council at Lagos

this day of 194

Clerk of the Executive Council.

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FIRST SCHEDULE

FORM A1

Authorisation to export or remove from Nigeria any article to which an Order in Council under PART I applies.

Regulation 11

THE ARMS ORDINAICE 194

Authority is hereby granted

to

of

to export or remove from Nigeria the following articles;-

This authority is granted subject to the conditions stated on the back hereof.

Dated this day of ,19

Governor.

Reference:-

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FIRST SCHEDULE

FORM A2

Authorisation to export from Nigeria Arms of War and import into

Munitions of War.

Regulation 12

THE ARMS ORDINANCE 194

Authority is hereby granted

to

of

to export from Nigeria the following articles;-
import into

This authority is granted subject to the conditions of any Customs Ordinance in force in Nigeria and to those stated on the back hereof.

Dated this day of ,19

Governor

Reference:-

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Conditions.

- (1) This authorisation and the arms and ammunition in respect of which the same is granted shall be produced to the administrative officer in charge at (4) _____;
 - (ii) The arms and ammunition or any of them shall not be used or disposed of whilst in Nigeria;
 - (5)
-
- (4) Insert name of last administrative station through which arms and ammunition will pass before leaving Nigeria.
 - (5) Add any other conditions which may be considered necessary.

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FIRST SCHEDULE

FORM A4

Authorisation for the importation into and exportation from Nigeria of personal small-arms and ammunition in transit to another territory.

Regulation 13(2)

THE ARMS ORDINANCE 194

Authority is hereby granted

to

who is proceeding through Nigeria to (1)

via (2)

to take with him the following arms and ammunition;-

(3) _____

This authority is granted subject to the conditions of any Customs Ordinance in force in Nigeria and to those stated on the back hereof.

Dated this _____ day of _____, 19

Fee paid £

Prescribed Authority.

- (1) Insert final destination.
- (2) Insert route through Nigeria.
- (3) Description of small-arms and ammunition.

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Conditions

- (i) This authorisation and the small-arms and ammunition in respect of which the same is granted shall be produced to the administrative officer in charge at (4) _____;
- (ii) The small-arms and ammunition or any of them shall not be used or disposed of whilst in Nigeria;
- (5)

- (4) Insert name of last administrative station through which holder will pass before leaving Nigeria.
- (5) Add any other conditions which may be considered necessary.

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FIRST SCHEDULE

FORM B1

Licence to keep repairing establishment

Regulation 17

THE ARMS ORDINANCE 194

No. _____ Station _____

Licence is hereby granted

to⁽¹⁾of⁽²⁾to open and carry on an establishment for the repair of
small-arms at⁽³⁾

subject to the following conditions;

(i) Not more than⁽⁴⁾ _____ small-arms shall be
kept on the premises at any one time(ii) A register shall be kept in the Form B2 in the
First Schedule(iii) A return in the Form B3 in the First Schedule shall be
sent to the deputy registrar of arms at⁽⁵⁾
at the end of each month(6) _____

Dated this _____ day of _____ 19____

Prescribed Authority

(7) Fee paid £2
£1

- (1) Full name.
 (2) Full address.
 (3) Address of repairing establishment.
 (4) Insert maximum number authorised.
 (5) Address of deputy registrar.
 (6) Any other conditions
 imposed by prescribed authority.
 (7) £2 if taken out before 1st of July, £1 if taken out after 30th of June.

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FIRST SCHEDULE

FORM B2

Register to be kept by holders of licences for repairing establishments.

Regulation 18

THE ARMS ORDINANCE 194

Particulars of small-arms received for repairs.

Date received	Name of owner.	Address of owner.	Description of small-arm.	Name of maker.	Maker's No.	Date returned to owner.

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FIRST SCHEDULE

FORM B2

Register to be kept by holders of licences for repairing establishments.

Regulation 18

THE ARMS ORDINANCE 194

Particulars of small-arms received for repairs.

Date received	Name of owner.	Address of owner.	Description of small-arm.	Name of maker.	Maker's No.	Date returned to owner.

Reference:-

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FIRST SCHEDULE
FORM B3

Return to be sent to deputy registrar by holders of licences for repairing establishment.

Regulation 18

THE ARMS ORDINANCE 194

To the Deputy Registrar

(1) Station

I, (2)

of (3)

holder of licence for repairing establishment No.

issued at certify that the following is a complete

record of small-arms which entered or left my establishment during the

month of 19

Date received.	Name of owner.	Address of owner.	Description of small-arm.	Maker's name.	Maker's No.	Date returned to owner.

Dated this day of 19 (Signed)

(Note continue on back hereof if necessary)

- (1) Address of deputy registrar
- (2) Full name of licences
- (3) Address of licensee

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(Contd.)

Date received	Name of owner.	Address of owner.	Description of small-arm.	Maker's name.	Maker's No.	Date returned to owner.

(Signed)

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References:-

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Particulars of any certificates for export and re-import issued.

File reference	Date	No. of Certificate	Where issued

Particulars of any transfer of the small-arm described overleaf.

File reference	Date	Name of transferee.	Address of transferee.	By whom authorised and at what station.

Particulars of permanent export of the small-arm described overleaf.

File reference	Date	Port of Export.	Evidence of export

Particulars of any revocation or suspension of permit.

File reference.	Date	Revoked or suspended	By whose order.	Where	Date suspension expires.	Remarks.

Particulars of any convictions in respect of the small-arm described overleaf.

File reference	Date	Which Court	Charge	Sentence

Reference:-

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Return of small-arms to be sent by deputy registrars to the registrar.

Regulation 20

THE ARMS ORDINANCE 194

Station _____

I certify that on the _____ day of _____ 19____
 the following small-arms were actually in the area for which I am
 the deputy registrar and were owned by the following nationals;-

Nationality ⁽¹⁾	No. of rifles	No. of revolvers	No. of shot guns	No. of air guns (rifled barrels)
Total				

Since my last return was rendered the following number of small-arms have entered my area;-

No. of rifles	No. of revolvers	No. of shot guns	No. of air guns (rifled barrels)

Since my last return was rendered the following number of small-arms have left my area;-

No. of rifles	No. of revolvers	No. of shot guns	No. of air guns (rifled barrels)

Dated this _____ day of _____ 19____

Deputy Registrar

(1) Insert below the various Nationalities e.g. African, British, French, Syrian, etc. as may be appropriate.

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FIRST SCHEDULE

FORM C4

Advice to prescribed licensing authorities of licences for small-arms which have not been renewed.

Regulation 22(1)

THE ARMS ORDINANCE 194

To the Prescribed Authority

No.

for the licensing of small-arms

Station

Station

Date

I have to report that the following licences issued at your station during the year ended the 31st of December, 19 do not appear to have been renewed and to request you to take the action prescribed in Regulation 22 of the Arms Ordinance 194

Name of holder	Address of holder	Description of small-arm.	No. of licence

Deputy Registrar

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FIRST SCHEDULE

FORM C5

Return of prosecutions made for non-licensing of small-arms

Regulation 22(3)

THE ARMS ORDINANCE 194

To the Deputy Registrar for Arms

No.

Station

Station

Date

With reference to your advice No. of the 19

I have to report that the following action has been taken;-

List of persons prosecuted.

Date	Name	No. of old licence	Which Court	Result of prosecution	No. of new licence issued.

The following persons have not been prosecuted;-

Name	Reason for not prosecuting	No. of new licence issued, if any.

Prescribed Authority.

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FIRST SCHEDULE

FORM D1

Application for Permit for small-arm and/or ammunition

Regulation 25(1)

THE ARMS ORDINANCE 194

FULL NAME _____

FULL ADDRESS _____

NATIONALITY _____

OCCUPATION _____

AGE _____

NO. OF ~~WEAPONS~~
 (if employed) _____

Description of small-arm desired. _____

Quantity and description of ammunition desired. _____

Date _____ (Signed) _____

Recommendation of employer or other Prominent Person

Date _____ (Signed) _____

Recommendation of Police Officer

Date _____ (Signed) _____

Recommendation of Administrative Officer

Date _____ (Signed) _____

To the Deputy Registrar
Station

*The above application has not been granted

*The above application has been granted and permit No.
has been issued to the applicant.

Date _____ Prescribed Authority
Station

*Strike out whichever is inapplicable.

Reference:-

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FIRST SCHEDULE

FORM D2

Permit to possess and use a small-arm and ammunition

No. of Permit _____ Regulation 25(7) _____ Station _____

THE ARMS ORDINANCE 194

Permission is hereby granted to

(Full name in Block capitals)

at (Full address i.e. number of house and name of street or compound as well as place)

to purchase and/or possess and use the following small-arm;-

(1) and to purchase and/or possess and use the following ammunition;-

(2) Provided that at no time shall the holder of this permit be in possession of a quantity of ammunition in excess of _____ rounds.

Date _____ Prescribed Authority _____

Fee Paid 5/-
(or) Free

(3) Maker's Name _____ Particulars of Licences (3) Maker's No. _____

Date	No. of licence issued.	Station	Signature of Prescribed Licensing Authority.

Particulars of Ammunition supplied

I hereby certify that on the date shown in column (a) the holder of this permit declared that he was in possession of the quantity of ammunition shown in column (b) and that, being satisfied that it would not cause him to be in possession of a greater quantity of ammunition than is authorised by this permit I supplied the quantity shown in column (c) of the ammunition described in column (d).

(a) Date	(b) Quantity of ammunition in possession of holder.	(c) Quantity of ammunition supplied to holder.	(d) Description of Ammunition	Signature of Supplier. (4)	Address of Supplier.

Note. A separate permit is required for each small-arm. For conditions see back.

- (1) Description of small-arm authorised.
- (2) Description of ammunition authorised.
- (3) To be filled in by prescribed licensing authority.
- (4) Where ammunition is withdrawn from a public warehouse the officer in charge shall sign as supplier (Regulation 28(3)).

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FIRST SCHEDULE

FORM E1

Application for small-arms to be transported from one public warehouse to another

Regulation 27(1)

THE ARMS ORDINANCE 194

I, (1)

of, (2)

make application for the transport of the following small-arms from the public warehouse at (3) in which

they are now deposited to the public warehouse at (4)

which is the public warehouse for the area in which I

(5) reside permanently and I hereby undertake within fifteen days from am permanently employed

the date of the issue of a notification in the Form E4 addressed to me

to pay the transport charges set out in such notification and to

licence the small-arms described hereunder;-

Small-arms

No.	Description

Dated this day of 19

(Signed)

- (1) Full name
- (2) Full address
- (3) Insert place where small-arms are deposited.
- (4) Insert place to which transport is requested.
- (5) Strike out whichever is inapplicable.

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1	2	3	4

FIRST SCHEDULE

FORM E2

Certificate for transport of small-arms from one public warehouse to another

Regulation 27(2)

THE ARMS ORDINANCE 194

To the District Officer

No.

_____ Station

Station

I certify that Mr. (1)
of (2)

Date

has applied for the transport of the following small-arms to the public warehouse at (3) and is in possession of the permits enumerated below and has given an undertaking in the Form E1 to pay the charges for such transport;-

Small-arms

No.	Description	No. of Permit	Where issued

Officer in Charge

Public Warehouse for arms

- (1) Full name
- (2) Full address
- (3) Station to which small-arms are to be forwarded.

Reference:-

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FIRST SCHEDULE

FORM E3

Certificate of charges due for the transport of
small-arms

Regulation 27(4)

THE ARMS ORDINANCE 194

To the Officer in Charge

No.

Public Warehouse

Station

Station

Date

With reference to your Certificate in the Form E2 No.

of I have to inform you that the following small-arms
were despatched by me on the day of
19 by the following route:-

(1) _____

Small-arms

No.	Description

The following charges should be collected from the owner:-
£ s d

Warehouse rents
Forwarding fees
(2) _____

Total _____

District Officer

Station

- (1) Insert route and method of transport.
- (2) Insert other charges incurred e.g. railway freight.

See back

PUBLIC RECORD OFFICE

Reference:-

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(Note. In any case where it is impossible to forward the small-arms direct to the officer in charge of the warehouse concerned (e.g. where rail and motor transport are both necessary) this form should be sent to the District Officer at the station where it will be necessary to change the means of transport and such District Officer shall arrange for the small-arms or ammunition to be forwarded to their final destination and shall forward this form to the officer in charge of the public warehouse to whom it is addressed).

I certify that the small-arms have been forwarded by me by the following route;-

(1) _____

and that the following additional charges should therefore be collected;-

(2) _____

Date

District Officer
 Station

(1) Insert route and method of transport.

(2) Insert further charges due.

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	1				2	

FIRST SCHEDULE

FORM E4

Notification of arrival of small-arms and charges due.

Regulation 27(5)

THE ARMS ORDINANCE 194

To	No.
Name	Station
Address	Date

The following small-arms are now lying in the public warehouse at(1)

Small-arms

No.	Description

and the following charges are payable;-

£ s d

(2) _____

Total

I have to request that you will arrange to collect the above small-arms and to take out licences therefor and to pay the charges set out above within fifteen days from the date hereof.

Officer in Charge
Public Warehouse for arms.

- (1) Insert place.
- (2) Insert charges due.

(Note. If the charges and licence fees are not paid within 15 days from the date hereof warehouse rents will become payable and under section 23 of the Ordinance the small-arms may be disposed of by the Governor if they remain unclaimed for a period of six months from the date hereof).

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FIRST SCHEDULE

FORM F

licence to possess and use a small-arm

Regulation 27(6)

THE ARMS ORDINANCE 194

Licence No.

Station

Licence is hereby granted to

(1)

of (2)

to possess and use one (3)

until the 31st of December, 19

and I hereby certify that I have inspected permit No. (4) issued

at (5), together with the small-arm the subject of this

licence and that I am satisfied that the holder of this licence is

entitled according to the terms of such permit to be in possession of

such small-arm and that I have caused particulars of this licence to be

entered on the said permit.

Dated this _____ day of _____ 19

Fee paid (6) _____

Prescribed Authority

- (1) Full name in Block Capitals.
- (2) Full address including number of house and name of street or compound and place.
- (3) Description of small-arm and maker's name and number.
- (4) No. of permit issued by prescribed authority.
- (5) Place where permit was issued.
- (6) Insert amount of fee paid or "free" as case may be. Free licences may be granted;-
 - (a) For revolvers to administrative or Police Officers or other Public Officers to whom a free permit has been granted.
 - (b) For rifles to rifle clubs on production of a permit.

Half fees only to be charged for any licence issued after the 1st of July.

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FIRST SCHEDULE

FORM G

Authorisation for withdrawal of arms and ammunition
from a public warehouse.

Regulation 28

THE ARMS ORDINANCE 194

Station

No.

Date

Permission is hereby granted

to

of

to withdraw the undermentioned arms and ammunition from the public
warehouse at _____ at any time before the _____ day of

19 _____ :-

No.	Description of arms	Particulars of permit for small arms	
		No. of Permit	Where granted.

Quantity	Description of ammunition

Purpose for which
withdrawal is permitted

Special directions
to be observed

*Date, number and place of issue
of certificate for re-importation (Form Hi)

*Date, number and place of issue
of undertaking given in Form H 2

Fee Paid _____
Rent Paid _____

Officer in Charge
Public Warehouse.

*Strike out if not applicable

Note A copy of this authorisation must
be sent to a deputy registrar (regulation 30)

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FIRST SCHEDULE

FORM H1

Authorisation for export and re-import of small-arms and ammunition
 Regulations 29(1) and 39
 THE ARMS ORDINANCE 194

No.

Station

Date

Authority is hereby granted subject to the provisions of any Customs Ordinance in force in Nigeria to(1)
 of(2)

to export the following small-arms and ammunition and to re-import them within nine months from the date hereof;-

Small-arms.

No.	Description	Permit No.	Where issued.

Ammunition

Quantity	Description

I certify that the permits for the above-mentioned small-arms have been handed to me to be deposited with the deputy registrar at(3)

Fee paid 5/-

Prescribed Authority

- (1) Full name.
- (2) Full address.
- (3) Place where registry is situated.

See back

Reference:-

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To the Deputy Registrar
Station

I certify that the following small-arms and ammunition were re-imported on the _____ day of _____, 19____ and that authorisation No. (6) _____ for their withdrawal from the public warehouse was issued by me;-

Small-arms

No.	Description

Ammunition

Quantity	Description

Date

Officer in Charge
Public Warehouse

(6) Insert No. of authorisation for withdrawal.

Reference:-

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FORM H2

Undertaking by importer of small-arms or ammunition.

Regulation 29(2)(b)

THE ARMS ORDINANCE, 194

PART I

I,

am proceeding to

and hereby promise and undertake to deposit the small-arms and
ammunition mentioned in the ^{1st} Schedule in the public warehouse

at within days of this

date, and that I will not use or dispose of the said small-arms and
ammunition, or any of them until the same have been deposited as
aforesaid.

Date

Port or Aerodrome

Signature of Importer

Signature of Officer in Charge of
Public Warehouse.

1st SCHEDULE

No. of small-arms.	Description of small-arms	No. of permit issued	No. of Licence issued
Quantity of ammunition.	Description of ammunition	No. of Permit* issued	

*To be inserted by the officer in charge of the public warehouse named above.

PART II

I hereby certify that the above mentioned small-arms and ammunition
with the exception of those enumerated in the 2nd Schedule were
withdrawn from the public warehouse at in accordance with the
provisions

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2.

provisions of section 3(3)(c) of the Ordinance on the
 day of 19 and that one copy of this undertaking has
 been sent to (the deputy registrar at (registrar for area)
 (the Collector of Customs at (Port or aerodrome)
 of entry)

Station, Signature of officer in charge
 of public warehouse named in
 this undertaking.

2nd SCHEDULE

Particulars of small-arms and ammunition not withdrawn

No. of arms	Description of arms	Reasons for non-withdrawal
Quantity of ammunition.	Description of ammunition	

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1	2	3	4	5	6

FIRST SCHEDULE
FORM I 1

Arms and Ammunition Deposits Register

Regulation 31
THE ARMS ORDINANCE 194

Date of Deposit	Name of owner and mark (+)	Nationality of owner	Address of owner	Ship by which imported and date of B/E(+)	No. or quantity deposited	Description of arms or ammunition	No. or quantity withdrawn	Particulars of Authorisation for withdrawal		Rent Bill		No. and date of receipt	Signature of withdrawer	Initials of warehouse keeper	
								No. and date	Fees paid £. s. d	No. and date	Period and expires				Amount of rent £. s. d
															159

(+) The mark on packages and details of Bill of Entry need only be inserted at Customs Warehouses.

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FIRST SCHEDULE
 FORM 12
 Register of arms and ammunition seized, forfeited or abandoned
 Regulation 32(1)
 THE ARMS ORDINANCE, 1944

Date seized forfeited or deposited.	No. or quantity	Description of arms and ammunition	Folio No in Deno- sits Re- gister.	Circumstances of seizure, forfeiture or abandonment	Rent due	No. of authori- sation of Governop	How disposed of	Selling price	Receipt No.	File references

160

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FIRST SCHEDULE

FORM 13

Return of small-arms finally disposed of

Regulation 32(2)

THE ARMS ORDINANCE 194

To the Deputy Registrar

Station

No.

Station

Date

The following small-arms have been finally disposed of during the month of ;

Name of owner	Address of owner	Description of small-arm	How disposed of	New owner's name (if sold)	New owner's address	New owner's Permit No.	New owner's Licence No.

Reference:-

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FIRST SCHEDULE

FORM J1

Certificate for custody of small-arms and ammunition

Regulation 34(1)

THE ARMS ORDINANCE 194

No.

Station

Date

I certify that on the application

of (1)

of (2)

authority is hereby granted

to (3)

of (4)

to have in his possession for custody during the absence of the owner from Nigeria the following small-arms and ammunition;-

Description of <u>small-arms</u>	No. of permit	No. of licence

Description of ammunition

dated this day of 19

Prescribed Authority

- (1) Name of owner
- (2) Address of owner
- (3) Name of custodian
- (4) Address of custodian.

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FIRST SCHEDULE

FORM J2

Certificate of temporary deposit of small-arms
and ammunition in a public warehouse.

Regulation 34(3)

THE ARMS ORDINANCE 194

No.

Station

Date

I hereby certify that⁽¹⁾
of⁽²⁾

has deposited the undermentioned small-arms, ammunition and permits
for custody during his temporary absence from Nigeria:-

Description of small-arms and ammunition	No. of permits	Where issued

and that the permits above-mentioned have been sent to the
registrar at⁽³⁾ _____

Officer in Charge

Public Warehouse.

- (1) Full name
- (2) Full address of last residence in Nigeria
- (3) Insert station at which deputy registrar for area resides.

See back.

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(This part to be completed after owner has returned to Nigeria)

To the Deputy Registrar for Arms

_____ Station

I certify that the small-arms and ammunition enumerated overleaf have been withdrawn by the owner and have to request that his permits may be returned to him at the following address;-

Dated this day of 19

Officer in Charge

Public Warehouse

Reference:-

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FIRST SCHEDULE

FORM K

Certificate for disposal of small-arms and ammunition of a deceased person.

Regulation 36 (2)

THE ARMS ORDINANCE 194

To the Officer in Charge

No.

Public Warehouse for Arms

Station

_____ Station

Date

I certify that I have received from (1) {the legal representative
(the District Officer, _____)}

a written request that the following small-arms and ammunition, the property of (2) _____ deceased of (3) _____

(4) shall be {sold by auction
(delivered to the persons named below)} and this certificate

shall be to you a sufficient authority to (5) {sell } such arms and
{deliver}

ammunition accordingly subject to the regulations;-

No. or quantity	Description of arms or ammunition	NAME of person to whom delivery may be made.

Deputy Registrar

- (1), (4) & (5) Strike out whichever is inapplicable.
- (2) Name of deceased.
- (3) Address of deceased.

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FIRST SCHEDULE

FORM L

Certificate of loss, theft or destruction of small-arms

Regulation 37(i)

THE ARMS ORDINANCE 194

No.

Station

Date

I certify that⁽¹⁾
of⁽²⁾

has reported the⁽³⁾ loss of the following small-arms and
ammunition;-
theft
destruction

Description of small-arms	No. of permit	Where issued	No. of licence	Where issued

Quantity	Description of ammunition	No. of permit	Where issued

and that having duly enquired into the matter I am satisfied that such small-arms and ammunition have been⁽⁴⁾ lost
stolen
destroyed

(5) Administrative Officer
Deputy Registrar

- (1) Name of owner
- (2) Address of owner
- (3), (4) & (5) Strike out whichever is inapplicable.

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FORM M

Authorisation for the permanent export of small-arms and ammunition

Regulation 38

THE ARMS ORDINANCE 194

No the
(1)

No.

Station

Date

Authority is hereby granted, subject to the provisions of any Customs Ordinance in force in Nigeria, to(2) of(3)

to export from(4) within(5) days

the following small-arms and ammunition;-

No.	Description of small-arms
Quantity	Description of ammunition

Dated this day of 19

Fee paid 5/-

Prescribed Authority

To the Prescribed Authority

No.

(for the issue of small-arms permits)

Station

Station

Date

I certify that the above-mentioned small-arms and ammunition were exported from this station by(6)

on the day of 19

- (1) Collector of Customs or District Officer. Collector of Customs. (or District Officer)
- (2) Full Name.
- (3) Full address in Nigeria.
- (4) Insert place from which export is to be made.
- (5) Insert period allowed.
- (6) Insert name of ship or number of aeroplane or other means of export.

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SECOND SCHEDULE

Fees payable for permits, licences, authorisations and certificates issued under the Arms Ordinance, 194

(Note. Reference to Forms are to Forms in the First Schedule.)

	£	s	d
1. For an authorisation for transit in the Form A3:-			
for every arm		1.	0
for every 100 cartridges or part thereof		1.	0
Provided that no fee shall be charged if such arms and ammunition are declared to be solely for the use of the Administration of the territory in such authorisation mentioned.			
2. For an authorisation for transit in the Form A4;-			
for every arm		1.	0
for every 100 cartridges or part thereof		1.	0
3. For an authorisation in the Form A5;-			
for every arm		2.	6
for every 100 cartridges or part thereof		2.	0
4. For a licence to keep a repairing establishment (Form B1)		2.	0. 0
Provided that if a licence is taken out after the 1st of July the fee shall be £1. 0. 0.			
5. For a permit to possess a small-arm and ammunition (Form D2)			5. 0
Provided that permits granted to administrative or police officers or to such other public officers as the prescribed authority may think fit to possess a revolver and ammunition therefor or to rifle clubs to possess rifles and ammunition therefor shall be free:			
Provided further that a free permit may be issued for any small-arm in the circumstances prescribed in regulations 25(9) and 37(3).			
6. For forwarding any small-arm under a certificate (Form 13) in addition to freight charges for each small-arm.			5. 0

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2.

SECOND SCHEDULE (Contd.)

	£	s	d
7. For a licence to use a small-arm (Form F);-			
for a shot gun	1.	0.	0
for a revolver, rifle or air gun			
with rifled barrel	10.	0	
<p>Provided that if such small-arm is licensed on or after the 1st of July and there was no obligation on the owner to licence such small-arm on or before the 30th of June one-half of the above fees shall be paid:</p> <p>Provided, further, that free licences shall be granted for revolvers to administrative and police officers and such other public officers to whom free permits have been granted and for rifles to rifle clubs on production of a permit.</p>			
8. For an authorisation for withdrawal from a public warehouse (Form G);-			
for every arm	5.	0	
for every 100 cartridges or part thereof	2.	0	
<p>Provided that such fees shall not be payable if such arms and cartridges are being transferred to another public warehouse.</p>			
9. For an authorisation for export and re-import (Form H1).	5.	0	
10. For an authorisation for permanent export (Form M)	5.	0	
11. For the renewal of a lost permit under regulation 25(10).	1.	0	
12. For a sale conducted under regulation 36(2);			
for each small-arm sold	5.	0	
for every 100 cartridges or part thereof sold	2.	0	

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	1	2	3

THIRD SCHEDULE

171

Rates of rent to be paid in respect of arms and ammunition

deposited in a public warehouse

Per month or part of a month.

Ammunition

- | | |
|---|-----|
| 1. Cartridges for every 100 or part thereof in each shipment | 6d. |
| 2. Gun flints for every 10 lbs or part thereof in each shipment | 1d. |
| 3. Lead shot for every 10 lbs or part thereof in each shipment | 1d. |
| 4. Percussion caps for every 10,000 or part thereof in each shipment | 3d. |
| 5. Other materials for every 10 lbs or part thereof in each shipment. | 6d. |

Arms

- | | |
|---|-----|
| 6. For every small-arm for each week or part thereof | 6d. |
| 7. For every cap gun with unrifled barrel for each month or part thereof | 2d. |
| 8. For every flint-lock gun with unrifled barrel for each month or part thereof | 2d. |

Provided that no rent shall be charged;-

- (1) in respect of any small-arm or ammunition therefor deposited by a passenger on arrival and withdrawn within 72 hours;
- (2) at the receiving warehouse in respect of any small-arm transferred from another public warehouse pursuant to regulation 27 provided that such small-arm is withdrawn within 15 days from the date of the notification prescribed in regulation 27(5);
- (3) in respect of any small-arm or ammunition which has been sold pursuant to regulation 33(3) provided that such small-arm or ammunition is withdrawn within 3 days of the sale as provided in regulation 33(3)(k);
- (4) in respect of any small-arm or ammunition, the property of a deceased person, deposited pursuant to regulation 36 provided, in the case of the legal representative electing to dispose of such small-arm or ammunition by gift or private sale rent shall become payable if withdrawal is not made within 15 days from the date of the receipt by the officer in charge of the warehouse of the certificate (Form K) prescribed in regulation 36(3);

(5)

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2.

THIRD SCHEDULE (Contd.)

- (5) in respect of any small-arm or ammunition deposited pursuant to regulations 37(4) or 41 provided;
- (a) that such small-arm or ammunition is withdrawn within six months from the date of deposit pursuant to regulation 41(a), or
 - (b) that such small-arm or ammunition is permanently exported from Nigeria within eighteen months from the date of deposit in accordance with the provisions of regulation 41(b);
- (6) in respect of any prohibited arm deposited pursuant to regulation 40 where;
- (a) such arm is destroyed;
 - (b) the owner having elected and been granted permission permanently to export such arm from Nigeria does so within the time stated in the authorisation for export (Form M).
- (7) in respect of any small-arm and ammunition deposited during the temporary absence of the owner from Nigeria as prescribed in regulation 34(3) provided that rent shall become payable after nine months have elapsed since the date of deposit.

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Prescribed ports aerodromes and public warehouses.

Regulations 4-6

THE ARMS ORDINANCE 194

PART I. PRESCRIBED PORTS

Lagos
 Burutu
 Sapele
 Koko-Town
 Warri
 Degema
 Opobo
 Calabar
 Port Harcourt
 Tiko
 Victoria

PART II. PRESCRIBED AERODROMES

Apapa (Lagos)
 Calabar
 Kaduna
 Kano
 Likomba (Cameroons)
 Lokoja
 Maiduguri
 Minna
 Oshogbo
 Port Harcourt

PART III. PUBLIC WAREHOUSES.

(i) at prescribed ports :-

Lagos:- "B" warehouse, adjoining the Customs wharf;
 Burutu:- The building known as "The King's Warehouse;"
 Sapele:- The building known as "The King's Warehouse;"
 Koko-Town:- The building known as "The King's Warehouse;"
 Warri:- The building known as "The King's Warehouse;"
 Degema:- The building known as "The King's Warehouse;"
 Opobo:- The building known as "The King's Warehouse;"
 Calabar:-

Reference:-

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FOURTH SCHEDULE (Contd.)

Calabar:- The building known as "The King's Warehouse;"

Port Harcourt:- The building known as "The King's Warehouse;"

Victoria:- The building known as "The King's Warehouse;"

Tiko:- The building known as "The King's Warehouse;"

(ii) at prescribed aerodromes;-

at every prescribed aerodrome such place on the customs premises as the Collector of Customs shall appoint;

(iii) at administrative stations;-

at every administrative station, in addition to any public warehouse which may be established by subparagraphs (i) and (ii) above, the office of the officer in charge of police at such station or such building as such officer shall appoint:

Provided that in every administrative station where there is no such officer in charge of police, the office of the administrative officer in charge of the station or such building as he shall appoint shall be a public warehouse.

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FIFTH SCHEDULE (Contd.)

- (6) To grant permits to rifle clubs for the purchase and/or possession and use of small-arms and small-arms ammunition (Section 19, regulation 26). The Resident of the Province in which the club is situated or the Commissioner of the Colony (for the Colony exclusive of Lagos) and the Commissioner of Police in respect of Lagos Township.
- (7) To grant licences for small-arms (Section 18(3), regulation 27). The officer in charge of the public warehouse at every prescribed port or prescribed aerodrome; the Superintendent in charge of the Colony Police, Lagos; at every administrative station at which a superior police officer is stationed such superior police officer, at every administrative station at which no superior police officer is stationed the administrative officer in charge of such station.
- (8) To grant an authorisation for withdrawal of arms and ammunition from a public warehouse (Section 22, regulation 28). The Officer in charge of such public warehouse.
- (9) To grant an authorisation for the permanent export of small-arms and ammunition therefor (Section 28, regulation 38). The Resident of the Province in which the applicant is residing or the Commissioner of the Colony (for the Colony exclusive of Lagos) and the Commissioner of Police in respect of Lagos Township.
- (10) To grant an authorisation for export and re-import of small-arms and ammunition therefor (Section 29, regulation 39). The Resident of the Province in which the applicant is residing or the Commissioner of the Colony (for the Colony exclusive of Lagos) and the Commissioner of Police in respect of Lagos Township.

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PART II DEPUTY REGISTRARS.

For the Administrative Area of:-	Deputy Registrar	Location of Registry
The Colony	Superintendent of Police.	Office of Supt. of Police, Colony.
The Abeokuta Province	-do-	Police Office, Abeokuta
" Benin "	-do-	" " , Benin
" Calabar "	-do-	" " , Calabar
" Cameroons "	-do-	" " , Buea
" Ijebu "	-do-	" " , Ijebu-Ode
" Onitsha "	-do-	" " , Onitsha
" Owerri "	-do-	" " , Port Harcourt
" Oyo "	-do-	" " , Ibadan
" Warri "	-do-	" " , Warri
" Benue "	-do-	" " , Makurdi
" Kabba "	-do-	" " , Lokoja
" Kano "	-do-	" " , Kano
" Niger "	-do-	" " , Minna
" Plateau "	-do-	" " , Jos
" Zaria "	-do-	" " , Zaria
" Ogoja "	Officer in charge of Police.	District or Police Office, Ogoja.
" Ondo "	-do-	District or Police Office, Akure.
" Adamawa "	-do-	District or Police Office, Yola.
" Bauchi "	-do-	District or Police Office, Bauchi.
" Bornu "	-do-	District or Police Office, Maiduguri.
" Ilorin "	-do-	District or Police Office, Ilorin.
" Katsina "	-do-	District or Police Office, Katsina.
" Sokoto "	-do-	District or Police Office, Sokoto.

Notes:- (1) Superintendent of Police includes a Senior Assistant or an Assistant Superintendent of Police.

(2) "Officer in charge of Police" means the District Officer when there is no Superintendent of Police posted to the station but at any time that a Superintendent of Police is posted to the station means such Superintendent.

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Attachment BB.

Comparison of the draft regulations with the regulations made under the Arms Ordinance (Chapter 132, Laws Volume III page 871).

The same procedure will be followed as in the case of the draft Bill and in this comparison reference is made to the draft regulations except where otherwise stated.

Regulation 2 provides for the fees to be paid. These will be found in the Second Schedule and are compared with those payable at present under that heading later in this memorandum.

Regulation 3 provides for the warehouse rents to be charged. These will be found in the Third Schedule and are compared with those payable at present under that heading later in this memorandum.

1933
Supplement
page 1277.

Regulation 4 prescribes the ports under the new Ordinance, which will be found in Part I of the Fourth Schedule. They are the same as those shown in the Fifth Schedule under the existing regulations except that Akassa, Bonny, Brass and Forcados are omitted, since they are no longer ports and Tiko is new.

1936
Legislation
p.C83 and

Regulation 5 prescribes the aerodromes under the new Ordinance, which will be found in Part II of the Fourth Schedule. They are the same as those approved as Customs Aerodromes in regulation 3 of the Customs (Aircraft)

1939
Legislation
P.B24.

Regulations, 1936 (No.32 of 1936), as amended by Order No.11 of 1939.

1933
Supplement
page 1275.

Regulation 6 prescribes the public warehouses, which will be found in Part III of the Fourth Schedule. Those which are at ports are the same as those which are named in sub-division (b) of the Fourth Schedule to the existing regulations save that Akassa, Bonny, Brass and Forcados are omitted. In addition the Collector of Customs at each prescribed aerodrome is required to appoint a place on the

customs

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customs premises and at every administrative station the office of the Officer in charge of police will be a public warehouse. This should result in the minimum possible inconvenience to members of the public, who will not have to make long journeys to deposit or withdraw their small-arms and ammunition. Further, the work involved will be distributed amongst a number of officers instead of being confined to a few.

Regulation 7 names the prescribed authorities indicated in Part I of the Fifth Schedule. They are mentioned where necessary in the following notes.

Regulation 8 provides that the Commissioner of Police shall be the registrar for arms. His function will be to compile, from returns submitted by deputy registrars, such information relating to small-arms and ammunition as the Governor may require and to supervise the work of deputy registrars.

Regulation 9 prescribes the deputy registrars, who are named in Part II of the Fifth Schedule. One is provided for the Colony and one for each Province and is the Superintendent of Police, where there is one, or the District Officer in charge of the administrative station named where there is no police officer. Theirs is the task of keeping track of all small-arms which enter their area and of ensuring that they are licensed annually. It is going to entail a good deal of extra work, particularly during the first three months after the introduction of the new Ordinance when all small-arms now in the country will have to be registered as their owners declare them. In fact extra temporary, if not permanent, clerical assistance may be necessary. The Commissioner of Police should be permitted to inspect all registries whether or not the deputy registrar is a police

officer

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officer and all deputy registrars should correspond direct with him.

Regulation 10 empowers the Governor to amend any of the Schedules to the regulations.

Regulation 11 provides a form (A1) of authorisation by the Governor under section 5 of the draft Bill for the export of arms and ammunition which may be subject to some future Order in Council. Under the existing regulations Form A is similar but is used only for arms of war and munitions of war.

Laws Volume
III page 877.

Regulation 12 provides a form (A2) of authorisation by the Governor under section 6 of the draft Bill for the import or export of arms of war and munitions of war required by Government or some other Government. Under the existing regulations Form A would, presumably, be used for exports and Form B for imports. The latter can at present be granted by a Collector of Customs at a port but it seems desirable that the Governor alone should authorise both imports and exports of arms of war and munitions of war.

Laws Volume
III page 877.

Laws Volume
III page 878

Regulation 13(1) provides a form (A3) of authorisation by the prescribed authority under section 7(1) of the draft Bill for the transit through Nigeria of arms and ammunition in bulk. The Commissioner of Police is recommended to be the prescribed authority. Under the existing regulations, Form D2 is the equivalent and collectors of Customs may grant the authorisation. Such traffic is unlikely to be large and would be better controlled by a single authority.

1933
Supplement
page 1273.

Regulation 13(2) provides a form (A4) of authorisation by the prescribed authority under section 7(3) of the draft Bill for the transit through Nigeria of the personal small-arms and ammunition therefor of persons arriving on route

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route for some other territory. Collectors of Customs at prescribed ports and aerodromes and elsewhere the Resident of the Province are recommended as prescribed authorities. Under the existing regulations Form D1 is used and may be granted by Collectors of Customs.

Laws Volume III page 879.

Regulation 14 provides a form (A5) of authorisation by the prescribed authority under section 8 of the draft Bill for the import of arms and ammunition, other than arms of war and munitions of war, through a place other than a prescribed port or prescribed aerodrome. The Resident in charge of the Province through which Nigeria is entered (or the Commissioner of the Colony) is recommended to be the prescribed authority instead of a Collector of Customs. Under the existing regulations Form B would, presumably, be used.

Laws Volume III page 878

Regulations 15 and 16 are new and are included at the request of the Comptroller of Customs to fix standards for the minimum length of the barrels of shot guns, the minimum number of shots which cartridges must contain and the maximum diameter of such shots.

Letter No. 31/1933 of 23/8/39 addressed to Commissioner of the Colony in latter's file 2164/Vol.1/89

Regulation 17 provides for the licensing of establishments for the repair of small-arms and Form B1 may be compared with the existing Form N. The licence fee remains unchanged at £2 but provision is made for the payment of only one half of the fee if a licence is taken out after the 30th of June in any year.

Laws Volume III page 883

Regulation 18 is new and requires the holder of a licence for a repairing establishment to keep a register of small-arms entering and leaving and also to send a monthly return to a registrar. This is a necessary part of the internal control of small-arms.

Regulations 19 to 24 are all new and provide that deputy registrars shall keep registers of small-arms and

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and licensed repairing establishment. They also provide that copies of permits and licences, issued by prescribed authorities, shall be sent to deputy registrars and that such registrars shall send returns to the registrar for arms.

Regulation 25 prescribes a form (D1) of application for a permit to possess a small-arm and explains how it should be forwarded to the prescribed authority. It also prescribes the form (D2) of the permit and provides that a permit shall lapse after nine months if no small-arm has been obtained in the meanwhile. In this connexion the Secretary, Southern Provinces, stated, in a letter No.S.P.3708/222 of the 10th of December, 1936, that a period of six months had proved insufficient in all cases to enable permit-holders to obtain shot guns from England. This regulation also provides for the renewal of worn or mutilated permits and states to whom the loss of a permit must be reported. Attention is invited to the following points where the draft regulations depart from existing practice :-

(a) to avoid discrimination between Europeans and the Africans/^{the} prescribed authority for the grant of permits is recommended to be the Resident of a Province, the Commissioner of the Colony and the Commissioner of Police (for Lagos Township only), according to where the applicant resides, instead of Chief Commissioners and the Commissioner of the Colony for Africans and Collectors of Customs for Europeans (who only require a licence at present);

(b) a form is provided for applications to avoid having to return letters for further information;

(c) the administrative officer who receives the application is bound to refer it for the recommendation of the superior police officer responsible for the police in

the

C.S.G's
file 0680/
Vol.II
page 105.

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the station. Although such police officer may not always be in a position to make a recommendation, it is possible that he may have records of the applicant's past history of which the administrative officer is unaware. It is therefore considered more desirable to insist on reference to the police in all cases than to leave it to administrative officers to use their discretion.

(d) a fee of 5/- is prescribed for a permit but free permits may be granted for revolvers to administrative and police officers and to such other public officers as a prescribed authority may think fit and for rifles to rifle clubs. At present an import licence is required at a cost of 2/6 per arm and 2/- per 100 cartridges. This will no longer be required.

Regulation 26 is now and follows up section 19 of the draft Bill with detailed instructions as to the issue of permits to rifle clubs. Rules of the club must accompany the application and subsequent changes in the rules must be made known to the prescribed authority.

Regulation 27 deals with licences, which must be obtained annually on production of the small-arm and permit therefor. Now there is one difficulty that can be foreseen, namely, that if the holder of a permit residing at, say, Kano orders a shot gun from England the gun will go into the public warehouse at Lagos as soon as it arrives. To get it out the holder must produce his permit and a licence but he cannot get a licence until the licensing authority has seen the shot gun. To overcome this difficulty provision is made for the permit holder to sign an undertaking to pay the forwarding and transport charges and, when he has signed the undertaking, the shot gun can be sent from the warehouse at Lagos to that at Kano. Thereafter, the officer in charge of

police

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police who will also be the officer in charge of the public warehouse at Kano can grant the necessary licence and also an authorisation for withdrawal. In addition to officers in charge of public warehouses, superior police officers or administrative officers in stations where there is no such police officer should be authorised to grant licences. The licence fee remains as at present at 10/- except for shot guns for which it is raised to £1 to include the right to shoot Game Birds. (Note. This was the fee recommended by the Chief Commissioners, Eastern and Western Provinces (see page 19 in C.S.G's file 36249). The Chief Commissioner, Northern Provinces, suggested 15/-, which sum would equal the cost of current licences for a shot gun (10/-) and a Bird Licence (5/-)). A licensing authority has to certify on the licence (Form F) that he has seen the small-arm concerned and he must enter on the permit particulars of the licence issued.

Regulation 28 provides a form (G) for the withdrawal of arms and ammunition deposited in a public warehouse and a fee of 5/- for each arm and 2/- per 100 cartridges.

Laws Vol.III Under the existing regulations Form K is used and the fee page 882.

is 1/- for each licence which is thought to be too low, particularly as one licence might cover hundreds of arms and large quantities of ammunition.

Regulation 29 deals with a person landing at a prescribed port or aerodrome in cases:-

(a) where he has an authorisation (Form H1) to export and re-import small-arms or ammunition;

(b) where he has no such authorisation.

In case (a) he exchanges his authorisation (Form H1) for an authorisation (Form G) and, when he reaches his destination, sends the latter to the deputy registrar, with whom his permit has been lodged during his absence, and receives back his permit. In case (b), if he is

going

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going to a distant destination, he may give an undertaking (Form H2) to deposit his small-arms and ammunition in the public warehouse at such destination and may then take them with him. Under existing legislation there is no equivalent to Form H1 but Form H2 may be compared with Form Q.

Laws Vol.III
page 884

Regulation 30 is new and provides, for registration purposes, that copies of authorisations must be sent to a deputy registrar.

Regulation 31 provides for registers in the Form I1 to be kept at all public warehouses to show deposits and withdrawals of arms and ammunition. The existing Form H provides only for registration, although in practice deposit and withdrawals registers are kept. It is considered desirable that the form of such registers should be prescribed in the regulations.

Laws Vol.III
page 880

Regulation 32 provides for another register (Form 12) to be kept to show what happens to arms and ammunition which are forfeited, seized or abandoned. This has no parallel under the existing regulations.

Regulation 33 shows how the Governor's authority for the disposal of unclaimed arms and ammunition should be sought and gives detailed instructions regarding sales, some of which are culled from Section 275 of the Customs Ordinance. This regulation is new but follows up section 23 of the draft Bill.

Laws Vol.II
p.1235

Regulation 34 is also new and relates to section 18(4)(b) of the draft Bill in prescribing what happens when the owner of a small-arm wishes to leave it with someone else during his absence from Nigeria. He has to obtain an authorisation from the prescribed authority and this, it is thought, should be granted free of charge. On the other hand, if the owner cannot find a suitable person to look after his small-arm, he may deposit it in

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in a public warehouse at his own risk free of rent for a period not exceeding nine months.

Regulation 35 guides the would-be appellant who is dissatisfied because his application for a permit has been refused or because his permit has been revoked. Section 23 of the Arms Ordinance grants the right of appeal but the regulations give no guidance in the matter.

Regulation 36 deals with the small-arms and ammunition of a deceased person and requires their deposit in a public warehouse. Thereafter the legal representative of the deceased or the administrative officer concerned may direct that such small-arms and ammunition be sold by the officer in charge of the warehouse or delivered to the holder of an appropriate permit on private sale or gift. There is no parallel in the present regulations.

Regulation 37 provides that a certificate must be obtained in respect of any small-arm which is lost, stolen or destroyed. It also gives directions as to what happens when a lost or stolen small-arm is recovered and states the rights of the owner if his permit is not restored to him after such recovery. There is no parallel regulation in existence at present but section 20 of the Arms Ordinance does require that loss, etc., be reported and a certificate obtained.

Regulation 38 provides a form (M) of authorization for the permanent export of small-arms and ammunition which should be granted by Residents, the Commissioner of the Colony or the Commissioner of Police. A fee of 5/- is prescribed. Under existing regulations Form C is the equivalent and may be granted by a Collector of Customs free of charge.

Regulation 39 provides a form (H1) of authorization for the export and re-import of small-arms and ammunition. This is designed to enable persons proceeding on leave to take

Laws Vol.II
page 1269.

Laws Vol.II
page 1268.

Laws Vol.III
page 878.

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take their small-arms with them and bring them back with the minimum of inconvenience. The authorisation may be granted by Residents, the Commissioner of the Colony and the Commissioner of Police and has no equivalent under the existing regulations. A fee of 5/- is prescribed.

Regulation 40 empowers an officer in charge of a public warehouse to destroy forthwith any prohibited arm but requires him to give the owner a receipt (Form N). The owner, however, has the right to export such arm from Nigeria if he can convince the officer that he is in a position to arrange for such export. There is no similar regulation in force at present.

Regulation 41 provides for the payment of warehouse rents but makes certain exceptions in the light of these regulations.

Regulation 42 limits the compensation payable by Government in respect of arms and ammunition damaged in or lost from a public warehouse, to cases in which Government officers are prosecuted to conviction of stealing or conniving and is exactly the same as regulation 15A which will be found in regulation 8 of the Arms (Amendment) Regulations.

Second Schedule. The following fees recommended in the draft regulations are new or different from those now payable :-

Item in Second Schedule	Description	New fee	Old Fee	Remarks.
5.	permit to possess a small-arm or ammunition	5. 0	Nil	Only Africans require permits under Chapter 132.
6.	fee for forwarding a small-arm	5. 0	Nil	An entirely new item.
7.	license for shot gun	1. 0. 0	10.0	To include Bird Licence (fee 5/-)

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Supplement
page 1272.

11.

second Schedule (contd.)

Item in Second Schedule	Description	New Fee	Old Fee	Remarks
8	authorisation for withdrawal from public warehouse; for each arm for every 100 cartridges or part thereof	5.0 2.0	1.0	The fee of 1/- irrespective of the number of arms or quantity of ammunition withdrawn seems to be too low.
9	authorisation for export and re-import of small-arms and ammunition.	5.0	Nil	An entirely new item.
10	authorisation for permanent export of small-arms and ammunition.	5.0	Nil	Justified as time of Government officers will be occupied in necessary formalities.
11.	renewal of a lost permit	1.0	Nil	An entirely new item.

Third Schedule. The following table compares the proposed new rents for warehouse space, recommended by the Comptroller of Customs, with those payable at present.

	<u>Ammunition</u>	
	New rate per month or part of a month	Present rate per week or part of a week
Cartridges per 100 or part thereof	6d	1d per case or box
Guns flints per 10 lbs or part thereof	1d = 6d to 8d per case	1d per case or box
Lead shot per 10 lbs or part thereof	1d = 11d per case	1d per case or box
Percussion caps per 10,000 or part thereof	3d	1d per case or box
Other materials per 10 lbs or part thereof	6d	1d per case or box
	<u>Arms</u>	
Small-arms each	6d per week	6d per week
Caps guns and flint-lock guns each	2d per month = 1/8d to 3/4d per case	1d per case per week
		Under

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Under the present arrangement whereby rent is charged for a case, instead of for each arm and for a specified quantity of ammunition, commercial firms import cases containing ten or twenty flint-lock guns or 60 to 80 lbs of gun flints or 114 lbs of lead shot. At intervals they withdraw part of the contents of the cases and on each occasion that such withdrawals are made the officer in charge of the warehouse concerned has to make an entry in his register. The rent charged (1d per case per week) is so low that unnecessarily large stocks are sometimes accumulated and they occupy a great deal of warehouse space. It is thought that a rental for each arm and for small quantities of ammunition will discourage the accumulation of unnecessarily large stocks and will at the same time lead to some increase in Government revenue from this source.

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ATTACHMENT C.

Suggestions for the guidance of Prescribed Authorities in dealing with applications for permits for small-arms.

The Prescribed Authorities.

In accordance with sections 18(2) and 19 of the Arms Ordinance, 194 and regulation 7, coupled with items (5) and (6) of Part I of the Fifth Schedule thereunder, the only officers who are entitled to issue permits to possess and use small-arms and small-arms ammunition, whether on the application of a European, African or other National, are Residents in charge of Provinces, the Commissioner of the Colony (for the Colony exclusive of Lagos Township) and the Commissioner of Police (for Lagos Township).

Object of these suggestions.

2. These suggestions are offered to ensure, so far as may be possible, that applications from similar classes of persons for permits for similar types of small-arms will be disposed of consistently throughout Nigeria and to avoid any possible complaint that it is easier to obtain permits in one Province than it is in another.

Discrimination between Europeans and Africans.

3. So far as may be possible, there should be no discrimination between Europeans, Africans and other Nationals.

Suitability of applicant.

4. In the first place the prescribed authority must feel satisfied that the applicant is a thoroughly suitable person to bear a small-arm of the type applied for.

Safe custody of the small-arm.

5. The prescribed authority should also feel satisfied that there is no particular reason to suppose that the arm will not be safe in the custody of the applicant.

Safety of small-arm on death of owner.

6. The prescribed authority should also be satisfied that the family or employers of the holder will, on his death, ensure that the provisions of section 26 of the Ordinance are complied with.

7. The

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7. The prescribed authority should also be satisfied that the applicant resides permanently in the area under his control. Permanent residence for this purpose may be taken as the place in which the applicant normally resides or the place in which he is employed, provided that such employment is not of a purely temporary nature.

Applicant must reside permanently in the area controlled by the prescribed authority.

8. Except in the Township of Lagos, where applications should be submitted in the first place to the Superintendent of Police, Colony, applications must be submitted in the first place to the District Officer concerned who shall refer the application to the police officer in charge of police in the Province for his recommendation. When this is received, the District Officer will add his own recommendation and forward the application to the prescribed authority. While it may sometimes happen that a police officer is not in a position to make any recommendation he should always be consulted in case his records may disclose some fact concerning the applicant's past history which may not be known to the District Officer.

Method of submission of applications.

9. Assuming that the applicant for a permit for a shot gun or air gun with rifled barrel is considered suitable in the light of the above suggestions, it is still necessary that he comes within one of the following categories;-

Permits for shot guns or air rifles.

(a) that he is a responsible European

(b) that he is a chief or councillor whose loyalty to Government is unquestioned;

(c) that he is a Government, town council or township servant with not less than 15 years service or has reached the rank of 1st Class Clerk or its equivalent;

(d) that he is an employee of a commercial firm or private employer and has 15 years service and is vouched for by his employer;

(e) that he is a native authority employee with 15 years service and is vouched for by the native authority;

(f) that

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(f) that he is a member of a Profession (Doctor, Legal Practitioner, etc.);

(g) that he is an important trader or business man or is of independent means or has an income of not less than £150 per annum;

(h) that he is a retired Government, town council, township, native authority or commercial employee, who held the necessary qualifications at the time of his retirement, and who is still able-bodied and genuinely desires to use a shot gun for sporting purposes.

Permits for rifles.

10. Permits for rifles should be issued sparingly and only to persons who genuinely intend to use them for shooting wild animals. They should be granted to Africans only in the most exceptional circumstances and with the approval of a Chief Commissioner.

Permits for revolvers or pistols.

11. Permits for revolvers or pistols should be issued still more sparingly and the main consideration should be whether they are really necessary to the applicant's duties. They may be granted freely to administrative or police officers but should not be granted to other persons unless some very good reason is given. Generally speaking, the fact that a revolver was required for purposes of self-protection or protection of property would not be regarded as a good reason, since a shot gun would be just as effective and less likely to be lost or stolen and thus find its way into the hands of an unsuitable person. On the other hand a permit might be granted to the Manager of a Bank, or other employee nominated by the Manager, if a revolver or pistol were considered necessary to guard against armed robbers.

Permits for rifle clubs.

12. Permits may be granted to rifle clubs in the discretion of prescribed authorities provided that they are satisfied that the club is a bona fide rifle club and then subject to such conditions as the prescribed authority may in writing impose. Such conditions must be made to suit the circumstances of each

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each case but the following points should be borne in mind;-

- (i) that some officer of the club must be responsible for each small-arm;
- (ii) that the arms and ammunition will be kept in a safe place;
- (iii) that the arms will only be used by the members or guests of the club;
- (iv) that the arms will only be used for the purposes for which the club is constituted, as shown in the rules of the club, and at a place or places to be specified (e.g. the local rifle range and ranges used by other clubs which may be visited).

Chief Secretary to the Government.

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C.I.
title

1. Nigeria — 136 — 25.3.42. 2

Copy requested
on 12/55/48/42

? put by FJ Pedler

10.4
J.H. P...
16/4 it over

NA

2. Nigeria — 258 — 6.6.42

? approve G 3

FJ Pedler
16/6

Stansfield
17/6
K...
17/6

Notes to
Library 19/6/43

February
note 2

To Nigeria 196 (2 ansd) G3. 18.6.42.

NA

Reference:-

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AIR MAIL.

NIGERIA.

NO. 258

30238 2
3

15 JUN 1942
C. O. Government House,
Nigeria.
6-8 June, 1942.

My Lord,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 5 of 1942 entitled "An Ordinance to Amend the Labour Ordinance, 1929" together with the usual report thereon by the Acting Attorney-General.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble
servant,

Alan Burns

OFFICER ADMINISTERING THE GOVERNMENT.

THE RIGHT HONOURABLE
LORD GRANVILLE, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

Amend (3)
3 copies rec'd

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 14th day of April, 1942.

ALAN BURNS,
Officer Administering the Government.

(L.S.)

No. 5

1942



Colony and Protectorate of Nigeria.

IN THE SIXTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

SIR ALAN BURNS, K.C.M.G.
Officer Administering the Government.

AN ORDINANCE TO AMEND THE LABOUR ORDINANCE, 1929.

Title.

[1st April, 1942.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

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Short title and commencement. 1. This Ordinance may be cited as the Labour (Amendment) Ordinance, 1942, and shall come into force on the 1st day of April, 1942.

Amendment of section 62 of No. 1 of 1929. 2. Section 62 of the Labour Ordinance, 1929, is hereby amended by deleting paragraph (18) thereof and substituting the following therefor:—

“(18) Providing for the payment of compensation by employers to labourers for injury arising out of and in the course of their employment in cases not coming within the provisions of any other Ordinance, and for the recovery of such compensation;”

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

P. F. CAMPBELL, Clerk of the Legislative Council.

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R E P O R T

6

on

A BILL FOR AN ORDINANCE TO AMEND THE LABOUR
ORDINANCE, 1929.

This Bill comes within category "A".

2. The short title of this Bill is the Labour (Amendment) Ordinance, 1942, and in my opinion the assent of His Excellency may properly be given thereto.

3. This amendment is consequential upon the coming into force on the 1st day of April, 1942, of the Workmen's Compensation Ordinance, 1941, and also other Bills to amend and the Minerals Ordinance, the Forced Labour Ordinance, 1933, in respect of compensation payable to workmen or other persons for injury received in the course of their employment or work.

The existing section 62(18) provides that the Governor in Council may make regulations providing for the payment of compensation by employers to workmen for injury arising out of and in the course of their employment and in view of the legislation above referred to these terms are too wide and clause 2 of the Bill limits the power to cases of labourers not covered by the provisions of any other Ordinance.

G. L. Howse

Acting Attorney-General.

Attorney-General's Chambers,

Lagos, Nigeria.

28th March, 1942.

No. 51 of
1941.

No. 22 of
1933.

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NIGERIA

No 136

1 copy only

air mail
RECEIVED
1 APR 1942

GOVERNMENT HOUSE, NIGERIA,

25 March, 1942.

My Lord, — I have the honour to transmit herewith ten copies of Regulations No 21 of 1942, made under "The Labour Ordinance, 1929 (No. 1 of 1929)." Ordinance (Chapter xxxxx);

I have the honour to be, My Lord,
Your Lordship's most obedient, humble Servant,
ALAN BURNS
OFFICER ADMINISTERING THE GOVERNMENT.

THE RIGHT HONOURABLE
LORD CRAIBORNE, P.C.,

SECRETARY OF STATE FOR THE COLONIES, &c., &c., &c.

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END

2

(4) Where a magistrate makes an award under the provisions of this regulation he may order the amount so awarded to be paid in one lump sum or by instalments payable at such periods as he may think fit; or may order, in the sole discretion of any person named in such order, that the sum awarded be expended for the benefit of such labourer or of such dependants of such labourer as the magistrate may decide.

(5) Where a magistrate makes an award under the provisions of this regulation he may order, in addition to any such award, that the employer shall pay all reasonable medical and hospital expenses incurred by a labourer in treatment of the injury.

(6) Where a sum is due upon any award made under this regulation the labourer to whom such sum is due or the dependant entitled thereto may recover such sum by process of law as if the award under which such sum is due were a judgment of the court of the magistrate who made the award.

(7) Nothing in this regulation contained shall affect the civil liability of the employer under any other law unless compensation is paid under this regulation.

29. (1) Any person aggrieved by the decision of a magistrate holding an inquiry under the provisions of regulation 28 may appeal to a Judge of the Supreme Court or of the High Court, as the case may be, by giving notice of appeal to the appropriate court within fourteen days of the date of such decision.

(2) The decision of any such Judge shall be final.

30. For the purposes of regulations 28 and 29 'partial incapacity', 'total incapacity' and 'dependants' shall have the same meaning as in the Workmen's Compensation Ordinance, 1941, as from time to time amended."

Ordinance
No. 51 of
1941.

MADE by the Governor in Council at Lagos this 10th day of March, 1942.

P. F. CAMPBELL.
Clerk of the Executive Council.

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C-1
COLLECTIVE
FINES

2

1. Nigeria - ~~387~~ 387 - 99-42

This might have had very serious consequences if the Ithokpara people had offered any resistance to the Isigwe's attack, but fortunately they did not.

As almost the entire male population of Isigwe took part in the affair, a severe reprimand by many women, a collective fine was the most suitable form of punishment. It is to be hoped that this, together with the conviction of twelve of the offending villagers will be salutary.

? Act, within the action taken.

J. A. ...

You may care to see.

16/11/42

The action taken appears to have been fully justified. ? As proposed

O.G.R.U

18.11.42

Alt...

A.P.S.
19.11

2 to Nigeria 337 - 1 Ansd. - 23.11.42

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Mr. Brearley 24/11 f.p.

3

2/

Colonial Office,
Downing Street,

23 November, 1942.

NIGERIA.

NO. 337

Sir,

(1)

I have the honour to acknowledge the receipt of your despatch No. 387 of the 9th September reporting the imposition of a collective fine of £150 on the people of the Isigwe quarter of Ugbawka Village in the Udi Division of Onitsha Province in the circumstances set forth and to inform you that I have noted the action which you have taken in the matter.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

(SIGNED) CRANBORNE

GOVERNOR
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.,
etc., etc., etc.

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NIGERIA.

NO. 387

dup.

RECEIVED
10 NOV 1942

- 30242

Government House,

Nigeria.

9th September, 1942.

My Lord,

I have the honour to report that, under the provisions of sections 2(d) and 2(e) of the Collective Punishment Ordinance, Chapter 80 of the Laws of Nigeria, a collective fine of £150 has been imposed on the people of the Isigwe quarter of Ugbawka Village, in the Udi Division of Onitsha Province.

2. An affray took place last March in which the people of Isigwe attacked those of the neighbouring village of Ihuokpara and, in the resulting Inquiry, the finding was that the Isigwe people wilfully disobeyed the lawful orders of the District Officer (section 2(d)) and that they conducted themselves in such a manner as to necessitate the bringing of police to the area to quell the disturbance (section 2(e)). The facts are as follows.

3. Between Isigwe and Ihuokpara there is a three-mile strip of land which is heavily farmed. It is said to belong half to Isigwe and half to Ihuokpara, and for years the Ihuokpara people have rented parts of their portion to the people of Isigwe. On the 5th and 6th of March Isigwe attacked Ihuokpara, driving the latter off the land and uprooting their crops. The nearest police, a Lance-Corporal and three constables, proceeded at once to the scene and succeeded in restraining the Ihuokpara from defending their property so that there was little or no real fighting. When the District Officer arrived on the 7th the incident was apparently over, but he issued warnings to those of Isigwe whom he saw not to repeat their attacks, and ordered the few members of the Native Authority Council who appeared before him to issue similar warnings to everyone. He also made arrangements for special telephonic communication and for a detachment of police to be ready to move to the area if required.

4. On the 8th, however, a large number of armed men of Isigwe assembled, estimated at not less than 2,000, and the District Officer immediately summoned the police and went to the scene himself. He warned the assembly that their action was unlawful but, in spite of his efforts to stop them, the Isigwe people marched towards Ihuokpara and looted the latter's farms. No resistance was offered and there was no fighting. The Isigwe fled on the arrival of the police detachment later, and there has since been no further incident.

5. The members of the Ugbawka Council and Court were immediately suspended by the Chief Commissioner for failing (a) to attempt to prevent the attack of the Isigwe quarter, (b) to report the attack, and (c) to appear before the District Officer when he summoned them on his arrival. It was later decided that this suspension should operate for six months.

THE RIGHT HONOURABLE
VISCOUNT CRANBORNE, P.C.,
SECRETARY OF STATE FOR THE COLONIES,

WSP ETC., ETC., ETC.

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END

6. The Inquiry under the Collective Punishment Ordinance was held for the following reasons :-

- (a) Practically the entire male population of Isigwe took part, and they were supported by many women.
- (b) There have been three previous disturbances in the last 18 months in this same town.
- (c) The attack was a wilful breach of law and order by the concerted action of a whole community. There has never been a land dispute between these two communities, and no complaints have ever been lodged. It was quite clear that the Isigwe decided that a certain stretch of land should now be theirs, and that they should forthwith acquire it by force.
- (d) Every person who took part in the attack on the 8th saw the District Officer on the spot and heard his orders and warnings that their action was unlawful.
- (e) Criminal proceedings in the Magistrate's Court were found to be possible against only 12, who were convicted of various offences connected with the affray. It is impossible to proceed individually against over 2,000 persons, or to identify some with a greater degree of guilt than others.

7. This fine of \$150 amounts to approximately 2/6d per adult male, the annual tax being 3/6d per adult male. Those convicted in the Magistrate's Court will not contribute to the collective fine, so that no suggestion will arise of their being punished twice for the same offence.

I have the honour to be,
Your Lordship's most obedient, humble Servant,

R. H. ...

GOVERNOR

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Miss Bess

~~This file contains:-~~

- (a) one item for 1939
- (b) one item for 1940
- (c) nine items for 1941-3

(a) & (b) have been destroyed

So reports can be stamped accordingly.
The boxes withdrawn from P.R.O.
& files deleted from box lists - 1940
has been ticked as transferred.



(This file can then be returned
as 1941-3 file)

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C.1 Title

NATIVE AUTHORITY

3

DESTROYED UNDER STATUTE

Tr: 10 Copies of Order No. 28 of 1939.
(Spares to Library) 22/11/39

Put by
M. H. ...
14/12

Alto

M. ...
15/12. advice

1940 File

1. Gov. Ho 568
DESTROYED UNDER STATUTE

22. 7. 40.

Put by
A. D. ...
A. D. ...

M

1941

2. Nigeria 536 9. 9. 41.

DESTROYED UNDER STATUTE (Spares to Liby).

Liby
Rel. Leg. ...

5/10
Min Richards
Pres. - The principal
Rules are in 30249/38
below.

Liby
C. ...
7/10/41
at own.

(Copy of ho. 2
reg'd on 12752/30A 55.)
82

References:-

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1942

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Sparks
Library 3

Nigeria

- 451 -

20.10.42

Lib
16 put up
copy of Ordinance

· Sir S. Atkinson. Any comments?

(in former letter)

Arthur Hughes

16-3-42

M. Mayhew

No legal objections. I think that

Social Services Dept should see this Ordinance.

D^r Richards - accordingly.

Arthur Hughes
16-3.

Handwritten signature

16/3/43

? A-G-3 can be sent.

S. Allan Hallatt
17/3.

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It seems almost impossible to ensure that the N.A.'s 5
do ~~use~~ ^{use} the child betrothal ^{regin} powers, & probably
a more satisfactory way would be to put them
under the care of the new probation - ^{care}
welfare officer that we are proposing to recommend
to them.

We should send the G.3. but I suggest it
might be worth letting Nigeria that we are interested to
hear how this child ^{with} betrothal supervision scheme
goes, & to suggest to them that the probation
proposals which are going shortly to be sent to
them in the J.D. report, may enable better
supervision G. I. Richards 16/5

See also 30346/47.

Mr. Williams

Further information about the
practice of housing of children in
the form of child betrothal is contained

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Miss Richards
shd see these
A

6
in the reports supplied by the Gov.
of the Nations Slavery Com. in 1937
& 1938 (29 on 1901/12/37 & 15 on
1901/12/38) etc. In the latter report
it was stated that the conclusion
had been reached that no amendment
of the Criminal Code was necessary,
a desirable to deal with ^{the} spawning
persons, unless there was evidence
that the practice of spawning in all
its forms continued to decline.
We have recently asked to be
furnished with a further
report (following P.Q.s by Mr. Harvey -
re 30192/43 & P.Q. files attached)
The local authorities have now
changed

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changed their minds, insofar as
chief brewing or stealing is
concerned at any rate, I
consider that the problem can best
be dealt with by giving the
native authorities power to
regulate chief behavior by means
of rules under the Native Authority
Administration. Until we see the
rules, however, we cannot judge
whether these powers are likely
to be effective or not.

2. If we use disallowance
L.F. " in a separate despatch
referring to (3) on this file & (1) on
30346/42, ask to be supplied with copies
of

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of ^{any} rules made under the
Ordinances, together with a report
on the working of the new
system in, say, a year's time.
Add a para. on the lines of
* of Miss Richards' minutes of
1873

Haines

(See also 3026/12 below) 29/3/43

I agree. The Administrative Offices will
no doubt see to it with N.A. to not
allow these regulations to become a dead
letter.

action done 30.5.43

30/5/43 4 To Nigeria N°-84 ————— 6/3/43

9/3/43 (2 files) 5 To Nigeria N°-90. 93 (3 and) — 8/4/43

RYS
See also below.

The T.D. report is complete today. I will go to
Nigeria at once. G.S. Richards 12/4

Legal
To take sealed

Copy of 39 note 5
Note to
Haines 19/4/43

Received 2/5/43

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6 hujira 196 _____ 6.5.43

7 hujira 181 _____ 3.5.43

6. This appears to be a comprehensive and progressive ordinance. Of the new sections introduced the following appear to be the more important:

Clauses 5 and 6 providing for the particularisation of persons or classes of persons who can be appointed as native authorities. Lord Hailey has remarked that it is essential that the forms in which Native authorities receive Statutory recognition should reflect as closely as possible the real character of the organisation, particularly in respect of the position of the Council.

Clause 8 providing for the appointment of temporary members, presumably to advise on specific questions.

Clause 12 empowering Native authorities to constitute subordinate native authorities. This delegation of responsibility marks a definite advance.

Clauses 23 - 25. The re-organisation of the Sections dealing with the legislative powers of Native Authorities, includes machinery to enable the Native Authorities to assume the duties of Local Authorities and gives them legal power, which previously was lacking, to enforce their rules on non-natives in all cases when such rules can suitably be applied to the latter.

Clause 33

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Clause 33 providing for the appointment of Advisory Council is an important innovation in that it supplies the machinery to give official standing to elements of the educated class, e.g. members of the "Youth Movements" which are a peculiar feature of political development particularly in the Eastern Provinces.

Clause 34 empowering the Native Authorities to make standing rules governing the conduct of their business, should be of considerable ~~importance~~ *administrative value.*

Parts VIII and IX. It seems highly desirable that Native Authority Police and Prisons should have official standing and I am surprised the need for this legislation has not appeared earlier.

Subject to comments of the Legal Adviser
?Signify non-disallowance, expressing appreciation of the comprehensive and progressive nature of the ordinance and congratulating the Attorney General on the good use to which his experience has been put.

7. - appears unexceptionable. ? G-3.

Shankar
19.7.43

70 orders on either Ordinance.

Abraham
20/7/43

I fear this has been held up for some time during my absence. Now the copies of the Ordinance at 6 seem to have escaped from their envelope, so that I pass for back to Mr. Parkinson in case he has time
G. I. Richards 30/7

*How many
copies of
- 16-17-18
- 13/8*

Yes ABC 14/8/43

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Sir A Dawe.

11

We have no comments to make on the comprehensive Native Authority Ordinance which it is now proposed to approve, but I pass on the papers to you as a matter of general interest.

The Ordinance marks a big step forward in the development of Native Administration in Nigeria. In more than one respect its terms are so drawn as to give effect to recommendations by Lord Hailey. For instance Clause 52 provides, as Mr. Parkinson points out, for the statutory recognition of a Native Authority in a form reflecting the real character of the organisation. Clause 33 provides for the appointment of Advisory Councils where necessary.

Clauses 23 to 25 provide for the effective exercise by Native Authorities of control of Township areas where this is necessary. Provision is also made for Native Authorities to become corporate bodies, so that they can hold land, and for Native Authority Police and Prisons - some Native Authorities, of course, have Police Forces and Prisons already.

I think that there may be a good deal of useful publicity in the terms of this Ordinance, and I propose after the despatch has gone to consult with Mr. Sabine on the method of obtaining such publicity. Where we are able to make such a progressive step forward in wartime, it is, I think, worth while seeing that the Government concerned gets credit for it publicly.

I agree.

ABC
16.8.43.

M. Thomley
to see.

Attn
Seen - [unclear] 18.8.
[unclear] 19.8.

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Mr. Thoms
 Miss Kendall (B-4) I think we can 13
 get some publicity for this
 although I am afraid
 it will not be
 considerable at this
 late stage (the papers
 seem to have been
 hung up for two months
 so far leaving you!)
 I will ask Miss Kendall
 to prepare a short article
 for distribution to the
 more serious daily papers,
 such as The Times and
Manchester Guardian; to
 the national "specialist"
 papers in this country, &
 to the "heavier"
 weeklies - Spectator, New
Statesman etc.

Pl. proceed as you prefer.
 U.S. Dept. of C.S. of course are
 that is put out.

G.D.H.
 29/12

J.P. Staker.
 29/12

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Miss Kendall,

14

Will you pl. go ahead as indicated in my min. overleaf?

J. M. Hales,
30/12

Mr. Parkin,

See the attached draft. It is intended for distribution to:

- ① The Times
- ② Manchester Guardian
- ③ West Africa
- ④ West African Review
- ⑤ African World
- ⑥ African Outlook
- ⑦ Mr. Evans (BBC)
- ⑧ News Review
- ⑨ Empire Review
- ⑩ Empire
- ⑪ Mrs. Mann, MOI
- ⑫ Reference Journal, MOI

At this late stage, I do not expect very successful results but we will have a try.

J. M. Hales,
3/1

Discussed with Mr. Hales. He agreed that (at this late date (the Order was passed in March '43)) it was better to risk promising its publicity question further. L. M. Hales 31/12/43

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to reply to Nos. 8 & 9.
S. Knoff
6.10.44.

16

Remind again of 2 (4)

(8) - v.a. 18.2.45

6/10 above

~~no 6/10/45~~

10th Nigeria

A2

18/2/45

bars

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CO 583/259/30249

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Substantial progress
~~has been made~~ in the development of Native Administration is represented by a new Ordinance recently enacted by the Government of Nigeria.

The Ordinance is progressive and comprehensive in its terms and the Secretary of State for the Colonies has congratulated the Government of Nigeria on putting through this important piece of legislation under wartime conditions. The new Ordinance is entitled "The Native Authority Ordinance, 1943". An earlier Ordinance substituted the words "Native Authority" for "Native Administration", previously used.

Taken separately, the new features of the Ordinance are not particularly spectacular but, ~~when~~ together, they widen the scope of the previous Ordinance of 1933 to a considerable degree, and combine a number of provisions which were formerly contained in a number of Ordinances.

One of the most important amendments puts into effect one of Lord Hailey's recommendations *(that)* that the Native Authority should reflect the real character of the organisation and a new clause provides for a more precise definition of the persons or classes of persons who can be appointed as a Native Authority.

Another clause empowers the Native Authorities to make standing rules governing the conduct of their business, and another gives official standing to Native Authority prisons.

An important section dealing with the legislation of Native Authorities includes machinery to enable them to assume the duties of Local Authorities and gives them legal power to enforce their rules on non-natives.

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Other amendments provide for the Native Authorities to appoint temporary members to advise on specific questions, and for the appointment of Advisory Councils.

Provision is also made in the ^{new} Ordinance for Native Authorities to become corporate bodies so that they can hold land.

The Attorney-General of Nigeria has pointed out that, even now, the Ordinance cannot be expected to remove every difficulty in legislation and that as the scope of administration of the Native Authorities grows still wider, other amendments will be necessary from time to time.

Colonial Office Press Section,

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C. O.

Mr. Cohen / 17 8.43.

Mr.

Mr.

Mr. G. E. J. Gent.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

X Sir A. Dave. 18.8.43.

Sir W. Battershill.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

18th August, 1943.

DRAFT. DESPATCH.

NIGERIA,

NO. 264

(7 and 6)

~~TO THE GOVERNOR.~~

OAG

Sir,

I have the honour to refer to Sir Bernard Bourdillon's despatches No. 181 and No. 196 of 3rd and 6th May transmitting copies of Ordinances No. 17 and 18 of 1943, entitled "An Ordinance to provide for the establishment of the offices of Native Authorities throughout Nigeria, other than in the township of Lagos, the appointments to such offices and the powers and duties of Native Authorities" and "An Ordinance to provide for the substitution of the term Native Authority for the term Native Administration where used in Legislation". His Majesty's power of disallowance will not be exercised in respect of these Ordinances.

2. The Native Authority Ordinance, 1943, is ~~clearly~~ an important, progressive and a comprehensive piece of legislation, which marks a big step forward in the development of Native Administration in Nigeria. The Government is to be congratulated on having put through these Ordinances and I shall be grateful if you will convey

FURTHER ACTION.

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convey my appreciation to the Attorney General for the comprehensive way in which he has dealt with the many problems involved. I have read his report on the Ordinance with much interest.

3. I have noted what the Attorney General says with regard to the desire of certain very advanced Native Authorities to obtain statutory powers to acquire land compulsorily, and I shall be interested to learn in due course what action is to be taken with regard to this.

I have etc.

(Sd) OLIVER STANLEY

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NIGERIA.

No. 181

30249 21 7

Government House,
Nigeria.

3rd May, 1943.

RECEIVED
30 JUN 1943
C. O. REGY

Sir,

I have the to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No.18 of 1943 entitled "An Ordinance to provide for the substitution of the term Native Authority for the term Native Administration where used in Legislation" together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

B. H. M. de

GOVERNOR.

The Right Honourable
Oliver Stanley, M.C., M.P.,
Secretary of State for the Colonies,
&c., &c., &c.

[Handwritten mark]

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on

A BILL FOR AN ORDINANCE TO PROVIDE FOR
THE SUBSTITUTION OF THE TERM NATIVE
AUTHORITY FOR THE TERM NATIVE
ADMINISTRATION WHERE USED
IN LEGISLATION.

The short title of this Bill is the Native Authority (Substitution for Native Administration) Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. No native administration within the meaning of that term as it exists in legislation can exist which is not in fact a native authority or a group of native authorities. In view of the fact that more and more subsidiary legislation is being enacted by native authorities as such and such authorities are more and more taking the place of local authorities it has been decided that the correct term to use in legislation in future is native authority and not native administration. In other words not only is there no necessity to retain the term native administration in legislation but on the contrary, it is advisable that only one term should be employed therein, and that is "native authority". A further argument in favour of this change is the fact that "native administration" as the term is used in legislation means administration through native authorities.

3. The necessity for this change in legal phraseology has been recognised for some time and now that a consolidation of the laws is being undertaken the opportunity is being taken of taking out of existing legislation the term native administration and substituting therefor the term native authority. This will not in any way prevent the use of the phrase native

administration

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administration but it will mean that it will have no particular significance in legislation.

4. It is obviously impracticable to specify every single instance in which the term native administration is used in all regulations, rules, bye-laws, orders, orders in council and Gazette notices and therefore this general change over will be effected by means of sub-section (1) of clause 2 while in sub-section (2) will be found a reference to the Schedule wherein is set out at length all the various places in which the change must be made in the Ordinances.

5. When this Bill was originally drafted over three years ago the Schedule was approximately twice as long but in the meantime the change has been made in respect of different Ordinance as and when opportunity offered, see for example, section 19 of the Forestry (Amendment) Ordinance, 1941 (No.47); and the term "native administration" has not been used in legislation for some years; it was in fact omitted from the Interpretation Ordinance, 1939. There is no reference in this Bill to the Native Authority Ordinance, 1933 or to certain other Native Administration Ordinance as they are being repealed by the new Bill passed at this session - see Schedule thereto - and this Bill and that will be brought into operation simultaneously.

J. C. O.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria,
29th. March, 1943.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 24th day of April, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 18

1943



Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO PROVIDE FOR THE SUBSTITUTION OF THE TERM **NATIVE AUTHORITY** FOR THE TERM **NATIVE ADMINISTRATION** WHERE USED IN LEGISLATION. Title.

[. 194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:— Enactment.

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2 No. 18 of 1943 *Native Authority (Substitution for Native Administration)*.

Short title. 1. This Ordinance may be cited as the Native Authority (Substitution for Native Administration) Ordinance, 1943, and shall come into operation on a day to be fixed by the Governor by notice in the Gazette.

Substitution of "native authority" for "native administration" in legislation. 2. (1) On and after the coming into operation of this Ordinance there shall be substituted in all Ordinances (other than in sub-section (4) of section 5 of the Markets Ordinance) regulations, orders, orders in council, notices, announcements or other notification of any kind whatsoever, for a reference to a native administration a reference to a native authority and where there is in any such document as aforesaid a reference to both a native authority and in the alternative a native administration the reference to the native administration shall be omitted.

Schedule. (2) Notwithstanding the generality of the provisions of sub-section (1) the provisions set out in the second column of the Ordinances referred to in the first column of the Schedule are hereby amended to the extent and in the manner set out in the third column of the said Schedule opposite to the said provisions in the said second column.

Native Authority (Substitution for No. 18 of 1943 Native Administration). 3

SCHEDULE

Ordinance	Section of the Ordinance	Extent of amendment
The Births, Deaths and Burials Ordinance, Cap. 47.	48	For the words "A native administration may" substitute the words "A native authority may".
The Leprosy Ordinance, Cap. 52.	23 (1)	For the words "or to a native administration" substitute the words "or to a native authority".
The Vaccination Ordinance, Cap. 53.	2	In the definition of "Medical officer" for the words "or native administration" substitute the words "or native authority".
The Public Health Ordinance, Cap. 56.	3 (1)	In the definition of "Health officer" for the words "or native administration" substitute the words "or native authority".
	29	For the words "or native administration" substitute the words "or native authority".
	37	For the words "of a native administration" substitute the words "of a native authority".
	39 (1)	For the words "or native administration" substitute the words "or native authority".
	43 (14)	For the words "or native administration" substitute the words "or native authority".
	44	For the words "and a native administration in respect of an area administered by such administration" in the second and third lines substitute the words "and a native authority in respect of an area administered by such native authority".
	45	For the words "and a native administration in respect of an area administered by such administration" in the second and third lines substitute the words "and a native authority in respect of an area administered by such native authority".
	45 (6), as substituted by section 2 of Ordinance 16 of 1931.	(a) For the words "or Native Administration" substitute the words "or native authority"; (b) Delete the words "or administration".
	46	For the words "or native administration" substitute the words "or native authority".
	50 (1)	For the words "by a native administration" substitute the words "by a native authority".

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SCHEDULE—continued

Ordinance	Section of the Ordinance	Extent of amendment
The Waterworks Ordinance, Cap. 63.	2, as amended by section 2 of Ordinance 43 of 1938.	In the definition of "Waterworks" for the words "Native Administration" in both places where they occur <i>substitute</i> the words "native authority".
The Land and Native Rights Ordinance, Cap. 85.	23B, as enacted by section 2 of Ordinance 25 of 1933.	(a) In sub-section (1) for the words "any Native Administration" <i>substitute</i> the words "any native authority". (b) In sub-section (2) for the words "a Native Administration" <i>substitute</i> the words "a native authority". (c) In sub-section (2) for the passage "be read as if for the words 'under his hand and the seal of the Protectorate' there were substituted the words 'bearing the seal of the Protectorate and also being sealed with the seal of the Native Administration'" <i>substitute</i> the following "be read as if for the words 'under his hand and the seal of the Protectorate' there were substituted the words 'executed by the native authority and where such native authority is a corporate body being also sealed with the seal of the native authority'". (d) In sub-section (3) for the words "to a native administration" <i>substitute</i> the words "to a native authority".
The Protectorate Laws (Enforcement) Ordinance, 1924, No. 15 of 1924.	2	(a) For the words "of a native administration" <i>substitute</i> the words "of a native authority". (b) For the words "of such native administration" <i>substitute</i> the words "of such native authority".
	4	(a) <i>Insert</i> the words "or orders" after the words "make rules" in the second line thereof. (b) For the comma and the words ", or of a Native Administration to make" in the third line <i>substitute</i> the words "or to make".
Mallam Said (Deportation and Detention) Ordinance, 1924, No. 18 of 1924.	4	For the words "of a Native Administration" <i>substitute</i> the words "of a native authority".

SCHEDULE—continued

Ordinance	Section of the Ordinance	Extent of amendment
Customs Tariff Ordinance, 1924, No. 20 of 1924.		In item 8 of the second schedule, as substituted by Resolution and Order No. 3 of 1939, for the words "or any Native Administration" <i>substitute</i> the words "or any native authority".
The Education (Colony and Southern Provinces) Ordinance, 1926, No. 15 of 1926.	2	In the definition of "Proprietor" for the words "or a native administration" <i>substitute</i> the words "or a native authority".
The Native Courts Ordinance, 1933, No. 44 of 1933.	10 (1) (c), as amended by section 4 of No. 16 of 1936.	Delete the words "or a Native Administration".
The Escorts (Requisition of Supplies) Ordinance, 1936, No. 12 of 1936.	5 (2)	For the words "such Native Administration Treasuries" <i>substitute</i> the words "such native authority treasuries".
The Sleeping Sickness Ordinance, 1937, No. 1 of 1937.	19	For the words "or any Native Administration" <i>substitute</i> the words "or any native authority".
The Interpretation Ordinance, 1939, No. 27 of 1939.	17 (2)	Delete the words "native administration,".

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS.
Clerk of the Legislative Council.

Printed and Published by the Government Printer, Lagos. 2992/40/400 3d. per copy.

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NIGERIA.

No. 196

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RECEIVED
23 JUN 1943
C. O. 1161

Government House,
Nigeria.
6⁶ May, 1943.

Sir,

4

With reference to your ^{despatch} telegram No. 87 of the 6th of April, I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 17 of 1943, entitled "An Ordinance to provide for the establishment of the offices of Native Authorities throughout Nigeria, other than in the Township of Lagos, the appointments to such offices and the powers and duties of Native Authorities" together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

D. H. Austin

Governor.

The Right Honourable
Oliver Stanley, M.C., M.P.,
Secretary of State for the Colonies,
etc., etc., etc.

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R E P O R T

on

A BILL FOR AN ORDINANCE TO PROVIDE FOR
THE ESTABLISHMENT OF THE OFFICES OF
NATIVE AUTHORITIES THROUGHOUT
NIGERIA, OTHER THAN IN THE
TOWNSHIP OF LAGOS, THE
APPOINTMENTS TO SUCH
OFFICES AND THE POWERS AND
DUTIES OF NATIVE AUTHORITIES.

The short title of this Bill is the Native Authority Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. In the course of the last nine years the Native Authority Ordinance, 1933, has been shown to be defective in certain ways; also in many respects its original scope is not wide enough for the stage of development now reached. It was therefore necessary to amend the Ordinance for this purpose, and while doing so the opportunity was being taken of effecting other amendments which have been shown to be necessary.

3. One amendment shown to be advisable was that the different persons or classes of persons who could be appointed as native authorities should be set out with more particularity in the Ordinance; another was that native authorities should be enabled to make standing rules governing the conduct of their business.

4. At present, the Governor may constitute the office of native authority and declare any native authority so constituted to be subordinate to another native authority; it is now considered advisable that legislation should provide for the constitution of and appointment to subordinate native authorities by the more advanced native authorities themselves. These subordinate native authorities being under the control of the native authority appointing them but also being subject to the Governor's

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Governor's general control.

5. It has also been found necessary to enable certain native authorities to hold land; in other words, that those native authorities whose duties make it advisable for them to hold land should be incorporated and given a corporate status.

6. As the above amendments would mean the introduction of an amending Ordinance as large or larger than that of the original Ordinance of 1933, it was considered advisable to introduce one Ordinance containing all the existing provisions, the amendments shown to be necessary to them, and the new provisions to which reference has already been made. At the same time, as it would be advantageous to have as many as possible of the statutory provisions relating to native authorities under one Ordinance, the opportunity has been taken of incorporating in this Bill the Native Administrations (Legal Proceedings) Ordinance, 1932 (No.19) and the Administrative Officers (Appointment as Native Authorities) Ordinance, 1934 (No.5). Also included in the draft are the provisions of the Colony Native Authority Ordinance of 1937 care being taken to separate in the Bill those provisions which are peculiar to the Colony or to the Protectorate.

7. The Bill now submitted has been divided into ten parts, each part being given its own heading, and, where necessary, subsidiary headings; the clauses being grouped in accordance with their subject matter under those headings.

8. So as to enable the Bill to be applicable both to the Colony and Protectorate the definition of Resident in clause 2 has been extended to include in the Colony the Commissioner of the Colony.

9.

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9. Part II, which deals with the establishment and appointment of native authorities sets out first of all that the Governor may establish native authorities in specified areas and direct that any office so established may be subordinate to another native authority: it then provides clearly in clause 5 who may be appointed as a native authority in the Protectorate and, in clause 6, in the Colony. In respect of the Colony special provision exists for the appointment of district officers as native authorities if for any reason it is undesirable to appoint a native authority under clause 6; similar provisions will be found in clause 7. Also in clause 8 will be found power to make temporary appointments.

10. Clauses 9 to 11 relate to the appointment of members of native authorities, clause 11 being new and providing that where a council or group of persons is appointed as a native authority each individual member of that council or group is deemed, in effect, to have been separately appointed.

11. In clauses 12 to 15 will be found the provisions relating to native authorities constituting the office of subordinate native authority and making the appointments thereto. These appointments made by a native authority may nevertheless be terminated by the Governor.

12. The powers and duties of native authorities will be found contained in Part III, clauses 19 to 32, the first three dealing with jurisdiction of native authorities reproducing almost verbatim the existing law, except that the provisions of clause 21 can now be extended to the Colony, to which the existing section does not apply.

13. The duties of native authorities with reference to crime will be found in clause 22, and their legislative powers in clauses 23 to 28. Clause 23, which takes the place of
 section

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section 8 had, as published in the Gazette, been considerably extended; in that clause had been included the substance of many of the notices which had previously been issued under subsection (p) of section 8, and upon enactment of this Ordinance the notices in question were to be cancelled. The power of native authorities to make rules - clause 25 - had been only slightly extended and included in the new section 16A enacted in 1942.

14. The considerations which resulted in clauses 23 and 25 obtaining their present form are interesting, the clauses in question having been completely recast while the Bill was before the Legislative Council. Clauses 23 and 25 as published contained 26 and 5 heads under which orders and rules could respectively be made, and it must be borne in mind that while orders can only bind persons subject to the jurisdiction of the native authority making the order, rules could, in the 1933 Ordinance, apply with the Governor's approval to persons not subject to the jurisdiction of the native authority; naturally any such person would be charged for a breach of the rule before a magistrate's court and not a native court, but in this Bill as published they could be made to apply to all persons unless the Governor intervened.

15. Just about the time the Bill was published the question arose, so far as the Law Officers were concerned, of a native authority taking over an area that had been a township. In other words, a township ceasing to be a township by order of the Governor under section 3(d) of the Townships Ordinance (Cap.57) and the local native authority then taking over that area and administering it. From the legal point of view there were many complications of which a couple examples will suffice. A township is laid out with roads, open spaces, etc.

Now

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Now who is to have control over such matters and who ought to be able to divert roads, close them up and generally obstruct them? Why, obviously the local authority under the Townships Ordinance but the moment the township ceases to be a township there is no local authority and the native authority taking over the area has no such legislative sanction. Then again what about all the multitudinous minor, what I might call municipal, legislation governing the township which had been made by the local authority? The moment a township ceased to be a township and the local authority ceases to exist all this legislation dies. What was required therefore was that a native authority on taking over the area which was formerly a township should have vested in it all the powers of the local authority and that could have been achieved - as was suggested - by an amendment to the Townships Ordinance to enable the Govern- or to appoint a native authority as a local authority leaving the township as a township. Such an amendment would have vested all the powers of a local authority on the native authority appointed as such. That suggestion was objected to on political grounds and the old lay argument was used that all this had not been found necessary in the case of Abeokuta, Ibadan and certain other ex-townships. The answer to that of course was that because one had got away with a certain matter in the past it did not follow that one would always have that same luck and in any event if trouble did arise and the Euro- pean community said "Your native authority orders do not bind us", there would be no answer. And further the fact remained that having found this legal flaw it was up to Government to remedy it. Native authorities made orders in respect of the licensing and equipment of bicycles but as that was an order it did not apply to Europeans - who nevertheless complied with

it

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it, but if they struck, what then?

16. Fortunately as the native authority Bill was before the Legislative Council a solution to the above problem presented itself and that was to re-examine the order and rule-making clauses and ensure that in the order-making clause, i.e., No.23, there were included only those matters which could only apply to persons subject to the jurisdiction of a native authority and to insert in clause 25, the rule-making clause, all matters which could possibly apply to both (e.g., the one about bicycles which had previously been in clause 23) and at the same time to comb the Townships Ordinance reproducing in the rule-making clause all those municipal powers which the native authority should have to enable it to administer a mixed community and which would of course also be very useful in improving conditions in native towns.

17. In order to avoid having innumerable heads (and not having an inexhaustible alphabet !) many subjects have been grouped together. The following table, which is not complete, will show whence many of the new provisions of clause 25 have been taken:-

<u>Paras. of Clause 25.</u>	<u>Townships Ordinance, Cap.57.</u>
(a)	Sec.29(1)(1) and Secs.58 and 59.
(m)	Existing re bicycles but extended to include sec.29(1)(o) exclusive of motor vehicles.
(o)	Sec.29(1)(b).
(p)	Sec.60(b) and Sec.62.
(q)	Sec.29(1)(m) and (n).
(r)	Secs.70 and 71.
(s)	Sec.29(1)(c), (d) and (e).
(t)	Secs.46,48,49 and 50 and Sec.29(1)(f).
(v)	Sec.57.
(w)	Secs.51 to 54.

At this stage the native authority is vested with the necessary powers to administer an ex-township but there is still outstanding the question of the ownership of the townships property

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property and the continuation in face of the existing municipal legislation. These are provided for by clauses 54 and 55 respectively. Under the former all the townships property vests in the native authority taking over and as that necessitates the native authority having a corporate existence provision is made in the same clause for the incorporation of such native authority and the grant of a certificate of registration as a corporate body by the Governor, and under the latter clause, 55, the existing legislation is kept alive for six months unless previously replaced by legislation made by the native authority in question. In considering clause 54 attention is invited to clauses 44 to 53. It will be observed that under clause 54 a separate certificate of incorporation is required - this is to avoid the possibility of mistakes in the future.

18. While on the subject of the taking over of township areas it might be advisable to draw attention to clause 3 of the Township Local Authority Servants' Provident Fund (Amendment) Ordinance, 1943, which was also enacted at the same meeting of Council; that Bill provides that when a native authority takes over a township those local authority employees who may have been subscribing to the Provident Fund applicable to the township may elect to continue doing so and if they do so elect, then the native authority employing them must make the contributions and pay in the bonus just as if the native authority in question were in fact a local authority.

19. Having got these provisions enacted it will now be possible for the native authorities administering the ex-townships of Abeokuta, Ibadan and elsewhere to put their houses in order gradually and avoid possible future difficulties. The Provident Fund provisions do not affect the other ex-townships

as

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could make rules under section 45 of the Public Health Ordinance. That notice has, however, been cancelled and by an Order in Council native authorities have been given power to make bye-laws under this same section. We thus find the native authorities have been making orders but may now make bye-laws in respect of the same subjects. This is further complicated by the relatively recent amendments to the Public Health Ordinance under which native authorities will not make bye-laws under section 45 (and also 44) but rules, the object of this amendment being not to complicate native authority subsidiary legislation by giving them authority to make bye-laws, rules and orders as at present but restricting their class of legislation to rules and orders only. There are accordingly three classes of subsidiary legislation for this same subject namely, orders, bye-laws and rules although only rules will now be made; but under clause 30 of this Bill it will be possible for a native authority to declare that these orders or bye-laws shall be deemed to be rules and to amend them as rules by rules. This provision is only intended for use until such time as the native authorities concerned have prepared fresh and complete sets of rules governing these subjects which they can then make revoking all previous relative orders and bye-laws.

22. Then again, a native authority may be replaced by a native authority of a different name in respect of the same area, or it may be replaced by a larger number of small native authorities each administering a smaller area within the larger and in clause 31 provision will be found to enable one native authority substituted for the other native authority to take over the subsidiary legislation of the other as if it were its own; and also where two or more native authorities are substituted

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substituted in the place of a larger one for the substituted native authorities to take over the subsidiary legislation made by the previous native authority as their own in respect of the areas under their own administration.

23. Clause 33 is important it provides for the appointment and duties of an advisory council and should be found very useful by the highly developed native authorities consisting of one individual.

24. Important new provisions will be found in clauses 34 and 35. Difficulties have arisen in the past in deciding when a native authority consisting of a council or a group of persons actually meets; in other words what numbers of the members are necessary to establish a quorum; also what numbers of those present should agree on a measure for it to be adopted as an act of the native authority and furthermore how are orders and the like issued by native authorities to be executed so that the public will know that these are orders of the native authority. So far as this latter provision is concerned it has been the practice wherever possible for every person being a member of the native authority to sign the order. This necessitates innumerable signatures to documents such signatures actually in some cases taking up far more room than the order itself. Provision has now been made in the Bill by which native authorities consisting of a chief associated with a council, a council or group of persons are required to make certain standing rules relating to the subjects which are set out in paragraph (a) of clause 34(1) and they may make standing rules in respect of the matters set out in paragraph (b) of the same sub-clause. These standing rules require the approval of the Resident and in the case of subordinate native authori-

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power was almost invariably used when a chief or other person who was appointed to an office had either died or been removed and a successor had not been appointed. Instead of having these provisions in a separate Ordinance, the Ordinance of 1934 is being repealed and its provisions slightly varied will now be found in Part VI of the Bill. Clause 57 is the one chiefly changed.

29. By the Native Administration (Legal Proceedings) Ordinance, 1932 (No.19 of 1932) provision was made for the institution of suits by and against native administrations as such. This Ordinance was amended in 1933 and in a minor way in 1942, but no provision has yet been made for the method of satisfying a judgment which had been obtained against a native authority; this was seen to be necessary and therefore the existing Ordinance has been incorporated in Part VII of the Bill in clauses 59 to 63 but a new clause 64 has been added which follows the same principles that exist where a judgment is awarded against the Government, namely that on a certificate of the court the amount is paid and no execution issues.

30. Parts VIII and IX are entirely new and relate to native authority police forces and prisons respectively. For years native authorities have maintained their own police forces and such forces have been given implied recognition by different Ordinances but in no case has specific statutory authority been given for their constitution and maintenance. It is considered that the time has come for these police forces to be put on a proper statutory footing and that is the object of Part VIII of the Bill. It will be observed that existing forces are deemed to have been constituted under the Ordinance from the time when such forces were first constituted but as all members are now being brought within the Ordinance provision is made that

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their own rules their rules will supersede the Governor's regulations. It is hoped that by these means the various native authorities will be encouraged to run all their prisons at a standard not less than that of the Government prisons. Many native authority prisons are run in an exceptionally efficient manner and are all now subject to the supervision of the Director of Prisons. It is hoped that this legislation will encourage native authorities to take an even greater pride in the management of their prisons.

32. Part X contains miscellaneous provisions including the Governor's powers of delegation and the repeal of the nine Ordinances in the Schedule saving, however, all existing subsidiary legislation, pending suits and appointments made under the Ordinances repealed.

33. I would like to add a personal note to this report. I was here in April, 1934, when the Native Authority Ordinance, 1933, was brought into force and during the last nine years all the legal difficulties that have arisen in connection with that Ordinance and the administration thereof have passed through my hands, at one time or another, either as Solicitor-General or as Attorney-General. Certain of the difficulties in administration have been removed by amending legislation though not by any means all, but the Bill which has now been enacted removes every single legal difficulty that I am aware of which has been experienced and still exists. I am not suggesting that further amendment will not be necessary, the scope of administration of native authorities is growing and amendment of the law will accordingly be necessary but this Bill does carry matters very much further. It is not as complete in one respect as I would have liked and that is in connection with the power of incorporated native authorities. It

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is the desire of one or two of the very advanced native authorities which are carrying on public utility undertakings, e.g., The Ibadan Waterworks, for such native authorities to be able to acquire compulsorily the land necessary for such undertakings. At present the land must be acquired by the central government and held for the native authority in question although it will now be possible under the Bill for that land to be vested in the native authority in question. It has been agreed in principle that native authorities should, with the specific approval of the Governor be able compulsorily to acquire land for public works as amongst other reasons it is thought it will add to their prestige and they can do so far more economically than Government. A Part was accordingly drafted for inclusion in this Bill: a certain subsequent decision on policy, however, threw it all back into the melting pot and as it was likely to take some considerable time before the matter could be cleared up - as the decision also affects the Acquisition of Lands Ordinance (Cap.88) - and this draft Bill has been on the stocks for some time nearly completed it was decided to leave that question for the present and otherwise complete this Bill. If and when the details are settled and the provisions drafted it can then either be included in this Bill as a separate Part or else be contained in a separate Ordinance.

34. To sum up I think this Bill, especially since it has had added to it many municipal control provisions, marks a great step forward in native authority administration and furthermore it must be remembered that native authorities have power under other Ordinances as will e.g., sections 44 to 46 of the Public Health Ordinance (Cap.56 - see also Order in

Council

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Council No.27 of 1940) and sections 3 to 5 of the Markets Ordinance (Cap.58 - see also Ordinance 41 of 1938).

J. G. Cole
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria,
2nd. April, 1943.

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THE NATIVE AUTHORITY ORDINANCE, 1943.
ARRANGEMENT OF PARTS AND SECTIONS.

PART I.
PRELIMINARY.

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2. Definitions.

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Establishment of Office of Native Authority.

3. Establishment of native authorities.
4. Limitation of powers of native authorities.

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8. Temporary appointments as native authority or member thereof.

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9. Presumptions where person discharging specified functions is appointed.
10. Revocation of orders and appointments.
11. Removal of individual members where a body of persons is appointed a native authority.

Appointment by Native Authorities of Subordinate Native Authorities.

12. Native Authorities may constitute subordinate native authorities.
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ARRANGEMENT OF PARTS AND SECTIONS.

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ARRANGEMENT OF PARTS AND SECTIONS.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 3rd day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 17



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF THE OFFICES OF NATIVE AUTHORITIES THROUGHOUT NIGERIA, OTHER THAN IN THE TOWNSHIP OF LAGOS, THE APPOINTMENTS TO SUCH OFFICES AND THE POWERS AND DUTIES OF NATIVE AUTHORITIES.

[, 194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Enactment.

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Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

PART I.

PRELIMINARY.

Short title, application and commencement.

1. This Ordinance may be cited as the Native Authority Ordinance, 1943; it shall apply to the whole of Nigeria other than the township of Lagos and shall come into operation on a day to be fixed by the Governor by notice in the Gazette.

Definitions.

2. Definitions:—

"chief"

"chief" means any person recognised as a chief by the Governor;

"native"

"native" means any native of Nigeria who is ordinarily subject to the jurisdiction of a native court;

"native authority"

"native authority" means a native authority appointed under this Ordinance in respect of the specified area for which such native authority is appointed and includes unless the context otherwise requires a subordinate native authority;

"Resident"

"Resident" means:—

(a) in the Protectorate, the officer appointed by the Governor to be in charge of the province concerned;

(b) in the Colony, the Commissioner of the Colony;

"subordinate native authority"

"subordinate native authority" means a native authority directed by the Governor to be subordinate to any other native authority and a native authority constituted by another native authority in accordance with the provisions of this Ordinance;

"court"

"court" means a court presided over by a Commissioner of the Supreme Court, a Magistrate's Court and a Native Court.

PART II.

ESTABLISHMENT AND APPOINTMENT OF NATIVE AUTHORITIES.

Establishment of office of Native Authority.

Establishment of native authorities.

3. The Governor may by notice in the Gazette:—
(a) constitute the office of native authority for any specified area;

(b) direct that any office of native authority so constituted shall be subordinate to another office of native authority.

4. When constituting the office of a native authority, or at any time thereafter, the Governor may direct that such authority shall exercise only such of the powers conferred upon native authorities by this Ordinance as he may specify, and when any such direction shall have been given this Ordinance shall be deemed to confer upon such authority only such powers as the Governor shall have specified.

Limitation of powers of native authorities.

Appointments to Native Authorities in the Protectorate.

5. (1) The Governor may by notice in the Gazette appoint to any office of native authority so constituted in the Protectorate:—

- (a) any chief or other person;
- (b) any chief associated with a council;
- (c) any council;
- (d) any group of persons.

Appointments to native authorities in the Protectorate.

(2) Where in the Protectorate a native authority consisting of a chief associated with a council, or a council or a group of persons is appointed by the Governor to be a native authority the Governor may:—

- (a) specify the composition of such council with which a chief is associated, council or group of persons; or
- (b) direct that the composition of such council with which a chief is associated, council or group of persons be regulated in accordance with the native custom of the community concerned.

Appointments to Native Authorities in the Colony.

6. The Governor may by notice in the Gazette appoint to any office of native authority so constituted in the Colony:—

- (a) any council; or
- (b) any group of persons,

such council or group of persons being comprised of not less than five persons.

Appointments to native authorities in the Colony.

7. (1) Where no native authority has been appointed under section 6 for any specified area the Governor may by notice in the Gazette appoint a district officer as the native authority for that area and such officer shall have all the powers of a native authority appointed under this Ordinance or such of those powers

District Officer may be appointed native authority in the Colony.

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as may be specified under the notice appointing him or in any subsequent notice in the Gazette.

(2) Any act performed by a District Officer appointed as a native authority under this section in connection with his appointment as a native authority shall have the same force and effect as if it were an act performed by a native authority in the exercise of its power and duties under this Ordinance.

Appointments to Native Authorities for specified periods of time.

Temporary appointments as native authority or member thereof.

8. A person may be appointed as a native authority or as a member of a native authority for a specified period of time and such person shall upon the expiration of that period cease to be a native authority or a member of a native authority, as the case may be, but may thereafter be appointed either as a native authority or as a member of a native authority and either for a specified or for an unspecified period of time.

General Provisions relating to the appointment of members of Native Authorities.

Presumptions where person discharging specified functions is appointed.

9. Where the person or persons for the time being discharging specified functions, or being a member of a specified group is appointed to be a native authority or a member of a native authority a person shall be deemed to be lawfully discharging such functions or to be lawfully a member of such group if and so long as he is so recognised by the Governor or by such person as the Governor may direct.

Revocation of orders and appointments.

10. The Governor:—

(a) may at any time revoke, suspend or vary any constitution, appointment, direction or order made by him under sections 3 to 8 and,

(b) may at any time order that any person or persons appointed to be a member or members of a native authority shall cease to be such member or members, and thereupon such person or persons shall cease to be a member or members of such native authority.

Removal of individual members where a body of persons is appointed a native authority.

11. Where a chief associated with a council, a council or any group of persons is appointed as such to be a native authority the Governor may at any time direct that any individual member or members of such council with which a chief is associated, council or group of persons, either personally or in a representative

capacity, shall cease to be a member or members of the native authority and thereupon the person to whom such direction relates shall either personally or in a representative capacity, as the case may be, cease to be a member of such native authority.

Appointment by Native Authorities of Subordinate Native Authorities.

12. (1) Any native authority may by order, with the prior approval of the Governor, constitute the office of native authority for any specified area within the limits of its jurisdiction.

(2) Every native authority so constituted shall be a subordinate native authority and such subordinate native authority shall be so called and shall be subordinate to the native authority constituting it.

13. A native authority may appoint to such office so constituted by it:—

- (a) if within the Protectorate—
 (i) any chief or other person;
 (ii) any chief associated with a council;
 (iii) any council;
 (iv) any group of persons,

- (b) if within the Colony—
 (i) any council; or
 (ii) any group of persons,

such council or group of persons being comprised of not less than five persons.

14. (1) When a native authority constitutes the office of subordinate native authority under the provisions of section 12 it shall by the same order:—

- (a) vest in such subordinate native authority all the powers which such native authority may itself exercise; or
 (b) such of the powers which such native authority may itself exercise as may seem expedient,

and may at any subsequent time by order restrict or vary the powers of any such subordinate native authority constituted under the provisions of paragraph (a) or increase, further restrict or vary the powers to be exercised by any such subordinate native authority constituted under the provisions of paragraph (b).

Native authorities may constitute subordinate native authorities.

Appointments to subordinate native authorities

Powers of subordinate native authorities.

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(2) A subordinate native authority constituted under the provisions of section 12 shall, subject to the terms of the order made under the provisions of sub-section (1), have, exercise and perform all the powers and duties of a native authority under this Ordinance.

Application of sections 9-11 to subordinate native authorities.

15. The provisions of sections 9, 10 and 11 shall apply to subordinate native authorities in all respects as if such authorities had been constituted by and appointments made thereto by the Governor; and in addition a native authority may, in respect of a subordinate native authority constituted by it under section 12 and in respect of appointments made thereto by it under section 13, exercise in respect of such subordinate native authority similar powers to those which the Governor may exercise under the aforesaid sections in respect of native authorities appointed by him.

Existing Native Authorities.

Existing native authorities deemed constituted under this Ordinance. No. 43 of 1933. No. 39 of 1937.

16. Every office of native authority constituted under the Native Authority Ordinance, 1933, or under the Native Authority (Colony) Ordinance, 1937, and existing at the coming into operation of this Ordinance, shall be deemed to have been constituted under and in accordance with the provisions of this Ordinance.

Existing appointments deemed appointments under this Ordinance.

17. Every:—

- (a) chief or other person;
- (b) chief associated with a council;
- (c) council;
- (d) group of persons,

who or which at the coming into operation of this Ordinance was appointed as a native authority or as a member of a native authority within the meaning of the Native Authority Ordinance, 1933, or the Native Authority (Colony) Ordinance, 1937, shall be deemed to be appointed as a native authority or as a member of a native authority under and in accordance with the provisions of this Ordinance for the area for which he or it was appointed the native authority or was a member of the native authority on the coming into operation of this Ordinance.

No. 43 of 1933. No. 39 of 1937.

18. (1) Every native authority being a subordinate native authority on the coming into operation of this Ordinance shall remain subordinate to the native authority to which the Governor has directed that it shall be subordinate.

Existing subordinate native authorities to remain as such under this Ordinance.

(2) The Governor may by notice in the Gazette declare that any native authority which he has constituted or may constitute and which he shall have directed or may direct shall be subordinate to another native authority shall be deemed to have been constituted by the native authority to which it is or is directed to be subordinate and thereupon the provisions of sections 13, 14 and 15 shall apply to such subordinate native authority as if the native authority to which it is subordinate, and not the Governor, had constituted it.

PART III.

POWERS AND DUTIES OF NATIVE AUTHORITIES.

Jurisdiction of Native Authorities.

19. It shall be the duty of every native authority to perform the obligations by this Ordinance imposed and generally to maintain order and good government in the area over which its authority extends, and for the fulfilment of this duty it shall have and exercise over the natives residing or being in such area the powers by this Ordinance conferred in addition to such powers as may be vested in it by any other Ordinance or by any native law or custom, and, subject to any directions given by the Governor under sections 4 and 20, all such natives shall be deemed to be subject to the jurisdiction of the native authority.

Duties and powers of native authorities.

20. The Governor may direct that any or all of the powers conferred by this Ordinance shall not be exercised over such natives or classes of natives as he may designate and so far as regards such powers the native authority shall not be deemed to have jurisdiction over such natives or classes of natives within the meaning of this Ordinance.

Exceptions as regards persons over whom powers may be exercised.

21. The Governor in Council may with the approval of the Secretary of State by Order declare that native authorities or any class of native authorities or any particular native authorities shall have and exercise over any persons other than natives or classes of such persons residing or being in the several areas of the

Extensions as regards persons over whom jurisdiction may be exercised.

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native authorities, all or any of the powers conferred upon or vested in native authorities by this or any other Ordinance, and so far as regards such powers native authorities or such class of native authorities or such particular native authorities shall be deemed to have jurisdiction over such persons or classes of such persons:

Proviso.

Provided that an Order made under this section shall not come into force without the consent, signified by resolution, of the Legislative Council, in so far as the Order relates to the Colony and to the Southern Provinces.

Duties of Native Authorities relating to Crime.

Prevention of crime.

22. (1) It shall be the duty of a native authority to interpose for the purpose of preventing, and to the best of its ability to prevent, the commission of any offence within the area of its authority by any person subject to its jurisdiction.

(2) (a) A native authority knowing of a design to commit an offence within the area of its authority by any person subject to its jurisdiction, may arrest or direct the arrest of such person, if it appears to such authority that the commission of the offence cannot be otherwise prevented.

(b) Any person so arrested shall, unless he be released within twenty-four hours of his arrest, be taken forthwith before a court having jurisdiction over him.

(3) Every native authority receiving information that any person subject to its jurisdiction who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, is within the area of its authority, shall cause such person to be arrested and taken forthwith before a court having jurisdiction over him.

(4) Every native authority receiving information that property of any description which has been stolen, whether within or without the area of its authority, is within such area, shall cause such property to be seized and detained pending the order of a court having jurisdiction in the matter, and shall forthwith report such seizure and detention to such court.

(5) Where a native authority consists of a chief associated with a council the duties and powers vested by this section on a native authority shall also vest in and be exercisable by the chief and by each individual member of the council.

Legislative Powers of Native Authorities.

23. Subject to the provisions of any Ordinance or other law for the time being in force, a native authority may, subject to the general or specific directions of the native authority, if any, to which it is subordinate, issue orders, to be obeyed by such persons within its area as may be subject to its jurisdiction and to whom the orders relate, for all or any of the following purposes:—

Powers of native authority to issue orders.

- (a) prohibiting, restricting or regulating gambling;
- (b) prohibiting, restricting or regulating the carrying and possession of weapons;
- (c) prohibiting, restricting or regulating the cutting or destruction of trees growing on communal or native lands;
- (d) prohibiting, restricting or regulating the migration of natives from or to the area of its authority;
- (e) regulating child betrothals within the area of its authority and prescribing safeguards to be taken—
 - (i) when the child betrothed leaves the place in which her parents or guardians reside but does not leave the area of authority of the native authority making the order;
 - (ii) when the child betrothed leaves the area of authority of the native authority making the order;
 - (iii) when the child betrothed in some other area enters the area of the native authority making the order;
- (f) requiring the marriage, birth or death of any persons subject to its jurisdiction to be reported to it or to such person as it may direct;
- (g) prohibiting, restricting or regulating the movement in or through the area of its authority of livestock of any description;
- (h) prohibiting, restricting or regulating the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush in contravention of any law or regulation;

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- (i) requiring any native to cultivate land to such extent and with such crops as will secure an adequate supply of food for the support of such native and of those dependent upon him;
- (j) prohibiting, restricting or regulating or requiring to be done any matter or thing which the native authority, by virtue of any native law or custom for the time being in force and not repugnant to morality or justice, has power to prohibit, restrict, regulate or require to be done;
- (k) prohibiting the hindrance or interruption of the free passage of any person transporting goods or produce along any path or road leading to any town or village;
- (l) protecting vegetation along any road or path;
- (m) specifying fees or charges to be paid in respect of any matter or act for which provision is made in any order; and
- (n) for any other purpose, whether similar to those hereinbefore enumerated or not, which may, by notice published in the Gazette, be sanctioned by the Governor, either generally or for any particular area or native authority.

Powers of Residents in relation to orders which may be issued by native authorities.

24. (1) Whenever in the opinion of a Resident it is expedient for the good order and government of the area of a native authority that any order should be issued which such authority is empowered to issue by section 23, the Resident may direct the native authority to issue and enforce any such order, and if the native authority shall neglect or refuse to issue the order which it is so directed to issue, the Resident may himself issue such order and thereupon such order, when made known in the manner prescribed by section 28, shall have the same force and effect as if it had been issued by the native authority.

(2) When a Resident is of opinion that any order issued by a native authority should not have been issued or should not be enforced, he may direct the native authority to revoke such order or to refrain from enforcing such order, or may himself revoke such order and may, with the consent of the Governor, require the repayment of any fine imposed by a court or the release from custody

of any person sentenced to imprisonment by the court for contravention of such order, whether before or after his direction to revoke or to refrain from enforcing such order, or his revocation of such order, was issued.

25. (1) Subject to the provisions of any Ordinance or other law for the time being in force a native authority, with the concurrence of the native authority, if any, to which it is subordinate, and subject to the approval of the Governor, may make rules:—

Powers of native authority to make rules.

- (a) for the regulating, controlling or promoting of trade or industry and regulating the carrying on of any offensive trade;
- (b) prohibiting, restricting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession and consumption of intoxicating liquors;
- (c) for the purpose of exterminating or preventing the spread of tsetse fly;
- (d) prohibiting or regulating the removal from any place of African antique work of art and generally for the protection and preservation thereof;
- (e) prohibiting or regulating the capture, killing or sale of fish or any specified kind or kinds of fish;
- (f) (i) prohibiting cruelty to animals or specified acts of cruelty to animals, and
(ii) authorising the detention for treatment of any animal suffering from the effects of cruelty;
- (g) prohibiting any act or conduct which in the opinion of the native authority might cause a riot or a disturbance or a breach of the peace;
- (h) preventing the pollution of the water in any stream, water-course or water-hole, and preventing the obstruction of any stream or water-course;
- (i) preventing the spread of infectious or contagious disease, whether of human beings or animals, and for the care of the sick;

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- (j) requiring persons to report the presence within the area of its authority of any person who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, or of any property stolen or believed to have been stolen within or without the area of its authority;
- (k) declaring any area specified in any such rules to be a public burial ground, requiring the burial of all persons who die within the jurisdiction of the native authority making the rules in such burial ground, requiring the burial of a dead body within a specified period after death, and imposing on any person named in the rules the duty of causing any dead body to be buried;
- (l) regulating animal traffic along highways;
- (m) (i) requiring bicycles and vehicles other than motor vehicles to be licensed, authorising the exaction of fees for licences issued in respect of bicycles and such vehicles, and
 - (ii) specifying the equipment with which bicycles and such other vehicles must be fitted, and generally for regulating and controlling the riding of bicycles and the use of such other vehicles, and
 - (iii) generally for all purposes incidental to subparagraphs (i) and (ii);
- (n) requiring people to carry lamps during such hours and within such places or areas as may be specified in the rules;
- (o) prohibiting or regulating the hawking of wares, or the erection of stalls on or near any street;
- (p) declaring any land to be an open space and the purposes for which such space is to be used or occupied and regulating such use or occupation;
- (q) (i) for the prevention of fires, and
 - (ii) providing for the establishment of fire brigades, and
 - (iii) prescribing the duties of the members of such brigades and

- (iv) generally in connection with any matters relating to the extinguishing of fires and to the custody and use of appliances provided for such purpose;
- (r) (i) for the licensing of buildings or other places for the performance of stage plays or the display of cinematograph films, and
 - (ii) prescribing the building materials thereof and the mode of building, seating accommodation, entrances, exits and all other matters appertaining to the same, and
 - (iii) prescribing against overcrowding and for the control and prevention of fire, and
 - (iv) prescribing for the maintenance of good order therein and for the entry and inspection during any performance or display or at any time by any police officer or person authorised so to do;
- (s) (i) for the appointment, management and control of pounds, and
 - (ii) prescribing the powers and duties of pound masters, and
 - (iii) for the seizing and impounding of stray animals, the recovery of expenses incurred in connection therewith, and
 - (iv) for the sale of impounded animals and the disposal of the proceeds of any sale;
- (t) (i) regulating the repairing, improving, stopping or diverting of streets, water-courses or drains, preventing obstructions thereto, and the mode of objection to the stopping or diverting thereof, and
 - (ii) regulating the construction of new streets, water-courses or street drains and building lines, and
 - (iii) regulating the cutting, uprooting, topping, injuring or destroying any tree growing in any street, and
 - (iv) regulating traffic in any street;

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- (u) with regard to public services provided by the native authority in any capacity and for the imposition of general or other rates in respect of the same;
- (v) providing for the fencing of land or any particular land and for the maintenance and repair of such fences;
- (w) (i) providing for the demolition of dangerous buildings, and
 - (ii) enabling some person or persons to carry out such demolition at the expense of the owner in default of the owner so doing, to remove and sell the materials of any building so demolished, and
 - (iii) regulating the procedure by which such expenses may be recovered;
- (x) providing for the peace, good order and welfare of the persons within the area of its authority;
- (y) specifying fees or charges in respect of any matter or act for which provision is made in any rule; and
- (z) imposing as penalties for the breach of any rule, a fine not exceeding twenty-five pounds or imprisonment not exceeding six months or both fine and imprisonment.

(2) Subject to any exception specified in such rules, all rules made under sub-section (1) shall apply to all persons who are subject to the jurisdiction of the native authority, and may apply to all other persons or to such other persons as the rules may either generally or more particularly specify.

(3) The Governor may at any time revoke any rule made by a native authority under this section and such revocation shall be made known in the manner herein prescribed for the promulgation of such rule and shall thereupon have effect.

(4) A person subject to the jurisdiction of a native authority who may be accused of an offence against rules made under this section may be arrested in accordance with a warrant obtained under section 42.

26. (1) When a native authority issues an order under section 23 or a Resident issues an order under section 24, the native authority or the Resident, as the case may be, may specify a penalty for the breach thereof and may specify different penalties in the case of successive breaches, and such penalty or penalties shall be made known in the manner prescribed by section 28:

Breaches of orders under sections 23 and 24.

Provided that the penalty shall not exceed a fine of twenty-five pounds or imprisonment for six months or both such fine and imprisonment.

Proviso.

(2) Where no penalty is specified and made known under sub-section (1) for the breach of an order issued by a native authority under section 23 or by a Resident under section 24, any person who contravenes or fails to obey the order shall be liable to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) Any person accused of the breach of such an order may be arrested in accordance with a warrant obtained under section 42.

Signification and Promulgation of Orders and Rules.

27. (1) Where a native authority comprises more than one person and such native authority gives or makes any orders or rules which by virtue of and subject to the provisions of this or any other Ordinance, it is empowered to give or make such giving or making shall, subject to the provisions of sub-section (2), be signified in accordance with the provisions of the standing rules of the native authority giving or making the order or rule, such standing rules being made in accordance with the provisions of and under the authority of section 34.

Signification of orders and rules.

(2) Unless and until such standing rules have been made by such a native authority and countersigned by the Resident the giving or making of any order or rule by the said authority may be signified by such member or members of that native authority as may be authorised in that behalf by the Resident either generally or specifically.

(3) Any authorisation made by a Resident under the provisions of sub-section (2) shall be kept and filed in the office of the Divisional Officer concerned.

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Publication of orders and rules.

28. (1) Subject to any specific or general directions given by the Governor every order issued under section 23, other than an order issued to an individual, and all rules made under section 25 shall be made known in such manner as is customary in the area of the native authority by which the order is issued or the rule made and thereupon the order or rule shall be in force and shall be binding upon and be obeyed by all persons by whom the order or rule, as the case may be, is to be obeyed or observed.

(2) Without prejudice to any other mode of proof, a certificate purporting to be signed by an administrative officer shall be sufficient evidence:—

- (a) of the terms of any such order or rule;
- (b) that the concurrence of a superior native authority, if such was necessary, has been obtained;
- (c) that the approval of the Governor, if necessary, has been given; and
- (d) that the order or rule has been made known as required by this section.

(3) Every order directed to an individual shall be binding upon him on his being notified thereof by or on behalf of the native authority.

(4) The provisions of this section shall also apply to rules made by native authorities under the authority of any other Ordinance existing at the coming into force of this Ordinance notwithstanding that such other Ordinance requires such rules to be published in the Gazette.

Other Powers of Native Authorities.

Powers of native authority to order stranger to leave its area.

29. (1) A native authority may order any person who, although subject to the jurisdiction of the native authority, is not a member of the native community living in the area of its authority, and who fails, when so required by the native authority, to produce reasonable proof to the native authority that his means and legitimate labour are sufficient for the adequate support of himself and his dependents, to leave such area within such time after the order has been communicated to him, not being less than fourteen days, as the native authority may direct:

Proviso.

Provided, however, that any person so ordered to leave such area may within fourteen days of the order being communicated to him appeal against the order to a court presided over by a

magistrate, but the court shall not set aside the order unless such person satisfies the court that his means and legitimate labour are sufficient for the adequate support of himself and his dependents.

(2) Any person who fails to obey an order made under this section, or who, having left the area which he was directed by the order to leave, returns to such area without the consent of the native authority, shall be liable to a fine of twenty-five pounds or to imprisonment for six months, or to both such fine and imprisonment.

Special provisions relating to Subsidiary Legislation under different Legislative authorities made by different Native Authorities.

30. Where a native authority has enacted any rule or bye-law or issued any order in accordance with the provisions of any law and subsequently such native authority is authorised under different legislative authority to enact any rule or issue any order in respect of substantially the same subject matter as that previously made or issued such native authority may:—

Subsidiary legislation made under one authority may in certain cases be varied under another.

- (a) amend, vary, modify or repeal such previous enactment by means of the legislative authority subsequently vested in the said native authority even though such previous enactment is being amended, varied, modified or repealed by an enactment of a different kind;
- (b) declare, by means of an enactment under the subsequent legislative authority, that the prior enactment shall be deemed to be a rule or order, as the case may be, made or issued under the provisions of the subsequent authority; and thereupon such rule, bye-law or order as aforesaid shall be deemed to be a rule or order, as the case may be, made or issued under the latter legislative authority and be in full force and effect, save in so far as the same may be in conflict with any of the provisions authorised to be made or issued by the subsequent legislative authority.

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Effect in subsidiary legislation where another native authority is substituted.

31. Where any bye-law has been made, or where any rule or order has been made or issued or may hereafter be made or issued, by a native authority and another or two or more native authorities are substituted for such native authority aforesaid and such substituted native authority or authorities is or are authorised to make or issue similar rules or orders; then all such existing rules, bye-laws or orders shall, in so far as they relate to the area under the jurisdiction of such substituted native authority or authorities, be deemed to have been made by such substituted native authority or authorities and may be amended, varied, modified and repealed by such latter native authority or authorities in so far as they relate to the area within the jurisdiction of such substituted native authority or authorities.

Section 30 to apply to original and substituted native authorities.

32. The provisions of section 30 shall apply not only in respect of the native authority which originally made or issued such rule, bye-law or order but also, where another or two or more native authorities are substituted for the native authority which originally made or issued such rule, bye-law or order, to such latter native authority or authorities in respect of the area within the respective jurisdiction of such latter native authority or authorities.

Conduct of business of Native Authorities.

Appointment and duties of advisory councils.

33. (1) Where a chief or other person is appointed a native authority such chief or other person may, subject to the approval of the Governor, appoint certain persons to be an advisory council.

(2) The constitution of any such council shall not be altered save with the prior approval of the Governor.

(3) The chief or other person appointed a native authority as aforesaid may require any such council to perform such duties on behalf of, and to render such assistance to, the native authority as may be specified by rules made by a native authority as hereinafter provided in section 35.

Standing rules of native authorities with a membership of more than one person.

34. (1) Where a native authority consists of a chief associated with a council, a council or a group of persons such native authority:—

(a) shall make standing rules in respect of the following matters—

(i) the minimum number of members necessary to constitute a meeting of the native authority;

- (ii) the minimum number of members comprising the said native authority whose assent, recorded at any one meeting of the native authority, shall be necessary to validate a resolution or any other act of the said native authority;
- (iii) by whom and in what manner the assent or other action of the native authority shall be signified on documents;
- (iv) the person who shall preside either permanently or temporarily or on special occasions at the meetings of the native authority when such authority consists of a council or group of persons.
- (b) may make standing rules in respect of the following matters—
- (i) procedure at meetings of the said native authority;
- (ii) the manner in which notices should be given of meetings and the subjects to be considered thereat;
- (iii) the times at which meetings shall be held and the notices therefor;
- (iv) the control of the general public within the vicinity of the place where meetings are being held by the native authority;
- (v) generally for furthering the due, proper and orderly conduct of the business of the native authority; and
- (vi) generally for enabling decisions of the native authority to be given effect to in the simplest, speediest and most efficient way.

(2) Any standing rule made under this section and any amendment of any such rule shall be subject to the approval of the Resident and require his counter signature before it shall take effect.

(3) After a standing rule or any amendment thereof has been countersigned by the Resident such standing rule shall be binding upon the proceedings of the native authority which made it until such time as the rule shall be revoked or varied and any decision or act of a native authority made or taken in accordance with such standing rules shall be of the same force and validity as an act of all the members of the native authority acting together and in unity.

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(4) When a native authority making a standing rule is a subordinate native authority it shall obtain the approval of the native authority to which it is subordinate before submitting the rule for the approval of and counter signature by the Resident.

(5) Standing rules under paragraph (a) of sub-section (1) shall be made as soon as practicable after the coming into force of this Ordinance and until such standing rules shall be approved of and countersigned by the Resident the native authority may continue to conduct its business in the same manner as heretofore with such variations as may from time to time be approved of by an administrative officer.

Standing rules where a chief or other person is appointed native authority.

35. (1) Where a chief or other person is appointed as a native authority such chief or other person may make standing rules in respect of the conduct of the business of the native authority to which he has been appointed.

(2) Such rules may include provisions providing for the conduct of the business of advisory councils appointed under section 33, their duties, and in addition provisions similar to those which a native authority consisting of a chief associated with a council or a group of persons may make under section 34.

(3) If standing rules are made in accordance with the provisions of this section such rules shall require the signature of the Resident as provided for in sub-section (2) of section 34 and shall remain in force and be binding on the proceedings of the native authority which made them so far as they are applicable thereto and upon the advisory councils to which they relate until such time as the rules shall be varied or repealed.

PART IV.

Legal Proceedings and Offences.

Penalty to which native authorities are liable

36. (1) A native authority shall be liable to a fine of fifty pounds upon conviction of any of the following acts or defaults:—

- (a) if it shall wilfully neglect to exercise the powers by this Ordinance conferred upon it for or in respect of the prevention of offences or the bringing of offenders to justice, or the seizure of property stolen or believed to have been stolen;
- (b) if when required by an administrative officer to give a direction to any person under section 38 it shall wilfully neglect to do so;

- (c) if when directed by a Resident under sub-section (1) of section 24 to issue orders for any of the purposes specified in section 23 it shall wilfully neglect to issue the orders directed;
 - (d) if it shall wilfully neglect to enforce any orders issued by it under section 23 under the direction of a Resident under sub-section (1) of section 24 or issued by a Resident under the powers conferred on a Resident by sub-section (1) of section 24;
 - (e) if it shall wilfully neglect to revoke an order when directed by a Resident under the powers conferred on him by sub-section (2) of section 26, or if it shall enforce or attempt to enforce any order after it has been directed as aforesaid to refrain from so doing;
 - (f) if it shall wilfully neglect to enforce any lawful order issued by a native authority to which it is subordinate;
- or
- (g) if it shall be guilty of any abuse of authority conferred on it by this Ordinance or by any other law or by native custom.

(2) When a group of persons is collectively appointed to be a native authority proceedings may be taken against all or any members of such authority, either together or separately, in respect of any act or default punishable under this section, and upon proof of the commission of an offence by such authority every member thereof shall individually be liable to the penalties prescribed unless he shall satisfy the court that he was in no way responsible for or a party to the commission of the offence.

(3) Subject to the provisions of the proviso to sub-section (4) no proceedings shall be taken in respect of an offence under this section without the permission of the Governor.

(4) Proceedings under sub-section (3) shall be brought in the Supreme Court or the High Court:

Provided that where a native authority is subordinate to any other native authority and the area for which it was appointed is within the jurisdiction of a native court of grade A, such subordinate native authority or any members thereof may be tried for such an offence by such native court without the permission of the Governor.

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Duty of natives to assist native authorities.

37. (1) It shall be the duty of every person subject to its jurisdiction, when thereto required by a native authority, to assist in carrying out the duties imposed upon such authority by this or any other Ordinance or, in the case of natives, by any native law or custom.

(2) Every person so required by a native authority shall be deemed to be empowered to do all that may be reasonably necessary to give effect to any lawful order given by such authority.

Duty to attend before native authority certain officers and court.

38. (1) Every person, being a member of or subject to the jurisdiction of a native authority, shall, when so directed by the native authority or by an administrative officer, attend before such native authority or administrative officer or any other Government officer or before a native court having jurisdiction over such person.

(2) Any such person who when so directed to attend before any such authority, administrative officer, other Government officer or court shall, without reasonable excuse, neglect or refuse to attend as and when directed may be arrested in accordance with a warrant obtained under section 42 and taken before such authority, administrative officer, other Government officer or court.

Penalties for offences.

39. (1) Whoever:—

- (a) contravenes or fails to obey any direction which by this Ordinance he is bound to obey;
- (b) obstructs or interferes with the lawful exercise by a native authority of any powers conferred by this Ordinance,

shall be liable to a fine of twenty-five pounds or to imprisonment for six months or to both such fine and imprisonment.

(2) Whoever, not being a person exercising administrative functions with the approval of the Governor, or a native authority, or a chief, shall profess to exercise administrative functions, or hold himself out to be a chief or assume the powers of a native authority, shall be liable to a fine of fifty pounds or to imprisonment for one year or to both such fine and imprisonment:

Proviso

Provided that no proceedings shall be taken for an offence against this sub-section without the consent of the Attorney-General.

(3) Any person accused of an offence against this section may be arrested in accordance with a warrant obtained under section 42.

40. (1) Everyone who conspires against or in any manner attempts to undermine the lawful power and authority of any native authority, shall be liable to a fine of one hundred pounds or to imprisonment for one year, or to both such fine and imprisonment. Penalty for conspiring against native authority.

(2) No proceedings shall be taken for an offence against this section without the consent of the Attorney-General.

(3) Proceedings for offences under this section shall be brought in the Supreme Court or the High Court unless the Governor directs in any special case that a charge in respect of a particular offence shall be brought before a particular native court in which case such native court shall have full jurisdiction and authority to hear and determine such charge and impose a penalty in respect thereof.

41. No native court shall be precluded from trying an offence under this Ordinance by reason of the fact that such offence, if committed, was a breach of an order, direction or rule issued or made by any member of the court as a native authority or member of a native authority. Preservation of jurisdiction of courts concerned in the issue of subsidiary legislation.

42. (1) Where it is desired that any person should be arrested under:— Procedure for arrest under certain sections.

- (a) sub-section (4) of section 25;
- (b) sub-section (3) of section 26;
- (c) sub-section (2) of section 38; or
- (d) sub-section (3) of section 39.

any member of a native authority or any district head, village head, or ward head shall if time permits, and it is otherwise practicable to obtain a warrant, apply to a court having jurisdiction over such person for a warrant directing the arrest of such person, and such warrant shall be issued if the court considers it is a proper case for the issue of a warrant.

(2) Where time does not permit or where for any reason it is otherwise impracticable to obtain a warrant in accordance with the provisions of sub-section (1), any member of a native authority or any district head, village head or ward head may arrest or cause to be arrested such person and such person shall forthwith be taken before a court having jurisdiction over him to be dealt with according to the law.

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Supreme Court or High Court to determine if individual is subject to native authority.

43. (1) Where any person alleges in respect of any particular matter that he is not subject to the jurisdiction of a native authority or of a rule made by a native authority such person may upon application to the Supreme Court or to the High Court have the question whether he is or is not so subject determined by such court in respect of the particular matter in connection with which the allegation arose.

(2) Upon such determination the Supreme Court or High Court shall make such declaration as to the court seems just.

PART V.

INCORPORATION OF NATIVE AUTHORITIES
Method and Effect of Registration.

Incorporation of native authorities.

44. Native authorities may become corporate bodies and for that purpose may apply to the Governor in manner hereinafter mentioned for a certificate of registration as a corporate body; and if the Governor shall consider such incorporation expedient for the more effective carrying out of the duties and powers of such native authority he may grant such certificate accordingly and thereupon such native authority shall become a body corporate by the name described in the certificate.

Contents of certificate of incorporation.

45. (1) A certificate of incorporation granted by the Governor shall be granted subject to such conditions and directions generally as the Governor shall think fit to insert in such certificate and in particular with reference to the custody and use of the common seal, the amount of land which any such native authority may hold and the purposes for which such land may be held and used.

(2) In addition to the provisions of sub-section (1) a certificate may be granted containing conditions authorising the native authority, with the approval of the Governor, to acquire and hold lands in the future in addition to any lands held at the time of the incorporation or which it is proposed should be held on the incorporation of the native authority.

(3) Where a certificate is granted as in sub-section (2) the lands in question need not be specified in the certificate at the time of issue but where subsequently the Governor approves of the native authority holding other lands a description of such other lands and the purpose for which they are to be held shall be endorsed upon the certificate.

46. Every native authority which has become a body corporate as hereinbefore mentioned shall have perpetual succession and a common seal and power to sue and be sued in manner hereinafter appearing.

Incorporated native authorities to be body corporate.

47. Every native authority which has become a body corporate shall subject to such conditions and terms as have been included in the certificate have power to hold and acquire, and by instruments under such common seal to convey, assign and demise, any land or any interest therein now or hereafter belonging to or acquired by or held by such native authority.

Incorporated native authorities may hold lands.

48. The certificate of incorporation shall vest in such body corporate all land or any interest therein, of what nature and tenure soever, belonging to or held by or purporting to belong to or to be held by the native authority as such before the date of incorporation.

Vesting of existing interests in native authority upon incorporation.

49. (1) Every application to the Governor for a certificate under this part of the Ordinance shall be in writing, signed by the native authority making the same, and shall contain particulars relating to:—

Application for incorporation.

- (a) the proposed device of the common seal;
- (b) rules for the custody and use of the common seal; and
- (c) the land now held by the native authority or which it proposes to hold and the purposes for which such land is to be held.

(2) The Governor may require such other particulars and information, if any, as he may think fit.

50. A certificate of incorporation granted in accordance with the provisions of this part of the Ordinance shall be conclusive evidence that the preliminary requisitions herein contained and required in respect of such incorporation have been complied with; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Certificate prima facie evidence of incorporation and date thereof.

51. The Governor shall in such manner as he shall think fit, direct a record to be kept of all such applications for certificates of incorporation and shall at such time and in such manner as he may think necessary notify in the Gazette the fact that certificates of incorporation have been issued and the native authorities to which the same have been issued.

Register of certificates.

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Conditions in certificate binding on native authority.

52. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the native authority to which it relates.

Seal.

53. (1) The common seal of the corporate body shall have such device as may be approved by the Governor and until such common seal is provided the Governor may authorise for use as the common seal of the corporate body such other seal as he may approve.

(2) Any instrument to which the common seal of the corporate body, or the seal approved of by the Governor prior to the provision of the common seal, has been affixed in apparent compliance with the rules for the use of such common seal referred to in sub-section (1) of section 49 shall be binding on such corporate body notwithstanding any defect or circumstances affecting the execution of such instrument.

Administration of Former Township Areas.

Procedure when township taken over by native authority.
Chapter 57.

54. When any area or place which was formerly a township under the provisions of the Townships Ordinance, or any Ordinance amending or replacing that Ordinance, ceases to be a township and is thenceforth to be administered by a native authority all property formerly vested in the local authority and all streets, open spaces, township buildings and other township property whatsoever shall vest in such native authority and the Governor shall accordingly grant a certificate of registration as a corporate body to such native authority in respect of all such premises and property.

Procedure regarding township subsidiary legislation.

55. Where any native authority is granted a certificate of registration under the provisions of section 54 all rules, bye-laws and notices made and issued by such local authority in respect of the particular area or place shall be enforced by the native authority as if it were the local authority which it has replaced, and any such rule, bye-law and notice shall remain in operation for a period of six months from the date of the grant or until such time, within that period, as it is replaced by a rule or order made under the provisions of this or any other Ordinance and for this purpose the native authority shall have power to revoke any or all of the rules, bye-laws and notices so replaced.

PART VI.

Vacancy in office of Native Authority.

56. Where the office of native authority constituted for any area is for the time being vacant, the Governor may by notice in the Gazette appoint any administrative officer to such office.

Governor may appoint administrative officer to office of native authority.

57. When the Governor has made an appointment in the Colony under section 7 or has appointed an administrative officer to act under section 56 the relevant provisions of this Ordinance shall apply *mutatis mutandis* save that section 29 shall, for the purposes of this section, be construed as if for the words "a court presided over by a magistrate" there were substituted the words "a court presided over by a judge".

Application of Ordinance to administrative officers functioning as native authorities.

58. No act done by an administrative officer appointed under section 56 in the exercise of any power conferred upon him in virtue of this Ordinance with reference to the area for which he is appointed, shall be deemed to be invalid by reason only of the fact that the act was not done within such area.

Validity of exercise of powers from without area of appointment.

PART VII.

Civil Legal Proceedings by and against Native Authorities.

59. In this Part:—

"court" includes the Supreme Court, the High Court, a court presided over by a magistrate and a native court;

"suit" includes action, means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by rules of court and does not include a criminal proceeding.

Definitions in Part VII.

60. (1) Subject to the provisions of this part suits may be instituted by and against any native authority as such.

Suits by and against native authorities.

(2) When the native authority by or against which a suit is being instituted is a corporate body such suit shall be instituted in the corporate name of such native authority.

61. (1) When any suit is commenced against any native authority for any act done in pursuance, or execution, or intended execution of any Ordinance, or of any public duties or

Limitation of suits against native authorities.

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authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority such suit shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in a case of a continuance of damage or injury, within six months next after the ceasing thereof:

Proviso.

Provided that if the suit be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of that person from prison.

(2) No suit shall be commenced against a native authority until one month at least after written notice of intention to commence the same shall have been served upon the native authority by the intending plaintiff or his agent. Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.

Mode of service on native authority.

62. The notice referred to in the last preceding section, and any summons, notice or other document required or authorised to be served on a native authority in connection with any suit by or against such native authority, shall be served by delivering the same to, or by sending it by registered post addressed to an officer of the native authority at the principal office of the native authority:

Proviso.

Provided that the court may with regard to any particular suit or documents order service on the native authority to be effected otherwise, and in that case service shall be effected in accordance with the terms of such order.

Representation of native authority at hearing of suit.

63. In any suit pending before a court a native authority may be represented in court at any stage of the proceedings by any member or officer of the native authority who shall satisfy the court that he is duly authorised in that behalf.

Provisions for satisfying judgments against native authorities.

64. (1) When any judgment has been entered up against a native authority, execution shall not issue against such authority, but the court shall certify to the Resident the amount of such judgment together with the sum, if any, awarded as costs and shall state the name of the native authority by which the same is payable and the name of the person in whose favour the said amount shall be paid.

(2) On receipt of such certificate, the said amount shall be paid, upon the order of the Resident to the said person out of the funds of the native authority named in such certificate.

(3) Where for convenience or otherwise the native authority named in such certificate shares a treasury with one or more other native authorities, and the funds of such native authorities are collectively held in common such funds shall be used for the purpose of satisfying such judgment.

(4) Where for convenience or otherwise native authorities collectively employ an individual for certain duties and judgment is entered up against a native authority in respect of the actions of such individual, such judgment shall be satisfied either:—

- (a) if such native authority has separate funds, out of the funds of the native authority against which judgment has been entered; or
- (b) if such native authority has not separate funds, out of the funds held in common by that native authority and the other native authorities aforesaid.

(5) In this section:—

“ judgment ” includes order or decree.

PART VIII.

NATIVE AUTHORITY POLICE FORCES.

65. In this Part:—

“ a force ” means a police force established and constituted by a native authority under section 66 or deemed under section 74 to have been duly constituted.

Definition in Part VIII. “ a force ”

66. (1) A native authority with the approval of the Governor may by order establish a force which shall consist of such number of fit and proper persons as the native authority may direct.

Establishment of a force.

(2) A native authority shall furnish particulars and information concerning a force in such manner and to such persons as the Governor may direct.

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Powers of the Governor in relation to a force.

67. The Governor may, when he considers it expedient so to do, limit the number of persons who may constitute a force or dismiss or suspend any or all of such persons, and a person so suspended may not exercise or perform the powers or duties of his office without the consent of the Governor.

Declaration.

68. Every member of a force shall upon appointment make and sign the following declaration:—

" I do solemnly and sincerely declare that I will obey all lawful orders of the native authority and the members of the force placed over me and subject myself to all Ordinances and rules relating to the force now in operation or which may hereafter from time to time be in operation."

Powers of a member of a force.

69. (1) A native authority may give a general authority to such members of a force as it may think proper either by name or according to rank, title or grade, to exercise on behalf of the native authority all or any of the powers conferred upon a native authority by section 22 or to exercise the powers of an authorized officer within the meaning of the Protectorate Laws (Enforcement) Ordinance, 1924, or both.

(2) A native authority shall send a copy of a general authority issued under this section to such persons as the Governor may direct.

Application of term "police officer" to members of a force.

70. The expression " police officer " or any other expression meaning a member of the Nigeria Police Force shall wherever it occurs in any Ordinance, other than the Police Ordinance, 1942, include a member of a force.

No. 27 of 1942.

Suspension and dismissal.

71. A native authority may suspend or dismiss any member of a force whom such native authority considers negligent in the discharge of his duty, or otherwise unfit for the same.

Effect of suspension or dismissal.

72. Where a member of a force is dismissed or ceases to belong to the force, all powers vested in him as a member shall immediately cease.

Rules.

73. (1) The Governor and, subject to the provisions of any Ordinance or other law for the time being in force, a native authority, with the concurrence of the native authority, if any, to

which it is subordinate, and subject to the approval of the Governor, may, in respect of a force established within its jurisdiction, make rules for all or any of the following purposes:—

- (a) the enlistment, engagement, discharge and service of members of a force;
- (b) the ranks, titles or grades of which a force shall consist;
- (c) the uniform or equipment of a force;
- (d) the prevention of negligence or abuse on the part of members of a force and the maintenance of discipline;
- (e) the efficient discharge of their duties by members of a force;
- (f) for giving general effect to the provisions of this Part of this Ordinance.

(2) Where a native authority has with the approval of the Governor made rules in respect of any of the matters referred to in sub-section (1), any rules made by the Governor in respect of the same matters shall cease to apply to any force to which the rules made by the native authority aforesaid apply.

74. (1) All native authority police forces existing at the commencement of this Ordinance shall be deemed to have been duly constituted from the time when such force was first established and the provisions of this Ordinance shall hereafter apply to every such force.

(2) Every member of such force shall be deemed to have been appointed under and in accordance with the provisions of this Ordinance and to have made and signed the declaration set out in section 68 and to be subject to any rules made or to be made hereunder:

Provided that any member of a police force to which this section refers may within three months of the commencement of this Ordinance tender his resignation from such force and the native authority shall be obliged to accept such resignation.

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PART IX.

Native Authority Prisons.

Definitions
in Part IX
"a prison"

75. In this Part:—

"a prison" unless the contrary intention appears means a prison established by a native authority under this Ordinance;

"prison
staff"

"prison staff" includes the head warder, warders and wardresses.

Powers and
duties of
administra-
tive officers
under this
Ordinance.

76. The powers and duties conferred or imposed on an administrative officer by this Part shall only be exercised by such officer in the case of prisoners or of a prison within the administrative area of which he is in charge or in which he may be stationed.

Native
authority
may by order
constitute a
prison.

77. A native authority with the approval of the Governor may by order declare any building within the area of its jurisdiction to be a prison under this Ordinance and by the same or any subsequent order declare the district or place for which any such building shall be used for the purposes of a prison and may likewise order that any building declared a prison under this Ordinance shall cease to be a prison.

Extent of
prison.

78. Every prison shall include the grounds and buildings within the prison enclosure.

Who may be
confined in a
prison.

79. Any prisoner may be confined in a prison constituted under this Ordinance who:—

(a) is awaiting trial before any native court or who has been convicted by such court;

(b) has been committed to custody by the Supreme Court, the High Court, or any magistrate's court, when the Governor in Council, in exercise of the powers conferred upon him by section 25A of the Prisons Ordinance, has so ordered.

Cap. 34.

Native
authority
may by order
constitute a
lock-up.

80. A native authority with the approval of a Resident may within the area of jurisdiction of the native authority and of any one native court declare any one building, part of a building, or

collection of buildings together with the enclosure, if any, relating thereto to be a lock-up and such declaration shall be made known within the area of the native authority in such manner as is customary.

81. Subject to such regulations as may be made by the Governor under section 90, a prisoner who is awaiting trial or who has been convicted or who has been adjudged a debtor, may be detained in a lock-up for a period not exceeding fourteen days.

Period of
detention in
a lock-up.

82. The native authority shall appoint:—

- (a) for each prison a head warder, a prison clerk or scribe and such number of warders and wardresses as shall be necessary for the proper administration of the prison; and
(b) for each lock-up such officers as may be necessary.

Prison and
lock-up
officers.

83. (1) The Director of Prisons shall have the general superintendence of prisons established under this Ordinance, shall advise the native authorities thereon, and shall submit to the Governor an annual report on the administration of the prisons and such other reports as the Governor or the Director of Prisons may consider necessary.

Superinten-
dence and
visitation of
prisons.

(2) The Chief Justice, Members of the Executive Council, Judges of the Supreme Court, Judges and Assistant Judges of the High Court, the Commissioner of Police, the Deputy Director of the Medical Service, the Deputy Director and the Assistant Director of the Health Service and officers of or above the rank of field officer in the Royal West African Frontier Force shall *ex officio* be visitors of all prisons established under this part of this Ordinance.

(3) In addition to the *ex officio* visitors hereinbefore mentioned a magistrate shall be an *ex officio* visitor in respect of each prison within the district in which he is officiating as a magistrate and there shall also be appointed by the Resident not less than five other persons to be visitors in respect of any or all such prisons within the particular province or the Colony, as the case may be.

(4) The Resident shall appoint one or more of such visitors to be a visiting committee for each prison, but the appointment of such committee shall not interfere with the general right of visitation on the part of the visitors.

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(5) For the purposes of this section the expression "prison" includes a lock-up.

Prisoners in legal custody of head warder.

84. Subject to such regulations as may be made by the Governor under section 90 relating to prisoners under sentence of death, every prisoner shall be deemed to be in the custody of the head warder.

Provisions in the case of lunacy of prisoners.

85. (1) The head warder shall report to the native authority and also to a medical officer or to a district officer any prisoner who appears to be of unsound mind. If the prisoner shall be certified by a medical officer to be of unsound mind, the Resident, after consultation with the native authority constituted for the area within which the prison is situated, shall by order in writing under his hand authorise the removal of the prisoner to a lunatic asylum to which the Lunacy Ordinance applies and which may have been appointed by the Governor for that purpose.

Cap. 51.

(2) Any prisoner removed as aforesaid shall remain in such asylum until the term of imprisonment to which he is subject determines or until it shall be certified by a medical officer that he has become of sound mind in which latter case he shall by order of the Resident be re-delivered into the custody of the aforesaid head warder.

(3) Where a prisoner has been removed to a lunatic asylum in accordance with the provisions of sub-section (1) and it has been certified by a medical officer that he has become of unsound mind and his term of imprisonment is about to determine, it shall be the duty of the head warder to give information on oath to a magistrate as in the terms of Form II in the Schedule to the Lunacy Ordinance for the purpose of the adjudication of such person as a lunatic as from the date of the determination of his sentence.

See sec. 13 of Ordinance 25 of 1942. Cap. 51.

Prisoners to be brought before a court.

86. (1) The head warder, upon receiving the order of a court directing him to bring up a prisoner before the court at the time and place stated therein, shall obey such order and may, for the purpose of carrying out such order, cause the prisoner to be removed to another prison established under this Ordinance or under the Prisons Ordinance.

Cap. 34.

(2) If the prisoner shall be remanded, committed for trial, imprisoned, or detained by such court, he shall be so dealt with either in the prison whence he came, or in such other prison as such court may direct.

87. A Resident or any officer who may have been authorised in that behalf by a Resident may order any person imprisoned under the sentence of any court for an offence committed by him to be removed from the prison in which he is confined to any other prison within the meaning of this Ordinance, and whenever any prisoner is removed to any other prison than that named in the warrant or order under which he may have been imprisoned, the said warrant or order, together with an order of removal, either endorsed on the warrant or order, or separate therefrom, shall be sufficient authority for the removal of such prisoner to the prison named in the order of removal, and his detention therein, and for carrying out the sentence described in the warrant or order of imprisonment, or any part thereof which may remain unexecuted.

Removal of prisoners in other cases.

Provided that where a prisoner who has been committed to custody by the Supreme Court, or High Court or a magistrate's court and is confined in a prison authorised by the Governor by Order in Council made under section 25 of the Prisons Ordinance as being a prison in which persons so committed to custody may be detained, such prisoner shall not be transferred to another prison except one so authorised.

Proviso.

Cap. 34.

88. (1) The Governor and, subject to the provisions of any Ordinance or other law for the time being in force, a native authority, with the concurrence of the native authority, if any, to which it is subordinate, and subject to the approval of the Governor, may, in respect of a prison established within its jurisdiction, make rules for all or any of the following purposes:—

Rules.

(a) relating to prison staff—

- (i) the engagement, discharge and service of members of a prison staff;
- (ii) the titles or grades of which a prison staff shall consist;
- (iii) the uniform or equipment of a prison staff;
- (iv) the prevention of negligence or abuse on the part of members of a prison staff, and the maintenance of discipline;

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- (r) the efficient discharge of their duties by members of a prison staff;
- (ri) generally for ensuring the proper administration of and control over prison staff:
- (b) relating to prisoners—
- (i) the return of a discharged prisoner to his ordinary place of abode and the necessary and proper precaution to ensure such return;
- (ii) the release of prisoners on the day preceding such holidays or other days as may be specified in the rules;
- (iii) the regulation of the work or labour of convicted persons;
- (ir) the remission of sentences for good conduct;
- (v) the discipline of the prisoners:
- (c) notwithstanding the particularity of the powers contained in paragraphs (a) and (b), generally for the regulation and government of a prison in so far as such rules do not conflict with regulations made by the Governor under section 90.

(2) Where a native authority has with the approval of the Governor made rules in respect of any of the matters referred to in sub-section (1), any regulations made by the Governor in respect of the same matters shall cease to have effect in respect of the prisons to which such native authority rules apply.

Existing prisons deemed to be constituted under this Ordinance.

89. (1) Subject to the provisions of this section, any existing prison which at the commencement of this Ordinance is under the control and management of a native authority shall be deemed to have been duly established under this Ordinance from the time that such prison was first used for the confinement or detention of prisoners and all members of the staff of any such prison shall be deemed to have been appointed under and in accordance with the provisions of this Ordinance and shall be liable to any rules made or to be made under this Part of this Ordinance:

Proviso.

Provided that any member of a prison staff to whom this section refers may within three months of the date of commencement of this Ordinance tender his resignation from such staff and the native authority shall be obliged to accept such resignation.

(2) A prison which but for the provisions of sub-section (1) would not be duly constituted, shall cease to be a prison unless, within six months from the commencement of this Ordinance, the native authority having the management and control thereof, shall, with the approval of the Governor, by order declare the same to be a prison to which sub-section (1) of this section applies.

90. (1) The Governor may make regulations in respect of prisons to which this Part applies for any or all of the following purposes:—

- (a) for regulating the legal custody of prisoners under sentence of death;
- (b) for the removal of prisoners in case of infectious disease and the removal of sick prisoners to a hospital outside the prison and the custody of prisoners so removed;
- (c) the grant of licences to prisoners to be at large, the conditions of such licence and the penalties and procedure upon a breach of such conditions;
- (d) the health and diet of the prisoners;
- (e) the length of time and the conditions under which a person awaiting trial or a judgment debtor may be kept in custody in a lock-up;
- (f) notwithstanding the particularity of the powers hereinbefore set forth, generally for regulating the management of prisons and matters affecting the health and treatment of prisoners therein.

(2) Regulations made under this section may be applied to prisons generally or to prisons in any specified area as may be provided therein.

(3) Unless and until regulations are made under this section or rules are made by native authorities with the approval of the Governor under section 88, the Native Authority Prisons Rules, 1938, shall be deemed to have been made under and in accordance with the provisions of this section, shall hereafter be cited as the Native Authority Prisons Regulations, 1938, and shall apply to all prisons constituted under this Ordinance but upon the making of regulations by the Governor under this section or rules by a native authority under section 88 the aforesaid Native Authority Prisons Regulations, 1938, shall cease to apply to any prison to which the said subsequently made regulations or rules apply.

Rules No. 10 of 1938.

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PART X.

MISCELLANEOUS.

*Delegation of Powers.*Delegation
of powers.

91. The Governor may delegate to a Chief Commissioner or to a Resident such of the powers vested in him by this Ordinance as he may deem expedient, and subject to such conditions as he may impose, and may order that the exercise of any such delegated powers shall not require publication in the Gazette but shall be notified in such manner as is customary for the native community in the area concerned.

(2) 15 (14) *Repeal and Saving.*

Repeal
Schedule
and saving.

92. The Ordinances set out in the Schedule hereto are hereby wholly repealed:

Proviso.

Provided that such repeal shall not, in addition to the provisions hereinbefore made, affect:—

- (a) any rule, bye-law or order heretofore made or issued and existing at the coming into operation of this Ordinance and such rule, bye-law or order shall be deemed to have been made and issued under and in accordance with the provisions of this Ordinance;
- (b) any suit which may have been instituted by or against any Native Administration under and in accordance with the provisions of the Native Administrations (Legal Proceedings) Ordinance, 1932, and any such suit pending at the coming into operation of this Ordinance shall be deemed to have been instituted under and in accordance with the provisions of this Ordinance by or against, as the case may be, the native authority exercising jurisdiction in respect of the matter in respect of which or over the place where the cause of action arose, in the place and stead of the Native Administration which instituted the suit or against which the suit was instituted; and
- (c) the appointment of any District Officer to the office of native authority under the provisions of the Administrative Officers (Appointment as Native Authorities) Ordinance, 1934, and any such appointment existing

No. 19 of
1932

No. 5 of 1934.

at the coming into operation of this Ordinance shall continue in force and be deemed to have been made under and in accordance with the provisions of section 56.

SCHEDULE.

(SECTION 92).

No. and Year of Ordinance.	Short Title.
No. 19 of 1932 ...	The Native Administrations (Legal Proceedings) Ordinance, 1932.
No. 27 of 1933 ...	The Native Administrations (Legal Proceedings) (Amendment) Ordinance, 1933.
No. 43 of 1933 ...	The Native Authority Ordinance, 1933.
No. 5 of 1934 ...	The Administrative Officers (Appointment as Native Authorities) Ordinance, 1934.
No. 28 of 1936 ...	The Native Authority (Amendment) Ordinance, 1936.
No. 39 of 1937 ...	The Native Authority (Colony) Ordinance, 1937.
No. 18 of 1942 ...	The Native Administrations (Legal Proceedings) (Amendment) Ordinance, 1942.
No. 23 of 1942 ...	The Native Authority (Amendment) Ordinance, 1942.
No. 24 of 1942 ...	The Native Authority (Colony) (Amendment) Ordinance, 1942.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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C. O.

Mr. Maynard 1/4/43.

Miss Richards 2/4

Mr. Farnes *7/4*

Mr. G. E. J. Gent.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

DRAFT. Despatch.

NIGERIA.

NO. 84

GOVERNOR.

(3)
and 1/1
(30346/42)

FURTHER ACTION.

Recirc. with
30346/42 Nigeria
to G3 both
Ordinances.

*After action
write to him
Richards, to see
- v. minutes*

30249/39-42.

Sir A. Dawe.
Sir W. Battershill.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Downing Street,
6th April, 1943.

Sir,

I have etc., to refer to your
despatches Nos. 451 and 452 of the 20th
of October, 1942, enclosing, respectively,
copies of the Native Authority (Amendment)
Ordinance No. 23 of 1942 and the Native
Authority (Colony) (Amendment) Ordinance
No. 24 of 1942, and to request that you will
furnish copies of any rules made under
these Ordinances together with a report in,
say, a year's time on the working of the
new system for the supervision of child
betrotals.

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2. The whole question of the enforcement of rules relating to the supervision of ~~and~~ ^{and} ~~delinquent~~ children naturally raises practical difficulties, & I hope this question may be considered in each connection with the proposals for the appointment of probation & welfare officers, & for the training of officers men & women in welfare work, & made in the Report of the Juvenile Delinquency Sub. Committee which will shortly be ~~submitted~~ ^{sent} to you.

Oliver Stanley

(Sgd) OLIVER STANLEY.

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NIGERIA.

N O. 451

Spence
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19 FEB 1943
O. O.

30249 - 369

Government House,
Lagos, Nigeria.
20th October, 1942.

My Lord,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 23 of 1942 entitled "An Ordinance to amend the Native Authority Ordinance, 1933" together with the usual report thereon by the Attorney-General.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

R. H. Muir

G O V E R N O R .

THE RIGHT HONOURABLE
THE VISCOUNT CRANBORNE, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
etc., etc., etc.

Hand by (5)
R.

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R E P O R T

70

on

A BILL FOR AN ORDINANCE TO AMEND THE
NATIVE AUTHORITY ORDINANCE, 1933.

The short title of this Bill is the Native Authority (Amendment) Ordinance, 1942, and in my opinion the assent of His Excellency can properly be given thereto.

2. Concern has been occasioned by what may frankly be termed child stealing for the purposes of practical servitude which is being practised among certain native communities under the guise of child betrothal or marriage by virtue of native law and custom. It was at first thought that this practice might be curbed by suitable amendments to the Criminal Code but having regard to the fact that child betrothals are recognised by native law and custom, the confusion was reached that such amendments would prove ineffective and that the best solution was to enable native authorities by means of special rules to look after the interests of the children within the areas of their jurisdiction. This proposal is incorporated in clause 2 of this Bill which inserts a new section, as section 16A, in the Native Authority Ordinance, 1933. This will apply only to the Protectorate and so that similar legislation may prevail and become reciprocal throughout Nigeria, a similar amendment has been made to the Native Authority (Colony) Ordinance, 1937, in a Bill concomitant with this.

See 30346/62

3. In many cases native authorities consist of a council in which there may be numerous members; in one instance the number is over one hundred. When subsidiary legislation

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legislation is made or passed under the Ordinance as it exists at present, all members have to sign such legislation with the result that the signatory part is far bigger than the actual legislation. This is both unnecessary and cumbersome and the amendment enables the Resident to authorise a limited number of members either generally or specifically of any particular native authority to sign subsidiary legislation on behalf of the remainder once it has been passed by the whole. A record will be kept of such authorisation in the office of the Divisional Officer. Clause 2 of the Bill, inserting new section 16B effects this amendment. A similar amendment has been made to the Native Authority (Colony) Ordinance, 1937.

W. C. Kay
ATTORNEY-GENERAL.

Attorney-General's Chambers,
Lagos, Nigeria,
11th September, 1942.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 23rd day of September, 1942.

B. H. BOURDILLON.
Governor.

(L.S.)

No. 23



1942

Colony and Protectorate of Nigeria.

IN THE SIXTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE NATIVE AUTHORITY ORDINANCE, 1933 Title

[6th October, 1942.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:— Enactment.

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72A

No. 23 of 1942 *Native Authority (Amendment)*

Short title and application.

1. This Ordinance may be cited as the Native Authority (Amendment) Ordinance, 1942, and shall apply to the Protectorate.

Amends Ordinance No. 43 of 1933 by insertion of new sections

2. The Native Authority Ordinance, 1933, is hereby amended by inserting immediately after section 16 thereof the following new sections:—

Power to make rules relating to child betrothals.

“ 16A. (1) A native authority may, with the approval of the Chief Commissioner of the provinces concerned make rules for the following purposes:—

- (a) regulating child betrothals within the area of its authority;
- (b) prescribing safeguards to be taken.
 - (i) when the child betrothed leaves the place in which her parents or guardians reside but does not leave the area of authority of the native authority making the rules,
 - (ii) when the child betrothed leaves the area of authority of the native authority making the rules,
 - (iii) when a child betrothed in some other area enters the area of authority of the native authority making the rules.

(2) The provisions of sub-section (1) shall be in addition to and not in derogation of the powers of a native authority to make rules by virtue of the preceding section and the provisions of the second paragraph of sub-section (1) and of sub-sections (2), (3) and (4) of that section shall apply *mutatis mutandis* to any rules made under the provisions of sub-section (1) of this section.

Signification of subsidiary legislation.

“ 16B. (1) Where any native authority comprises more than one person and such native authority makes or passes any orders, regulations or rules which, by virtue of and subject to the provisions of this or any other Ordinance, it is empowered to make or pass, such making or passing may be signified by such members of that native authority as may be authorised in writing in that behalf by the Resident either generally or specifically.

(2) Any authorisation made by a Resident under the provisions of sub-section (1) shall be kept and filed in the office of the Divisional Officer concerned.”

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73
END

Native Authority No. 23 of 1942
(Amendment)

① This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

P. F. CAMPBELL,
Clerk of the Legislative Council.

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Nigeria

1941-43.

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No. 30257



SUBJECT.

Co 583
Bond 59

Judicial System in Nigeria

Previous

1940

Subsequent

30648/45 (Magistrate
hegn)
30649/45 (Evidence
hegn)
30124/46 (Criminal
procedure)

Reference:-

CO 583/259/30257

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C.J. legal. 1 Nigeria Conf. _____ 10.9.41.
 2 Nigeria Conf. _____ 12.9.41. 2

Nos: 1 and 2. These two despatches relate primarily to the comments made from here on the (a) Supreme Courts Bill and (b) Magistrates Courts Bill, copies of which are to be found below No: 1 on 30257/40.

See No: 2 on 30075/41.

There is a subsidiary point about criticisms made from here on the Protectorate Courts (Amendment) Ordinance 1941. This Ordinance is, however, a dead letter because it will be superseded by the new Supreme Court and Magistrates Courts Ordinances.

To deal with No: 1 first; the Governor has accepted the criticisms raised in No: 6 on the 1940 file regarding the draft Magistrates Courts Ordinance, and has made suitable amendments in the draft, and, where necessary, in the draft Supreme Court Ordinance. But he now proposes to add fresh clauses to the Magistrates Courts Bill, providing for the three grades of Magistrates and the respective powers of the Magistrates as described in paragraphs 9 and 10 of the despatch. ~~He asks for telegraphic approval.~~ The proposals seem perfectly good to me and a very necessary addition to the draft Ordinance, but the Legal Department will advise. ^{? Approve by telegram. The increased civil jurisdiction to be granted to Grade I Magistrates.}

A |

No: 2. This despatch encloses a revised draft Bill for the new Supreme Court Ordinance. All the suggestions in the annexures of the Secretary of State's despatch of the 25th April, 1940 (No: 7/1940 file) have now been adopted. This is very satisfactory. The two other amendments described in paragraph 3 of the Governor's despatch do not amount to much.

Clause 73 of the old Bill is reproduced in toto as Clause 72 in the new Bill. With regard to Sub-Clause 2, the Governor told us earlier that the Clause as drafted reproduced the existing law, but the Judiciary and the Law Officers had pressed for a withdrawal of the long standing exclusion of Counsel in Appeals from the decision of Native Court. He was consulting representative Native Authorities as to whether they favoured any relaxation. The matter has got no further forward and it is proposed that Sub-Clause 2 should remain as originally drafted, at any rate for the time being.

Subject to legal observations I concur in the introduction of the revised Bill into the Legislative Council.

C.A. Prosser
 23.10.41.

No 1. In my opinion the innovations can be approved.

No 2. The amendments are in conformity with the suggestions contained in the despatch of 25/4/40.

As regards the exclusion of Counsel ⁱⁿ appeal from Native Courts it is somewhat difficult to understand what objections there can be

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On 14387/9/42 a telegram has been received from the O.A.G. suggesting the enactment of a Defence Regulation to suspend trial by jury except in the most serious cases. He has been asked in telegram No.336 of the 24th of March to suspend action and to give his reasons. That need not however affect action on No 5: though para 13 of the A.G's Report enclosed in No 5 throws light on the proposal to abolish juries (save in cases punishable by death) - a proposal which surprised us here.

Previous corres. about the Bill now submitted is ~~at~~ on 30257/37, at the following places -

- No 1, 1st enclosure, para 17
- No 1, 2nd enclosure, para 28
- No 1, para 8
- No 4, para 4.

The Report submitted with the Bill seems to me to be adequate as an explanation of the purpose of the Bill and as justification of its provisions. I have no comments in detail.

? approve the introduction of the Bill

FJ Pedler
9.4.42

Yrs.
S. S. Abrahams

By airmail 13/4/42.
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1943

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- 7 Nigeria 199 _____ 5.5.43
- 8 Nigeria 189 _____ 6.5.43
- 9 Nigeria 197 _____ 6.5.43

Then must await receipt of the new Supreme Court Ord. ~~by the courts~~ (vide X in para 2 of outline to 8)
 Copy of the outline *Shankar*
 12.7.43

- 10 Nigeria 236 _____ 27.5.43
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- 11 Nigeria 190 _____ 6.5.43
specimens to library

(7) - (11)

The five important Ordinances herein submitted for approval & represent part of the general revision of Nigerian judicial legislation which has been in progress for some years. Three of the Ordns have already been considered in this Office in draft form and have been approved.

(7)

The Evidence Ordinance has not

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previously been considered. There is detailed
comment. In the circumstances of Nigeria when
judicial functions have to be exercised by administrative
Officers after a superficial training and limited
experience, it should prove a very useful
measure. I am glad to note that the Bill
was discussed with practicing members of the
Legal Bar before its introduction.

(8) The Magistrate Ordinance was originally
approved in draft at (6) in 30257/40. Some
subsequent amendments received approval at
(3) herein. A few further amendments have
since been introduced, none of which appear
objectionable.

(9) The Jury Ordinance was approved in draft
at (6) herein. Certain subsequent amendments
do not appear of major importance.

(10) The Criminal Procedure Amendment Ordinance
has not previously been considered.

(11) The Supreme Court Ordinance was last
approved in draft at (4) herein.

Subject to the comments of the Legal
Adviser, all the Ordinances may now be
formally approved?

W. S. Williams
4.8.43

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Mr. Cox is a Law Officer of long-standing & experience & one is entitled to expect work of high quality from him but I must say he is to be congratulated on this group of Ordinances which should render the administration of justice much more efficient in Nigeria. He has displayed great care & industry & an appreciation of essentials.

It is particularly satisfactory to observe the removal of the ban on the appearance of legal practitioners in affairs from native Courts. This defect existing from very ancient days has at last been corrected.

The sole comment I have to make is

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upon section 140 Evidence Ordinance. As ¹⁰
result of the Woolmington case in 1935
it became necessary for Legislatures
who relied upon an actual evidence
Ordinance to consider how far their
legislation met the decision of the House of
Lords ^{in that case} on the question of the burden of proof.
I am of the opinion that the Nigerian section
leaves the matter obscure & I would suggest
that consideration be given to the more
exact & more elaborate wording of the
legislation on the point in the East African
Legislation as contained in ~~section~~ the
Uganda Evidence (Amendment) Ordinance 1936.
I understand that in House the Sol^r Genl
of Nigeria will presently be attached to this
Office during his leave & will call in at the
Office in the matter. The same is done 9/3/33

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14 Nigeria 502 _____ 5.12.43
 (Spares to Librarian)

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13, 14. - ? items have amending ordinances
 are insignificant

[Signature]
 25.12.43

I agree
 A. Purcell
 1.1.44

item G.3
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NIGERIA.

NO. 502



Sir,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No.33 of 1943, entitled "An Ordinance to amend the Supreme Court Ordinance, 1943", together with the usual report thereon by the Attorney-General and a copy of a minute in which he explains why the publication of the Ordinance has been delayed.

I have the honour to be,
Sir,

Your most obedient, humble Servant,

Ans'd (15)

W. Hamilton

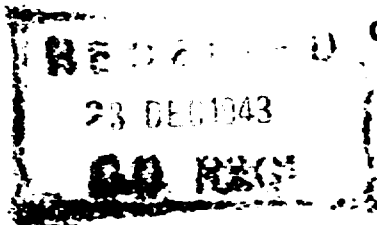
OFFICER ADMINISTERING THE GOVERNMENT.

COLONEL THE RIGHT HONOURABLE
OLIVER STANLEY, M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

✓

30257 14
GOVERNMENT HOUSE, 13
NIGERIA.

5 December, 1943.



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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 23rd day of August, 1943.

A. G. GRANTHAM.
Officer Administering the Government.

(L.S.)

No. 33

1943



Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

A. G. GRANTHAM, C.M.G.,
Officer Administering the Government

AN ORDINANCE TO AMEND THE SUPREME COURT ORDINANCE, 1943 Title.

[2nd December, 1943.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:—

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No. 33 of 1943 *Supreme Court (Amendment)*

Short title.

1. This Ordinance may be cited as the Supreme Court (Amendment) Ordinance, 1943.

Amendment of section 8 of No. 23 of 1943.

2. Section 8 of the principal Ordinance is hereby amended:-

- (a) by substituting the words "a suitable person whether or not qualified as provided in section 5" for the words "a fit and proper person" appearing in sub-section (1) thereof; and
- (b) by substituting the words "suitable person" for the words "administrative officer" appearing in sub-section (2) thereof.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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REPORT

on

A BILL FOR AN ORDINANCE TO AMEND THE
SUPREME COURT ORDINANCE, 1943.

The short title of this Bill is the Supreme Court (Amendment) Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. Sub-section (1) of section 8 of the Supreme Court Ordinance, 1943, enables the Governor to make acting appointments when a judge is for any reason absent from duty and it might be held that the words "a fit and proper person" appearing therein mean a person who is qualified as set out in section 5 which is the qualification required of substantive judges. Sub-section (2) of the same section enables the Governor to appoint an administrative officer to exercise temporarily the powers of a judge within an area and for such time as the Governor may prescribe. This sub-section applies in practice only to those cases where there is no judge at all, and in any event it is unnecessary to restrict this class of temporary appointment to administrative officers when other suitable persons may be available. Clause 2 clears up both these difficulties.

Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
3rd August, 1943.

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Attorney-General's Chambers,
Lagos, Nigeria.
24th November, 1943.

The Honourable
The Chief Secretary,
LAGOS.

The Supreme Court (Amendment) Ordinance, 1943
(No. 33 of 1943).

The Magistrates' Courts (Amendment) Ordinance, 1943
(No. 34 of 1943).

The above amending Ordinances enacted in August last were intended to make minor alterations in the Supreme and the Magistrates' Courts Ordinances with the object of remedying in these two Ordinances, enacted in the previous March, certain minor difficulties which came to light when steps were being taken to put them into operation. Immediately before the publication of these amending Ordinances in the Gazette my attention was drawn to the fact that they contained no suspending clause it was suggested that publishing them at this stage might adversely affect the existing law. I gave directions accordingly that notwithstanding the Ordinances had been assented to by His Excellency and numbered as Nos. 33 and 34 of 1943, they should not be published along with the others. Accordingly in the frontis page of the Supplement to Nigeria Gazette of 26th August, 1943 (No. 40 of 1943), will be found tabulated Ordinances Nos. 35 to 48 and in addition a footnote "Ordinances Nos. 33 and 34 of 1943 will be published subsequently."

2. I have been withholding publication in the hopes :-

- (a) either that the Supreme Court and Magistrates' Courts Ordinances, 1943, will be brought into force during this present year, in which case the day after they have been brought into force these two amending Ordinances could be published in an Extraordinary Gazette and the difficulties be resolved, or
- (b) that there would be another meeting of the Legislative Council this year at which I would have an opportunity of making the matter quite clear by legislation.

As to paragraph (a); it has been provisionally decided to try and bring the Ordinances into force on 1st April next year - a decision which I support because I hope to have the remaining judicial reform legislation completed by that date.

As to paragraph (b); it appears to be unlikely that another meeting of the Legislative Council will be held this year.

Having reached this stage a decision has had to be taken as to whether or not these Ordinances should now be published. I have gone into the matter very carefully and I am satisfied that the Ordinances can be published at this stage without any deleterious effect on the existing law.

In

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NIGERIA.

NO. 503

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December, 1943.

Sir,

I have the honour to transmit herewith, for the significance of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 34 of 1943, entitled "An Ordinance to amend the Magistrates' Courts Ordinance, 1943", together with the usual report thereon by the Attorney-General and a copy of a minute in which he explains why the publication of the Ordinance has been delayed.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

Ansrd
(16)

Alhambra

OFFICER ADMINISTERING THE GOVERNMENT.

COLONEL THE RIGHT HONOURABLE
OLIVER STANLEY, M. C., M. P.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 23rd day of August, 1943.

A. G. GRANTHAM,
Officer Administering the Government.

(L.S.)

No. 34



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

A. G. GRANTHAM, C.M.G.,
Officer Administering the Government

AN ORDINANCE TO AMEND THE MAGISTRATES' COURTS ORDINANCE, Title.
1943.

[2nd December, 1943.]

Date of
commence-
ment.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:—

Enactment.

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2 No. 34 of 1943 *Magistrates' Courts (Amendment)*

Short title. 1. This Ordinance may be cited as the Magistrates' Courts (Amendment) Ordinance, 1943.

Repeals and re-enacts section 47 of Ordinance 24 of 1943. 2. Section 47 of the Magistrates' Courts Ordinance, 1943, hereinafter referred to as the principal Ordinance, is hereby repealed and the following section substituted therefor:—

Fixing of times and places of permanent sittings of courts. "47. The Chief Justice may, by notice, appoint times and places for sittings of courts."

Repeals and re-enacts section 51 of Ordinance 24 of 1943. 3. Section 51 of the principal Ordinance is hereby repealed and the following section substituted therefor:—

General places of hearing and changes thereof. "51. Subject to the provisions of section 47, the court may be held at a place appointed by the magistrate; but, on the application of either party or otherwise, the hearing of any case appointed for one such place may, in the discretion of the magistrate, be appointed to be taken by him at another such place within or without the district."

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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REPORT

22

on

A BILL FOR AN ORDINANCE TO AMEND THE MAGISTRATES'
COURTS ORDINANCE, 1943.

The short title of this Bill is the Magistrates' Courts (Amendment) Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. The original intention underlying the provisions of the Magistrates' Courts Ordinance, 1943, relating to the sittings and the places of the sittings of the courts, was that a settled itinerary suitable to the district concerned might be worked out and fixed by the Chief Justice so that not only the actual position of the court itself might be permanent but that also a regular circuit might be arranged and known to all persons concerned.

3. It has, however, proved to be most difficult in many parts of the country to accomplish this at once and it has been decided that while preserving the power of the Chief Justice to appoint times and places for sittings of courts in districts where this is feasible it is necessary to maintain some flexibility in other districts.

4. It is proposed therefore to replace section 47 of the Ordinance by a section enabling the Chief Justice to fix times and places of court sittings by notice where he thinks it to be desirable, and also to re-enact section 51 enabling the particular magistrate to arrange his own sittings in places not covered by a notice under the suggested new section 47. Clauses 2 and 3 of the Bill give effect to this proposal.


Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.

3rd August, 1943.

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Attorney-General's Chambers,
Lagos, Nigeria.

24th November, 1943.

The Honourable
The Chief Secretary,
LAGOS.

The Supreme Court (Amendment) Ordinance, 1943
(No. 33 of 1943).

The Magistrates' Courts (Amendment) Ordinance, 1943
(No. 34 of 1943).

The above amending Ordinances enacted in August last were intended to make minor alterations in the Supreme and the Magistrates' Courts Ordinances with the object of remedying in those two Ordinances, enacted in the previous March, certain minor difficulties which came to light when steps were being taken to put them into operation. Immediately before the publication of these amending Ordinances in the Gazette my attention was drawn to the fact that they contained no suspending clause it was suggested that publishing them at this stage might adversely affect the existing law. I gave directions accordingly that notwithstanding the Ordinances had been assented to by His Excellency and numbered as Nos. 33 and 34 of 1943, they should not be published along with the others. Accordingly in the frontis page of the Supplement to Nigeria Gazette of 26th August, 1943 (No. 40 of 1943), will be found tabulated Ordinances Nos. 35 to 48 and in addition a footnote "Ordinances Nos. 33 and 34 of 1943 will be published subsequently."

2. I have been withholding publication in the hopes :-

- (a) either that the Supreme Court and Magistrates' Courts Ordinances, 1943, will be brought into force during this present year, in which case the day after they have been brought into force these two amending Ordinances could be published in an Extraordinary Gazette and the difficulties be resolved, or
- (b) that there would be another meeting of the Legislative Council this year at which I would have an opportunity of making the matter quite clear by legislation.

As to paragraph (a); it has been provisionally decided to try and bring the Ordinances into force on 1st April next year - a decision which I support because I hope to have the remaining judicial reform legislation completed by that date.

As to paragraph (b); it appears to be unlikely that another meeting of the Legislative Council will be held this year.

Having reached this stage a decision has had to be taken as to whether or not these Ordinances should now be published. I have gone into the matter very carefully and I am satisfied that the Ordinances can be published at this stage without any deleterious effect on the existing law.

In

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In view of the cardinal rules of the interpretation of statutes the effect of publishing these Ordinances at this stage, in my opinion, will be that they remain dormant on the statute book until their respective principal Ordinances are brought to force when the respective amendments made by each of them will automatically take effect. This I do not think raises legal difficulties but it is definitely untidy and I would rather have avoided it.

3. I am not in the habit of placing responsibility upon any of my individual officers for any specific error he may have made but for which I am ultimately responsible; however, had I wished to do so I could not have done it in these cases as I personally am responsible and needless to say I regret it. I can only urge in extenuation that, as you are aware, the Department is under-staffed and overworked and when the necessity for the amendments arose I directed my attention particularly to the actual alterations required to be made to the text of the law in the belief that the principal Ordinances would be in operation before the amendments could be effected, thus overlooking the advisability of adding a suspending provision in the first clause of each Bill.

4. The two amending Ordinances have not yet been transmitted to the Secretary of State as it was hoped their defects might be remedied and the position then explained but as that now appears unlikely of achievement this year I request they be now published and transmitted to the Secretary of State together with a copy of this minute.

(Sgd.) H.C.F. Coxllw 3497

Attorney-General.

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[13702] Wt. 32385/242 10m. 10.42 C.N.I.D. 748
[13966] Wt. 39977/249 50m. 12.42 C.N.I.D. 748

C. O.

Mr. Pavein 20/8
Mr. Sir Sidney Abraham 21/8
Mr. Cohen 23 fs
Mr. G. E. J. Gent.
Mr. G. L. M. Clauson.
Mr. C. J. Jeffries.

23 AUG
Sir A. Dawe.

Sir W. Battershill.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State

30257/43 Nigeria 25

24th August 1943

DRAFT.

Despatch Sir

Acting Governor

No. 272

Nigeria No. 182 of 6.5.43

No. 190 of 6.5.43

No. 197 of 6.5.43

No. 236 of 27.5.43

No. 199 of 5.5.43

(7-11)

Thank you for the ref to Sir
Bernard Bourdillon's marginally
noted despatches and to inform
you that His Majesty's power
of disallowance will not be
exercised in regard to the following
Ordinances:-

- The Supreme Court Ordinance, 1943
- The Criminal Procedure (Amendment)
Ordinance, 1943.
- The Jury Ordinance, 1943
- The Magistrates Courts Ordinance, 1943
- The Evidence Ordinance, 1943

FURTHER ACTION.

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2. I consider that the Attorney General is to be congratulated on his industry, care and appreciation of essentials which he has displayed in the preparation of this group of Ordinances which should ~~undoubtedly~~ greatly facilitate the efficient administration of justice in Nigeria.

3. The only detailed comment I have to make is in connection with sec. 140 of the Evidence Ordinance, 1943, the wording of which appears to be somewhat obscure and I would suggest for consideration that it might be preferable to adopt the more elaborate wording of the legislation on this point in the East African dependencies as contained in the Uganda Evidence (Amendment) Ordinance, 1936. It is proposed to take advantage of the presence of his G. L. House, Secretary General, in the country to discuss this point more fully with him. That

(Sgd) OLIVER STANLEY.

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2711

NIGERIA.

NO. 190

20757
RECEIVED
27 JUL 1943
G. O. REGY

Government House,
Nigeria.

6th May, 1943.

Sir,

out
I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No.23 of 1943, entitled "An Ordinance for the Constitution of a Supreme Court of Justice for the Colony and Protectorate of Nigeria and for other purposes relating to the Administration of Justice in Nigeria", together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

B. H. Munro

G O V E R N O R .

THE RIGHT HONOURABLE
OLIVER STANLEY, M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
etc., etc., etc.

[Handwritten mark]

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R E P O R T

on

28

A BILL FOR AN ORDINANCE FOR THE CONSTITUTION
OF A SUPREME COURT OF JUSTICE FOR THE
COLONY AND PROTECTORATE OF NIGERIA
AND FOR OTHER PURPOSES RELATING
TO THE ADMINISTRATION OF
JUSTICE IN NIGERIA.

The short title of this Bill is the Supreme Court Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. This bill is one of five enacted at the same time and as they are closely related certain general observations apply to all. The other bills in question are the Magistrates' Courts Ordinance, 1943, the Jury Ordinance, 1943, the Criminal Procedure (Amendment) Ordinance, 1943, and the Evidence Ordinance, 1943.

3. The decision to have one Supreme Court and one Magistrate Court throughout Nigeria had been approved by the Secretary of State long ago and I had prepared the necessary draft legislation in rough form about four years ago but the intervention of the war set the general scheme back and it was impossible at the time to proceed with the whole scheme which included in addition to the five bills referred to above (with the exception of the Criminal Procedure (Amendment) Ordinance, 1943, as to which more later), a new criminal procedure Ordinance for the Supreme Court, a separate criminal procedure Ordinance for the magistrates' court, an Ordinance governing appeals from magistrates' courts and in addition certain amendments to the West African Court of Appeal Ordinance, 1933. In addition, it was also hoped to provide a new Sheriffs Ordinance, so as to include therein all the provisions relating to execution, and also, with luck, a new Criminal Code but these last two had not been

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been drafted. Subsequently three of these bills were settled, submitted to and approved by the Secretary of State prior to their enactment, these three being the magistrates' courts Ordinance, the Jury Ordinance and this bill. In view of the fact that the Supreme and magistrates' courts bills were correctly drafted, that is to say, they only dealt with constitution, jurisdiction and general administration of the courts, it was impossible to proceed with these two alone as if that were done the various provisions relating to evidence which were scattered throughout the existing Supreme Court Ordinance and the Protectorate Court Ordinance, 1933 (both of which were to be repealed) would be lost and a grave defect mark the introduction of the new Supreme Court and magistrates' courts. There were two ways of tackling this difficulty, the former being to enact what was thought to be a short Ordinance reproducing the provisions of the law of evidence which exists in the local statutes and carry on with that until an opportunity arose of completing the bill for the law of evidence which had already been drafted and nearly completed or to complete this latter bill. A rough draft of a bill to give effect to the former course was prepared and was found to be of some length; in addition there were many recent English statutory provisions affecting the law of evidence which should be included and further certain other provisions affecting evidence were also necessary: accordingly it was decided that the larger task should be attempted as soon as practicable.

4. About three or four months ago it was decided that a concentrated effort should be made to complete the evidence bill and enact the Supreme and the magistrates' courts Ordinances and the Jury Ordinance. Further work on this subject showed that

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that when I made that proposal I was wrong and that a large amount of work remained to be performed not only on the evidence bill but also the criminal procedure Ordinance (Cap. 20) required extensive amendment to enable it to work smoothly with the new Ordinances and that necessitated a further bill, namely, the Criminal Procedure (Amendment) Ordinance, 1943, this was accordingly prepared and reference has already been made to it in paragraphs 2 and 3 of this report.

(2) 5. Lengthy comment is unnecessary on the subject of this report as the draft bill had already been submitted and approved by the Secretary of State, the last occasion on which correspondence on this subject took place being when a copy of the bill was sent to England in September, 1941, leaving still outstanding, however, only the main question of the appearance of counsel before the Supreme Court (and magistrates' courts) on appeals from native courts. This particular matter the Secretary of State emphasized he hoped would soon be solved and I may here mention that it has been.

(4) 6. After the bill was published in the Gazette His Honour the Chief Justice raised the question of Major Wolfe's position and asked that the bill should be amended to save this officer's prospective rights, namely, that he could be considered for promotion to the judicial bench in Nigeria in spite of clauses 4 and 5 of the Bill. This particular point was covered by an amendment to clause 5 subsequently made in Council but not intended specifically to cover Major Wolfe.

7. This and the four other bills were all referred to a Select Committee of the Legislative Council consisting of myself as chairman, Mr. Howe the Solicitor-General, who was for this purpose an extraordinary member of the Council, Mr. Rhodes and Mr. Jibril Martin, member for the Rivers and Second Lagos Member respectively,

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respectively, both being counsel. The qualification of judges was referred to in the debate on the second reading, has also been referred to in the Press and there is no doubt that strong feeling existed that only those who had actually practised and were experienced should be qualified to be appointed to the bench. While in Select Committee I drew the attention of the unofficial members of the Committee to the Secretary of State's ^{no here.} despatch of 29th July, 1938, from which the clause of the draft bill was taken. I felt that if the clause could be varied so as to substitute "experience" for "practice" that we would be meeting the wishes of the Secretary of State and local opinion as well and having ascertained from the Governor that such an amendment would be acceptable to Government the Committee recommended to the Council that clause 5 should be re-enacted as it now appears in the enacted bill. I think this new clause is clear and reasonable and it should not in any material way in practice tie the hands of the Secretary of State in making appointments to a bench of such importance as that of Nigeria. It was also recommended by the Committee that the restriction imposed on counsel appearing before the Supreme Court (and also appearing in the magistrates' courts) on appeals from native courts should be abolished.

7/ This amendment also was accepted by Government.

8. The two amendments just referred to are the only amendments to the main structure of the Bill but the differences between the bill as enacted and the bill as approved by the Secretary of State are as follows:-

Clause 5. New clause but see paragraph 7 above.

Clause 8(1). Insertion of the words "or on leave" after the words "on duty" in the fourth line.

Clause

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Clause 12, proviso. The expression "inheritance or disposition of property on death" is substituted for "inheritance, testamentary disposition of property or the administration of an estate". This amendment was made to try and eliminate some of the conflict which exists between the Supreme Court and native courts over the administration of certain estates: it should clear the air somewhat if, as has now been done, we omit the use of English technical legal phraseology. A similar amendment was also made to the Magistrates' Courts Bill.

Clause 17(5). In this and the Magistrates' Court Bill this particular sub-section has been omitted as the provisions are covered by clauses 58 and 62 of the evidence bill.

Clause 57. A third sub-section has been added to assist in and simplify the internal administration of the judicial department.

Clause 59. This has been deleted as it was thought unnecessary, the ordinary criminal law can apply. This has necessitated renumbering the remaining clause and cross references to some clauses throughout the bill.

Clause 71, (as renumbered). This is the clause which provided for the restrictive appearance of counsel in the Supreme Court on appeals from native court. That clause has now been varied and counsel accordingly have the right of audience in all cases subject to any special provisions which may exist. The clause has been re-drafted as it appears in the enacted bill so that it will be quite clear that the practice of the last ten years is now no longer in vogue; but at the same time it may happen, though it is unlikely, that somewhere there is or in the future there may be provision requiring some matter to be determined by the Supreme Court but without the aid of counsel.

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THE SUPREME COURT ORDINANCE, 1943
ARRANGEMENT OF PARTS AND SECTIONS.

PART I.

PRELIMINARY.

- Section.
1. Short title, application and commencement.
 2. Definitions.

PART II.

CONSTITUTION OF THE SUPREME COURT

3. Establishment of the Supreme Court.
4. Constitution of the court.
5. Appointment of judges.
6. Forfeiture of office.
7. Powers of judges.
8. Vacancies and devolution of duties.
9. Precedence of judges.

Seal of the Court.

10. Seal.

PART III.

JURISDICTION AND LAW.

11. To have jurisdiction of High Court of Justice in England.
12. His Majesty's civil and criminal jurisdiction vested in court.
13. Power to appoint guardians, committees of lunatics.
14. How far the law of England in force.
15. Practice and procedure.
16. Rules as to the application of Imperial laws.
17. Application of native laws and customs.

Law and Equity.

18. Law and equity to be concurrently administered.
19. Questions of foreign and native law or custom to be decided by judge.
20. Determination of matter completely and finally.
21. Rules of equity to prevail.

Probate and Divorce.

22. In probate, divorce, and matrimonial causes.
23. Attorney-General to be King's Proctor for Nigeria. Powers and duties of.

Admiralty.

24. Admiralty jurisdiction of Supreme Court.

Appellate Jurisdiction.

25. Jurisdiction of Supreme Court with respect to appeals and cases stated from inferior courts.
26. Jurisdiction in appeals from native courts.
27. Power to revise decisions of magistrates' courts.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 3rd day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 23



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE FOR THE CONSTITUTION OF A SUPREME COURT OF JUSTICE FOR THE COLONY AND PROTECTORATE OF NIGERIA AND FOR OTHER PURPOSES RELATING TO THE ADMINISTRATION OF JUSTICE IN NIGERIA.

194 .] Date of commencement.

WHEREAS it is expedient to merge the Supreme Court of Nigeria and the High Court of the Protectorate of Nigeria into

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a single Court having jurisdiction throughout the Colony and Protectorate of Nigeria and to establish a Supreme Court of Justice for the Colony and Protectorate of Nigeria:

Enactment. BE IT THEREFORE ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:—

PART I

PRELIMINARY

Short title, application and commencement. 1. This Ordinance may be cited as the Supreme Court Ordinance, 1943; it shall apply to Nigeria and come into operation on such day as the Governor may by notice in the Gazette appoint.

2. Definitions:—

Definitions. "Act" "Act" used with reference to legislation means an Act of Parliament;

"action" (15 & 16 Geo. 5. c. 49, s. 225.) "action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding;

"cause" "cause" includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;

"cause of action" "cause of action" in suits founded on contract does not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;

"Chief Justice" "Chief Justice" means the Chief Justice of Nigeria;

"court" "court" includes the Supreme Court of Nigeria, and the Chief Justice, and Puisne Judges of the Supreme Court, sitting together or separately;

"Court of Appeal" "Court of Appeal" means the West African Court of Appeal, established by Order of His Majesty in Council;

"defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the court with any crime or offence; "defendant"

"division" means a Judicial Division of the Supreme Court; "division" (15 & 16 Geo. 5. c. 49, s. 225.) "execution creditor"

"execution creditor" includes every person having title to enforce a judgment or order by process of execution;

"existing" shall mean existing at the time appointed for the commencement of this Ordinance; "existing" (36 & 37 Vict. c. 66, s. 100.)

"first class chief" means a head chief graded as first class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, 1930; "first class chief" No. 14 of 1930.

"Imperial laws" means any Act and includes general rules or orders of court made thereunder; "Imperial laws"

"inferior court" includes a magistrate's court established under the Magistrates' Courts Ordinance, 1943, and a native court; "inferior court" Ordinance No. 24 of 1943.

"judge" means the Chief Justice or a Puisne Judge of the Supreme Court of Nigeria; "judge"

"judgment" includes a decree; "judgment"

"judgment debtor" includes every person ordered by a judgment or order in a civil cause or matter to pay money, or to do or abstain from doing any act; "judgment debtor"

"material part of the cause of action" means any fact which a party must prove in order to substantiate his claim; "material part of the cause of action"

"matrimonial cause" means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights; "matrimonial cause"

"matter" includes every proceeding in court not in a cause; "matter"

"oath" shall include solemn affirmation and statutory declaration; "oath"

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"office copy"

"office copy" means a copy either made under direction of the court or produced to the proper officer of the court for examination with the original, and examined by him therewith, and in either case certified by him as correct;

"order"

"order" shall include rule;

"party" (15 & 16 Geo. 5. c.49, s. 225.)

"party" includes every person served with notice of or attending any proceeding, although not named on the record;

"petitioner"

"petitioner" includes every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant;

"plaintiff"

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

"pleading"

"pleading" includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

"prescribed"

"prescribed" means prescribed by rules of court;

"registrar"

"registrar" includes the Chief Registrar and all other registrars of the court;

"rules of court"

"rules of court" includes forms;

"second class chief"

"second class chief" means a head chief graded as second class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, 1930;

No. 14 of 1930.

"suit"

"suit" includes action;

"Supreme Court"

"Supreme Court" means the Supreme Court of Nigeria established under this Ordinance.

PART II

CONSTITUTION OF THE SUPREME COURT

Establishment of the Supreme Court.

3. From and after the coming into operation of this Ordinance there shall be one Supreme Court of Justice for Nigeria which shall be the Supreme Court of Nigeria.

4. (1) The court shall consist of a Chief Justice and such other judges as the Governor shall from time to time appoint by letters patent under the public seal of the Colony in accordance with such instructions as he may receive from His Majesty, which Chief Justice and judges shall hold office during His Majesty's pleasure.

Constitution of the court.

(2) The judges shall be called the Senior Puisne Judge, the Second Puisne Judge, the Third Puisne Judge, the Fourth Puisne Judge and Puisne Judges.

(3) The court shall be deemed to be duly constituted notwithstanding any vacancy in the office of the Chief Justice or of any judge thereof.

5. (1) No person shall be appointed to be a judge of the Supreme Court unless:—

Appointment of judges.

(a) he is qualified to practise as an advocate in a court in England, Scotland, Northern Ireland or some other part of His Majesty's dominions having unlimited jurisdiction either in civil or criminal matters; and

Qualifications of judges.

(b) he has—

(i) practised as an advocate or solicitor in such a court for not less than five years, or

(ii) been a member of the colonial legal service for not less than five years.

(2) For the purpose of calculating the period of five years periods of less than five years falling within sub-paragraph (b) of sub-section (1) may be combined.

6. The acceptance by any judge of any other office or place of profit or emolument without the approval of the Governor shall be and be deemed *de facto* an avoidance of his office of judge, and his salary as judge shall cease accordingly from the time of his acceptance of such other office or place.

Forfeiture of office.

7. (1) All the judges of the court shall have in all respects save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Ordinance.

Powers of judges.

(2) Any judge of the court may, subject to this Ordinance and any rules of court, exercise all and any part of the original jurisdiction, civil and criminal, vested by this Ordinance in the court, and for such purpose shall be and form a court.

8. (1) Whenever the office of any judge shall become vacant by death or otherwise, or in case of the absence from duty of any judge owing to illness or any other cause or in case of the absence

Vacancies and devolution of duties.

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from Nigeria on duty or on leave of any judge it shall be lawful for the Governor in his discretion to appoint a fit and proper person to act in the office of such judge:

Proviso.

Provided that in the case of a vacancy in the office of Chief Justice or in the absence from duty or absence from Nigeria on duty of the Chief Justice as aforesaid the Senior Puisne Judge shall act as Chief Justice unless and until some other person is appointed to act in accordance with the provisions of this sub-section.

(2) Notwithstanding the provisions of section 5 and without derogating from the powers of the Governor under sub-section (1) hereof, the Governor, on the application of the Chief Justice, may appoint any administrative officer to exercise temporarily the powers of a judge within such area and for such time as the Governor shall prescribe.

(3) A person lawfully acting as Chief Justice, Senior Puisne Judge, or any other judge shall for all purposes, including the purposes of the proviso to sub-section (1) of this section, be deemed to be the Chief Justice or Senior Puisne Judge or other judge as the case may be, and shall have all the powers and perform all the duties possessed by or imposed upon the substantive holder of the office in which he is acting.

Precedence of judges.

9. (1) The Chief Justice for the time being shall be the President of the Court and in his absence the senior judge present shall preside.

(2) The other judges shall take precedence after the Chief Justice in the following order, namely:—

- (a) the Senior Puisne Judge;
- (b) the Second, Third and Fourth Puisne Judges;
- (c) the Puisne Judges according to the date of their respective appointments.

Seal of the Court.

Seal.

10. (1) The court shall have and use, as occasion may require, a seal, bearing the inscription "The Supreme Court of Nigeria". The seal of the court shall be kept by the Chief Justice, and a duplicate thereof shall be kept by each judge. The Chief Justice and judges may entrust the seal or duplicates to such officers of the court from time to time as they may respectively think fit.

(2) Such seal shall be the seal of the court for all purposes for which it may be required under the provisions of the rules of court.

PART III

JURISDICTION AND LAW

11. The Supreme Court shall be a superior court of record, and in addition to any other jurisdiction conferred by this or any other Ordinance shall, within the limits and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities which are vested in or capable of being exercised by His Majesty's High Court of Justice in England.

To have jurisdiction of High Court of Justice in England. (See 15 & 16 Geo. 5, c. 49.)

12. Subject to such jurisdiction as may for the time being be vested by Ordinance in native courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty's civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty's criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Ordinance and not otherwise:

His Majesty's civil and criminal jurisdiction vested in court.

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits transferred to the Supreme Court under the provisions of section 25 of the Native Courts Ordinance, 1933, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a native court nor in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

Proviso. Civil jurisdiction excluded where native court has jurisdiction. See also section 27 (1) (ii) of Ordinance No. 44 of 1933.

13. The court shall have all and singular the powers and authorities of the Lord High Chancellor of England, with full liberty to appoint and control guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics, and such as being of unsound mind are unable to govern themselves and their estates.

Power to appoint guardians, committees of lunatics.

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How far the law of England in force.

14. Subject to the terms of this or any other Ordinance, the common law, the doctrines of equity, and the Statutes of general application which were in force in England on the 1st January, 1900, shall be in force within the jurisdiction of the court.

Practice and procedure.

15. The jurisdiction by this Ordinance vested in the Supreme Court shall be exercised (so far as regards procedure and practice) in the manner provided by this or any other Ordinance, or by such rules and orders of court as may be made pursuant to this or any other Ordinance.

Rules as to the application of Imperial law.

16. (1) All Imperial laws declared to extend or apply to the jurisdiction of the court shall be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future local Ordinances.

(2) For the purpose of facilitating the application of the said Imperial laws, they shall be read with such formal verbal alterations, not affecting the substance, as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances.

(3) Every judge or officer of the Supreme Court having or exercising functions of the like kind, or analogous to the function of any judge or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned judge or officer.

(4) Whenever the great seal or any other seal is mentioned in any such law it shall be read as if the seal of the Supreme Court were substituted therefor.

(5) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment, or otherwise.

Application of native laws and customs.

17. (1) Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any existing native law or custom, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force.

(2) Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

(3) No party shall be entitled to claim the benefit of any local law or custom, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connexion with such transactions should be regulated exclusively by English law or that such transactions are transactions unknown to native law or custom.

(4) In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.

Law and Equity.

18. Subject to the express provisions of any other Ordinance, in every civil cause or matter commenced in the Supreme Court law and equity shall be administered by the Supreme Court concurrently and in the same manner as they are administered by His Majesty's High Court of Justice in England.

Law and equity to be concurrently administered. (See ss. 36-44 15 & 16 Geo. 5, c. 49.)

19. Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court by a judge with or without a jury or assessors it is necessary to ascertain the law of any other country or the native law or custom of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law or custom shall, instead of being submitted to the jury or assessors, be decided by the judge alone.

Questions of foreign and native law or custom to be decided by judge. (15 & 16 Geo. 5, c. 49, s. 102.)

20. The Supreme Court in the exercise of the jurisdiction vested in it by this Ordinance shall, in every cause or matter pending before the court, grant, either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward

Determination of matter completely and finally (15 & 16 Geo. 5, c. 49, s. 43.)

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by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Rules of equity to prevail.
(15 & 16 Geo. 5, c. 49, s. 44.)

21. Subject to the express provisions of any other Ordinance in all matters not particularly mentioned in this Ordinance, in which there was formerly or is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in the court so far as the matters to which those rules relate are cognizable by the court.

Probate and Divorce.

In probate, divorce, and matrimonial causes.
(See ss. 20 & 21, 15 & 16 Geo. 5, c. 49.)

22. The jurisdiction hereby conferred upon the court in probate, divorce, and matrimonial causes and proceedings may, subject to the provisions of this Ordinance and especially of section 17, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force in England.

Attorney-General to be King's Proctor for Nigeria. Powers and duties of
(15 & 16 Geo. 5, c. 49, s. 181.)

23. In the case of any petition for divorce or nullity of marriage:—

- (a) The court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney-General, who is hereby declared to be His Majesty's Proctor in and for Nigeria, and who may, either personally or by counsel, argue before the court any question in relation to the matter which the court deems to be necessary or expedient to have fully argued.
- (b) Any person may at any time during the progress of any proceedings or before the *decree nisi* is made absolute give information to His Majesty's Proctor for Nigeria of any matter material to the due decision of the case and His Majesty's Proctor for Nigeria may thereupon take such steps as he may consider necessary or expedient.
- (c) If in consequence of any such information or otherwise His Majesty's Proctor for Nigeria suspects that any parties to the petition are or have been acting in

collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.

- (d) Any rules and regulations for the time being in force for His Majesty's High Court of Justice in England relating to His Majesty's Proctor in England shall, subject to rules of court, apply to His Majesty's Proctor for Nigeria.

Admiralty.

24. The court shall be a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, and shall have and exercise Admiralty jurisdiction in accordance with the provisions of the said Act in all matters arising upon the high seas or elsewhere or upon any lake, river or other navigable inland waters or otherwise relating to ships and shipping.

Admiralty jurisdiction of Supreme Court.
(53 & 54 Vict. c. 27, ss. 3 & 4.)

Appellate Jurisdiction.

25. The Supreme Court shall have appellate jurisdiction to hear and determine all appeals from the decisions of magistrates' courts in civil and criminal causes and matters given in the exercise of the original jurisdiction of the said courts, as well as cases stated by magistrates in accordance with the provisions of any Ordinance relating thereto.

Jurisdiction of Supreme Court with respect to appeals and cases stated from inferior courts.

26. The Supreme Court shall have appellate jurisdiction to hear and determine appeals from native courts and appeals from decisions of magistrates on appeal from native courts in accordance with the provisions of any Ordinance relating thereto.

Jurisdiction in appeals from native courts.

27. The Supreme Court shall have powers of revision in respect of all proceedings in magistrates' courts in accordance with the provisions of any Ordinance relating thereto.

Power to revise decisions of magistrates' courts.

Miscellaneous.

28. (1) The court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

Mandamus, injunctions and receivers.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

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(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Relief against forfeiture for non-payment of rent.

29. In the case of any action for a forfeiture brought for non-payment of rent, the court shall have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as can be imposed by His Majesty's High Court of Justice in England, and if the lessee, his executors, administrators or assigns are so relieved they shall hold the demised premises according to the terms of the lease and without the necessity of any new lease.

Executions of instruments by order of court.

30. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to indorse any negotiable instrument, the court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be indorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or indorsed shall operate and be for all purposes as valid as if it had been executed or indorsed by the person originally directed to execute or indorse it.

quo warranto.

31. Proceedings in *quo warranto* shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

Reconciliation in civil cases.

32. Where an action is pending the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

Reconciliation in criminal cases.

33. In criminal cases the court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

34. The court shall not enforce against a native living in any area specified by Order of the Governor in Council under this section, which Order the Governor in Council is hereby empowered to make, any obligation incurred by him towards a non-native in respect of a commercial transaction, so far as it is based on credit, if it appear to the court in its discretion that it was not reasonably probable that the native was fully aware of the nature of the obligation and the consequences of failure to perform the same.

Credit to natives.

35. (1) Where the plaintiff in any action in the Supreme Court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to any amount and that there is probable cause for believing that the defendant is about to quit Nigeria unless he be apprehended and that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action, the court may, in the manner prescribed by rules of court, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has paid into court the sum claimed and costs, or given security as prescribed by rules of court, that he will not go out of Nigeria without the leave of the court, in a sum not exceeding the amount claimed in the action.

Power to arrest debtor quitting Nigeria.

(2) Where the claim is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, the provisions of sub-section (1) shall apply as if it were an action but it shall not be necessary to prove that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action and the security given, instead of being that the defendant will not go out of Nigeria, shall be to the effect that any sum recovered against the defendant in the action shall be paid or that the defendant shall be rendered to prison.

PART IV

SITTINGS, DISTRIBUTION OF BUSINESS

36. (1) For the more convenient despatch of business the court may sit in two or more divisions and the Chief Justice may divide Nigeria into divisions and assign any portion of Nigeria to any division which shall be known as a Judicial Division and may designate such Judicial Division by name and shall direct one or more judges to sit in one or more Judicial Divisions.

Divisions of Supreme Court.

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(2) Every judge, subject to any directions that may be given by the Chief Justice, shall sit for the trial of criminal and civil causes and for the disposal of other legal business pending at such places in Nigeria and at such times as he may think fit.

Chief Justice distributes business of court.

(3) The Chief Justice may determine the distribution of the business before the court among the judges thereof and may assign any judicial duty to any judge or judges.

Court open at all times for general business.

37. The court shall be open throughout the year for the transaction of the general legal business pending therein.

Adjournment of court in judge's absence.

38. In case the judge who should preside over the sitting of the court is from any cause unable or fails to attend the same on the day appointed, and no other judge shall attend in his stead, the court shall stand adjourned from day to day until a judge shall attend or until the court shall be adjourned or closed by order under the hand of a judge.

Power of Transfer.

Power of transfer.

39. (1) A judge may at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a magistrate's court or to a judge in the same or any other Judicial Division.

(2) The Chief Justice may at any time or at any stage of the proceedings before judgment similarly transfer any cause or matter before a judge to any other judge.

Manner of its exercise.

40. (1) The power of transfer shall be exercised by means of an order under the hand of the Chief Justice or a judge, as the case may be, and seal of the court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken thereon, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such orders be in dependence.

(2) The Chief Justice or judge, as the case may be, may at all times cancel, alter, add to or amend any such order before final judgment by the court to which a cause or matter has been transferred.

(3) The Chief Justice or judge, as the case may be, may, if it appear expedient, telegraph in the first instance the contents of any such order made by him, and such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

By telegraph if necessary.

41. Every order of transfer shall operate as a stay of proceedings before the judge to whom it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of the record shall be transmitted to the judge or magistrate to whom the same shall be transferred.

Effects of order of transfer.

42. (1) The court may at any stage of the proceedings by order direct that any cause or matter pending before it be transferred to a native court having jurisdiction in such cause or matter.

Power to transfer cause to native court.

(2) Any order made under sections 39 to 42 (1) inclusive shall not be subject to appeal.

43. Every proceeding in the Supreme Court and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of the Legal Practitioners Ordinance, 1933, be heard and disposed of by a single judge, and all proceedings in an action subsequent to the hearing or trial, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place.

Proceedings in Supreme Court to be disposed of by single judge. (15 & 16 Geo. 5, c. 49, s. 61.) No. 57 of 1933.

44. A judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the Supreme Court, in all such causes and matters and in all such proceedings in any causes or matters as may be heard in court or in chambers respectively by a single judge of His Majesty's High Court of Justice in England.

Powers of single judge in court and in chambers. (15 & 16 Geo. 5, c. 49, s. 61.)

45. Subject to the provisions of this Ordinance with respect to appeals in matters of practice and procedure, every order made by a judge in chambers, except orders as to costs only which by law are left to the discretion of the court, may upon notice be set aside or discharged by the judge sitting in court.

Discharge of orders made in chambers. (15 & 16 Geo. 5, c. 49, s. 62.)

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PART V

GENERAL PROVISIONS AS TO TRIAL AND PROCEDURE

Trial by Judge or Jury

Mode of trial.

46. Civil and criminal causes shall be tried by a judge alone except where express provision to the contrary is made by this or any other Ordinance.

Assessors.

Trial with assessors. (15 & 16 Geo. 5. c. 49. s. 98.)

47. (1) In any civil cause or matter before the Supreme Court the court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the court.

Inquiries and Trials by Referees.

Reference for report.

48. (1) Subject to rules of court a judge may refer to an official or special referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding.

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Reference for trial.

49. In any cause or matter, other than a criminal proceeding:—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be conducted by the court through its ordinary officers; or
- (c) if the question in dispute consists wholly or in part of accounts,

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

50. (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.

Powers and remuneration of referees and arbitrators.

(2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the court or a judge, be equivalent to a finding of the court.

(3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be determined by the court or a judge.

51. The court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Ordinance on the court or a judge in relation to submissions.

Court to have powers as in submissions. Chapter 9.

52. The court or a judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee or arbitrator.

Power to order *habeas corpus* to issue.

53. A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Statement of case pending arbitration.

54. An order made under the provisions of this Ordinance relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the court or a judge thinks fit.

Power of court to impose terms as to costs.

55. In the provisions of this Ordinance relating to inquiries and trials by referees, unless the context otherwise requires:—

Explanation of term "reference."

"reference" means a reference under an order made by the court or a judge under the said provisions.

Rules of Court.

56. (1) The Chief Justice with the approval of the Governor may make rules of court for carrying this Ordinance into effect, and in particular for all or any of the following matters:—

Powers of making rules of court.

- (a) for regulating the pleading, practice, and procedure of the court, including all matters connected with the forms to be used and the fees to be payable;

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PART VI
MISCELLANEOUS
Officers of Court

Chief Registrar and other officers.

57. (1) The Governor may from time to time appoint a fit and proper person to be the Chief Registrar of the Supreme Court, who shall perform such duties in execution of the powers and authorities of the court as may from time to time be assigned to him by the rules of court or, subject thereto, by any special order of the Chief Justice.

(2) The Chief Justice, with the approval of the Governor, may from time to time appoint registrars, deputy registrars and such other officers as may be deemed necessary, who shall perform all such duties with respect to business before the court as may be directed by rules of court or any order of the Chief Justice.

(3) The Chief Justice may appoint any member of the Judicial Department to act temporarily in any of the offices specified in sub-section (2).

Negligence or misconduct of officers.

58. If an officer of the court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the fact alleged, the court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order directing payment of money.

Restriction on officers of court buying property sold at execution.

59. No person in permanent employment as an officer of the court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase any property sold at execution, and in the event of any such person purchasing or being interested in the purchase of any property at an execution sale, such purchase shall be entirely void:

Proviso.

Provided that nothing herein contained shall prevent any such person from purchasing by leave of the court at execution sale, any property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

Inspection.

Inspection.

60. In any cause the court may on the application of either party, or of its own motion, make such order for the inspection by the court, the jury, the parties or witnesses, of any movable or

immovable property, the inspection of which may be material to the proper determination of the question in dispute, and give such direction respecting such inspection as to the court may seem fit.

Costs.

61. Costs shall be allowed to a successful plaintiff on the scale prescribed for similar proceedings in an inferior court in any action brought by him in the Supreme Court which might have been tried in an inferior court in its civil jurisdiction, unless the judge is of the opinion that the action was one which it was proper to bring in the Supreme Court and certifies accordingly.

Disallowance of costs in certain cases.

Keeping of Minutes.

62. (1) In every cause or matter the presiding judge shall take down in writing the purport of all oral evidence given before the court and minutes of the proceedings and shall sign the same at any adjournment of the case and at the conclusion thereof.

Notes of evidence and minutes of proceedings to be kept by presiding officer.

(2) No person shall be entitled, as of right, to the inspection of or to a copy of the records so kept as aforesaid save as may be expressly provided for by rule of court.

(3) The record so kept as aforesaid or a copy thereof purporting to be signed and certified as a true copy by the registrar shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses

Witnesses.

63. (1) The presiding judge may in any cause order and allow to all persons required to attend, or examined as witnesses, such sum or sums of money as may be specified by rules of court as well for defraying the reasonable expenses of such witnesses, as for allowing them a reasonable compensation for their trouble and loss of time.

Allowances to witnesses.

(2) No person may refuse to attend as a witness, or to give evidence, when so required by process of the court on the ground that his expenses have not been first paid or provided for.

64. All sums of money so allowed shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit if the court shall

How defrayed.

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so order, and in criminal proceedings they shall, unless by the court ordered to be paid by the party convicted or the prosecutor, be paid out of the general revenue.

Persons in court may be required to give evidence though not summoned.

65. Any person present in court, whether a party or not in a cause, may be compelled by the court to give evidence, and produce any document in his possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished for any refusal to obey the order of the court.

In what cases prisoners may be brought by warrant to give evidence. Proviso.

66. A judge may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process to be examined as a witness in any cause depending, or to be inquired of, in the court:

Provided that such warrant shall not be granted as of course, nor unless the judge shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

Prison officer to produce prisoner.

67. The Superintendent of Prisons or person in whose custody such prisoner may be shall forthwith obey such warrant by bringing the prisoner to the court in his custody, or by delivering him to an officer of court, as the warrant may order, and if the prisoner shall under the terms of the warrant be delivered to any officer of court, the Superintendent of Prisons or other person shall not be liable for the escape of such prisoner.

Saving of Rules of Evidence.

Ordinance not to affect rules of evidence or juries. (15 & 16 Geo. 5, c. 41, ss. 101 & 103.) Proviso.

68. Nothing in this Ordinance and nothing in rules of court made under this Ordinance shall affect the mode of giving evidence by the oral examination of witnesses, or the rules of evidence, or the law relating to juries or juries:

Provided that nothing in this section shall:—

- (a) prejudice the operation of any rules of court made in pursuance of the express power conferred by this Ordinance to make rules of court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given: or

- (b) affect the power of the court for special reasons to allow depositions or affidavits to be read.

Representation of Parties.

69. (1) In the case of a prosecution by or on behalf of the Crown or by any public officer in his official capacity, the Crown or that officer may be represented by a law officer, crown counsel, administrative officer, police officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

Representation of the Crown and Government departments.

(2) In any civil cause or matter in which the Crown or any public officer in his official capacity is a party or in any civil cause or matter affecting the revenues of Nigeria the Crown or that officer may be represented by a law officer, crown counsel, administrative officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

70. In any suit brought by or against a first or second class chief in either his official or personal capacity such chief may be represented in a court established by this Ordinance at any stage of the proceedings by any native of his chieftom who shall satisfy such court that he has the authority of such chief to represent him.

Representation of first and second class chiefs.

71. Subject to the provisions of this or any other Ordinance legal practitioners may appear in any cause before the court.

Right of appearance of legal practitioners.

Commissioners of Oaths.

72. The Chief Justice may appoint under his hand and the seal of the court, from time to time, such and so many persons as may be requisite to be commissioners within Nigeria for taking affidavits and declarations and receiving production of documents, or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in the court, and any order of the court for the attendance and examination of witnesses or production of documents before any such commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the court.

Chief Justice may appoint commissioners for affidavits or for taking evidence.

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Protection of commissioners from actions.

73. No action shall be brought against any commissioner in respect of any act or order *bona fide* performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every such act or order if in excess of such powers and jurisdiction shall be liable to be revised, altered, amended or set aside upon summary application to the court.

Protection of Judicial Officers.

Judicial officers not liable to be sued if acted in good faith.

74. (1) No judge or other person acting judicially shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Proviso.

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any such judge or other person acting judicially, shall be liable to be sued in any court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

Saving.

Saving of pending proceedings.

Chapter 3.

No. 45 of 1933.

75. (1) All proceedings instituted, commenced or taken in accordance with the rules or practice of the Supreme Court established in accordance with the provisions of the Supreme Court Ordinance, or of the High Court established in accordance with the provisions of the Protectorate Courts Ordinance, 1933, in respect of any cause pending at the coming into force of this Ordinance shall be valid and effectual as though they had been instituted, commenced or taken in accordance with the provisions of this Ordinance and such proceedings shall continue before the court in accordance with the provisions of this Ordinance.

(2) All proceedings instituted, commenced or taken in accordance with the Prize Court Rules, 1939, in the Supreme Court established in accordance with the Supreme Court Ordinance shall continue in the court established by this Ordinance.

Saving of certain existing appointments.

76. Notwithstanding the provisions of sections 4 and 5 of this Ordinance nothing in this Ordinance shall be construed to affect the status, appointment or tenure of office of any judge of the Supreme Court or of any judge or assistant judge of the High

Court or of any registrar or other officer performing duties on the coming into force of this Ordinance in connection with a court established in accordance with the provisions of the Supreme Court Ordinance, or of the Protectorate Courts Ordinance, 1933; all judges, registrars and other officers as aforesaid shall be deemed to have been appointed to exercise their respective duties in the Supreme Court established in accordance with the provisions of this Ordinance, in the case of the Chief Justice of Nigeria as the Chief Justice of Nigeria constituted by this Ordinance and in the case of any Puisne Judge of the Supreme Court or of any judge or assistant judge of the High Court as a Puisne Judge of the Supreme Court established by this Ordinance and in the case of the Chief Registrar as Chief Registrar of the Supreme Court of Nigeria, and in the case of all other officers as aforesaid in the Supreme Court of the Judicial Division in which they were serving on the coming into force of this Ordinance and shall thereafter be subject to the jurisdiction and provisions of this Ordinance.

Chapter 3.
No. 45 of
1933.

77. (1) Wherever in any Ordinance, rule of court or other document reference is made to the Supreme Court established in accordance with the provisions of the Supreme Court Ordinance, or to the High Court, such reference shall be read, in so far as the context will permit, to mean a reference to the Supreme Court established in accordance with the provisions of this Ordinance, and where in any such Ordinance, rule of court or other document reference is made to any judge, assistant judge, registrar or other officer of the High Court such reference shall be read, so far as the context will permit, to mean a judge, registrar or other officer as aforesaid of the Supreme Court established in accordance with the provisions of this Ordinance.

Certain references to Supreme Court under Chapter 3 and to High Court to be references to Supreme Court under this Ordinance.

(2) Notwithstanding the generality of the provisions of subsection (1), the provisions set out in the second column of the Ordinances referred to in the first column of the First Schedule hereto are hereby amended to the extent and in the manner set out in the third column of the said schedule opposite to the said provisions in the said second column.

First
Schedule

Repeal.

78. The Ordinances set out in the Second Schedule hereto and all rules made thereunder are hereby wholly repealed:

Repeal
Second
Schedule

Reference:-

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Coroners' Ordinance. (Cap. 15)	Section 2	Delete sub-section (1) and substitute the following therefor :— “(1) (a) Within the Colony every magistrate shall be a coroner for the area within which he exercises jurisdiction as such coroner. (b) Within the Protectorate every magistrate, district officer and assistant district officer shall be a coroner for the area within which he exercises jurisdiction or is appointed.” For the words “of the Supreme Court or of the High Court” substitute the words “of the Supreme Court”. For the expression “to the Registrar of the Supreme Court or of the High Court, to whichever court he may have committed the accused, and in case of committal to the Supreme Court, a copy thereof to the Solicitor-General or Crown Counsel,” substitute the expression “to the Registrar of the court to which he may have committed the accused, and a copy thereof to the Solicitor-General or Crown Counsel.” For the expression “or to Registrar of the High Court, as the case may be, and the Registrar” substitute the words “and the Registrar”.
Sheriffs Ordinance. (Cap. 16)	Section 2	Delete the definition “Court” and substitute therefor :— “‘Court’ means the Supreme Court and Magistrates' Courts.”
	Section 4	In sub-section (3) for the words “every commissioner of such court shall” substitute the words “the court may detail any officer of the court to”.
The Criminal Code Ordinance. (Cap. 21)	Section 1 of the Code	In the definition “court,” “a court”, “the court” delete the following expression appearing therein :— “(b) the High Court and any judge thereof being engaged in any judicial act or proceeding or inquiry;” In the definition “judicial officer” delete the words “any judge of the High Court;”.
The Fugitive Criminals Surrender Ordinance. (Cap. 23)	Section 2	Delete the definition “The Magistrate” and substitute the following therefor :— “‘The Magistrate’ means a magistrate appointed under the Magistrate's Courts Ordinance, 1943.”
	Section 10	For the words “the High Court” substitute the words “the Supreme Court”.

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Departmental Offences Ordinance. (Cap. 31)	Section 9	For the expression “a judge of the High Court by section 24 of the Protectorate Courts Ordinance, 1933, in relation to the monthly lists forwarded by a Magistrate's Court” substitute the expression “a judge of the Supreme Court by section 45 of the Magistrates' Courts Ordinance, 1943, in relation to the monthly lists forwarded by a Magistrate”.
The Prisons Ordinance. (Cap. 34)	Section 25A	For the expression “by the Supreme Court, the High Court, or any Magistrate's Court,” substitute the expression “by the Supreme Court or a magistrate's court;”.
The Lunacy Ordinance. (Cap. 51)	Section 15	In sub-section (2) for the words “Supreme Court Ordinance” substitute the expression “Supreme Court Ordinance, 1943;”.
	Section 17	In the proviso thereto for the expression “or under section 24 of the Protectorate Courts Ordinance, 1933,” substitute the expression “or under section 45 of the Magistrates' Courts Ordinance, 1943”.
	Section 20	For the expression “The Supreme Court or the High Court,” substitute the expression “The Supreme Court;”.
The Public Health Ordinance. (Cap. 56)	Section 39	In sub-section (7) for the words “of the Supreme Court or of the High Court” substitute the words “of the Supreme Court”.
The Assessment Ordinance. (Cap. 62)	Section 19	For the words “the Supreme Court or the High Court” substitute the words “the Supreme Court”.
	Section 22	In sub-section (2) for the words “the Supreme Court or the High Court” at both places where those words appear therein substitute the words “the Supreme Court”.
	Section 24	For the words “the Supreme Court or the High Court” appearing in the third line thereof substitute the words “the Supreme Court”; and For the words “of the Supreme Court or the High Court or a Magistrate” appearing in paragraph (2) thereof substitute the words “of the Supreme Court or a Magistrate”.

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Marriage Ordinance, (Cap. 68)	Section 25	In paragraph (c) for the words "to the Supreme Court or the High Court" substitute the words "to the Supreme Court".
	Section 26	For the expression "The Chief Justice in the case of the Colony and the Chief Judge in the case of the Protectorate may" substitute the words "The Chief Justice may".
The Crown Lands Ordinance, (Cap. 84)	Section 15	Delete the words "or of the High Court" and the words "or High Court".
	Section 16	Delete the words and the brackets "(or High)".
	Section 19	For the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
	Section 20	Delete paragraph (c) thereof and substitute the following therefor:— "(c) A judge of the Supreme Court;".
	Section 8	In sub-section (3) for the words "of the Supreme Court or of the High Court" substitute the words "of the Supreme Court".
	Section 14	For the words "in the Supreme Court or the High Court or a Magistrate's Court" substitute the words "in the Supreme Court or the magistrate's court".
	Section 16	For the words "in the Supreme Court or in the High Court or a Magistrate's Court" substitute the words "in the Supreme Court or in a magistrate's court".
The Land and Native Rights Ordinance, (Cap. 85)	Section 23	For the words "by the Supreme Court or the High Court" substitute the words "by the Supreme Court".
	Section 28	For the words "in the Supreme Court or the High Court" substitute the words "in the Supreme Court".
	Section 14	For the words "High Court" in each of the three places where the same occurs therein substitute the words "Supreme Court".
	Section 21	In sub-section (1) for the words "in the High Court" substitute the words "in the Supreme Court".
		In sub-section (2) for the words "before a Magistrate's Court or the High Court" substitute the words "before the Supreme Court or a magistrate's court".
		In sub-section (3) for the words "in a Magistrate's Court or the High Court" substitute the words "in the Supreme Court or a magistrate's court".

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Public Lands Acquisition Ordinance, (Cap. 88)	Section 10	For the words "the Supreme Court or the High Court and such Court shall" substitute the expression "the Supreme Court, which shall".
	Section 18	For the words "by the Supreme Court or the High Court" substitute the words "by the Supreme Court".
	Section 20	For the expression "the Supreme Court, or the High Court, or the West African Court of Appeal" substitute the expression "the Supreme Court, or the West African Court of Appeal".
	Section 25	For the words "by summons to the High Court or the Supreme Court" substitute the words "by summons to the Supreme Court".
	Schedule	For the expression "In the Court of" in the heading to Form F substitute "In the Supreme Court of Nigeria".
The Native Lands Acquisition Ordinance, (Cap. 89)	Section 2	Delete the definition "Court" appearing therein and substitute therefor:—"Court" means the Supreme Court."
	Section 28	For the words "to the Supreme Court or the High Court" substitute the words "to the Supreme Court".
The Survey Ordinance, (Cap. 90)	Section 31	For the words "of the Supreme Court or High Court" substitute the words "of the Supreme Court".
	Section 48	For the words "in the Supreme Court or High Court" substitute the words "in the Supreme Court".
The Minerals Ordinance, (Cap. 93)	Section 58	In the proviso to paragraph (b) to sub-section (1) delete the words "or the High Court".
	Section 64 Section 68	Delete paragraph (c) thereof. Delete sub-section (2) thereof.
The Piers Ordinance, (Cap. 103)	Section 11	For the words "the Supreme Court or the High Court" substitute the words "the Supreme Court".

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Shipping and Navigation Ordinance. (Cap. 104)	Section 7	For the words "the Supreme Court or the High Court" substitute the words "the Supreme Court".
	Section 10	In sub-section (3) for the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
	Section 14	In sub-section (2) :— For the words "the Supreme Court or the High Court" appearing in the third line thereof substitute the words "the Supreme Court". For the words "the Supreme Court or of the High Court" appearing therein in the fifth line thereof substitute the words "the Supreme Court".
	Section 16	In sub-section (2) :— For the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
	Section 2	Delete the definition "Court" and substitute therefor :— "Court" includes the Supreme Court and a magistrate's court.
The Dersation from Ships Ordinance. (Cap. 106)	Section 9	For the words "the High Court" appearing at the end of the second paragraph thereof substitute the words "the Supreme Court".
	Section 13	For the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
The Railways Ordinance. (Cap. 110)	Section 182	For the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
	Section 206	For the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
	Section 211	For the words "The Supreme Court or the High Court" substitute the words "The Supreme Court".
	Section 239	For the words "one hundred pounds" substitute the words "two hundred pounds".

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Liquor Ordinance. (Cap. 131)	Section 26	Delete sub-section (2) and substitute the following therefor :— "(2) Notwithstanding the provisions of sub-section (1), in the Colony a magistrate, and in the Protectorate a District Officer, may extend the hours during which liquor may be sold on any special occasion in respect of all or any licence holders."
	Section 28	In paragraph (a) for the words "to the Commissioner of the Supreme Court" substitute the words "to the magistrate".
The Folded Woven Goods Ordinance. (Cap. 135)	Section 58a	In sub-section (1) delete the words and comma "Commissioner of the Supreme Court".
	Section 11	For the words "the Supreme Court or the High Court" substitute the words "the Supreme Court".
	Section 235	Delete the figure and brackets "(1)" and for the words "the Supreme Court or the High Court or a Magistrate" substitute the words "the Supreme Court or a magistrate".
The Companies Ordinance. (Cap. 138)	Section 3	In paragraph (a) of sub-section (3) for the expression "before the Supreme Court, or before the High Court" substitute the words "before the Supreme Court".
	Section 10	In sub-section (3) for the words "the Supreme Court or of the High Court" substitute the words "the Supreme Court".
The Naturalisation of Aliens Ordinance. (Cap. 155)	Section 6	In paragraph (a) for the words "the Supreme Court or of the High Court or by a Magistrate" substitute the words "the Supreme Court or by a magistrate".
	Section 7	In sub-section (2) delete the words "or the Chief Judge" in both places where they appear therein.

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Protectorate Laws (Enforcement) Ordinance, 1924 (No. 15 of 1924)	Section 2	Delete the proviso, renumber the section as sub-section (1) and add the following sub-section thereto :— “(2) Every such person shall be brought before the court having jurisdiction over him and exercising jurisdiction either in the place where he is detained or arrested or in the area in which the offence has been or is suspected of having been committed whichever is the more convenient.”
The Registration of Business Names Ordinance, 1926 (No. 5 of 1926)	Section 2	Delete the definition “Court” and substitute the following therefor :— “ ‘Court’ means the Supreme Court.”
The Harbour Dues Ordinance, 1926 (No. 20 of 1926)	Section 11	For the words “the Supreme Court or the High Court” substitute the words “the Supreme Court”.
	Section 16	For the words “the Supreme Court or the High Court” substitute the words “the Supreme Court”.
The Motor Traffic Ordinance, 1927 (No. 10 of 1927)	Section 8	In sub-section (3) for the expression “section 48 of the Supreme Court Ordinance or section 20 of the Protectorate Courts Ordinance, 1933, as the case may be” substitute the expression “section 15 of the Supreme Court Ordinance, 1943.”
The Coins Ordinance, 1928 (No. 6 of 1928)	Section 8	In paragraph (i) for the words “the Supreme or the High Court” substitute the words “the Supreme Court”.
The Lagos Town Planning Ordinance, 1928 (No. 45 of 1928)	Section 48	In sub-section (2) for the words “Supreme Court Ordinance” substitute the expression “Supreme Court Ordinance, 1943.”

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Native Authority Ordinance, 1933 (No. 43 of 1933)	Section 15	In sub-section (3) for the words “in a Magistrate's Court or in the High Court” substitute the words “in the Supreme Court or in a magistrate's court”.
The Native Courts Ordinance, 1933 (No. 44 of 1933)	Section 2	For the definition of “High Court” substitute the following :— No. 23 of “Supreme Court” means the Supreme Court established under the provisions of the Supreme Court Ordinance, 1943.”
	Section 13	For the words “High Court” in each of the twelve places where the same occurs therein substitute the words “Supreme Court”.
	Section 22	Delete the expressions “the High Court,” appearing therein.
	Section 25	In sub-section (1) (b) for the words “High Court” substitute the words “Supreme Court”. In sub-section (1) (c) and in the proviso thereto for the words “High Court” in the three places where they occur therein substitute the words “Supreme Court”. In sub-section (2) for the words “High Court” substitute the words “Supreme Court”. In sub-section (4) for the words “High Court” substitute the words “Supreme Court”.
	Section 27	In sub-section (1) for the words “High Court” in each of the three places where the words occur therein substitute the words “Supreme Court”. In sub-section (2) for the words “High Court” substitute the words “Supreme Court”. In sub-section (3) for the words “High Court” in both places where they occur therein substitute the words “Supreme Court”.
	Section 29	For the words “High Court” substitute the words “Supreme Court”.
	Section 30	For the words “High Court” substitute the words “Supreme Court”.
	Section 32	For the words “High Court” substitute the words “Supreme Court”.

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
	Section 35	For the words "High Court" in both places where they occur therein <i>substitute</i> the words "Supreme Court".
	Section 36	For the words "High Court" in both places where they occur therein <i>substitute</i> the words "Supreme Court".
	Section 39	In sub-section (3) for the words "the Supreme Court Ordinance" <i>substitute</i> the expression "the Supreme Court Ordinance, 1943".
	Section 40	For the words "High Court" <i>substitute</i> the words "Supreme Court".
	Section 42	For the words "High Court" in both places where they occur therein <i>substitute</i> the words "Supreme Court".
	Section 43	For the words "High Court" in the five places where they occur therein <i>substitute</i> the words "Supreme Court".
The West African Court of Appeal Ordinance, 1933. (No. 47 of 1933)	Section 2	In the definitions:— "Conviction" <i>delete</i> the words "or the High Court"; "Lower Court" <i>delete</i> the words "or the High Court"; "Magistrate's Court" <i>substitute</i> for the expression "the Protectorate Courts Ordinance, 1933" the expression "the Magistrate's Courts Ordinance, 1943".
	Section 3	<i>Delete</i> the definition "High Court".
	Section 4	<i>Delete</i> the words "or the High Court" in the second line of paragraph (a) thereof. <i>Delete</i> the words "or the High Court" at the end of the second proviso thereto. <i>Delete</i> and <i>substitute</i> the following therefor:— "4. An appeal shall lie to the Court of Appeal from the decision of the Supreme Court on appeal:— (1) from the decision of a magistrate's court, or (2) from the decision of a native court, where an appeal lies therefrom under any Ordinance, subject to the following provisions:— (a) where the Supreme Court has affirmed the decision of a magistrate's court the appeal shall lie only by special leave of the Supreme Court;

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
	Section 6	(b) where the Supreme Court has reversed or materially altered the decision of a magistrate's court or of a native court or where the Supreme Court has approved the decision of a native court, the Supreme Court shall give leave to appeal from its decision subject to the like conditions as if the decision had been given in a suit originating in the Supreme Court: Provided that no appeal shall lie except by special leave of the court making the order or the Court of Appeal:— (i) from an order made <i>ex parte</i> , or (ii) from an order as to costs only, or (iii) from an order made by the consent of the parties.
	Section 9	<i>Delete</i> the words "or of the High Court".
	Section 13	<i>Delete</i> the words "or the High Court" appearing in the first and second lines thereof. In paragraph (b) for the words "High Court" <i>substitute</i> the words "Supreme Court". In the provisos for the words "High Court" in each of the six places where they occur therein <i>substitute</i> the words "Supreme Court".
	Section 17	<i>Delete</i> the words "or the High Court" in the sixth line thereof. For the words "High Court" in the seventh line thereof <i>substitute</i> the words "Supreme Court". For the expression "by or in the Supreme Court or the High Court, by such Court, or in the case of a conviction in a Native Court, by the High Court." <i>substitute</i> the expression "by or in the Supreme Court or in the case of a conviction in a native court, by the Supreme Court." In sub-section (2):— <i>delete</i> the words "or the High Court" in the second line thereof, and for the words "High Court" in the fourth line thereof <i>substitute</i> therefor the words "Supreme Court". In sub-section (3) for the words "High Court" in the tenth line thereof <i>substitute</i> the words "Supreme Court".

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
	Section 18	Delete the words " or of the High Court " in the fifth and sixth lines thereof. For the expression " other than the Judge of the High Court who heard the appeal, and such Judge of the Supreme Court or of the High Court may," substitute the expression " other than the Judge who heard the appeal, and such Judge may."
	Section 22	Delete the words " or the High Court " in the fourth line thereof. For the words " High Court " in the sixth line thereof substitute the words " Supreme Court ".
The Additional Customs Duties Ordinance, 1934. (No. 8 of 1934)	Section 21	For the expression " Any Commissioner of the Supreme Court, Magistrate or Justice of the Peace," where it occurs substitute the expression " Any magistrate or justice of the peace."
The Gold Trading Ordinance, 1935. (No. 18 of 1935)	Section 2	Delete the definition of " Court " and substitute therefor :- " " Court " means the Supreme Court."
	Section 11	In sub-section (1) for the expression " Any Commissioner of the Supreme Court, Magistrate or Justice of the Peace," substitute the expression " A magistrate or justice of the peace."
The Kola Tenancies Ordinance, 1935. (No. 25 of 1935)	Section 4	For the words " High Court " substitute the words " Supreme Court ".
	Section 7	In sub-section (2) for the words " High Court " substitute the words " Supreme Court ".
	Section 19	For the words " High Court " in the five places where they occur therein substitute the words " Supreme Court ".
	Section 23	For the words " High Court " substitute the words " Supreme Court ".
The Co-operative Societies Ordinance, 1935. (No. 39 of 1935)	Section 59	Delete the words " or the High Court ".

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Foreign Judgments (Reciprocal Enforcement) Ordinance, 1935. (No. 48 of 1935)	Section 2	In the definitions :- " Supreme Court of Nigeria " delete the words " or the High Court " ; " Judgments given in the superior courts of Nigeria " delete the words " or the High Court ".
	Section 5	In sub-section (1) for the expression " The power to make rules of court under section 79 of the Supreme Court Ordinance and under section 48 of the Protectorate Courts Ordinance, 1933, shall," substitute the expression " The power to make rules of court under section 56 of the Supreme Court Ordinance, 1943, shall."
	Section 12	For the expression " under section 79 of the Supreme Court Ordinance," substitute the expression " under section 56 of the Supreme Court Ordinance, 1943."
The Notaries Public Ordinance, 1936. (No. 41 of 1936)	Section 17	For the expression " All Commissioners of the Supreme Court, Magistrates of the High Court and " substitute the expression " All magistrates and "
The Forestry Ordinance, 1937. (No. 38 of 1937)	Section 8	Delete and substitute therefor :- " 8. For the purposes of the inquiry the reserve settlement officer shall have all the powers conferred upon a magistrate."
	Section 11	In sub-section (1) for the expression " to a Commissioner of the Supreme Court if the land are situate in the Colony or to a Magistrate if the lands are situate in the Protectorate," substitute the expression " to a magistrate."
	Section 48	In sub-section (2) :- For the expression " of a Commissioner of the Supreme Court to the Supreme Court or from a decision of a Magistrate to the High Court," substitute the expression " of a magistrate to the Supreme Court," and delete the expression " or of the High Court, as the case may be," In the proviso to sub-section (1) for the expression " a Commissioner of the Supreme Court or a Magistrate, as the case may be," substitute the words " a magistrate "

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ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
The Native Courts (Colony) Ordinance, 1937. (No. 39 of 1937)	Section 6	In paragraph (b) of sub-section (2) for the words " a Court of a Commissioner of the Supreme Court " substitute " a magistrate " ; In sub-section (3) for the words " a Court of a Commissioner of the Supreme Court " substitute the words " a magistrate " ; and In sub-section (4) for the expression " the order of a Court of a Commissioner of the Supreme Court or a Native Court having jurisdiction in the matter, and shall forthwith report such seizure and detention to such Court " substitute the expression " the order of a magistrate or of a native court having jurisdiction in the matter, and shall forthwith report such seizure and detention to a magistrate or to such native court, as the case may be. "
	Section 10	In sub-section (2) :— For the expression " imposed by a Court of a Commissioner of the Supreme Court or a Native Court " substitute the expression " imposed by a magistrate or a native court " ; and Insert the words " magistrate or " between the words " such " and " Court " in the eighth line thereof.
	Section 12	In the proviso to sub-section (1) for the expression " appeal against the order to a Court of a Commissioner of the Supreme Court, but the Court shall not set aside the order unless such person satisfies the Court that his " substitute the expression " appeal against the order to a magistrate, but the magistrate shall not set aside the order unless such person satisfied the magistrate that his " .
	Section 15	In sub-section (3) for the expression " taken in a Court of a Commissioner of the Supreme Court or in the Supreme Court " substitute the expression " taken in the Supreme Court or in a magistrate's court. "
The Native Courts (Colony) Ordinance, 1937. --- (No. 40 of 1937)	Section 19	In sub-section (2) for the expression " to the Court of a Commissioner of the Supreme Court; and the District Officer shall inform such Commissioner's Court " substitute the expression " to a magistrate's court and the District Officer shall inform such court " . In sub-section (3) for the words " Court of a Commissioner of the Supreme Court " in both places where they occur therein substitute the words " magistrate's court " .

ORDINANCE	SECTION OR SCHEDULE	AMENDMENTS
	Section 20	For the expression " orders of the Supreme Court, the High Court, a Court of a Commissioner of the Supreme Court or any Magistrate's Court or Native Court " substitute the expression " orders of the Supreme Court, a magistrate's court or any native court. "
	Section 22	For the words " Court of a Commissioner of the Supreme Court " where they occur in :— paragraphs (b) and (c) of sub-section (1), sub-section (2), and sub-section (7) substitute the words " magistrate's court " .
	Section 23	For the words " Court of a Commissioner of the Supreme Court " in the three places where they occur therein substitute the words " magistrate's court " .
	Section 25	For the words " Court of a Commissioner of the Supreme Court " in both places where they occur therein substitute the words " magistrate's court " .
	Section 27	For the words " Court of a Commissioner of the Supreme Court " substitute the word " magistrate " .
	Section 28	For the words " Court of a Commissioner of the Supreme Court " substitute the word " magistrate " .
	Section 30	In sub-section (2) for the words " the Court of a Commissioner of the Supreme Court " substitute the words " a magistrate's court " .
The Moneylenders Ordinance, 1938. (No. 45 of 1938)	Section 8	Delete sub-section (2) and substitute therefor :— " (2) Any person aggrieved by the refusal of a magistrate to grant a certificate may appeal to the Supreme Court as if the refusal were an order of a magistrate's court. "
The Stamp Duties Ordinance, 1939. (No. 5 of 1939)	Section 20	In sub-section (1) delete the words " or to the High Court " . In sub-section (2) delete the expression " or the High Court as the case may be. "

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ORDINANCE	SECTION OF SCHEDULE	AMENDMENTS
The Trading with the Enemy Ordinance, 1939. (No. 23 of 1939)	Section 3	In paragraph (a) of sub-section (1) for the expression "on conviction before any Judge of the Supreme Court or any Judge or Assistant Judge of the High Court of the Protectorate to imprisonment" substitute the expression "on conviction in the Supreme Court to imprisonment". In paragraph (a) of sub-section (4) for the expression "on conviction before a Judge of the Supreme Court or a Judge or Assistant Judge of the High Court of the Protectorate to imprisonment" substitute the expression "on conviction in the Supreme Court to imprisonment". In sub-section (4) delete the words "or the High Court".
The Interpretation Ordinance, 1939. (No. 27 of 1939)	Section 2	Delete the definition "magistrate" and substitute therefor:—"magistrate" means a person appointed to be a magistrate under any Ordinance creating the office of magistrate in Nigeria.
The Direct Taxation Ordinance, 1940. (No. 4 of 1940)	Section 27	In the definition of "judge" for the expression "the Supreme Court Ordinance or under the Protectorate Courts Ordinance, 1933;" substitute the expression "the Supreme Court Ordinance, 1943;" Delete the expression "or a Commissioner of the Supreme Court".

SECOND SCHEDULE
(Section 79).

No. and Year.	Short Title of Ordinance.
Cap. 3, 1923 Laws ..	Supreme Court Ordinance.
No. 7 of 1928 ..	Supreme Court (Amendment) Ordinance, 1928.
No. 26 of 1930 ..	Supreme Court (Amendment) Ordinance, 1930.
No. 46 of 1933 ..	Supreme Court (Amendment) Ordinance, 1933.
No. 33 of 1935 ..	Supreme Court (Amendment) Ordinance, 1935.
No. 14 of 1936 ..	Supreme Court (Amendment) Ordinance, 1936.
No. 43 of 1936 ..	Supreme Court (Amendment No. 2) Ordinance, 1936.
No. 7 of 1938 ..	Supreme Court (Amendment) Ordinance, 1938.
No. 45 of 1933 ..	Protectorate Courts Ordinance, 1933.
No. 7 of 1935 ..	Protectorate Courts (Amendment) Ordinance, 1935.
No. 34 of 1935 ..	Protectorate Courts (Amendment No. 2) Ordinance, 1935.
No. 15 of 1936 ..	Protectorate Courts (Amendment) Ordinance, 1936.
No. 22 of 1941 ..	Protectorate Courts (Amendment) Ordinance, 1941.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

Printed and Published by the Government Printer, Lagos. 3142/540/400 1s per copy.

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NIGERIA.

NO. 236

RECEIVED
23 JUL 1943
O. O. REOX

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Government House,
Lagos, Nigeria.

27 May, 1943.

Sir,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 26 of 1943, entitled "An Ordinance to amend the Criminal Procedure Ordinance," together with the usual report thereon by the Attorney-General.

I have the honour to be,

Sir,
Your most obedient, humble servant,

Horquiallah
GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
OLIVER STANLEY, M.C.M.P.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

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A BILL FOR AN ORDINANCE TO AMEND THE CRIMINAL PROCEDURE ORDINANCE.

The short title of this Bill is the Criminal Procedure (Amendment) Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. Before considering this bill attention is invited to paragraphs 2 to 4 of my report on the bill for the Supreme Court Ordinance, 1943, in which paragraphs will be found how the necessity for this bill arose at this particular time.

3. For those who are fully trained and experienced in legal matters it would be quite practicable to read into the Criminal Procedure Ordinance (Cap.20) the necessary modifications to enable it to be used both by the new Supreme and magistrates' courts established respectively under the Supreme Court Ordinance, 1943, and the Magistrates' Courts Ordinance, 1943, but there are many officers in Nigeria exercising magisterial duties who have not had sufficient experience that I felt it advisable to prepare this bill solely with the idea of assisting those officers and preventing their making, what might be considered unnecessary mistakes. Further I am aware that all the amendments to the Criminal Procedure Ordinance made by the Protectorate Courts Ordinance, 1933, have not been written up in the statute books used by officers in the country and it is for that reason that instead of simply deleting in many cases the references to the High Court which should have been written in 1934, I have used the full phrase which should appear in the books if correctly annotated and then reproduced the phrase to fit the new state of affairs.

(11)

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4. In examining the criminal procedure Ordinance it was found that many clauses, owing to the fact that they were originally designed for use in the provincial courts as well as old Supreme Court, did not really suit present conditions to say nothing of the fact that they had been amended in some cases to suit the High Court. In all those cases therefore the clauses in question have been repealed and re-placed as shown in the First Schedule to this bill while in the Second Schedule will be seen all the minor amendments which may conveniently be made in the existing law without the necessity of reproducing the whole section.

5. As an example of an instance to which reference is made in the first half of the previous paragraph I invite attention to section 7 of the Criminal Procedure Ordinance (Cap.20): in that it will be seen that the areas in which a person should be tried, is governed by "provinces," now that obviously is unsuitable today (and for the last ten years) when the Supreme Court works in divisions and magistrates' court in districts either of which may embrace several provinces. The section has accordingly been repealed and re-enacted as will be seen in the First Schedule. The opportunity has been taken in all those cases where sections are being re-enacted either to introduce better provisions which have stood the test of time in other places or to improve the language in the particular section itself.

6. This amending Ordinance is only intended to bridge the gap until new complete criminal procedure legislation can be enacted both for the Supreme Court and the magistrates' courts.

(Sgd.) H.C.F. Cox
Attorney-General.

Attorney-General's Chambers,
Nigeria,
1943.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 3rd day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 26

1943



Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO AMEND THE CRIMINAL PROCEDURE ORDINANCE. Title.

[, 194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and Southern Provinces, as follows:— Enactment.

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Short title
and com-
mencement.

1. This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance, 1943, and shall come into operation on a day to be fixed by the Governor by notice in the Gazette.

Amendment
of section
2 of Cap. 20.

2. Section 2 of the Criminal Procedure Ordinance, herein after called the principal Ordinance, is hereby amended by repealing the definitions of "High Court", "Court", "Magistrate's Court", "Chief Judge", "Judge of the High Court" and "Magistrate" appearing therein and substituting therefor:—

" 'court' means the Supreme Court or a magistrate's court and 'division' and 'district' shall have the same meaning respectively as contained in the Supreme Court Ordinance, 1943, and the Magistrates' Courts Ordinance, 1943."

Ord. 23 of
1943.
Ord. 24 of
1943.

Substitu-
tion of
certain new
provisions
in Cap. 20.
First
Schedule.
Amendment
of certain
sections of
Cap. 20.
Second
Schedule.

3. The provisions of the principal Ordinance set out in the first column of the First Schedule are hereby repealed and the provisions set out opposite thereto in the second column of the said Schedule are hereby respectively substituted therefor.

4. The provisions of the principal Ordinance set out in the first column of the Second Schedule are hereby amended to the extent indicated opposite thereto in the second column of the said Schedule.

Repeal of
sections 8
and 145 of
Cap. 20.

5. The principal Ordinance is hereby amended by repealing sections 8 and 145 thereof.

FIRST SCHEDULE.

(SECTION 3)

Section.	Provisions substituted.
3	General authority to bring persons before courts. " 3. A court has authority to be caused to be brought before it any person who is within the jurisdiction charged with an offence committed within Nigeria, or which according to law may be dealt with as if such offence had been committed within the jurisdiction and to deal with such person according to law."
6	Power of Chief Justice to direct the holding of preliminary investigation. " 6. The Chief Justice may by order direct that a preliminary investigation be held by a magistrate into any criminal charge which is alleged to have been committed outside the district of such magistrate."
7	Venue. " 7. Subject to the powers of transfer contained in the Ordinance constituting any court the place for the investigation or trial of offences by such court shall be:— (a) an offence shall be enquired into or tried by a court having jurisdiction in the division or district where the offence was committed; (b) when a person is accused of the commission of any offence by reason of anything which, has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be enquired into or tried by a court having jurisdiction in the division or district in which any such thing has been done or omitted to be done, or any such consequence has ensued; (c) when an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be enquired into or tried by a court having jurisdiction either in the division or district in which it happened, or in which the offence, with which it was so connected, happened; (d) (i) when it is uncertain in which of several divisions or districts an offence was committed; or (ii) when an offence is committed partly in one division or district and partly in another; or (iii) when an offence is a continuing one, and continues to be committed in more divisions or districts than one; or

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FIRST SCHEDULE—contd.

Section.	Provisions substituted.
	(ir) when it consists of several acts committed in different divisions or districts, it may be enquired into or tried by a court having jurisdiction in any of such divisions or districts;
	(c) an offence committed while the offender is in the course of performing a journey or voyage may be enquired into or tried by a court through or into the division or district of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage;
	(f) an offence committed at sea or elsewhere out of Nigeria, which, according to law, may be enquired into or tried in Nigeria may, subject to the provisions of section 33, be so enquired into or tried at any place in Nigeria."
18	Execution of warrant. "18. A warrant may be executed at any place within Nigeria and when executed outside the division or district of the court issuing the warrant, the person arrested shall be brought before a court of appropriate jurisdiction most convenient to the place of arrest and such court shall proceed as if such person were brought before it under the provisions of section 4."
33 (2) (a)	"(a) Proceedings before a magistrate previous to the committal of an offender for trial, or to the determination of the magistrate that the offender is to be put upon his trial, shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the consent and certificate under this section."
41 (2).	"(2) In its application to a magistrate's court subsection (1) is subject to the following provisions:— If a magistrate orders a person to be imprisoned or to pay a fine, he shall, within three days forward to the Chief Justice, or by direction of the Chief Justice to any other judge, a certified copy of the notes of the proceedings, and the Chief Justice or other judge may, without hearing any argument, set aside such order or reduce the sentence of imprisonment or a fine imposed."
43 (1).	"(1) When a sworn information is made before a magistrate that an offence has been committed, the Attorney-General may, whether or not any known person be charged with the commission of the offence

FIRST SCHEDULE—contd.

Section.	Provisions substituted.
	direct a magistrate to hold an inquiry under this section, and may, if he thinks fit, direct that such inquiry be held <i>in camera</i> ."
56 (5).	"(5) A judge may, if he thinks fit, admit any person to bail although the magistrate before whom the charge is laid has refused bail."
73	Returns to be made to court and legal officers. "73. The charge, the depositions, the statement of the accused, his answer recorded under section 66, the recognisances of the prosecutor and witnesses, the recognisance of bail and any document and things which has been put in evidence shall be transmitted in proper time to the court before which it appears that the trial should be held, and an authenticated copy of all such documents and a list of such things shall be transmitted to a law officer or Crown counsel or a resident as may be most convenient."
77	Summary trial of offences. Ord. 23 of 1943. "77. Trials before magistrates, and subject to the provisions of the Supreme Court Ordinance, 1943, trials taken other than after committal by a magistrate, shall be taken in the manner and subject to the conditions laid down in this Part."
83	Reply by prosecution. "83. Where an accused adduces evidence in his defence the prosecutor shall not, save with the leave of the court, comment on such evidence."
89	Procedure where offence appears unsuitable for determination by magistrate. "89. If during a trial before a magistrate it shall appear that the offence, on account of its aggravated character or other sufficient reason, should be tried by the Supreme Court, the magistrate shall stay the trial before him and shall commence proceedings for committal for trial in accordance with the provisions laid down in Part II."
90	Criminal trials in Supreme Court to be on charges or information. "90. Trials before the Supreme Court shall, subject to the provisions of section 77 be tried upon charges preferred to the court or upon information, and any such information shall be signed by a law officer or a Crown counsel."
93	Objections cured by verdict. "93. No judgment shall be stayed or reversed on the ground of any objection, which, if raised after the charge or information was read over to the accused or during the progress of the trial might have been amended by the court, or for any informality in swearing the witnesses or any of them."

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FIRST SCHEDULE—contd.

Section.	Provisions substituted.
94	Legal effect of charge or information. "94. The fact that a charge is preferred or an information filed is equivalent to a statement that every legal condition precedent required by law to constitute the offence was fulfilled in the particular case."
136 Proviso.	"Provided that the disqualifications and exemptions set out respectively in sections 5 and 6 and the provisions of section 24 of the Jury Ordinance, 1943, shall apply to assessors in like manner as to jurors."
137	Ord. 25 of 1943. Sheriff or member of court to summon assessors. "137. The sheriff or an officer of the court before the sitting of the court whereat assessors shall be necessary, shall, on receiving from the court a precept, issues summonses requiring the attendance thereof of persons, not exceeding ten in number, qualified to serve as assessors, and every such summons shall be served by the sheriff or other officer of the court not less than three days before the day on which the attendance is required."
138	List of assessors summoned. "138. The sheriff or an officer of the court shall cause to be delivered to the court issuing the precept a list of the names with the occupations and places of abode of the persons so summoned."
166 (3)	"(3) The provisions of this section shall be in addition to and not in derogation of the powers vested in the Chief Justice by section 45 of the Magistrates' Courts Ordinance, 1943."
176	Ord. 24 of 1943. Chief Justice may direct an appeal be heard by two or more judges. "176. Appeals from Lower Courts shall be heard by one judge except where in any particular case the Chief Justice shall direct that an appeal be heard by two or more judges. Such direction may be given either before the hearing of the appeal or at any time before judgment is delivered and if on the hearing of an appeal by two or more judges the court is equally divided in opinion the appeal shall be dismissed."
188	Chief Justice may direct that case stated be heard by two or more judges. "188. A case stated for the opinion of the Court of Appeal shall be heard by one judge except where in any particular case the Chief Justice shall direct that it be heard by two or more judges. Such direction may be given either before the hearing of the case stated or at any time before judgment is delivered and if on the hearing by two or more judges the court is equally divided in opinion the decision of the Lower Court shall be affirmed."

SECOND SCHEDULE.
(SECTION 4)

Section.	Amendments made.
10	By deleting the words "other province or" appearing therein.
22	By deleting the words "on information" appearing therein.
23	By deleting the words "on information" appearing therein.
31	By substituting a full stop for the comma after the word "information" where it first appears therein and by deleting the remainder of the section.
41 (3)	By deleting in sub-section (3) thereof the words "a Commissioner of the Supreme Court or" appearing therein.
41 (4)	By deleting in sub-section (4) thereof the words "Commissioner of the Supreme Court or a" appearing therein.
43	(a) By substituting "Attorney-General" for "Governor" appearing in sub-section (3) thereof, and (b) by deleting the expression "the Supreme Court Ordinance and this Ordinance," appearing in sub-section (4) thereof and substituting therefor the expression "any Ordinance."
44	By deleting the expression "judge, Commissioner of the Supreme Court or Magistrate," in both places where it appears therein and substituting therefor the expression "judge or magistrate."
45	By deleting the expression "judge, Commissioner of the Supreme Court or Magistrate, and" appearing therein and substituting therefor the expression "judge or magistrate."
56 (1)	By deleting the words "or the High Court" appearing therein.
62	By deleting the words "counsel or attorney" appearing in the third paragraph thereof and substituting therefor the words "a legal practitioner."
65 (1)	By deleting the words "against you upon your trial" appearing in the sixth and seventh lines and the words "against you" appearing in the twelfth and thirteenth lines respectively of the address therein.
69	(a) By deleting the symbol "(1)" in the first line thereof;

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SECOND SCHEDULE—contd.

Section.	Amendments made.
74	(b) by deleting the words "the court having jurisdiction to try such accused," and substituting the expression "the Supreme Court," therefor, and (c) by deleting sub-section (2) thereof. By deleting the expression "Attorney-General, and Solicitor-General or a Crown Counsel," and substituting the expression "Attorney-General under the provisions of sections 22 and 23." therefor.
80	(a) By deleting the expression "except in cases of treason or murder," in the first paragraph thereof and substituting the expression "except in the case of murder." therefor, and (b) by deleting the words "In cases of treason or murder" in the second paragraph thereof and substituting the words "In the case of murder" therefor.
81	By deleting the expression "counsel or attorney," in the third paragraph thereof and substituting the words "a legal practitioner" therefor.
84	(a) By renumbering the first and second paragraphs thereof as sub-sections (1) and (2) respectively, and (b) by deleting the third paragraph thereof and substituting the following sub-section therefor:— "(3) The court may at any stage amend the charge or substitute a new charge therefor save that where an accused person may be prejudiced by such amendment or substitution the court shall grant any necessary adjournment and shall allow the accused to recall any witness for cross-examination or examination."
91	(a) By deleting the expression "except in the case of informations preferred by the direction of, or with the consent in writing, the Chief Justice, and" appearing therein, and (b) by repealing the proviso thereto.
100	(a) By inserting the words "charge or" between the words "any" and "information" appearing in the first line thereof, and (b) by inserting the words "charge or" between the words "the" and "information" appearing in the third line thereof.

SECOND SCHEDULE—contd.

Section.	Amendments made.
143	(a) By renumbering the first paragraph as sub-section (1) thereof, and (b) by deleting the second paragraph thereof and substituting the following sub-section therefor:— "(2) The provisions of sections 79 and 80 of the Jury Ordinance, 1943, shall apply to a fine imposed under this section."
Ord. 25 of 1943.	By inserting the words "or magistrate" immediately after the word "judge" in the first line thereof.
154	(a) By deleting the definition of Court of Appeal appearing therein and substituting the following therefor:— " 'Court of Appeal' means a judge of the Supreme Court;";
164	(b) by deleting the words "either the Court of a Commissioner of the Supreme Court or" appearing in the definition of "Lower Court", and (c) by deleting the definition of "Advocate" appearing therein and substituting the following therefor:— " 'advocate' means a legal practitioner."
183	By deleting the words "Commissioner of the Supreme Court or" appearing therein.
185	By deleting the words "the Commissioner of the Supreme Court or" appearing therein. By deleting the words "and High Court".
The heading before section 190	By deleting the whole.
190	(a) By deleting the words "or the High Court" in the first and second lines thereof, and (b) by deleting the expression "or the High Court, as the case may be," appearing in the fifth and sixth lines thereof. By deleting the words "or the High Court" appearing therein.
191	By deleting the expression "rules made under section 3 of the Ordinance" appearing therein and substituting therefor the expression "rules of court made under section 56 of the Supreme Court Ordinance, 1943."
First Schedule. 1	

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This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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NIGERIA.

NO. 197

RECEIVED
30 JUN 1943
O. O. REGY

679
GOVERNMENT HOUSE,
NIGERIA.

6th May, 1943.

Sir,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 25 of 1943, entitled "An Ordinance relating to Jurors and Trial with a Jury" together with the usual report thereon by the Attorney-General,

I have the honour to be,
Sir,
Your most obedient, humble Servant,

B. H. Anderson

G O V E R N O R.

30257

THE RIGHT HONOURABLE
OLIVER STANLEY, M. C., M. P.,
SECRETARY OF STATE FOR THE COLONIES,
&c., &c., &c.

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R E P O R T

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on

A BILL FOR AN ORDINANCE RELATING TO JURORS
AND TRIAL WITH A JURY.

The short title of this Bill is the Jury Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. The draft for this bill was submitted to and approved by the Secretary of State, approval being conveyed in Saving ^{desp} despatch No.102 of 16th April, 1942.

3. Subsequent to approval being given the following alterations have been made:-

(1) Clause 6. The exemption referring to employees of the Posts and Telegraphs Department and the Customs and the Nigerian Railway, being the fifth exemption from the end of the clause, has been re-worded.

(2) Clause 43. This clause as submitted to the Secretary of State has been recast and in its place the existing clauses 43 to 46 have been substituted. This was done to clear up certain matters of procedure on which there is generally difficulty. I personally, as Solicitor-General, had to argue this subject several times in court, different judges holding different views as to what the procedure really is and as the question has cropped up again, in informal discussion, these amendments will settle it. This affects procedure in general and will have to be borne in mind when the general criminal procedure legislation is being finally drafted. The insertion of these additional clauses naturally necessitates renumbering the remaining clauses and some of the cross references in the bill.

(3) Clause 47 (No.44 as submitted to the Secretary of State). This has been amended by inserting the words "the accused or" before

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before the word "witnesses" in the third line.

(4) Clause 51. This is new, and has been inserted between clause 47 and the following head in the bill as submitted to the Secretary of State. It is intended to invite attention to and to give statutory approval to the correct practice.

(5) Clause 69. (No.65 as submitted to the Secretary of State). This has had the proviso deleted. It was thought that the proviso might result in a miscarriage of justice if the accused or his legal practitioner would not agree to the jury withdrawing.

(6) Clause 70. (No.66 as submitted to the Secretary of State). This has been amended by the addition of the words "the accused should be present at the view" at the end of sub-clause (1); to give statutory force to correct procedure.

(7) Clause 71. (No.67 as submitted to the Secretary of State). This has simply had an unnumbered paragraph converted into sub-clause (3) and sub-clause (3) renumbered as sub-clause (4).

(8) Clause 90. (No.86 as submitted to the Secretary of State). This has had further matter included in the repealed provisions. This was found advisable when the criminal procedure Ordinance was being carefully combed for whatever amendments were necessary to enable the new Supreme and the magistrates' courts Ordinances to work smoothly. The examination resulted in the bill to amend the criminal procedure Ordinance (Cap.20) which was also enacted at the same time as this bill.

J. K. O. O.
Attorney-General.

Attorney-General's Chambers,

Lagos, Nigeria,

5th. April, 1943.

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THE JURY ORDINANCE, 1943.

ARRANGEMENT OF PARTS AND SECTIONS.

PART I.

PRELIMINARY.

Section.

- 1. Short title, application and commencement.
- 2. Definitions.

PART II.

QUALIFICATIONS, DISQUALIFICATIONS AND EXEMPTIONS OF JURORS.

- 3. Liability to serve as a juror.
- 4. Qualifications of a juror.
- 5. Disqualifications of a juror.
- 6. Exemptions.

PART III.

PREPARATION OF JURY LISTS.

- 7. Magistrate of Legos to prepare list of jurors in the Colony.
- 8. Magistrates to prepare list of jurors in the Protectorate.
- 9. Contents of lists.
- 10. Posting of lists.
- 11. Information to be given when required.
- 12. List to be revised and settled.
- 13. Disqualification or exemption to be claimed on revision of list.
- 14. Names which must be excluded from jury list.
- 15. Special jurors.
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88. Power to enlarge time in connection with jury lists.
89. Rules of court relating to jury lists and the summoning of jurors.
90. Repeal of Parts V and VI of Chapter 20, and saving. Schedule.

Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 3rd day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 25

1943



Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE RELATING TO JURORS AND TRIAL WITH A JURY. Title

[, 19 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and the Southern Provinces, as follows:—

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PART I.

Short title, application and commencement.

1. This Ordinance may be cited as the Jury Ordinance, 1943; it shall come into operation on a date to be fixed by the Governor by notice in the Gazette.

Definitions.

2. Definitions:—

"Chief Registrar"

"Chief Registrar" means the Chief Registrar of the Supreme Court;

"judge"

"judge" means a judge of the Supreme Court;

"counter"

"counter" means any disc, counter or spherical object for the time being approved by the court for the purpose of having written thereon the number of a juror summoned to attend a session;

"counsel for the Crown"

"counsel for the Crown" includes any person appearing to conduct a prosecution;

"receptacle"

"receptacle" means any box, bag or any closed receptacle of a reasonable size for the time being approved by the court and into which the counters are to be placed in accordance with the provisions of this Ordinance;

"the court"

"the court" means the Supreme Court;

"session"

"session" means a criminal session of the Supreme Court;

"sheriff"

"sheriff" means the sheriff appointed under the provisions of the Sheriffs Ordinance and includes a deputy sheriff and any person authorised by the sheriff or a deputy sheriff to execute any process of a court.

PART II.

PART II.

QUALIFICATIONS, DISQUALIFICATIONS AND EXEMPTIONS OF JURORS

Liability to serve as a juror.

3. Every male person residing in Nigeria qualified to serve as a juror as hereinafter specified and not disqualified or exempted as in this Ordinance provided shall be liable to have his name placed in the list of jurors prepared in accordance with the provisions of this Ordinance and shall be liable to serve as a juror.

4. The qualifications of a juror shall be:—

Qualifications of a juror.

- (a) he shall be of or over the age of twenty-one years;
- (b) he shall not be over the age of sixty years;
- (c) he shall be resident in Nigeria; and
- (d) he shall be able to speak the English language and understand the same when spoken.

5. The disqualifications of a juror shall be:—

Disqualifications of a juror.

- (a) having been convicted of any treason or felony and not having received a free pardon therefor;
- (b) being a lunatic, or one of unsound mind, or imbecile, or deaf, or blind, or being afflicted with any other permanent infirmity of body or mind; and
- (c) having entered into a deed of arrangement with his creditors.

6. The following are exempted from serving as jurors:—

Exemptions.

- The judges, their clerks and messengers;
- The magistrates, their clerks and messengers;
- Officers of courts of justice;
- Members of the Executive Council;
- Members of the Legislative Council;
- Heads of Government departments and their deputies;
- Such other public officers as the Governor may from time to time, by notice in the Gazette, declare to be exempted from service as jurors;
- Officers of His Majesty's Army, Navy or Air Force on full pay in such service;
- Consuls and vice-consuls;
- Ministers of religion;
- Persons enrolled as barristers and solicitors of the Supreme Court in actual practice and their clerks;
- Registered or licensed medical practitioners, dentists and medical assistants;
- Qualified veterinary surgeons;
- Chemists, druggists and dispensers licensed under the Poisons and Pharmacy Ordinance, 1936;
- Schoolmasters;

Ord. 42 of 1936.

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exclude from such list the name of any person who he may be satisfied is so disqualified and also the name of any person who to his knowledge is over the age of sixty years.

Special Jurors.

15. (1) The magistrate in settling the list shall mark off the name of any person whom he shall deem suitable to be called and to serve as special juror, and shall mark on the list opposite the name of any such person the letters "S.J." in a separate column. No person shall be exempted from serving as a common juror by reason of being marked as a special juror.

(2) So far as practicable the jury list shall show the names in full arranged according to the alphabetical order of the surnames.

Officers to whom lists to be sent.

16. Upon any such list being so settled a copy signed by the magistrate settling the same shall be sent to the Chief Registrar.

Chief Registrar to correct the list.

17. If it appears to the Chief Registrar upon evidence, or upon his own knowledge, that the name of any person has been improperly inserted in or omitted from the said jury list or that there is any error or omission in any of the particulars required by this Ordinance he shall amend the jury list accordingly.

Jurors Book and Special Jurors Book to be prepared by sheriff from revised list

18. (1) Every such jury list when duly amended by the Chief Registrar, if amendment is necessary, shall be signed by the Chief Registrar who shall cause the same to be delivered to the sheriff without delay and the sheriff shall cause:—

(a) the names of all the jurors mentioned in the list delivered to him with their respective places of abode, business or occupation, if any, to be fairly copied out in alphabetical order into a book to be entitled the Jurors Book; and

Jurors Book.

(b) the names of the jurors mentioned in the said list delivered to him against whose names there have been inserted the letters "S.J.", with their respective places of abode, business or occupation, if any, to be clearly copied out in alphabetical order into a book to be entitled the Special Jurors Book.

Special Jurors Book.

(2) Every Jurors Book and Special Jurors Book when prepared shall be brought into use on a day to be specified by notice in the Gazette and recorded in the said books and shall be used for the

two years next following and thereafter until another Jurors Book and Special Jurors Book are prepared in accordance with the provisions of this Ordinance.

19. Any judge may at any time on being satisfied that any person has attained the age of sixty years or is otherwise not qualified or has become disqualified to be a juror from any other cause order the name of such person to be removed from the jury list for the time being in force and not be inserted in any subsequent list and the name of any such person so ordered to be removed shall be erased by the sheriff from the Jurors Book (and if a special juror also from the Special Jurors Book) for the time being in force and not inserted in any Jurors Book subsequently prepared.

Judge may direct name of juror to be struck out of jury list.

PART IV.

PART IV.

TRIAL WITH A JURY.

Summoning the Jury.

20. (1) Where it is necessary for a jury to be summoned to attend a session of the Supreme Court a precept for the return of jurors as in Form A in the Schedule shall be issued in the case of a trial in the Colony by the Chief Registrar, and in the case of a trial in the Protectorate by the registrar of the judicial division in which the trial is to take place, to the sheriff not later than fifteen days before the first day of each such session.

Precept for the return of jurors. Form A.

(2) The precept to the sheriff shall be for such number of jurors as the court may direct.

21. The precept for the return of jurors shall be returned by the sheriff to the Chief Registrar or registrar as the case may be not later than four days before the first day of the session as aforesaid and the sheriff shall annex to every such precept a panel containing the names alphabetically arranged together with places of abode, business or occupation, if any, of the required number of jurors named in the jury book for the time being in use.

Return of precept.

22. (1) The summons to every juror to serve shall be as in Form B in the Schedule and shall be served personally on such juror not less than three days before the first day of the session at which he is required to attend.

Jury summons. Form B.

(2) Such summons shall be served by the sheriff.

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Equality of service of jurors.

23. In making panels of jurors the sheriff shall not place any juror on the panel a second time until all the jurors have been placed once on the panel and the sheriff may make up the panel so that all jurors shall be summoned equally nor shall any person who is residing at a greater distance than ten miles from the court at which the session is to be held be summoned without the approval of a judge unless the business of the court shall be impeded by the failure to summon any such juror.

Exemption in favour of mercantile establishments.

24. Not more than one person employed in the same mercantile establishment shall be required to serve together on any panel at any session of the court unless the business of the court should be impeded by adherence to the provisions of this section.

Numbering of Jurors.

Preparation of panel for use in court.

25. (1) At the opening of any session the Chief Registrar or registrar as the case may be shall cause to be written a list in alphabetical order of the names of the jurors appearing on the panel and shall prefix to each name in such list a number commencing from the first name and continuing them in regular arithmetical series down to the last name.

(2) When such list of the jurors' names duly numbered shall be completed the registrar, or such other officer as may be directed by the court, shall, in the presence of the court, place in a receptacle for every name included in the panel a counter inscribed on the face thereof with a number corresponding to the number prefixed to the name in the list; the counters being all, as nearly as may be, of uniform size, shape and colour.

Selection of the Jury.

Composition of jury in capital cases.

26. On the trial of any capital offence the jury shall consist of twelve jurors of whom not less than seven shall be special jurors if so many can be obtained.

Composition of jury in non-capital cases.

27. On the trial of any offence other than a capital offence the jury shall consist of eight jurors who may be either common or special jurors or some of one and some of the other.

28. No person shall be entitled to be tried with a jury *Jury de medietate linguae.* *de medietate linguae*, but if the accused person is a non-native the court may, if it thinks fit, direct that a number, not exceeding one-half, of the jury shall be jurors who are non-natives if so many can be obtained.

29. Before the first counter is drawn from the receptacle the registrar or other officer of the court shall address the accused person to the following effect:—"The persons whose names are about to be called are the jurors who are to try you; if you object to any of them you must do so before they are sworn and you shall be heard."

Warning to accused.

30. After a name has been called and before the juror is sworn a juror may be challenged as hereinafter provided.

Juror to be challenged before being sworn.

31. (1) When a jury is to be empanelled the registrar or other officer as aforesaid shall place before the presiding judge the list of the panel retaining a copy for himself and having thoroughly intermixed the counters placed in the receptacle in manner hereinbefore provided shall, in open court, proceed to draw one by one out of the receptacle a number of counters equal to the number required for the jury.

Selection of jury.

(2) As each counter is drawn the registrar shall hand it to the presiding judge who shall, after referring to the list, write down the number inscribed on the counter and opposite to the number the name in the list to which that number is prefixed.

(3) The registrar or other officer as aforesaid shall then call out the name and if any of the persons whose names are so drawn and called do not appear or are successfully challenged or set aside then such further number and name until there be drawn the number required for the jury.

(4) After all just causes of challenge have been allowed the said number of persons so first drawn and appearing and approved as indifferent shall be sworn and shall be the jury to try the case and their names and numbers shall be copied down from the panel by the registrar or other officer.

(5) The counters corresponding with the names of the persons so drawn and sworn shall be kept apart by themselves until such jury is discharged and then the same counters shall be returned

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to the receptacle there to be kept with the other counters remaining at that time undrawn and so *toties quoties* as long as any case remains to be tried:

Proviso.

Provided that if any case is brought on before the jury in any other case have given in their verdict or have been discharged the court may order the required number of the residue of the said counters remaining in the receptacle (excluding those relating to the jury in such other case) to be drawn in manner aforesaid for the trial of the case so brought on.

Challenges

No challenge to array.

32. There shall be no challenge to the array.

Peremptory challenges.

33. (1) In trials with a jury every person arraigned whether for treason, felony or misdemeanour shall be allowed to challenge three of the jurors by way of peremptory challenge and without being subject to assign any reason therefor, but every peremptory challenge beyond that number shall be void.

(2) In like manner counsel for the Crown may, without cause assigned, challenge three jurymen if one person is arraigned, and six if two are arraigned, and so forth, being three without cause assigned for every person who shall be arraigned but every further such peremptory challenge shall be void.

Challenges for cause.

34. Challenges for cause shall be allowed on any of the following grounds and no other:—

(a) presumed or actual partiality or prejudice in the juror—

(i) as standing in the relation of husband, master or servant, landlord or tenant to the person accused, or to the person supposed to have been injured or affected by the acts complained of, or to the person on whose complaint the prosecution was instituted; or

(ii) being plaintiff or defendant against the person accused or the person supposed to have been injured or affected by the acts complained of in any civil suit, or having been accused by any such person in any criminal prosecution;

(b) (i) entertaining prejudiced views on the case to be tried; or

(ii) that the juror is not indifferent between the King and the accused;

(c) some personal cause, as infancy, old age, deafness, blindness, infirmity or ill-health;

(d) that the juror has been convicted of perjury or other offence disqualifying him from serving as a juror;

(e) that the juror does not understand the English language;

(f) that the juror is an alien.

35. (1) Every challenge for cause if objected to by counsel for the Crown or by or on behalf of the accused shall be tried and determined by the judge without a jury. Trial of challenges for cause.

(2) The person challenged shall be examined on oath, and shall be required to answer on oath all questions allowed by the judge, relating to the trial of the challenge.

Talesmen.

36. Where a full jury does not appear or where, by the exercise of the right of challenge or otherwise, there is likely to be a default of jurors; or where the number of trials before the court render the attendance of one set of jurors for the whole of the session unduly oppressive the court may, of its own motion or on request of counsel for the Crown or by or on behalf of the accused, direct either:— Deficiency of jurors.

(a) that a fresh precept be issued for a number of jurors specified therein and, if in the opinion of the court it is necessary to do so, adjourn the court until the jurors shall have been summoned; or

(b) that there shall be put upon the jury, subject to all rights of challenges, as common or special jurors, so many men of the bystanders as shall be sufficient to make up the full number thereof and it shall not be an objection to any such talesman that his name is not upon the jurors list: Tales de circumstantibus.

Provided that where the trial is with a special jury only persons qualified as special jurors or whose names are in the Special Jurors Book shall be placed on the jury as talesmen. Proviso.

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- Juror's oath.** 37. Before proceeding to any trial each juror shall in open court take the oath in manner hereinafter set forth:
- Proviso.** Provided that an affirmation shall be receivable in lieu of an oath in any case in which a juror wishes to, or the court considers it advisable that the juror should, make an affirmation.
- Form of oath.** 38. (1) The oath to be taken by a juror who is a Christian shall be in the following form:—
 "I swear by Almighty God (or I do solemnly, sincerely and truly declare and affirm) that I will well and truly try and true deliverance make between our sovereign lord the King and the prisoner at the bar, whom I shall have in charge, and a true verdict give according to the evidence."
 (2) The oath to be taken by any person other than a Christian shall be to the above effect and shall be administered in such form and with such ceremonies as the court may be satisfied is binding on the conscience of the person taking the same.
- Oath may be administered collectively or individually.** 39. In administering the oath to the jury the oath shall be administered to each juror individually or if the court so directs to the jury collectively:
- Proviso.** Provided that in the latter case the oath though administered collectively shall be taken individually by the members of the jury.

Proceedings after Jury is Sworn and before the opening of the Case for the Prosecution.

- Election of foreman.** 40. When the jurors have been duly sworn the registrar or other officer of the court shall request them to select one of their number to be their foreman, and they shall thereupon proceed to do so. If the majority of the jurymen are not, within such time as the judge may think reasonable, agreed in the appointment of a foreman, the foreman shall be appointed by the judge.

41. After the appointment of the foreman the registrar or other officer of the court shall address the jury to the following effect:—

Accused to be placed in charge of jury.

"Members of the jury, the prisoner stands indicted for that he, on the (stating the substance of the offence charged in the indictment). To this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not."

Case for the Prosecution.

42. After the accused person has been given in charge to the jury counsel for the Crown may open to the jury the case against the accused person and then adduce evidence in support of the charge.

Opening of the case for the prosecution.

Procedure at conclusion of Evidence on behalf of Prosecution.

43. At the conclusion of the evidence adduced on behalf of the case for the prosecution the following procedure shall be followed:—

At close of evidence for the prosecution accused to be informed of his options.

- (a) if the accused is not represented by a legal practitioner it shall be the duty of the judge to inform him of his right to give evidence on his behalf, or to make an unsworn statement and to call witnesses in terms to the following effect—

"You have heard the evidence against you and there is a case for you to answer. Now is the time for you to make your defence. You may go into the witness box and give evidence on oath and be liable to be cross-examined like any other witness or you may make a statement to the jury from where you stand in which case you will not be cross-examined or asked any questions by counsel for the Crown, and after that you may call witnesses on your behalf."

- (b) if the accused is represented by a legal practitioner and there is a case for the prisoner to answer it shall be the duty of the judge to ask the legal practitioner representing the accused whether he intends to adduce evidence on behalf of the accused:

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Proviso.

Provided that failure by the judge to comply with either of the aforesaid duties shall not invalidate the conviction, if any.

Summing up of the case for the prosecution if no evidence is adduced on behalf of defence.

44. If in the case referred to in paragraph (a) of section 43 the accused does not intend to give evidence or call witnesses on his behalf, and in the case referred to in paragraph (b) of the said section the accused does not intend to give evidence and no witnesses are to be called on his behalf counsel for the Crown shall be allowed to address the jury a second time in support of the case for the prosecution for the purpose of summing up the case against such accused.

Summing up where only accused gives evidence.

45. Subject to the provisions of sections 48 and 49 if the accused elects to give evidence but no other witnesses are called the summing up by counsel for the Crown shall be postponed until after the accused shall have given his evidence and counsel for the Crown may comment on the evidence given by the accused.

Summing up where some only of accused give evidence.

46. Subject to the provisions of sections 48 and 49 where more than one person is charged at the same time and one or more elect to give evidence but no other witnesses are called on behalf of the defence the summing up by counsel for the Crown shall be postponed until after all those who elect to give evidence shall have given evidence.

Case for the Defence.

Opening of case for the defence.

47. After the close of the case for the prosecution the accused person, or, if defended, the legal practitioner representing him, if intending to call the accused or witnesses in support of the defence, may open the case for the defence before calling evidence and, after making such opening, evidence in support thereof shall be adduced on behalf of the accused.

Addresses.

In certain cases counsel for Crown has no right to reply.

48. After the defence has been closed if no witnesses have been called for the defence, other than the accused himself or witnesses solely as to the character of the accused and no document is put in as evidence for the defence, counsel for the Crown shall not be entitled to address the jury a second time but if in opening the case for the defence the legal practitioner representing the accused has in addressing the jury introduced new matter without supporting it by evidence the judge, in his discretion, may allow counsel for the Crown to reply.

49. If any witness, other than the accused himself or witnesses solely as to the character of the accused, is called or any document is put in as evidence for the defence, the legal practitioner representing the accused shall be entitled after evidence on behalf of the accused has been adduced to address the jury a second time on the whole case and counsel for the Crown shall have a right of reply.

Cases in which counsel for the Crown may reply.

50. The provisions of sections 48 and 49 shall not affect the right of reply by a law officer.

Reply by law officer.

Accused giving Evidence.

51. Where the accused elects to give evidence he shall give his evidence immediately after the close of the case for the prosecution and before any other witnesses are called on behalf of the defence:

Accused to give evidence before witnesses for defence.

Provided that if the accused gives his evidence after a witness called on behalf of the defence such action shall not invalidate the conviction, if any, but may be the subject of comment both by counsel for the Crown and by the judge.

Proviso.

Summing Up.

52. When the case for both sides is closed the judge shall, if necessary, sum up the law and evidence in the case and direct the jury to consider their verdict.

Summing up and charge to the jury.

Deliberation, Custody and Verdict of the Jury.

53. If the jury are not immediately prepared to return their verdict, they may, by the direction of the judge or at their own request expressed through their foreman, retire for the purpose of considering their verdict in which case the judge shall direct that the jury shall be kept together and proper provision made for preventing them from holding communication with any person on the subject of the trial until they shall have given in their verdict.

Retirement of jury for consideration of verdict.

54. (1) If the jury retire to consider their verdict no person, other than the officer of the court who has charge of them, shall be permitted, until they shall have given in their verdict, to speak or to communicate in any way with any of them, without the leave of the court.

Communication with jury while in retirement considering verdict.

(2) Failure to comply with the provisions of this section shall not affect the validity of the proceedings:

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Proviso.

Provided that if such failure is discovered before the verdict of the jury is returned, the court may, if it is of opinion that such failure has produced substantial mischief, discharge the jury, and direct a new jury to be empanelled and sworn during the same sitting of the court, or may postpone the trial, on such terms as justice may require.

Jury to be kept together during trial.

55. Upon the trial of any person for treason, murder or other capital offence the judge may, if he thinks it advisable, order that the jury shall not separate but shall be kept together throughout the trial until the giving in of their verdict.

Accommodation of jury kept together during adjournment.

56. If the jury are not permitted to separate during an adjournment the court shall give such directions as it may think fit with respect to their accommodation, custody and refreshment.

Temporary absence of juror.

57. Whenever the jury shall have retired to consider their verdict and have not been allowed to separate the judge may for sufficient cause shown to his satisfaction, allow one or more of the jurors to separate from the other jurors, but not so as to hold communication with other persons, and in such a manner that the jurors allowed to separate shall remain in the charge of the proper officer of the court.

Refreshment to jurors.

58. Any jury, when not allowed to separate during the trial after being charged, shall be permitted to receive and take a reasonable amount of food and drink subject to the approval of the judge and, when directed by the judge, the same may be provided by the court at the cost of the Government.

Warning of jury before an adjournment.

59. (1) Where a jury which has been empanelled is allowed to separate during an adjournment of the court it shall be the duty of the judge, prior to allowing such jurors to separate for the first time, to direct the jurors that they shall not during such or any subsequent separation discuss the subject matter of the charge with any person other than a juror also empanelled on the said jury, or allow any person other than a juror as aforesaid to communicate with them in any way on the said subject:

Proviso.

Provided that failure on the part of the judge so to warn the jurors shall not vitiate the trial or render the jurors not liable to the provisions of sub-section (2).

(2) If it is proved to the satisfaction of a judge that a juror during any such adjournment discussed the subject-matter of the charge with any person not being a juror on the same jury, or allowed any person other than a juror as aforesaid to communicate with him on the said subject, or discussed the said subject with a juror on the said jury but in the presence or hearing of a person who is not a juror on the said jury, the juror so offending shall be liable to a fine of fifty pounds, such fine to be imposed forthwith by the judge.

(3) A fine so imposed as aforesaid shall for all purposes be deemed to be a fine imposed by a court of summary jurisdiction.

60. (1) The verdict of the jury shall be delivered verbally by the foreman of the jury in open court and in the presence and hearing of the other jurors and if no member of the jury expresses dissent therefrom the verdict so given shall be conclusively presumed to be the verdict of the jury.

(2) The foreman in delivering the verdict shall state if it is unanimous and if not unanimous the proportions in which the jury are agreed as in this Ordinance provided.

61. The verdict, when returned by the jury and accepted by the judge, shall be recorded by the judge and shall be entered by the registrar on the back of the indictment or on a sheet of paper annexed thereto before the jury are discharged.

62. If the jury find the accused person not guilty he shall be immediately discharged from custody on that indictment.

63. The judgment or sentence of the court shall be recorded by the judge and shall be entered by the registrar on the back of the indictment or on a sheet of paper annexed thereto.

64. Subject to the provisions of sections 65 and 66 the following provisions shall have effect with regard to the deliberations and verdict of the jury:—

- (a) on the trial of any capital offence, the verdict shall be unanimous;
- (b) on the trial of any offence other than a capital offence no verdict other than a unanimous verdict shall be accepted within two hours after the jury began to consider their verdict; and

Delivery of verdict.

Record of verdict.

Verdict of not guilty.

Recording of judgment.

Number of jurors required to find verdict.

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(c) on the trial of an offence other than a capital offence, if, on the expiration of two hours from the time when the jury began considering their verdict the jury are agreed in the proportion of seven to one or six to two, the verdict of such majority shall be taken and have effect as the verdict of the jury.

Majority verdict of lesser offence on capital charge.

65. On the trial of any capital offence if on the expiration of two hours from the time when the jury began to consider their verdict the foreman of the jury informs the court that the jury are agreed in the proportion of eleven to one or ten to two or nine to three that the accused is not guilty of the capital offence with which he is charged but is guilty of an offence of which the accused may properly be convicted on the indictment before the court the verdict of such majority may, at the discretion of the judge, be received and entered, and if the judge does not at that time think fit to accept the verdict the jury may be further directed to retire and such verdict or a unanimous verdict may be accepted subsequently by the judge and any such verdict shall be taken and have effect as the verdict of the jury.

Provisions for continuance of trial where a juror dies or becomes incapable. (15 & 16 Geo. 5, c. 86, s. 15.)

66. (1) Where in the course of a trial any member of the jury dies or is discharged by the court as being through illness incapable of continuing to act or for any other reason, the jury shall nevertheless, subject to assent being given either in writing or orally in court, a note of such assent being made by the judge, by both counsel for the Crown and by or on behalf of the accused and so long as the number of jurors remaining is not reduced by more than two in the case of a jury of twelve and by more than one in the case of a jury of eight, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and the verdict may be given accordingly.

(2) When one or more jurors has died or has been discharged as aforesaid in the case of a trial with a jury of twelve the verdict of eleven or ten jurors, as the case may be, shall be deemed to be a unanimous verdict of the jury.

(3) When one juror has died or has been discharged as aforesaid in the course of a trial with a jury of eight the verdict of seven jurors shall be deemed to be a unanimous verdict of the jury, and a verdict of six or five jurors shall be deemed to be a majority verdict within the meaning of paragraph (c) of section 64.

67. If the judge is satisfied that there is no reasonable probability that the jury will arrive at a verdict he may discharge the jury after the expiration of two hours from the time when they first began to consider their verdict.

Jury may be discharged after two hours' deliberations.

Miscellaneous Provisions Relating to Trial with a Jury.

68. Where no objection is made by counsel for the Crown or by or on behalf of the accused the court may try any case with the same jury that previously tried or was drawn for the trial of any other case without their counters being returned to the receptacle and re-drawn, or may order the counters of any persons on such jury whom both parties consent to withdraw or who may be justly challenged or excused by the judge to be set aside and other counters to be drawn from the receptacle and may try the issue with the residue of the original jury together with the persons whose counters are so drawn and who appear and are approved as indifferent and so *toties quoties* as long as any case remains to be tried.

Jury already empanelled may try successive issues.

69. Where an argument as to the admissibility of certain evidence takes place or is likely to be about to take place and the judge is of the opinion that the accused may be unfairly prejudiced if such argument is heard in the presence of the jury, the judge may direct the jury to retire to their room during the argument.

Withdrawal of jury during certain legal arguments.

70. (1) Where in any case it is made to appear to the court that it will be for the interests of justice that the jury who are to try or are trying the issue in the case should have a view of any place, person or thing connected with the case, it shall be lawful for the court to direct such view to be had in such manner, and upon such terms and conditions, as to the judge may seem proper. The accused shall be present at the view.

View by jury of place connected with case.

(2) In case of any such view being directed to be had, the judge shall give such directions as may seem requisite for the purpose of preventing undue communication with the jurors:

Provided that no breach of any such directions shall affect the validity of the proceedings, unless the court otherwise orders.

Proviso.

71. (1) If the court is of opinion that the accused person is taken by surprise, in a manner likely to be prejudicial to his defence, by the production on behalf of the prosecution of a witness who has not made any deposition, and of the intention to produce

Adjournment and postponement of trial during trial.

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whom the accused has not had sufficient notice, or if the court is of opinion that the prosecution is entitled to produce rebutting evidence, the court may, on application by or on behalf of the accused person or of counsel for the Crown, as the case may be, adjourn the further trial of the case or discharge the jury from giving a verdict and postpone the trial.

(2) If the court is of opinion that any witness who is not called ought to be so called, it may require him to be called at any stage of the proceedings, without the consent of either the prosecution or the defence, if in his opinion this course is necessary in the interest of justice, and, if the witness is not in attendance, may make an order that his attendance be procured and the court may, if it thinks fit, adjourn the further hearing of the case to some other time during the sitting until such witness attends.

(3) Where a witness is called by the judge as in this subsection provided, neither the prosecution nor the defence shall be entitled to examine or cross-examine such witness as of right, but the court may grant such permission and, where the evidence is adverse to either party such permission shall be given.

(4) If, in such a case, the court is of opinion that it would be conducive to the ends of justice to do so, it may, on application by or on behalf of the accused person, or of counsel for the Crown, discharge the jury and postpone the trial.

Discharge of jury during trial.

72. In cases of evident necessity such as when a juror is taken ill during any trial, and the trial is unable to proceed without that juror, or a prisoner is by illness rendered incapable of remaining at the bar in a case in which the judge considers the prisoner should remain in court, or for other cause deemed sufficient by the judge, the judge may at any time after the jury has been sworn discharge the jury.

Subsequent trial.

73. In any case where a jury has been discharged after being sworn and before giving in the verdict the judge may direct a new jury to be sworn during the same sessions or may adjourn the case to a subsequent sessions or to such special day as the judge may deem fit and, if necessary, direct that a new precept for the return of jurors be issued.

Discharge of jurors from attendance.

74. The court may at any time discharge any person summoned as a juror from further attendance on the court, or may excuse any such person from attendance for any period during the

sitting of the court or for any reason which it may deem sufficient may direct any juror at any stage before the accused is arraigned to stand aside until the rest of the panel has been called.

75. No judgment after verdict shall be stayed or reversed by reason of the neglect or default of any officer to do or perform any of the acts or requirements by this Ordinance required in relation to the preparation of the jury list, or in the making up of the jury panels.

Judgment not to be reversed through defect in jury list or panel.

76. The taking of the verdict of the jury, or other proceeding of the court, in a trial which is had with a jury, shall not be invalid by reason of its happening on a Sunday or a public holiday.

Validity of proceedings on Sunday and public holidays.

77. If after a jury has been empanelled the judge becomes for any cause incapable of trying the case or directing the jury to be discharged the registrar shall discharge the jury.

Registrar may in certain cases discharge the jury.

78. Any person summoned to attend the court as a juror who shall not, without reasonable excuse (the burden of proof whereof shall rest on such juror), duly attend and be present at the court and at all times appointed by the court for adjournments, and any person present in court who being called to serve as a juror, shall, without reasonable excuse, refuse so to serve till discharged by the court, shall be liable to a fine of twenty-five pounds.

Penalty on juror not attending.

79. Such punishment may be inflicted summarily on an order to that effect by the court, and any fine imposed shall be recoverable by distress and sale of the movable and immovable property of the person fined, by warrant of distress to be signed by the registrar of the court, which warrant shall be issued by the registrar, without further order of the court, if the amount of fine is not paid within six days of being imposed, if imposed in the presence of the person fined, or within six days of its having come to his knowledge by notice or otherwise that the fine has been imposed, if imposed in his absence. In default of the recovery of the fine by such distress and sale, the person fined may be imprisoned for the space of twenty-one days, if the fine be not sooner paid:

Punishment summary: how enforced.

Provided that it shall be lawful for the court, if it shall deem fit, to remit any fine so imposed.

Proviso.

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Notice to person fined in absence.

80. In cases where any person is so fined in his absence the registrar shall forthwith send him a written notice of the fact, requiring him to pay the fine, or to show cause before the court within four days for not paying the same.

Court may exempt persons from serving.

81. Nothing herein contained shall prevent the court from exempting any person from serving as a juror at any session, or on any trial for reasonable cause; a certificate bearing the signature of any qualified medical practitioner setting out that any person required to attend as a juror is unable from the state of his health to do so, may, on the court being satisfied of the signature to such certificate, be received as *prima facie* evidence of reasonable cause.

Procedure as to juries in matters not provided for by Ordinance.

82. Subject to the provisions of this Ordinance and of any other Ordinance for the time being in force relating to the procedure of the Supreme Court in the exercise of its criminal jurisdiction, the practice and procedure relating to the trial of indictable offences with a jury shall be, as near as possible, in accordance with the practice and procedure in the like cases of His Majesty's High Court of Justice in England.

PART V.

PART V.

TRIAL WITH SPECIAL JURY.

Special jury at discretion of court on application by either party.

83. Where the trial of a person charged with an offence is to take place with a jury in the Supreme Court the court may upon the application made verbally in court or upon motion filed either on behalf of the prosecution or of the accused, order, after hearing both sides, that the trial shall be with a special jury.

Precept for special jury.

84. (1) Where the court has ordered that a trial shall be with a special jury the Chief Registrar shall issue a precept to the sheriff for the return of special jurors.

(2) The precept shall be for such number of special jurors as the court may direct.

Sheriff to prepare panel of special jurors.

85. Upon receipt of such precept the sheriff shall take from the names in the Special Jurors Book a sufficient number of special jurors and transmit such list to the Chief Registrar and such list shall be the panel from which the special jury shall be selected.

86. The provisions under Part IV of this Ordinance relating to the forming of a panel of jurors, the summoning of jurors, the empanelling of jurors, the challenge of jurors, the attendance, discharge and custody of jurors, the number of jurors required to agree in order to find a verdict, the delivery of the verdict and all other provisions relating to trial with a jury in the said part shall apply to a special jury in the same manner as they apply to a common jury save only that all the jurors in question shall be special jurors.

Procedure relating to trial with special jury.

PART VI.

PART VI.

MISCELLANEOUS PROVISIONS RELATING TO JURORS.

87. The sheriff is hereby indemnified for empanelling and returning any person named in the Jurors Book, although he may not be qualified or liable to serve as a juror.

Indemnity to sheriff.

88. (1) Where in relation to the preparation of jury lists, by this Ordinance, any time is limited for the doing of any act or the giving or publishing any notice, list, or other document, or for taking any proceeding, or any time is limited during which any notice, list, book, or other document is to continue in force, such time, either before or after the expiration thereof, may be enlarged by the court on the application of the Attorney-General.

Power to enlarge time in connection with jury lists.

(2) An application under this section may be made by motion or in such other manner as may be prescribed by rules made under this Ordinance, and the court may make such order with respect to the costs of any such application as it deems just.

(3) Where, in the opinion of the court, an application under this section is rendered necessary by the wrongful act, default, or omission of any person, the court may order such person to forfeit and pay to His Majesty a sum of fifty pounds by way of fine.

89. The Chief Justice may, with the approval of the Governor, make rules of court for all or any of the following matters:—

Rules of court relating to jury lists and the summoning of jurors.

(a) the equal distribution, so far as is practicable, of actual service as jurors among the persons liable to such service and for the selection and preparation of jury panels;

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- (b) the preparation of jury lists and summoning of jurors under this Ordinance; and
 (c) generally for giving effect to the provisions of this Ordinance.

Repeal of
 Parts V and
 VI of Cap.
 20, and
 saving.
 Proviso.

90. The heading immediately before section 103, sections 103 to 105 and Parts V and VI of the Criminal Procedure Ordinance is hereby repealed:

Provided that until jury lists are prepared in accordance with the provisions of this Ordinance the lists prepared under the provisions hereby repealed and which lists are in force on the coming into force of this Ordinance shall remain in use.

Schedule.

SCHEDULE.

Form A.

FORM A.

THE JURY ORDINANCE, 1943.

PRECEPT FOR SUMMONING JURY.

Sec. 20.

(Section 20.)

To the Sheriff,
 Lagos.

WHEREAS it is necessary for a jury to be summoned to attend the Criminal Sessions of the Supreme Court, you are hereby required by the court to cause to come before the Supreme Court at the court house at.....day of....., 19...
 on the.....day of....., 19...
 [number of jurors required to be here specified] men whose names appear in the Jurors Book [or Special Jurors Book, as the case may be] for the time being in force.

You are hereby also required by the court not later than four days before the day first before mentioned to return this precept to me having annexed thereto a panel containing in alphabetical order the names of the jurors summoned or to be summoned together with their addresses and occupations, if any.

Dated at.....this.....day of....., 19.....

.....
 (Chief Registrar) or
 (Registrar) as the case may be.

FORM B.

Form B.

THE JURY ORDINANCE, 1943.

SUMMONS TO JUROR.

(Section 22.)

Sec. 22.

To Mr.....

You are hereby required to be and appear at the Criminal Sessions of the Supreme Court to be held at the court house at.....on the.....day of....., 19....., at the hour of.....o'clock in the forenoon, there to serve as a juror and not to depart without leave of the said court.

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

.....
 (Sheriff.)

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
 Clerk of the Legislative Council.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 3rd day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 26



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO AMEND THE CRIMINAL PROCEDURE ORDINANCE. Title.

[, 194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and Southern Provinces, as follows:— Enactment.

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Short title and commencement. 1. This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance, 1943, and shall come into operation on a day to be fixed by the Governor by notice in the Gazette.

Amendment of section 2 of Cap. 20. 2. Section 2 of the Criminal Procedure Ordinance, herein after called the principal Ordinance, is hereby amended by repealing the definitions of "High Court", "Court", "Magistrate's Court", "Chief Judge", "Judge of the High Court" and "Magistrate" appearing therein and substituting therefor:—

"court" means the Supreme Court or a magistrate's court and 'division' and 'district' shall have the same meaning respectively as contained in the Supreme Court Ordinance, 1943, and the Magistrates' Courts Ordinance, 1943." Ord. 23 of 1943. Ord. 24 of 1943.

Substitution of certain new provisions in Cap. 20. 3. The provisions of the principal Ordinance set out in the first column of the First Schedule are hereby repealed and the provisions set out opposite thereto in the second column of the said Schedule are hereby respectively substituted therefor.

First Schedule. Amendment of certain sections of Cap. 20. 4. The provisions of the principal Ordinance set out in the first column of the Second Schedule are hereby amended to the extent indicated opposite thereto in the second column of the said Schedule.

Second Schedule. Repeal of sections 8 and 145 of Cap. 20. 5. The principal Ordinance is hereby amended by repealing sections 8 and 145 thereof.

FIRST SCHEDULE. (SECTION 3)

Table with 2 columns: Section and Provisions substituted. Rows 3, 6, 7 detailing amendments to general authority, Chief Justice's power, and venue.

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FIRST SCHEDULE—contd.

Section.	Provisions substituted.
	<p>(ir) when it consists of several acts committed in different divisions or districts, it may be enquired into or tried by a court having jurisdiction in any of such divisions or districts;</p> <p>(e) an offence committed while the offender is in the course of performing a journey or voyage may be enquired into or tried by a court through or into the division or district of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage;</p> <p>(f) an offence committed at sea or elsewhere out of Nigeria, which, according to law, may be enquired into or tried in Nigeria may, subject to the provisions of section 33, be so enquired into or tried at any place in Nigeria."</p>
18	<p>Execution of warrant. "18. A warrant may be executed at any place within Nigeria and when executed outside the division or district of the court issuing the warrant, the person arrested shall be brought before a court of appropriate jurisdiction most convenient to the place of arrest and such court shall proceed as if such person were brought before it under the provisions of section 4."</p>
33 (2) (a)	<p>"(a) Proceedings before a magistrate previous to the committal of an offender for trial, or to the determination of the magistrate that the offender is to be put upon his trial, shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the consent and certificate under this section."</p>
41 (2).	<p>"(2) In its application to a magistrate's court sub-section (1) is subject to the following provisions:— If a magistrate orders a person to be imprisoned or to pay a fine, he shall, within three days forward to the Chief Justice, or by direction of the Chief Justice to any other judge, a certified copy of the notes of the proceedings, and the Chief Justice or other judge may, without hearing any argument, set aside such order or reduce the sentence of imprisonment or a fine imposed."</p>
43 (1).	<p>"(1) When a sworn information is made before a magistrate that an offence has been committed, the Attorney-General may, whether or not any known person be charged with the commission of the offence</p>

FIRST SCHEDULE—contd.

Section.	Provisions substituted.
	<p>direct a magistrate to hold an inquiry under this section, and may, if he thinks fit, direct that such inquiry be held <i>in camera</i>."</p>
56 (5).	<p>"(5) A judge may, if he thinks fit, admit any person to bail although the magistrate before whom the charge is laid has refused bail."</p>
73	<p>Returns to be made to court and legal officers. "73. The charge, the depositions, the statement of the accused, his answer recorded under section 66, the recognisances of the prosecutor and witnesses, the recognisance of bail and any document and things which has been put in evidence shall be transmitted in proper time to the court before which it appears that the trial should be held, and an authenticated copy of all such documents and a list of such things shall be transmitted to a law officer or Crown counsel or a resident as may be most convenient."</p>
77	<p>Summary trial of offences. Ord. 23 of 1943. "77. Trials before magistrates, and subject to the provisions of the Supreme Court Ordinance, 1943, trials taken other than after committal by a magistrate, shall be taken in the manner and subject to the conditions laid down in this Part."</p>
83	<p>Reply by prosecution. "83. Where an accused adduces evidence in his defence the prosecutor shall not, save with the leave of the court, comment on such evidence."</p>
89	<p>Procedure where offence appears unsuitable for determination by magistrate. "89. If during a trial before a magistrate it shall appear that the offence, on account of its aggravated character or other sufficient reason, should be tried by the Supreme Court, the magistrate shall stay the trial before him and shall commence proceedings for committal for trial in accordance with the provisions laid down in Part II."</p>
90	<p>Criminal trials in Supreme Court to be on charges or information. "90. Trials before the Supreme Court shall, subject to the provisions of section 77 be tried upon charges preferred to the court or upon information, and any such information shall be signed by a law officer or a Crown counsel."</p>
93	<p>Objections cured by verdict. "93. No judgment shall be stayed or reversed on the ground of any objection, which, if raised after the charge or information was read over to the accused or during the progress of the trial might have been amended by the court, or for any informality in swearing the witnesses or any of them."</p>

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FIRST SCHEDULE—contd.

Section.	Provisions substituted.
94	Legal effect of charge or information. "94. The fact that a charge is preferred or an information filed is equivalent to a statement that every legal condition precedent required by law to constitute the offence was fulfilled in the particular case."
136 Proviso.	"Provided that the disqualifications and exemptions set out respectively in sections 5 and 6 and the provisions of section 24 of the Jury Ordinance, 1943, shall apply to assessors in like manner as to jurors."
Ord. 25 of 1943.	
137	Sheriff or member of court to summon assessors. "137. The sheriff or an officer of the court before the sitting of the court whereat assessors shall be necessary, shall, on receiving from the court a precept, issue summonses requiring the attendance thereof of persons, not exceeding ten in number, qualified to serve as assessors, and every such summons shall be served by the sheriff or other officer of the court not less than three days before the day on which the attendance is required."
138	List of assessors summoned. "138. The sheriff or an officer of the court shall cause to be delivered to the court issuing the precept a list of the names with the occupations and places of abode of the persons so summoned."
166 (3)	"(3) The provisions of this section shall be in addition to and not in derogation of the powers vested in the Chief Justice by section 45 of the Magistrates' Courts Ordinance, 1943."
Ord. 24 of 1943.	
176	Chief Justice may direct an appeal be heard by two or more judges. "176. Appeals from Lower Courts shall be heard by one judge except where in any particular case the Chief Justice shall direct that an appeal be heard by two or more judges. Such direction may be given either before the hearing of the appeal or at any time before judgment is delivered and if on the hearing of an appeal by two or more judges the court is equally divided in opinion the appeal shall be dismissed."
188	Chief Justice may direct that case stated be heard by two or more judges. "188. A case stated for the opinion of the Court of Appeal shall be heard by one judge except where in any particular case the Chief Justice shall direct that it be heard by two or more judges. Such direction may be given either before the hearing of the case stated or at any time before judgment is delivered and if on the hearing by two or more judges the court is equally divided in opinion the decision of the Lower Court shall be affirmed."

SECOND SCHEDULE.

(SECTION 4)

Section.	Amendments made.
10	By deleting the words "other province or" appearing therein.
22	By deleting the words "on information" appearing therein.
23	By deleting the words "on information" appearing therein.
31	By substituting a full stop for the comma after the word "information" where it first appears therein and by deleting the remainder of the section.
41 (3)	By deleting in sub-section (3) thereof the words "a Commissioner of the Supreme Court or" appearing therein.
41 (4)	By deleting in sub-section (4) thereof the words "Commissioner of the Supreme Court or a" appearing therein.
43	(a) By substituting "Attorney-General" for "Governor" appearing in sub-section (3) thereof, and (b) by deleting the expression "the Supreme Court Ordinance and this Ordinance," appearing in sub-section (4) thereof and substituting therefor the expression "any Ordinance."
44	By deleting the expression "judge, Commissioner of the Supreme Court or Magistrate," in both places where it appears therein and substituting therefor the expression "judge or magistrate."
45	By deleting the expression "judge, Commissioner of the Supreme Court or Magistrate, and" appearing therein and substituting therefor the expression "judge or magistrate."
56 (1)	By deleting the words "or the High Court" appearing therein.
62	By deleting the words "counsel or attorney" appearing in the third paragraph thereof and substituting therefor the words "a legal practitioner".
65 (1)	By deleting the words "against you upon your trial" appearing in the sixth and seventh lines and the words "against you" appearing in the twelfth and thirteenth lines respectively of the address therein.
69	(a) By deleting the symbol "(1)" in the first line thereof;

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SECOND SCHEDULE—contd.

Section.	Amendments made.
74	(b) by deleting the words "the court having jurisdiction to try such accused," and substituting the expression "the Supreme Court," therefor, and (c) by deleting sub-section (2) thereof.
80	By deleting the expression "Attorney-General, and Solicitor-General or a Crown Counsel," and substituting the expression "Attorney-General under the provisions of sections 22 and 23," therefor.
81	(a) By deleting the expression "except in cases of treason or murder," in the first paragraph thereof and substituting the expression "except in the case of murder," therefor, and (b) by deleting the words "In cases of treason or murder" in the second paragraph thereof and substituting the words "In the case of murder" therefor.
84	By deleting the expression "counsel or attorney," in the third paragraph thereof and substituting the words "a legal practitioner" therefor.
91	(a) By renumbering the first and second paragraphs thereof as sub-sections (1) and (2) respectively, and (b) by deleting the third paragraph thereof and substituting the following sub-section therefor:— " (3) The court may at any stage amend the charge or substitute a new charge therefor save that where an accused person may be prejudiced by such amendment or substitution the court shall grant any necessary adjournment and shall allow the accused to recall any witness for cross-examination or examination."
100	(a) By deleting the expression "except in the case of informations preferred by the direction of, or with the consent in writing, the Chief Justice, and" appearing therein, and (b) by repealing the proviso thereto. (a) By inserting the words "charge or" between the words "any" and "information" appearing in the first line thereof, and (b) by inserting the words "charge or" between the words "the" and "information" appearing in the third line thereof.

SECOND SCHEDULE—contd.

Section.	Amendments made.
143	(a) By renumbering the first paragraph as sub-section (1) thereof, and (b) by deleting the second paragraph thereof and substituting the following sub-section therefor:— " (2) The provisions of sections 79 and 80 of the Ord. 25 of 1943, shall apply to a fine imposed under this section."
154	By inserting the words "or magistrate" immediately after the word "judge" in the first line thereof.
164	(a) By deleting the definition of Court of Appeal appearing therein and substituting the following therefor:— " 'Court of Appeal' means a judge of the Supreme Court;"; (b) by deleting the words "either the Court of a Commissioner of the Supreme Court or" appearing in the definition of "Lower Court", and (c) by deleting the definition of "Advocate" appearing therein and substituting the following therefor:— " 'advocate' means a legal practitioner."
183	By deleting the words "Commissioner of the Supreme Court or" appearing therein.
185	By deleting the words "the Commissioner of the Supreme Court or" appearing therein. By deleting the words "and High Court".
The heading before section 190	By deleting the whole.
190	(a) By deleting the words "or the High Court" in the first and second lines thereof, and (b) by deleting the expression "or the High Court, as the case may be," appearing in the fifth and sixth lines thereof.
191	By deleting the words "or the High Court" appearing therein. By deleting the expression "rules made under section 3 of the Ordinance" appearing therein and substituting therefor the expression "rules of court made under section 56 of the Supreme Court Ordinance, 1943."
First Schedule. 1	

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This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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NIGERIA.

NO. 189

RECEIVED
30 JUN 1943
O. O. REGY

918
GOVERNMENT HOUSE,
NIGERIA.
6th May, 1943.

Sir,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 24 of 1943, entitled "An Ordinance for the Constitution of Magistrates' Courts for Nigeria; for the appointment of Magistrates and other officers thereof; of Justices of the peace and for the regulation of their duties and jurisdiction" together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

B. H. ...
G O V E R N O R .

THE RIGHT HONOURABLE
OLIVER STANLEY, M. C. , M. P. ,
SECRETARY OF STATE FOR THE COLONIES,
&c. , &c. , &c.

JS

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on

A BILL FOR AN ORDINANCE FOR THE CONSTITUTION
OF MAGISTRATES' COURTS FOR NIGERIA; FOR
THE APPOINTMENT OF MAGISTRATES AND
OTHER OFFICERS THEREOF; OF
JUSTICES OF THE PEACE AND FOR
THE REGULATION OF THEIR DUTIES AND
JURISDICTION.

The short title of this Bill is the Magistrates' Courts Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

X | 2. This bill is one of the five closely-related bills
enacted at the same time and I invite attention to paragraphs
2 to 5 of my report on the Supreme Court Ordinance, 1943, which
should be read before this. The draft for this bill had already
been approved by the Secretary of State but in September, 1941,
A | a proposal to divide magistrates into three grades and increase
their jurisdiction was submitted to the Secretary of State and
approved by him towards the end of the following October.

3. The amendments which have been made in this bill and of which the Secretary of State has not yet been informed are as follows:-

Clauses 6, 38 and 8. Sub-clause (2) of clause 6 and clause 38 commenced with the expression "where the Governor appoints two or more magistrates for/to any district"; now this is not strictly correct, the Governor appoints magistrates who will have jurisdiction throughout Nigeria but who will only exercise their jurisdiction in those areas or rather districts to which they are posted as magistrates. This is a matter of internal administration of the judicial department and as such is left to the Chief Justice, and as the Governor is not really concerned with the appointment of magistrates to any particular district the first four words of the expression

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expression above referred to has been altered to "When the Chief Justice assigns". A consequential amendment being made in clause 8.

Clause 15. This clause has been renumbered as 15(1) and the words "in the Government service" has been omitted. It is possible that a private practitioner or other person not in the Government service may be appointed as a registrar: and to assist the Chief Justice in the internal administration of his department sub-clause (2) has been added.

Clause 17. Has been amended by the insertion of the words "or any other officer" after the word "magistrate" at the end of first line. This also is purely for internal administration.

Clause 19(1). Has been amended by substituting the expression "Subject to the provisions of this or any other Ordinance a" for "A" in the first line of sub-clause (1); and in the proviso all that portion after the expression "dispute," has been deleted and the following phrase substituted "or in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death". The latter part of this amendment has been made for the same reasons as was the amendment to the proviso to clause 12 of the bill for the Supreme Court Ordinance, 1943, and attention is invited to the report thereon, but this amendment goes further, removing the prohibition in the original draft on actions being brought before magistrates for malicious prosecution, libel, slander, seduction and breach of promise of marriage. It was considered unnecessary to put litigants to the expense of proceeding in the Supreme Court in respect of such matters if they

wished

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wished to bring them within a magistrate's court and ask for damages within a magistrate's jurisdiction - as in fact is normally done.

Clause 33. Sub-clause (5) has been deleted for the same reasons as a similar sub-clause was deleted from the bill for the Supreme Court Ordinance, 1943.

Clause 45. It was necessary to renumber this clause as 45(1) and add a sub-clause relative to the powers of a judge on review. This provision had been omitted from this Ordinance as it would appear in one of the procedure Ordinances but as they are not yet ready it was necessary to reproduce them here - temporarily at any rate.

Clause 64. This clause deals with the appearance of counsel in magistrates' courts on appeal from native courts and the existing restrictions have been removed: in this respect please see the references to clause 71 in paragraph 8 of the bill for the Supreme Court Ordinance, 1943. The amendment to this clause necessitates the deletion of the Schedule.

Clause 66. When this bill was drafted it was hoped that the procedure Ordinances relating to magistrates' courts would also be ready but as that has been impossible this clause has been renumbered and a sub-clause added to keep alive the existing practice until such time as other provision is made.

J. A. B.
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria,
8th. April, 1943.

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MAGISTRATES' COURTS ORDINANCE, 1943

ARRANGEMENT OF PARTS AND SECTIONS.

PART I.

PRELIMINARY.

Section.

1. Short title, application and commencement
2. Definitions.

PART II.

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3. Power to divide Nigeria into magisterial districts.
4. Special provision as to territorial and inland waters.
5. Establishment of magistrate's court in each district.
6. Presiding officer of the court who shall not exceed powers granted him.

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Magistrates.

7. Appointment of magistrates.
8. Territorial jurisdiction of magistrates.
9. Magistrates *ex officio* justices of the peace.
10. Procedure when magistrate personally interested in case before him.
11. Governor may confer powers of magistrate on justice of the peace.

Justices of the Peace.

12. Appointment and removal of justices of the peace.
13. Powers and functions of justices of the peace.
14. Justice of the peace shall not exceed powers granted him.

Registrars of the Courts.

15. Appointment of registrar.
16. Control of registrar.
17. Transfer of officers from one court to another.
18. Duties of registrars.

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JURISDICTION OF THE COURTS.

19. Civil jurisdiction of magistrates.
20. Criminal jurisdiction of a magistrate of the first grade.
21. Criminal jurisdiction of magistrates of second and third grades.

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Section:

22. Special jurisdiction in certain cases.
23. Power of Governor to increase jurisdiction of magistrates.
24. Appeals from native courts.
25. General powers of magistrate.
26. Acts of a magistrate not affected by error as to venue.
27. Magistrates to have process of Supreme Court executed.
28. Proceedings by or against officer of the court.
29. Administration of oaths in proceedings.

Law to be administered.

30. Application of English law.
31. Rules as to the application of Imperial laws.
32. Law and equity to be concurrently administered but equity to prevail in certain cases.
33. Application of native laws.

Reconciliation.

34. Courts to promote reconciliation.
35. In pending civil cases.
36. In which criminal cases.

Credit to Natives

37. Credit to natives.

Power of Transfer.

38. Transfer between magistrates in same districts.
39. Magistrate may report causes for transfer.
40. Transfer to native court.
41. Restriction on re-transfer.
42. Transfer of cases by a judge.
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Appeals and Revision.

44. Appeals from decisions of magistrates' courts.
45. Monthly lists to be sent to judge.
46. Reservations of questions of law for opinion of Supreme Court.

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47. Fixing of times and places for sittings of the court generally.
48. Nature of business at any sitting.
49. Adjournment of the court.
50. Adjournment over Sunday or holiday.
51. Change of place of hearing of case.

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52. Practice and procedure.
53. Completion by magistrate of process begun by his predecessor.
54. Process of magistrate valid throughout Nigeria.
55. Issue of process.
56. In which cases prisoners may be brought by warrant to give evidence.
57. Duty of constables to obey magistrates.

PART VII.

MISCELLANEOUS PROVISIONS.

Fees and Costs.

58. Fees and costs.
59. By whom fees payable.
60. All fees and moneys received in courts to be subject to foregoing provisions.

Protection of Magistrates, Justices of the Peace and Officers of the Court.

61. Protection of judicial officers.

Representation of Parties.

62. Representation of the Crown and Government departments.
63. Representation of first and second class chiefs.
64. Right of appearance of legal practitioners.

Rules of Court.

65. Rules of court.

Saving.

66. Saving of pending proceedings.
67. Saving of existing appointments of justices of the peace and other officers.
68. Substitution of term "magistrate" or "magistrate's court" in certain existing legislation.

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 4th day of May, 1943.

B. H. BOURDILLON,
Governor.

(L.S.)

No. 24



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE FOR THE CONSTITUTION OF MAGISTRATES' COURTS FOR NIGERIA; FOR THE APPOINTMENT OF MAGISTRATES AND OTHER OFFICERS THEREOF; OF JUSTICES OF THE PEACE AND FOR THE REGULATION OF THEIR DUTIES AND JURISDICTION.

[, 194 .] Date of commencement.

WHEREAS it is expedient to merge the Courts of Commissioners of the Supreme Court in the Colony and the Magistrates' Courts in the Protectorate and to establish and substitute therefor Magistrates' Courts for Nigeria:

Preamble.

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Enactment. BE IT THEREFORE ENACTED by the Governor of the Colony and Protectorate of Nigeria with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:—

PART I.

PRELIMINARY.

Short title, application and commencement. 1. This Ordinance may be cited as the Magistrates' Courts Ordinance, 1943; it shall apply to Nigeria and come into operation on a date to be fixed by the Governor by notice in the Gazette.

Definition. 2. Definitions:—

- "Act" "Act" used with reference to legislation means an Act of Parliament;
- "action" "action" means a civil proceeding commenced by a writ of summons and includes a criminal proceeding;
- "cause" "cause" includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding;
- "cause of action" "cause of action" in suits founded on contract does not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;
- "court" "court" means a magistrate's court established in an area under this Ordinance;
- "criminal" "criminal" includes quasi-criminal, and, with reference to matters of jurisdiction, comprehends all such matters not falling within the term "civil";
- "defendant" "defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the court with any crime or offence;
- "district" "district" means a magisterial district constituted under this Ordinance;

- "execution creditor" includes every person having title to enforce a judgment or order by process of execution; "execution creditor"
- "first class chief" means a head chief graded as first class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, No. 14 of 1930; "first class chief"
- "Imperial laws" means any Act and includes general rules or orders of court made thereunder; "Imperial laws"
- "judge" means a judge of the Supreme Court; "judge"
- "judgment" includes a decree; "judgment"
- "judgment debtor" includes every person ordered by a judgment or order in a civil cause to pay money or to do or abstain from doing any act; "judgment debtor"
- "justice of the peace" means a justice of the peace appointed under this Ordinance; "justice of the peace"
- "material part of the cause of action" means any fact which a party must prove in order to substantiate his claim; "material part of the cause of action"
- "matter" includes every proceeding in the court not in a cause; "matter"
- "plaintiff" includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether writ, petition or otherwise; "plaintiff"
- "registrar" means a registrar appointed under this Ordinance; "registrar"
- "second class chief" means a head chief graded as second class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, No. 14 of 1930; "second class chief"
- "suit" includes action, and means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by rules of court, and does not include a criminal proceeding; "suit"
- "summary conviction offence" means any offence punishable on summary conviction before the court, and includes any matter in respect of which the court can make an order in the exercise of its summary criminal jurisdiction. "summary conviction offence"

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PART II.

CONSTITUTION OF THE COURTS.

Power to divide Nigeria into magisterial districts.

3. The Chief Justice may:—

- (a) divide Nigeria, or any portion thereof, into magisterial districts for the purposes of this Ordinance;
- (b) constitute in any part of Nigeria a magisterial district or districts for the purposes of this Ordinance;
- (c) distinguish such districts by such names or numbers as he may think proper; and
- (d) vary the limits of any such districts.

Special provision as to territorial and inland waters.

4. A magistrate's civil and criminal jurisdiction shall extend over any territorial waters adjacent to the district in which for the time being he is exercising jurisdiction as well as over inland waters whether within or adjacent to such district.

Establishment of magistrate's court in each district.

5. In each district there shall be and there is hereby established a court to be called the Magistrate's Court.

Presiding officer of the court who shall not exceed powers granted him.

6. (1) Subject to the special provisions hereinafter contained in this Ordinance:—

- (a) the magistrate of each district shall be the presiding officer of the court of such district wherein he shall have and exercise all the jurisdiction and powers conferred upon him by his appointment; and
- (b) no magistrate either as presiding officer or otherwise shall exercise any jurisdiction and powers in excess of those conferred upon him by his appointment.

(2) When the Chief Justice assigns two or more magistrates for any district, each magistrate shall be a presiding officer of the court of such district and each sitting separately shall have and exercise all the jurisdiction and powers conferred upon him by his appointment.

PART III.

OFFICERS OF THE COURTS.

Magistrates.

7. The Governor shall have power to appoint magistrates, who shall be styled first, second and third grade magistrates, and may appoint any fit and proper person to be a magistrate of such grade as he may think fit.

Appointment of magistrates.

8. Every magistrate shall have jurisdiction throughout Nigeria but may be assigned to any specified district or transferred from one district to another by the Chief Justice.

Territorial jurisdiction of magistrates.

9. Every magistrate shall be *ex officio* a justice of the peace for Nigeria.

Magistrates *ex officio* justices of the peace.

10. Where a magistrate is a party to any cause or matter, or is unable, from personal interest or for any other sufficient reason, to adjudicate on any cause or matter, the Chief Justice shall direct some other magistrate to act instead of such aforesaid magistrate for the hearing and determination of such particular cause or matter, or may direct that such cause or matter shall be heard and determined in a court of any other district.

Procedure when magistrate personally interested in case before him.

11. If a magistrate is not available for the court in any district, or where in respect of any district the Governor for any other reason considers it necessary so to do, the Governor may by appointment confer upon any person being a justice of the peace the powers of a magistrate of such grade as he may think fit, or such of those powers as the Governor may specify, and until the Governor revokes the appointment such person shall be deemed to be a magistrate with such powers in and for such district.

Governor may confer powers of magistrate on justice of the peace.

Justices of the Peace.

12. (1) The Governor may appoint any person to be a justice of the peace in and for Nigeria or in and for such part of Nigeria as the Governor may specify, and the Governor may remove any person so appointed from the office of justice of the peace.

Appointment and removal of justices of the peace.

(2) Every administrative officer shall *ex officio* be a justice of the peace for the part of Nigeria to which he is for the time being appointed as such officer.

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Powers and functions of justices of the peace.

13. Subject to the provisions of this and of any other Ordinance, every justice of the peace shall, subject to any exceptions which may be contained in the appointment, within the area in and for which he holds such office have:—

- (a) power to preserve the peace, to suppress riots and affrays, and to disperse all disorderly and tumultuous assemblages, and for any of these purposes to call in the aid and assistance of police officers and others who shall severally be bound to obey all such lawful commands;
- (b) all the powers, rights and duties of a magistrate under this or any other Ordinance to—
 - (i) issue summonses and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before a court;
 - (ii) issue writs of summons and summonses in civil causes;
 - (iii) admit to bail persons who are accused but not convicted of crime;
 - (iv) issue search warrants;
 - (v) take solemn affirmations and statutory declarations; and
- (c) such other powers and rights and perform such duties of magistrates as may be conferred or imposed upon him by rules of court made under any Ordinance not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

Justice of the peace shall not exceed powers granted him.

14. Where a justice of the peace is appointed a magistrate under section 11 and such person has had conferred upon him part only of the powers of a magistrate such person shall not when presiding over a magistrate's court exercise any power in excess of the powers conferred upon him.

Registrars of the Courts.

Appointment of registrar.

15. (1) The Chief Justice may with the approval of the Governor appoint a fit and proper person to be the registrar of each court.

(2) The Chief Justice may appoint any member of the Judicial Department to act temporarily as registrar of any court.

16. The registrar shall, subject to the general supervision and control of the Chief Justice, be under the immediate direction and control of the magistrate. Control of registrar.

17. The Chief Justice may at any time transfer the registrar or any other officer of any magistrate's court from that court to any other court. Transfer of officers from one court to another.

18. The duties of the registrar shall be:— Duties of registrars.
- (a) to attend at such sitting of the court as the magistrate may direct;
 - (b) to fill up or cause to be filled up summonses, warrants, orders, convictions, recognizances, writs of execution, and other documents, and submit the same for the signature of the magistrate;
 - (c) to make or cause to be made copies of proceedings when required to do so by the magistrate, and to record the judgments, convictions and orders of the court;
 - (d) to receive or cause to be received all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the court, and to keep or cause to be kept accounts of the same; and
 - (e) to perform or cause to be performed such other duties connected with the court as may be assigned to him by the magistrate.

PART IV.

JURISDICTION OF THE COURTS.

19. (1) Subject to the provisions of this or any other Ordinance a magistrate of the first grade shall have and exercise jurisdiction in civil causes:— Civil jurisdiction of magistrates.

- (a) in all personal suits, whether arising from contract, or from tort, or from both, where the debt or damage claimed, whether as balance claimed or otherwise, is not more than two hundred pounds;
- (b) in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or

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refused to be delivered up, where the annual value or rent does not exceed two hundred pounds;

- (c) to issue writs of *habeas corpus* for the production before the court of any person alleged upon oath to be wrongfully imprisoned and detained, and to make orders thereon;
- (d) to appoint guardians of infants, and to make orders for the custody of infants;
- (e) to grant in any suit instituted in the court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain breaches of contracts or torts:

Proviso.
Ordinance
44 of 1933.

Civil juris-
diction
excluded
in certain
cases.

See also
Ordinance
44 of 1933.
(s. 27 (1)
(iii)).

Provided that, except in so far as the Governor may by order in Council otherwise direct, and except in suits transferred to a magistrate's court under the provisions of section 25 of the Native Courts Ordinance, 1933, a magistrate's court shall not exercise original jurisdiction in suits which raise any issue as to the title to land or as to the title to any interest in land, or in which the validity of any devise, bequest or limitation under any will or settlement is or may be disputed or in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death.

(2) Magistrates of the second and third grades shall have and exercise jurisdiction in civil causes similar in all respects to that set out in sub-section (1) save that such jurisdiction, in causes where the subject matter in dispute is capable of being estimated at a money value, shall be limited to causes in which such subject matter does not exceed in amount or value one hundred pounds in the case of a magistrate of the second grade and twenty-five pounds in the case of a magistrate of the third grade

(3) Where in any action the debt or demand consists of a balance not exceeding two hundred pounds, one hundred pounds or twenty-five pounds, as the case may be, after an admitted set off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a magistrate shall have jurisdiction and power to hear and determine such action within the limits of his personal jurisdiction and power.

20. Subject to the provisions of this and of any other Ordinance, a magistrate of the first grade shall have full jurisdiction in criminal causes and power as hereinafter set forth:—

Criminal
jurisdiction
of a magis-
trate of the
first grade.

(1) For the summary trial and determination of criminal cases as follows:—

- (a) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is in any case punishable either by fine not exceeding two hundred pounds or by imprisonment not exceeding two years or by both; power to impose the punishment specified by law;
- (b) (i) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is stated by the enactment declaring such to be both an offence and to be one punishable or triable or liable to be dealt with on summary conviction or summarily or in a summary manner; power to award the maximum sentence of imprisonment and to order the payment of the maximum fine or penalty or forfeiture provided by such enactment or both such imprisonment and such fine or penalty or forfeiture where by law both may be imposed;
- (ii) where any enactment provides that an order for the payment of money may be made on summary conviction or summarily or in a summary manner in respect of any act or omission; power to order the payment of the sum which may be ordered according to the provisions of the enactment providing for the making of the order;
- (c) where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is an offence, not stated to be triable on summary conviction or summarily or in a summary manner and is stated by the enactment declaring such to be an offence that is punishable either by a fine exceeding two hundred pounds or by imprisonment exceeding two years or both, but taking into account

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the circumstances of the particular offence with which such person is charged and the character and antecedents of the accused himself the court is of opinion that the charge then before the court appears to be one of such a nature that, if proved, it would be adequately punished by any of the following punishments—

- (i) imprisonment for not more than two years;
 - (ii) a fine not exceeding two hundred pounds, such fine to be enforced in default of payment by distress or by imprisonment for not more than two years;
 - (iii) in each of the above cases with or without whipping and any additional or alternative punishment in respect of offences for which such punishment may legally be inflicted;
 - (iv) any lesser penalty or order which a magistrate in the exercise of his summary jurisdiction may impose or make,
- power to impose such punishment:

Proviso.

Provided that the person so charged, if the magistrate decides to proceed in accordance with subsection (1) (c), shall be informed by the magistrate before any evidence is taken of his right to be tried in the Supreme Court and such person consents to be tried by the magistrate:

Proviso.

Provided further that if the magistrate shall not so inform the person charged the trial shall be null and void *ab initio* unless the person charged consents at any time before being called upon to make his defence to being tried by the magistrate, in which case the trial shall proceed as if the person charged had consented to being tried by the magistrate before the magistrate proceeded to hear evidence in the case;

- (2) To receive and inquire into all charges of indictable offences, and to make such orders in respect thereof as may be required by the provisions of any Ordinance for the time being in force in relation to procedure in respect of indictable offences, and

(3) Generally to do all such acts and things as may, by any Ordinance, which is now or may hereafter be in force, lawfully appertain to the office of a magistrate.

21. Subject to the provisions of this and of any other Ordinance the jurisdiction and powers of magistrates of the second and third grades in criminal causes shall be as follows:—

Criminal jurisdiction of magistrates of second and third grades.

- (a) magistrates of the second grade: all those set out in section 20, save that the maximum fine of not exceeding two hundred pounds and the maximum period of imprisonment of not exceeding two years mentioned in that section shall be replaced by a sum of not exceeding one hundred pounds and a period of not exceeding one year and such limitation shall extend to any cause or matter whether or not the offence be one declared to be punishable or triable or liable to be dealt with on summary conviction or summarily or in a summary manner;
- (b) magistrate of the third grade: all those set out in paragraph (a) herein save that the maximum fine and the maximum period of imprisonment shall in no cause exceed a sum of twenty-five pounds or a period of three months imprisonment respectively.

22. Where an offence is committed or any cause or matter arises over which a magistrate has jurisdiction in any ship, boat or canoe, such offence may be prosecuted or such cause or matter heard and determined either by the magistrate exercising jurisdiction over the place where the ship, boat or canoe may be at the time when the offence was committed or the cause or matter arose, or by the magistrate exercising jurisdiction over any place where the ship, boat or canoe may call at after the commission of the offence or the arising of the cause or matter.

Special jurisdiction in certain cases.

23. (1) The Governor may, on the recommendation of the Chief Justice, by writing under his hand authorise an increased jurisdiction in civil or criminal matters, or in both, to be exercised by any magistrate to such extent as the Governor may on such recommendation specify. Such authority may at any time be revoked by the Governor by writing under his hand.

Power of Governor to increase jurisdiction of magistrates.

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(2) For the purpose of facilitating the application of the said Imperial laws, they shall be read with such formal alterations, not affecting the substance, as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances.

(3) Every magistrate or officer of any of the said courts having or exercising functions of the like kind, or analogous to the functions of any magistrate, justice of the peace or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last mentioned officer.

(4) Whenever the great seal or any other seal is mentioned in any such law it shall be read as if the seal of the court were substituted therefor.

(5) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment or otherwise.

Law and equity to be concurrently administered but equity to prevail in certain cases.

32. (1) In every civil cause or matter which shall come in dependence in any of the magistrate's courts constituted by this Ordinance law and equity shall be administered concurrently.

(2) A magistrate in the exercise of the jurisdiction vested in him by this Ordinance shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

(3) In all causes or matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same subject the rules of equity shall prevail.

Application of native laws.

33. (1) Nothing in this Ordinance shall deprive a magistrate appointed under this Ordinance of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any

native law or custom existing in Nigeria, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force.

(2) Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives, and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

(3) No party shall be entitled to claim the benefit of any local law or custom, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connexion with such transactions should be regulated exclusively by English law or that such transaction is a transaction unknown to native law and custom.

(4) In cases where no express rule is applicable to any matter in controversy a magistrate shall be governed by the principles of justice, equity and good conscience.

Reconciliation.

34. In civil cases magistrates and their officers shall, as far as there is proper opportunity, promote reconciliation among persons over whom such magistrates have jurisdiction, and encourage and facilitate the settlement in an amicable way and without recourse to litigation of matters in difference among them.

Courts to promote reconciliation.

35. Where a civil suit or proceeding is pending, the magistrate may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

in pending civil cases.

36. In criminal cases a magistrate may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by him, and may thereupon order the proceedings to be stayed.

in which criminal cases.

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Credit to Natives.

Credit to natives.

37. Magistrates shall not enforce against a native living in any area specified by Order of the Governor in Council under this section, which Order the Governor in Council is hereby empowered to make, any obligation incurred by him towards a non-native in respect of a commercial transaction, so far as it is based on credit, if the court is satisfied that the native was not reasonably aware of the nature of the obligation and the consequence of failure to perform the same.

Power of Transfer.

Transfer between magistrates in same districts.

38. When the Chief Justice assigns two or more magistrates to any district any such magistrate within such district may, at any stage of the proceedings before final judgment, transfer, within the limits of such district, any cause or matter before him to any other such magistrate and such cause or matter shall be commenced *de novo*, enquired into, tried and disposed of, by any magistrate of competent jurisdiction to whom it has been transferred as if it had been instituted before him:

Proviso.

Provided that no cause or matter which has been specifically transferred by the Supreme Court for inquiry or trial by a particular magistrate shall again be transferred without leave of a judge.

Magistrates may report causes for transfer.

39. A magistrate may, of his own motion, or on the application of any person concerned, report to a judge the pendency of any cause or matter, civil or criminal, which in the opinion of such magistrate ought for any reason to be transferred from his court to any other magistrate's court or to the Supreme Court. Such judge shall direct in what mode and where the cause or matter shall be heard and determined.

Transfer to native court

40. Save as provided in section 41 a magistrate may at any stage of the proceedings before final judgment by order direct that any cause or matter pending before him be transferred to a native court having jurisdiction in such cause or matter. The magistrate shall inform such native court in writing of his reasons for making such order and where a matrimonial cause is transferred within the Colony such transfer shall be subject to the provisions of section 19 of the Native Courts (Colony) Ordinance, 1937:

Ordinance 40 of 1937.

Provided that such magistrate shall not transfer to a native court—

- any matrimonial cause arising out of or in connection with a monogamous marriage; or
- a cause or matter which has been transferred to his court by the Supreme Court.

41. A magistrate shall not save by leave of a judge, re-transfer to a native court a cause or matter which has been transferred to a magistrate's court by an administrative officer, in accordance with the provisions of the Native Courts Ordinance, 1933, or the Native Courts (Colony) Ordinance, 1937.

Restriction on re-transfer.

Ordinance 44 of 1933, s. 25.

Ordinance 40 of 1937, s. 19.

42. (1) The Chief Justice or a judge may at any time and at any stage thereof before judgment transfer any cause or matter before a magistrate's court to any other magistrate's court or to the Supreme Court and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.

Transfer of cases by a judge.

(2) The power of transfer shall be exercised by means of an order under the hand of the Chief Justice or a judge, as the case may be, and seal of the court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken thereon, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such orders be in dependence.

(3) The Chief Justice or judge, as the case may be, may at all times cancel, alter, add to or amend any such order.

Manner of its exercise.

(3) The Chief Justice or judge, as the case may be, may at it appear expedient, telegraph in the first instance the contents of any such order made by him, and such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

43. (1) Every order of transfer shall operate as a stay of proceedings in the court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an

Effect of order of transfer.

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attested copy of all entries in the books of the court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

(2) Any order given under sections 38, 39, 40 or 42 shall not be subject to appeal.

Appeals and Revision.

Appeals from decisions of magistrates' courts.

44. Subject to the conditions and limitations set forth in any Ordinance providing for appeals from the decisions of magistrates in respect of criminal and civil cases, an appeal shall lie to the Supreme Court from the judgments, decisions and orders of the magistrate in the exercise of his civil and summary criminal jurisdiction, and shall be made in accordance with and subject to the provisions of the said Ordinance.

Monthly lists to be sent to judge.

45. (1) The Chief Justice may require specified magistrates or all magistrates to forward at the expiration of every calendar month to the Chief Justice or to such other judge as the Chief Justice may designate, in such form as rules of court may direct, a list containing all criminal cases or specified criminal cases decided by or brought before such magistrates.

(2) Upon receipt of such list the judge may, if he thinks fit, call for a copy of the record of any case included therein, and, either without seeing such record or after seeing such record as he may determine, and either without hearing argument or after hearing argument as he may determine, may—

- (a) subject to any enactment fixing a minimum penalty, reduce a sentence or modify an order in such form as he thinks fit; or
- (b) annul the conviction, in which case the person under detention shall be forthwith set at liberty, or in the case of a fine such fine if already paid, shall be refunded to the person fined, or if security has been required and given he shall be freed from such security; or
- (c) annul the conviction and convict the accused of any offence of which he might have been convicted on the evidence, and sentence him accordingly; or
- (d) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged, but was insane so as not to be responsible for his

action at the time when he did the act or made the omission, and order the accused to be confined as a criminal lunatic in a lunatic asylum, prison, or other suitable place of safe custody and shall report the case for the order of the Governor; or

- (e) order a new trial before the court which passed sentence or before any other court; or
- (f) order further evidence to be taken either generally or on some particular point by the court which passed sentence or by any other court, and order in the meantime any person who shall have been convicted and imprisoned to be liberated on bail or on his own recognisance; and
- (g) make any order as justice may require, and give all necessary and consequential directions:

Provided that when a person convicted shall have appealed against such conviction, or when the magistrate shall have reserved any point of law for the consideration of the Supreme Court and shall have stated a case thereon, the judge shall not exercise the power by this section conferred until after the conclusion of the proceedings upon such appeal or stated case.

(3) When action upon the list as prescribed in sub-section (1) is complete or if the judge shall decide to take no such action, he shall direct that the list be filed; but such direction shall not have the effect of preventing him or his successor from subsequently taking any action prescribed in sub-section (1) if he shall think fit:

Provided that three months after the last day of the month to which the list relates he shall become *functus officio* in respect of all cases upon the list in respect of which he shall not up till then have taken any action.

46. In addition to and without prejudice to the right of appeal conferred by any Ordinance any magistrate may reserve for consideration by the Supreme Court on a case to be stated by him, any question of law which may arise in any cause or matter before him or in any appeal before him and may give any judgment or decision subject to the opinion of the Supreme Court.

Reservations of questions of law for opinion of Supreme Court

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PART V.

SITTINGS OF THE COURT.

Fixing of times and places for sittings of the court generally.

47. The Chief Justice may by rule of court appoint the times and places for the sittings of the courts, and may in like manner alter any such times or places.

Nature of business at any sitting.

48. At any sitting of the court both civil and criminal causes and matters may be heard, determined and dealt with, or either one or the other.

Adjournment of the court.

49. (1) The magistrate may adjourn the court from day to day or to any convenient day.

(2) If the magistrate is not present at the time and place appointed for any sitting of the court, an officer of the court or any other person authorised in that behalf by the magistrate, may, by public notice, written or oral, adjourn the sitting until such time and to such place as may have been communicated to him by the magistrate, and, in the absence of any such communication, to such time and to such place as may be convenient; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.

(3) In the absence of any such notice and of any notification to the contrary, all such persons shall be bound to be present at the next succeeding time appointed as aforesaid or otherwise for the sitting of the court in the same place.

Adjournment over Sunday or holiday.

50. When any day appointed for the sitting or adjourned sitting of the court falls on a Sunday or a public holiday, the magistrate shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or public holiday) next after the day appointed for such sitting.

Change of place of hearing of case.

51. Subject to the provisions of section 47, the court shall be held only at a place appointed for the sitting of the court; but, on the application of either party or otherwise, the hearing of any case appointed for one such place may, in the discretion of the magistrate, be appointed to be taken by him at another such place within or without the district.

PART VI.

PRACTICE AND PROCEDURE OF THE COURT.

52. The practice and procedure of the court:—

(a) in its civil jurisdiction shall be regulated by any Ordinance relating thereto;

Practice and procedure. Civil jurisdiction.

(b) in its criminal jurisdiction shall be regulated, in respect of summary conviction offences and in respect of indictable offences, by any Ordinance relating thereto;

Criminal jurisdiction.

(c) where any claim is made to any immovable property taken in execution under the process of the court whether civil or criminal, shall be as prescribed in any Ordinance relating thereto.

Interpleader cases.

53. Where a magistrate has issued any summons or warrant, or otherwise taken or commenced any proceeding or matter whether civil or criminal, under any authority however conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the magistrate who issued such summons or warrant had not ceased to act as such magistrate and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce and carry to completion any proceeding or matter so commenced as aforesaid, save that such magistrate shall commence the trial of any such cause or matter *ab initio*.

Completion by magistrate of process begun by his predecessor.

54. All summonses, warrants, orders, judgments, writs of execution, or other process or proceedings, whether civil or criminal, issued or taken by or by the authority of any magistrate respecting any cause or matter within his jurisdiction shall have full force and effect, and may be served or executed, anywhere within Nigeria by a bailiff of the court or by the member of the police force to whom the same are directed, or by any other member of the police force.

Process of magistrate valid throughout Nigeria.

55. All summonses, warrants, orders, convictions and recognizances, and all other process, whether civil or criminal, shall be issued or made under the hand of a magistrate.

Issue of process

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In which cases prisoners may be brought by warrant to give evidence.

Proviso.

56. A magistrate may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process to be examined as a witness in any cause depending, or to be enquired of, in the court:

Provided that such warrant shall not be granted as of course, nor unless the magistrate shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

Duty of constables to obey magistrates.

57. All police officers and all native authority police are hereby authorised and required to obey the warrants, orders and directions of a magistrate in the exercise of his criminal jurisdiction, and, so far as such obedience may be authorised and required by any Ordinance in that behalf, of his civil jurisdiction:

Proviso.

Provided that no member of a native authority police force shall, unless authorised by any other Ordinance, carry out any such duty in respect of any person who is not subject to the jurisdiction of a native authority.

PART VII.

MISCELLANEOUS PROVISIONS.

Fees and Costs.

Fees and costs.

58. The fees and costs set forth in the rules of court made under this Ordinance may be demanded and received by the registrars or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned:

Proviso.

Provided that in the absence of the registrar or in the event of there being no registrar or other person appointed to receive such fees and costs, such fees and costs may be demanded and received by the magistrate.

By whom fees payable.

59. All fees and costs payable under or by virtue of this Ordinance shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Proviso. Fees not payable by public officers or may be remitted

Provided that no fees shall be payable in any case instituted by a public officer when acting in his official capacity or in any case in which the magistrate or justice of the peace endorses on the plaint, information or complaint as the case may be that it is a fit one for the remission of fees on account of the poverty of the

party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the magistrate, be recoverable from the other party, if the decision be given against him.

60. Sections 58 and 59 shall apply to all moneys received by the registrar or other person of the court, under the provisions of this or any other Ordinance, whether the same be fees, costs, fines, forfeitures, penalties, or money paid into court for any purpose, or received or recovered under or by virtue of any process of execution or distress.

All fees and moneys received in courts to be subject to foregoing provisions.

Protection of Magistrates, Justices of the Peace and Officers of the Court.

61. (1) No magistrate, justice of the peace or other person acting judicially, shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction:

Protection of judicial officers.

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.

Proviso.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any such magistrate, justice of the peace or other person acting judicially, shall be liable to be sued in any civil court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

Representation of Parties.

62. (1) In the case of a prosecution by or on behalf of the Crown or by any public officer in his official capacity, the Crown or that officer may be represented by a law officer, crown counsel, administrative officer, police officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

Representation of the Crown and Government departments.

(2) In any civil cause or matter in which the Crown or any public officer in his official capacity is a party or in any civil cause or matter affecting the revenues of Nigeria the Crown or that officer may be represented by a law officer, crown counsel,

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NIGERIA.

NO. 199

sup

RECEIVED
30 JUN 1943
O. O. REGY.

Government House,
Nigeria.

5th May, 1943.

Sir,

I have the honour to transmit herewith, for the signification of His Majesty's pleasure with respect thereto, two authenticated and ten ordinary copies of Ordinance No. 27 of 1943, entitled "An Ordinance to Consolidate, Define and Amend the Law of Evidence", together with the usual report thereon by the Attorney-General.

I have the honour to be,
Sir,
Your most obedient, humble Servant,

B. H. M. A. I.

G O V E R N O R.

THE RIGHT HONOURABLE
OLIVER STANLEY, M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
etc., etc., etc.

[Handwritten mark]

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on

A BILL FOR AN ORDINANCE TO CONSOLIDATE,
 DEFINE AND AMEND THE LAW OF EVIDENCE.

The short title of this Bill is the Evidence Ordinance, 1943, and in my opinion the assent of His Excellency may properly be given thereto.

2. This bill is one of the five closely-related bills enacted at the same time and I invite attention to paragraphs 2 to 4, more especially paragraph 3, of my report on the bill for the Supreme Court Ordinance, 1943, which should be read before this.

em 1(1)

3. The draft for this bill was not submitted to the Secretary of State and as it is an important matter I propose to set out the actual history of its drafting. It having been decided that there should be an Evidence Ordinance which should consist of the English law of evidence, varied by those provisions of Nigerian statutes which were peculiar to Nigeria or which at any rate were not strict English law, it was decided to take, as a foundation upon which to build the Indian Evidence Act, 1872, as that was the work of Sir James FitzJames Stephen and being based generally on English law it had the advantage of having had nearly all the various English principles reduced into statute form. It was, of course, essential to ensure that none of the provisions of the Indian Evidence Act which conflicted with English law were introduced into this bill unless they by chance corresponded with the existing Nigerian provisions.

4. The Indian Act in many cases had its sections followed by certain "explanations" in separate paragraphs numbered "Explanation 1", "Explanation 2", etc., and these in turn were followed by "Illustrations". Many of the explanations were

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suitable for and could easily be converted into sub-clauses and that was done; accordingly the local draft bill contained clauses with more sub-clauses than does the Indian Evidence Act contain sub-sections but it does not contain any explanations as such *or any illustrations.*

5. I obtained in England copies of the Indian Act annotated up-to-date and also some copies of English statutes when I was on leave towards the end of 1937 and the drafting of the local bill was undertaken as soon as practicable after my return. To help in the drafting considerable use was also made of Stephen's Digest of the Law of Evidence of England, 1936 edition, which was the latest at that time. A draft was prepared and submitted to His Honour the Chief Justice who then stated that before he could usefully comment on it he would have to be provided with full information showing whence each provision of the bill had been taken. This entailed considerable further delay but finally a table was prepared showing in seven columns the following information:-

- (1) Clause in the draft bill.
- (2) The corresponding provision in the Indian Act.
- (3) If the clause was taken from Stephen's Digest, the Article in question.
- (4) The particular English statute, if any, from which it was taken.
- (5) The existing provision in any local Ordinance.
- (6) Where it was taken, if at all, from rules of the Supreme Court of Nigeria, and
- (7) A column containing remarks.

6. The draft of the bill was at that stage revised and printed, the table was also printed, attached to the bill and copies of the bill and table were supplied, shortly before the outbreak of war, to all judges and magistrates for their comments

and

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and observations thereon. The most important of these comments and observations were subsequently tabulated by the Chief Justice who submitted his own comments on the bill and also his observations on the more important observations made by the other judges and magistrates. This was towards the end of 1940 and while some judges and magistrates welcomed the bill there was on the other hand a definite fear on the part of some of the members of the judicial bench; including the Chief Justice, that the introduction of an Ordinance based on the Indian Act would bring into these courts the numerous contradictory decisions of the courts in India. This no doubt might in certain instances be true but it could easily be countered by the courts taking up the attitude that as nearly all the provisions of the bill were based on recognised English principles the courts would only consider as binding English case law and English decisions coupled, of course, with any special decisions affecting the existing Nigerian provisions which are reproduced. Some of the comments of their Honours were in a way amusing, one Assistant Judge who has since left Nigeria on promotion described the bill as "a very useful guide for a student but an insult to the intelligence of any professionally trained magistrate or judge". Another Assistant Judge, who has also left Nigeria, stated that it was not possible to place the law of evidence in a colonial Ordinance. That statement having completely ignored the fact that there are many colonial Ordinances containing the law of evidence. In view of the varied criticism which had been made and the amount of work involved or which would be involved in dealing in detail with these observations and the tremendous increase of work due to the war further progress was very slow, although progress was made as and when opportunity offered.

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7. After it was decided a few months ago to proceed with the bill as stated in my report on the Supreme Court bill I happened to discuss with Mr. Howe, the Solicitor-General who had come from Malaya, something to do with a confession and he showed me the section in the Straits Settlements' Law of Evidence covering the particular point. I then looked through that Ordinance and realised that it was, so far as it went, practically identical with my draft for the local Evidence Bill. I saw in this an opportunity to break away, on paper at any rate, from the bogie of the Indian Evidence Act and accordingly re-examined the draft bill in detail comparing its provisions with those of the Straits Settlements' Ordinance. I found in many cases the provisions, except that in the Straits Settlements the explanations were retained as such, were identical, in certain other cases the phraseology used in the Straits Settlements' Ordinance was better than that in the bill and in other cases the reverse. When I found a section in the Straits Settlements' Ordinance which I did not fully understand or care about I spoke to Mr. Howe and in nearly every case he explained that that was a section which had given trouble in Malaya and accordingly in this bill we have taken care to avoid the practical difficulties that had been experienced in that respect. Needless to say Mr. Howe's assistance was most helpful. I then prepared a new table abandoning all references to the Indian Evidence Act but substituting where it was possible references to the Straits Settlements' Ordinance, I also went through in detail the criticisms directed against the bill by the judges and magistrates and His Honour the Chief Justice. Where I found it was possible to give effect to the criticism that was done and where I thought further consideration

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consideration was necessary the provisions were left alone for the time being. Subsequently His Honour the Chief Justice and I went through the bill again. His Honour, I believe, being very relieved to find that the bill could now be said to follow an existing colonial statute and not as heretofore be founded on the Indian Act. After having gone into all outstanding points with His Honour the Chief Justice and come to agreement on them I prepared a complete new draft for re-printing and submitted it prior to printing to the Chief Justice for his perusal. The bill was then printed. Between the printing of the bill and its submission to the Governor in Council the bill was examined by all available legal officers in Nigeria as well as by the three senior practising members of the Bar and certain minor matters improved. A few minor alterations were subsequently made by the Select Committee of the Legislative Council to which the bill was referred.

8. The table to which previous reference has been made was revised omitting all references to the Indian Evidence Act and substituting in the second column references to the Straits Settlements' Ordinance, the contents of the other columns, particularly those relating to Stephen's Digest and to remarks, considerably extended the table was printed and made available for members of the Legislative Council. In the preparation of this extended table Mr. Hunter, Crown Counsel, gave considerable help.

9. An examination of the bill will show, I believe, that it has been brought up-to-date, for example, clause 219 sets out the law governing the exclusion of evidence on the grounds of public interest and the actual language used in that clause is that used by their Lordships in the "Thetis" case to which a
reference

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(2) of clause 107, which has been inserted for the guidance of our magistrates. There are many such aids scattered about the bill.

13. I do not think it necessary or that it will help very much if I refer further in general terms to the provisions of the bill. The table attached to this report gives all the information that I can give and should, I believe, give. I cannot pretend that a work of this magnitude may not require amendment in the reasonably near future. In view of the fact that this is a departure from the existing practice in West Africa there are bound to be conflicts of opinion as to the interpretation of the law no matter how clearly the provisions may be expressed, more especially as many will now for the first time have an idea of what the law of evidence really is and may accordingly argue about it, I therefore anticipate a certain amount of teething trouble but I am satisfied, and so are those members of the bench and the private practitioners with whom I have discussed this matter, that in a short time this Ordinance will prove of very great assistance to everybody.

14. It may not be out of place to mention here that as and when opportunity offers I hope to produce, for the benefit of officers who are divorced from law libraries, a little manual containing this bill and the table which I hope to extend still further and also have inserted throughout the bill the illustrations which are found in the Indian Act and the Straits Settlements' Ordinance, omitting, however, a few which appears to be incorrect. I do not, however, think that this should be done until the bill has been in operation for some time and we have

seen

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seen what difficulties, if any, appear in the reasonably near future.



Attorney-General.

Attorney-General's Chambers,

Lagos, Nigeria,

8th April, 1943.

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TABLE
SHOWING IN CERTAIN CASES WHERE THE PROVISIONS OF THE CLAUSES OF THE DRAFT BILL FOR THE
EVIDENCE ORDINANCE, 1943, WILL BE FOUND

1	2	3	4	5	6	7
Clause in draft Bill	Straits Settlements Evidence Ordinance (1933 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	Remarks and other Derivations
1 (1)						Short Title.
(2)	2 (1) (Except that this section also applies to affidavits).					Application.
2	3 Except for definitions of "bank," "banker" and "banker's books," "proceedings," "statement," "wife" and "husband."			"Wife" and "Husband" Ordinance of 1939.		Interpretation clause.
3	Part of 3.					Consistent with English law.
4	4					Mainly English law but does not include "irrebuttable presumptions." English Statute law.
5			1 & 2 Geo 6 c. 28 s. 6 (2).			
6	5 (Except for proviso)	Except for proviso (b) added, substance of same and also the proviso contained in Art. 2.				English common law.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	English common law.
7	6	Recumbles para. 2 of Art. 3.				English common law.
8	7	Illustrations to Art. 3.				English common law.
9	8	See Art. 7 and Illustrations.				English common law.
10	9	Substance greater part of Art. 7 <i>et seq.</i> except paras. 5, 7, and 8.				English common law.
11 (to "a party to it")	10	Art. 4 partly.				English common law. Consistent with English law.
11 (remainder)		part of Art. 3.				Consistent with English law.
12	11					Consistent with English law.
13	12					Drifted to suit local conditions.
14						English common law.
15	13	Art. 6				Consistent with English practice.
16 (1)	14	Part in definition of term "fact" in Art. 1				

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	Consistent with English practice.
16 (2)	14 (Explanation 1)	Art. 13				English common law.
17	15	1st para. of Art. 14				English practice.
18	16	Art. 16 partly.				Consistent with English common law.
19	17 (1)	Contained partly in Arts. 17 and 18.				English practice.
20	18					Consistent with English practice.
21	19					English practice.
22	20	Based on Art. 20.				Consistent with English practice.
23	21 (except i).					Consistent with English practice.
24	22					Consistent with English practice.
25	23	Art. 21 except for added proviso (which concerns Art. 124) and reference in Art. to "duress."				Consistent with English common law.
26	31	Cl. para. 1 of Art. 111.				Consistent with English law.
27	17 (2) up to words "that crime."	Art. 22 (whole of clause).				English law.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
28	24	Substance of the 1st three paras. of Art. 23. Cf. Art. 23 (para. 7)				English common law.
29		Para. 5 of Art. 23 and illustration (c).				English common law.
30		Art. 25				English common law.
31		Art. 24				English common law.
32	Part of 30.	(a) Generally see Art. 26; (b) dying declaration; from Art. 27 modified by local law. See column 5 and 7; (c) course of business; see Art. 28 and illustrations; (d) "against interest" Art. 29 (first sentence) (e) opinion as to public right; Art. 31 (part) (f) declarations as to pedigree; Art. 32 (omitting second and last paras.) (g) declarations as to tenancies; Art. 30 except "and" for "or" in 7th line of Article.				(a) Limited to statements of deceased persons in conformity with English law. (b) Mainly English common law or practice, but at English Law Declaration must have given up all hopes of recovery. (See column 5.) (c) - (g) Remainder English law, but (e) slightly revised to suit local conditions.
33				Modification of dying declarations resulting from Cap. 20, s. 51 (Criminal Procedure Ordinance)		
				Ordinance 27 of 1929.		

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
34 (1)	33					
(2)	33					
(3)	(Explanations)					New. Added for convenience but is at present; sometimes the local practice.
35				Cap. 20 s. 47		Local law.
36				Cap. 20 s. 49 extended and Cap. 15 s. 26		Adapted to suit local practice. Admissible also at English law if made after proper warning.
37	34	See illustrations (a) and (d) to Art. 28.				English practice.
38	35	Cf. Art. 35				
39	36	Based on "submission" in Art. 36.				English common law with "gazettes" added.
40	37	Resembles Art. 34				Local law.
41				Cap. 20 sec. 70A (Ord. 37 of 1939).		

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
42				Cap. 20 sec. 76B (Ord. 37 of 1939).		Local law.
43				Cap. 20 sec. 76C (Ord. 37 of 1939).		Local law.
44						West African Cine. rfs. Commissioner <i>Landa v. Kadiri Adau</i> 3 W.A.C.A. 206.
45						<i>Jones v. Williams</i> 2 M. & W. 326 (Cockle 6th Edn. 91).
46				6 & 7 Geo. 5 c. 5, s. 43.		English Statute law.
47	39					
48	40					
49	41 (modified partly)					
50	42					
51	43					
52	44					

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
53		Art. 42				English common law.
54		Art. 44				English common law.
55		Art. 46				English common law.
56	45 (but clause adds "native law or custom")	cf. para. 4 Art. 50.				Extended to include native law and custom.
57		Art. 50 para. 4.				English common law.
58		Resembles Art. 51.		Based on Cap 3 s. 73.		Based on local law.
59	46					Similar to English law except "Stephen" cases "have in some cases been permitted to be proved."
60 (1) (2)	47	Art. 52 (para. 1) Art. 52 (para. 2)				English common law. English common law.
61 (1) (2)	48 (Explanation).					
62	49					

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Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	Remarks and other Derivations
63 (except for proviso. Proviso.)	50 (1)	See Art. 54 as far as "marriage" is concerned. Also "adultery" and "bigamy."				English law.
64	50 (2)					English practice.
65	51	Art. 55				English common law and practice.
66		Art. 49				English practice.
67	52					English practice.
68	53	Art. 57 (down to semi-colon)				English law.
69	Introductory words relate to this in s. 54.	(a) and (b) contained in Art. 57 1st para. after semi-colon.				Rules of Supreme Court (England) O. XXXVI r. 37.
70	55	Art. 60 para. 2.				English common law.
71		Art. 59				English practice.
72	56	Art. 62 to semi-colon.				

1	2	3	4	5	6	7
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	Remarks and other Derivations
73	57 (omitting (iii) VII, IX XIV and (f) and (M) added).	(a) sub-clause (1) partly in Art. 61; (b) sub-clauses (2) and (3) in Art. 62 after semi-colon (except that the clause also adds also on all matters of public history, literature, science and art).				English practice varied to suit local conditions.
74 (except proviso.)	58 (1) (save that clause only applies to civil proceedings).	Cf. Art. 63				Consistent with English law.
75	58 (2)					English practice.
76 and proviso.	59 (except for matter referred to in Remarks Column practically the same as s. 60 but s.s. (2) is proviso (f) and s.s. (3) goes further than proviso (f))	Art. 64 Except for proviso Art. 65 as far as "experts" in foreign law are concerned and as to "books" see Art. 50 para. 3 (First part of proviso)				Mainly English practice. Addition (new) to proviso concerning adjournment to locus or "view" of same.
77			1 & 2 Geo. 6 Cap. 28 s. 5		Cf. Order XXXI r. 1	English Statute law and substantially reproduces O. XXXIII r. 1 of R.S.C. (England).

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1	2	3	4	5	6	Remarks and other Derivations
Clause in Draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
78 to 80 inclusive					Order VI r. 16-27	English practice. As to affidavit see R.S.C. (England) C. XXXVII r. 1.
90			1 & 2 Geo. 6 Cap. 28 s. 1			English Statute law.
91			1 & 2 Geo. 6 Cap. 28 s. 2			English Statute law.
92	61	Art. 66				English practice.
93 (1)	62	First sentence of Art. 67 up to <i>omnia</i> .				English common law.
(2)	62 (Part of explanation 1)	Second para. of Art. 67				English common law.
(3)	62 (Remainder of explanation 1)	Third para. of Art. 67				English common law.
(4)	62 (Explanation 2)	Fourth para. of Art. 67				English common law.
94	63	Art. 74 (except that (b) of clause is extended in language)				Save for note in column 3. English common law.
95	64	Art. 68 (up to colon)				English practice.
96 (1)	65 (except as to (b) and see 66)	(a), (c), (d), (e), (f), (g) and (h) contained in substance in Art. 75.	(b) see 42 Vict. Cap. 11 s. 4 and 5.		Order VI r. (7)	Mainly English common law.

1	2	3	4	5	6	Remarks and other Derivations
Clause in Draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
96 (2)		Compares partly with Art. 76	See 42 Vict. Cap. 11 s. 4 and 5 in regards entries in banker's books.		Order VI r. (7)	Mainly English common law except as regards (c) as in column 4.
(3)		Art. 75 (9)	57 and 58 Vict. c. 60, s. 123			English Statute law.
97	66 (except for (6) in proviso)	Similar to Art. 76				Art. 76 Stephen based upon R.S.C. (England) and decided cases.
98					Order VI (7) r. 43 (2)	But with "herebefore" added between "or" and "granted" in 12th line.
99	67					Consistent with English law.
100 (1)		Para. 4 of Art. 72				English common law.
(2)		Para. 5 of Art. 72				English common law.
101 (1)		Para. 6 of Art. 72				English practice.
(2)		Para. 7 of Art. 72				English common law.
102 (1)			1 & 2 Geo. 6 c. 28 s. 3			English Statute law.
(2)	Remembles s. 69	(See Remarks Column) Substantially the same as para. 7 of Art. 69 (and see note XIII)				English common law. Art. in Stephen also includes the case where attesting witness cannot be found.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
103	70	Follows from Art. 63				Consistent with English law.
104 (1)		Based on Art. 70				Consistent with English law.
105	71	Art. 71				English common law.
106	72	Para. 1 of Art. 72	28 and 29 Vict. c. 18 n. 7			English Statute law.
107	73	Remember Art. 53. See also para. 3 of Art. 72				Arts. in Stephen based on English Statute law on English Vict. c. 18 n. 8 but extended to include finger impressions. Sub-section (3) is new but advisable and the provision to sub-section (2) is explanatory.
108	74					Consistent with English law.
109	75					Consistent with English law.
110 (1)	76					Consistent with English law.
(2)	76 (Explanation)					Consistent with English law.
111	77					

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
112	78 Remembers	Cf. Art. 89	(a) 7 Edw. 7 c. 16 (1) Cf. 14 and 15 Vict. c. 99 n. 1 (b) 14 and 15 Vict. c. 99 n. 1			(i) Extended to U.K. (Other provisions when necessary extended to local conditions.
113	Substantially the same as n. 80	See para. 1 of Art. 83				
114	81					
115	82	Cf. Arts. 61 and 87 (first paragraph)	As to "private Act of Parliament" passed since Feb. 4th 1851 see Interpretation Act 1881 (52 and 53 Vict. c. 63 n. 9)			
116	83	Cf. Art. 84				Art. 84 based on English Statute law.
117	86 (with necessary modifications)					
118 (1)	Some resemblance to 84 (1)				O. VI r. 14	Local rule of court.
(2)						New.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
119		Cf. Art. 36				Art. 36 (Stephen) based on English common law.
120	89					Follows from right to give "secondary evidence" where such exists, and follows English common law.
121	90					
122	91 (except that in clause "20 years" is substituted for "30 years")	Art. 73 (first para.) except "20" in clause for "30" in Art. changed ---see column 4.	By 1 & 2 Geo. 6, c. 28 s. 4 the period of 30 years was reduced to 20			English Statute law and practice.
123	91 (Explanation)	Art. 73 (2nd para.)				English practice.
124		Art. 91				English practice.
125		Art. 92				English common law.
126		Art. 93				English common law.
127		Art. 94				English common law.
128		Art. 95 (para. 1)	15 Geo. 5, c. 20 s. 15.			English Statute law.
129		Art. 95 (para. 2)	15 Geo. 5, c. 20 s. 45 (6) and s. 10.			English Statute law.

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
130		Art. 96	15 Geo. 5, c. 20 s. 74			English Statute law.
131	Largely contained in 92 and 93 (except for proviso to clause).	Art. 97 (except for last para. of Art.)				English common law.
132 (1)	99	Art. 98 (2) up to semi-colon.				English common law.
(2)	95 (in effect)	Art. 98 (2) after semi-colon.				English common law.
(3)	94 (in effect)	Art. 98 (3)				English common law.
(4)		Art. 98 (4)				English common law and practice.
(5)	Cf. 95	Art. 98 (5)				English common law.
(6)		Art. 98 (6)				English common law.
(7)		Art. 98 (7)				English common law.
(8)	Partly resembles 97 also cf. 98.	Art. 98 (8)				English common law.
(9)		Art. 98 (9)				English common law.
133 (1)	Related to 100.	Art. 99 (1st sentence)				English common law.
(2)		Art. 99 (2nd sentence to semi-colon).				English common law.
(3)		Art. 99 (rest of 2nd sentence)				English common law.
(4)	Related to 101.					
134	102	Cf. Arts. 100 and 101				English practice.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
135	103	Substantially the same as 1st para. of Art. 102 but Art. mentions civil cases only.				English practice.
136		Art. 102				English common law.
137		Art. 103				English common law (in particular concerning s.s. (1) <i>see</i> Woolmington v. Director of Public Prosecutions 1935 [A.C.] 462.
138	Part of clause in 104.	Art. 104.				English common law.
139	Partly contained in 105	Art. 105				English common law.
140						<i>See</i> Woolmington v. Director of P.P. 1935 [A.C.] 462.
141	107					English common law.
142			42 and 43 Vict. c. 49, s. 39 (2).			English Statute law.
143	Sub-section (1) resembles 109.	Art. 108	Sub-section (2) — 15 Geo. 5, c. 20 s. 184.			English common law and Statute law.

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
144	110					English common law.
145	111					English common law.
146	112	Substance in Art. 106				English common law.
147	Part of 113	Art. 107 (except after semi-colon in last para.)				English common law. "280 days" substituted for "such a time" in Stephen.
148	115	Ch. (11) of Art. 61 (ordinary course of nature)				English common law in part.
149	115 (Explanation (a)) 115 (Explanation (d)) 115 (Explanation (f)) 115 (Explanation (g)) 115 (Explanation (h))	<i>See</i> footnote 1 to Art. 104 <i>See</i> para. 1 of Art. 14 (relevant fact)				English common law.
149	Sub-clause (1) is substantially 115 (Explanation (e))	Art. 110. As to sub-clause 2 <i>see</i> Art. 14 (para. 2) also; and Art. 97 (last para.)				English common law; also maxim " <i>Omnia iura esse iura</i> ".

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
135	103	Substantially the same as last para. of Art. 102 but Art. mentions civil cases only.				English practice.
136		Art. 102				English common law.
137		Art. 103				English common law (in particular concerning s.s. (1) <i>see</i> Woolmington v. Director of Public Prosecutions 1935 [A.C.] 462.
138	Part of clause is 104.	Art. 104.				English common law.
139	Partly contained in 105	Art. 105				English common law. Sir Woolmington v. Director of P.P. 1935 [A.C.] 462.
140						English common law.
141	107		42 and 43 Vict. c. 49, s. 39 (2).			English Statute law.
142			Sub-section (2)—15 Geo. 5, c. 20 n. 184.			English common law and Statute law.
143	Sub-section (1) replaces 109.	Art. 108				

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
144	110					English common law.
145	111					English common law.
146	112	Substance in Art. 106				English common law.
147	Part of 113	Art. 107 (except after semi-colon in last para.)				English common law. "280 days" substituted for "such a time" in Stephen.
148 (general principle)	115	Cf. (11) of Art. 61 (ordinary course of nature) <i>See</i> footnote 1 to Art. 104				English common law in part. English common law.
Particular (a)	115 (Explanation (a))					
Particular (b)	115 (Explanation (b))					
Particular (c)	115 (Explanation (c))					
Particular (d)	115 (Explanation (d))					
Particular (e)	115 (Explanation (e))					
149	Sub-clause (1) is substantially 115 (Explanation (a))	Art. 110. As to sub-clause 2 <i>see</i> Art. 14 (para. 2) also; and Art. 97 (last para.)				English common law; also making "Omnium <i>re ex acta</i> ".

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
178			and 2 Geo. 5 c. 6 s. 13. (c) Reference to sub-clause (4) based on 20 and 21 Geo. 5 c. 43 s. 10 (3).			English practice. English Statute law. Local law.
179		Para. 1 of Art. 133.	51 and 52 Viet. c. 46 s. 3.			English Statute law.
180		Last para. of Art. 133		Ord. 45 of 1933 as amended by 34 of 1935.		Local law.
181		Cf. para. 2 of Art. 133				English Statute law.
182		Substantially as Art. 134.	23 Geo. 5, c. 12, s. 38.			Local law.
183				Ord. 45 of 1933, S. 47 (2).		Consistent with English law.
184	136					Consistent with English law.
185	137					Local practice and consistent with English practice.
186					O. VI r. 1 and 2.	

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
187	138					English practice.
188	139 (except (4) is not contained in the clause).	(a) As to s.s. (1) Art. 138 (1st para.) but words "in open Court" appear in Art. 139 (para. 1). (b) As to sub-section (2) -- Art. 139 (para. 1). (c) As to re-examination -- Art. 139 (para. 2).				English common law and practice.
189						English practice.
190					O. VI r. 15	English practice.
191						Consistent with English practice.
192	140	See Art. 138 (2nd para. after semi-colon to comma).				English practice.
193	141					English practice.
194	142 (but section also relates to suggestions of disputed facts)	Definition but with addition as in Straits Settlements section contained in Art. 140.				English practice as in Stephen.
195	143	Mainly in Art. 140.				English practice.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
196	144 (up to first comma)	Art. 140 after last comma				English practice.
197 (1)	145					English practice. Follows from law concerning "secondary evidence". English practice.
(2)	145 (Explanation)					English practice.
198	146 (1)	Art. 145 (1st sentence)				As regards proviso see clause 159.
199	Mainly 147	Art. 141 (para. 1)				Mainly English practice.
200	149	See Art. 141.				Matter of professional etiquette in England.
201	150					Matter of professional etiquette and control of legal profession in England.
202	Resembles 151 in many details.					English practice.
203	152	Cf. Art. 142.				English practice. Also matter of professional etiquette in England.
204	153	Cf. Art. 142 (recursions).				English practice.

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
205 (except proviso), Proviso.	154	Art. 145	Proviso (a) 28 and 29 Vict. c. 18 s. 6 re-enacting 17 and 18 Vict. c. 125 s. 25 (Repealed).			Main section and proviso (b) English common law. Proviso (a) English Statute law.
206	146 (Explanations 1 and 2).		28 and 29 Vict. Cap. 18 s. 3		O. VI r. 3	English Statute law and local rule of court.
207	146 as to general rule concerning cross examination of witnesses concerning previous statements in writing.	Art. 144 (partly)	28 & 29 Vict. Cap. 18 s. 4 re-enacting 17 & 18 Vict. c. 125 s. 23 (Repealed).		O. VI r. 4	(a) English Statute law and Local law. (b) Section 4 of English Statute said to be declaratory of common law (footnote to Stephen Art. 145).
208		Art. 145	28 & 29 Vict. s. 5		O. VI r. 5	(a) English Statute law and Local law. (b) English section acts rid of common law rule which requires a party to disclose and prove the document by his own evidence

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	or an admission before cross examining his opponent on it (contnote Art. 145).
208						English common and Statute law.
209	156 (general words and (a), (b) and (c), but with addition in section of "or with the consent of the Court by the party who calls him.")	Art. 146 (general words and (a), (c) is implied by Art. 145.				English common law.
210	Part contained in 156(d)	Art. 148				English common law.
211	156 (Explanation)	Mainly in Art. 146 (1st para.)				English common law.
212	157					English practice.
213	158 (but section also contains words relating to "statement" - "whether written or verbal.")					
214	159	Art. 149 (except that Art. 15 is confined to contradic-				Art. in Stephen is English common law. Clause as drafted

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	means that evidence can be given to corroborate a statement, English common law.
214	159	tion, or to impeach or confirm credit of person.)				English common law.
215	160 (1) (2) and (4)	Art. 150				English common law.
216	161					English practices certainly as regards subsection (1).
217	162	Art. 151				Based on <i>Duncan v. Camwell Laid & Co. Ltd.</i> 50 L.T.R. 242 H. of L. (Theft case).
218	163					English common law.
219						
220	164 (but section has additional words at end, viz. "and if it is relevant.")	Art. 152				English common law.
221	165 (but section has additional words at end, viz. "or the order of the Court.")	Art. 153 (except for "or the order of the Court.")				English common law.

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1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
208						or an admission before cross examining his opponent: see footnote Art. 145). English common and Statute law.
209	156 (general words and (a), (b) and (c), but with addition in section of "or with the consent of the Court by the party who calls him.")	Art. 146 (general words and (a), (b) and (c) is implied by Art. 145).				English common law. English common law. English practice.
210	Part contained in 156(d)	Art. 148				Art. in Stephen is English common law; Clause as drafted
211	156 (Explanation)	Mainly in Art. 146 (1st para.)				
212	157					
213	158 (but section also contains words relating to "statement" - "whether written or verbal.")					
214	159	Art. 149 (except that Art. is confined to contradic-				

1	2	3	4	5	6	Remarks and other Derivations
Clause in draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
214	159	tion, or to impeach or confirm credit of person.)				means that evidence can be given to corroborate a statement. English common law.
215	160 (1) (2) and (4)	Art. 150				English common law.
216	161					English practice certainly as regards subsection (1).
217	162	Art. 151				Based on <i>Duncan v. Cunwell Ltd. & Co. Ltd.</i> , 50 L.T.R. 242 H. of L. (This case).
218	163					English common law.
219						
220	164 (but section has additional words at end, viz. "and if it is relevant.")	Art. 152				English common law.
221	165 (but section has additional words at end, viz. "or the order of the Court.")	Art. 153 (except for "or the order of the Court.")				

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1	2	3	4	5	6	Remarks and other Derivations
Clause in Draft Bill	Straits Settlements Evidence Ordinance (1893 Cap. 13)	Article in Stephen's Digest of Law of Evidence (12th Ed.) 1936	English Statutes	Local Ordinances	Rules of Supreme Court	
222	166					English practice.
223	167					
224						Sub-clauses (1) (a) and (b), (c) directly) based upon 14 and 15 Vict. c. 99 s. 13.
225	Cf. 168	Cf. Art. 159				Principles contained in most enactments governing Appeals in Empire and also cases at pages 330 and 331 in Archbold 30th edn., 1938.
226						Repeal section.

See 9.4.43

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 2. 19/5/43

Date 27/1/43
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THE EVIDENCE ORDINANCE, 1943

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 6th day of May, 1943.

B. H. BOURDILLON.
Governor.

(L.S.)

No. 27



1943

Colony and Protectorate of Nigeria

IN THE SEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI
SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief

AN ORDINANCE TO CONSOLIDATE, DEFINE AND AMEND THE LAW OF TITLE
EVIDENCE.

[194 .] Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces as follows:—

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PART I.

PRELIMINARY.

Short title and Interpretation.

- Short title.** 1. (1) This Ordinance may be cited as the Evidence Ordinance, 1943.
- Application.** (2) This Ordinance shall apply to all judicial proceedings in or before any court established in Nigeria but it shall not apply:—
- (a) to proceedings before an arbitrator; nor
- (b) to a field general court-martial; nor
- (c) to judicial proceedings in or before a native court unless the Governor in Council shall by Order in Council confer upon any or all native courts jurisdiction to enforce any or all of the provisions of this Ordinance.
- Commencement.** (3) This Ordinance shall come into operation on a date to be fixed by the Governor by notice in the Gazette.
- Definitions.** 2. (1) Definitions:—
- “bank” and “banker” “bank” and “banker” mean any person, persons, partnership or company carrying on the business of bankers and also include any savings bank established under the Savings Bank Ordinance, 1936, and also any banking company incorporated under any charter heretofore or hereafter granted, or under any Ordinance heretofore or hereafter passed relating to such incorporation;
- “bankers’ books” “bankers’ books”—the expressions relating to bankers’ books include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank;
- “court” “court” includes all judges and magistrates and, except arbitrators, all persons legally authorised to take evidence;
- “custom” “custom” is a rule which, in a particular district, has, from long usage, obtained the force of law;

44 and 45
Vict. c. 58.Ordinance
4 of 1936.

- “document” includes books, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter; “document” (1 & 2 Geo. 6 c. 28 s. 6 (1) extended).
- “fact” includes— “fact”
- (a) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (b) any mental condition of which any person is conscious;
- “fact in issue” includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows; “fact in issue”
- “proceedings” includes arbitrations under the Arbitration Ordinance, and “court” shall be construed accordingly; “proceedings” (1 & 2 Geo. 6 c. 28 s. 6 (1) Cap. 9.
- “statement” includes any representation of fact, whether made in words or otherwise; “statement” (1 & 2 Geo. 6, c. 28, s. 6 (1))
- “wife” and “husband” mean respectively the wife and husband of a monogamous marriage. “wife” and “husband”
- (2) A fact is said to be:— Facts:—
- (a) “proved” when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exist; “proved”
- (b) “disproved” when after considering the matters before it the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist; “disproved”
- (c) “not proved” when it is neither proved nor disproved. “not proved”

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Relation of
"relevant"
facts.

3. One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Ordinance relating to the relevancy of facts.

Presump-
tions:—
"may
presume"

4. (a) Whenever it is provided by this Ordinance that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

"shall
presume"

(b) Whenever it is directed by this Ordinance that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

"conclusive
proof"

(c) When one fact is declared by this Ordinance to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Saving as to
certain
evidence.

5. Nothing in this Ordinance shall:—

(1 & 2 Geo.
6, c. 28
s. 6 (2)).

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Ordinance be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Ordinance had not passed.

PART II.

RELEVANCY.

Relevancy of Facts.

Evidence
may be
given of facts
in issue and
relevant
facts.

6. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others:

Provido.

Provided that:—

(a) the court may exclude evidence of facts which, though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case, and

(b) this section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

7. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Relevancy
of facts
forming part
of same
transaction.

8. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which
are the
occasion,
cause or
effect of facts
in issue.

9. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive,
preparation
and previous
or subse-
quent
conduct.

(2) The conduct of any party, or of any agent to any party, to any proceedings, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

(3) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this provision shall not affect the relevancy of statements under any other section.

"conduct"

(4) When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant.

10. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts
necessary to
explain or
introduce
relevant
facts.

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Relation of "relevant" facts.

3. One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Ordinance relating to the relevancy of facts.

Presumptions:— "may presume"

4. (a) Whenever it is provided by this Ordinance that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

"shall presume"

(b) Whenever it is directed by this Ordinance that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

"conclusive proof"

(c) When one fact is declared by this Ordinance to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Saving as to certain evidence.

5. Nothing in this Ordinance shall:—

(1 & 2 Geo. 6, c. 28 s. 6 (2)).

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Ordinance be admissible: or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Ordinance had not passed.

PART II. RELEVANCY.

Relevancy of Facts.

Evidence may be given of facts in issue and relevant facts.

6. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others:

Provided that:—

(a) the court may exclude evidence of facts which, though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case, and

(b) this section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

7. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Relevancy of facts forming part of same transaction.

8. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant. Facts which are the occasion, cause or effect of facts in issue.

9. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. Motive, preparation and previous or subsequent conduct.

(2) The conduct of any party, or of any agent to any party, to any proceedings, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

(3) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this provision shall not affect the relevancy of statements under any other section. "conduct"

(4) When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant.

10. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose. Facts necessary to explain or introduce relevant facts.

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Things said or done by conspirator in reference to common intention.

11. (1) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in execution or furtherance of their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it; but statements made by individual conspirators as to measures taken in the execution or furtherance of any such common intention are not deemed to be relevant as such as against any conspirators, except those by whom or in whose presence such statements are made.

(2) Evidence of acts or statements deemed to be relevant under this section may not be given until the court is satisfied that, apart from them, there are *prima facie* grounds for believing in the existence of the conspiracy to which they relate.

When facts not otherwise relevant become relevant.

12. Facts not otherwise relevant are relevant:—

- (a) if they are inconsistent with any fact in issue or relevant fact;
- (b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or improbable.

Certain facts relevant in proceedings for damages.

13. In proceedings in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant.

What customs admissible.

14. (1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The burden of proving a custom shall lie upon the person alleging its existence.

Judicial notice.

(2) A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.

(3) Where a custom cannot be established as one judicially noticed it may be established and adopted as part of the law governing particular circumstances by calling evidence to show that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them:

Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

15. Every fact is deemed to be relevant which tends to show how in particular instances a matter alleged to be a custom was understood and acted upon by persons then interested.

16. (1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

(2) A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

17. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

18. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Admissions.

19. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned.

Evidence of customs.

Proviso.

Relevant facts as to how matter alleged to be custom understood.

Facts showing existence of state of mind, or of body, or bodily feeling.

See also sec. 46.

Facts bearing on question whether act was accidental or intentional.

Existence of course of business when relevant.

"admission" defined.

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Admissions by party to proceeding or his agent;

20. (1) Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, in the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

by suitor in representative character;

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

(3) Statements made by:—

by party interested in subject-matter;

(a) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who made the statement in their character of persons so interested; or

by person from whom interest derived.

(b) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

21. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons expressly referred to by party to suit.

22. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Proof of admissions against persons making them, and by or on their behalf.

23. Admissions are relevant and may be proved as against the person who makes them or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(a) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third parties under section 33;

- (b) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; and
- (c) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

24. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the provisions of Part V, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant. Part V.

25. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given:

Admissions in civil cases when relevant.

Provided that nothing in this section shall be taken to exempt any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 169.

Proviso.

26. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions of Part VIII.

Admissions not conclusive proof, but may estop. Part VIII.

Confessions.

27. (1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

Definition of "confession".

(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only.

Voluntary confessions relevant against maker.

(3) Where more persons than one are charged jointly with a criminal offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court, or a jury where the trial is one with a jury.

Effect of confessions on co-accused.

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Statement of accused at preliminary investigation. 36. Any statement made by an accused person at a preliminary investigation or at a coroner's inquest may be given in evidence.

Statements made in Special Circumstances.

Entries in books of account, when relevant. 37. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Relevancy of entry in public record, made in performance of duty. 38. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans. 39. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications. 40. When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Royal Proclamation or speech of the Sovereign in opening Parliament or in any Ordinance or in any proclamation or speech of the Governor in opening of the Legislative Council or in any statement made in a Government or public notice appearing in the Gazette or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any British possession is a relevant fact.

Certificates of specified Government officers to be sufficient evidence in all criminal cases. 41. Either party to the proceedings in any criminal case may produce a certificate signed by a Government Chemist, a Government Pathologist or Entomologist, or the Accountant-General, and the production of any such certificate may be taken as sufficient evidence of the facts stated therein:

Proviso. Provided that, notwithstanding the provisions herein contained, the court shall have the power, on the application of either party or of its own motion, to direct that any such officer

shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interests of justice so require.

42. Where any such certificate is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day appointed for the hearing and if it is not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

Service of certificates on other party before hearing.

43. The court shall, in the absence of evidence to the contrary, presume that the signature to any such certificate is genuine and that the person signing it held the office which he professed at the time when he signed it.

Genuineness of certificate to be presumed.

Facts Relevant in Special Circumstances.

44. Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant.

Family or communal tradition in land cases.

45. Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land.

Acts of possession and enjoyment of land.

46. Whenever any person is being proceeded against for receiving any property, knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings:—

Evidence of scienter upon charge of receiving stolen property. (6 & 7 Geo. 5, c. 50, s. 43).

(a) the fact that other property stolen within the period of twelve months preceding the date of the offence charged was found or had been in his possession;

See also sec. 16.

(b) the fact that within the five years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty.

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- This last mentioned fact may not be proved unless—
- (i) seven days' notice in writing has been given to the offender that proof of such previous conviction is intended to be given, and
 - (ii) evidence has been given that the property in respect of which the offender is being tried was found or had been in his possession.

How much of a Statement is to be Proved.

What evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers.

47. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances in which it was made.

Judgments of Courts of Justice when Relevant.

Previous judgments relevant to bar a second suit or trial.

48. The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in certain jurisdiction.

49. (1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

- (2) Such judgment, order or decree is conclusive proof:—
- (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
 - (b) that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

- (c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and
- (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

50. Judgments, orders or decrees other than those mentioned in section 49 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments other than those mentioned in section 49.

51. Judgments, orders or decrees, other than those mentioned in sections 48, 49 and 50, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this or any other Ordinance.

Other than those mentioned in sections 48 to 50, when relevant.

52. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 48, 49 or 50 and which has been proved by the adverse party, was delivered by a court without jurisdiction, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or non-jurisdiction of court, may be proved.

53. Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved.

Judgment conclusive of facts forming ground of judgment.

54. (1) If a judgment is not pleaded by way of estoppel it is as between parties and privies deemed to be a relevant fact, whenever any matter, which was, or might have been, decided in the action in which it was given, is in issue, or is or is deemed to be relevant to the issue, in any subsequent proceeding.

Effect of judgment not pleaded as estoppel.

(2) Such a judgment is conclusive proof of the facts which it decides, or might have decided, if the party who gives evidence of it had no opportunity of pleading it as an estoppel.

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Judgment
conclusive in
favour of
judge.

55. When any action is brought against any person for anything done by him in a judicial capacity, the judgment delivered, and the proceedings antecedent thereto, are conclusive proof of the facts therein stated, whether they are or are not necessary to give the defendant jurisdiction, if, assuming them to be true, they show that he had jurisdiction.

Opinions of Third Persons when Relevant.

Opinions of
experts.

56. (1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

"experts"

(2) Such persons are called experts.

Opinions as
to foreign
law.

See also
section 112
(g).

57. (1) Where there is a question as to foreign law the opinions of experts who in their profession are acquainted with such law are admissible evidence thereof, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

(2) Any question as to the effect of the evidence given with respect to foreign law shall, instead of being submitted to the jury, in the case of trial with a jury, be decided by the judge alone.

Opinions as
to native
law and
custom.

58. In deciding questions of native law and custom the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognised by natives as a legal authority are relevant.

Facts bearing
upon
opinions of
experts.

59. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Opinion as to
handwriting,
when
relevant.

60. (1) When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

(2) A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

61. (1) When the court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Opinion as to
existence of
"general
custom or
right" when
relevant.

(2) The expression "general custom or right" includes customs or rights common to any considerable class of persons.

62. When the court has to form an opinion as to:—

- (a) the usages and tenets of any body of men or family; or
- (b) the constitution and government of any religious or charitable foundation; or
- (c) the meaning of words or terms used in particular districts or by particular classes of people,

Opinions as
to usages,
tenets, when
relevant.

the opinions of persons having special means of knowledge thereon, are relevant facts.

63. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Opinion on
relationship,
when
relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings for a divorce or in a petition for damages against an adulterer or in a prosecution for bigamy.

Proviso.

64. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of
opinion,
when
relevant.

65. The fact that any person is of opinion that a fact in issue, or relevant to the issue, does or does not exist is irrelevant to the existence of such fact except as provided in sections 56 to 64 of this Ordinance.

Opinions
generally
irrelevant.

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Character, when Relevant.

In civil cases, character to prove conduct imputed irrelevant.

66. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

67. In criminal proceedings the fact that the person accused is of a good character is relevant.

Evidence of character of the accused in criminal proceedings.

68. (1) Except as provided in this section, the fact that an accused person is of bad character is irrelevant in criminal proceedings.

(2) The fact that an accused person is of bad character is relevant:—

(a) when the bad character of the accused person is a fact in issue;

(b) when the accused person has given evidence of his good character.

(3) An accused person may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (d) of the proviso to section 159.

See also section 224.

(4) Whenever evidence of bad character is relevant evidence of a previous conviction is also relevant.

Character as affecting damages.

69. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

In libel and slander notice must be given of evidence of character.

70. In actions for libel and slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant is not entitled on the trial to give evidence in chief with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Meaning of word "character".

71. In sections 66 to 70 the word "character" means reputation as distinguished from disposition, and except as previously mentioned in those sections, evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.

PART III.

PROOF.

Facts which need not be Proved.

72. No fact of which the court must take judicial notice need be proved.

Fact judicially noticeable need not be proved.

73. (1) The court shall take judicial notice of the following facts:—

Facts of which court must take judicial notice.

- (a) all laws or enactments and any subsidiary legislation made thereunder having the force of law now or heretofore in force, or hereafter to be in force, in any part of Nigeria;
- (b) all public Acts passed or hereafter to be passed by Parliament and all subsidiary legislation made thereunder, and all local and personal Acts directed by Parliament to be judicially noticed;
- (c) the course of proceeding of Parliament and of the Legislative Council of Nigeria;
- (d) the accession and the sign manual of the Sovereign for the time being of the United Kingdom;
- (e) all seals of which English courts take judicial notice; the seals of all the courts of Nigeria and of the West African Court of Appeal; the seals of Courts of Admiralty and maritime jurisdiction and of notaries public, and all seals which any person is authorised to use by any Act of Parliament or other enactment having the force of law in Nigeria;
- (f) the existence, title and national flag of every State or Sovereign recognised by the British Crown;
- (g) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Gazette or fixed by Ordinance;
- (h) the territories under the dominion of the British Crown;
- (i) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons;
- (j) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all legal practitioners and other persons authorised by law to appear or act before it;

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- (k) the rule of the road on land or at sea;
 - (l) all general customs, rules and principles which have been held to have the force of law in or by any of the superior courts of law or equity in England or the Supreme Court of Nigeria and all customs which have been duly certified to and recorded in any such court;
 - (m) the course of proceeding and all rules of practice in force in His Majesty's High Court of Justice in England and in the Supreme Court in Nigeria.
- (2) In all cases in the preceding sub-section and also on all matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.
- (3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

74. No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Proviso.

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

PART IV.

ORAL EVIDENCE AND THE INSPECTION OF REAL EVIDENCE.

Proof of fact by oral evidence.

75. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

76. Oral evidence must, in all cases whatever, be direct:—
- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;
 - (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;
 - (c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner;
 - (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that—

Proviso.

- (i) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable;
- (ii) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection, or may inspect or may order or permit a jury to inspect any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute. In the case of such inspection being ordered or permitted, the court shall either be adjourned to the place where the subject-matter of the said inspection may be and the proceedings shall continue at that place until the court further adjourns back to its original place of sitting or to some other place of sitting, or the court shall attend and make an inspection of the subject-matter only, evidence, if any, of what transpired there being given in court afterwards. In either case the accused, if any, shall be present.

View.

Accused to be present.

PART V.

DOCUMENTARY EVIDENCE.

Affidavits.

77. A court may in any civil proceeding make an order at any stage of such proceeding directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

Court may order proof by affidavit. (1 & 2 Geo. 6 c. 28 s. 5)

78. Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognised for any purpose in the court.

Affidavits to be filed.

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Before whom sworn.

79. Any affidavit sworn before any judge, officer or other person in the United Kingdom, or in any British possession, authorised to take affidavits, may be used in the court in all cases where affidavits are admissible.

Sworn in foreign parts.

80. Any affidavit sworn in any foreign parts out of the United Kingdom or out of any British possession before a judge or magistrate, being authenticated by the official seal of the court to which he is attached, or by a public notary, or before a British minister or consul, may be used in the court in all cases where affidavits are admissible.

Proof of seal and signature.

81. The fact that an affidavit purports to have been sworn in manner hereinbefore prescribed shall be *prima facie* evidence of the seal or signature, as the case may be, of any such court, judge, magistrate or other officer or person therein mentioned, appended or subscribed to any such affidavit, and of the authority of such court, judge, magistrate or other officer or person to administer oaths.

Not to be sworn before certain persons.

82. An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner.

Defective in form.

83. The court may permit an affidavit to be used, notwithstanding it is defective in form according to this Ordinance, if the court is satisfied that it has been sworn before a person duly authorised.

Amendment and re-swearing.

84. A defective or erroneous affidavit may be amended and re-sworn by leave of the court, on such terms as to time, costs or otherwise as seem reasonable.

Contents of affidavits.

85. Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

No extraneous matter.

86. An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.

87. When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

Grounds of belief to be stated.

88. When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstances of the information.

Informant to be named.

89. The following provisions shall be observed by persons before whom affidavits are taken:—

Provisions in taking affidavits;

(a) every affidavit taken in a cause or matter shall be headed in the court and in the cause or matter;

to be properly entitled;

(b) it shall state the full name, trade or profession, residence, and nationality of the deponent;

description of witness;

(c) it shall be in the first person, and divided into convenient paragraphs, numbered consecutively;

in first person.

(d) any erasure, interlineation or alteration made before the affidavit is sworn, shall be attested by the person before whom it is taken, who shall affix his signature or initial in the margin immediately opposite to the interlineation, alteration or erasure;

erasures to be attested;

(e) where an affidavit proposed to be sworn is illegible or difficult to read, or is in the judgment of the person before whom it is taken so written as to facilitate fraudulent alteration, he may refuse to swear the deponent, and require the affidavit to be re-written in an unobjectionable manner;

if improperly written;

(f) the affidavit when sworn shall be signed by the witness or, if he cannot write, marked by him with his mark, in the presence of the person before whom it is taken;

witness to sign;

(g) (i) the jurat shall be written without interlineation, alteration or erasure immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the person before whom it is taken;

form of jurat;

(ii) it shall state the date of the swearing and the place where it is sworn;

date and place;

(iii) it shall state that the affidavit was sworn before the person taking the same;

in presence of person taking affidavit;

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illiterate or blind witness;

(ic) where the deponent is illiterate or blind it shall state the fact, and that the affidavit was read over (or translated into his own language in the case of a witness not having sufficient knowledge of English), and that the witness appeared to understand it;

marksman;

(r) where the deponent makes a mark instead of signing, the jurat shall state that fact, and that the mark was made in the presence of the person before whom it is taken;

joint affidavit;

(ri) where two or more persons join in making an affidavit, their several names shall be written in the jurat and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit;

if affidavit altered to be re-sworn;

(h) the person before whom it is taken shall not allow an affidavit, when sworn, to be altered in any manner without being re-sworn;

new jurat;

(i) if the jurat has been added and signed the person before whom it is taken shall add a new jurat on the affidavit being re-sworn; and in the new jurat he shall mention the alteration;

new affidavit; declarations without oath.

(j) the person before whom it is taken may refuse to allow the affidavit to be re-sworn, and may require a fresh affidavit;

(k) the person before whom an affidavit may be taken may take without oath the declaration of any person affirming that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who, by reason of immature age or want of religious belief, ought not, in the opinion of the person taking the declaration, to be admitted to make a sworn affidavit. The person taking the declaration shall record in the attestation the reason of such declaration being taken without oath.

Ordinance 25 of 1942.

Admissibility of Documentary Evidence.

Admissibility of documentary evidence as to facts in issue. (1 & 2 Geo. 6, c. 28, s. 1).

90. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say:—

- (a) if the maker of the statement either—
- (i) had personal knowledge of the matters dealt with by the statement; or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in sub-section (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence:—

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or

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produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

Weight to be attached to evidence. (1 & 2 Geo. 6, c. 28, s. 2).

91. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Ordinance, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Ordinance shall not be treated as corroboration of evidence given by the maker of the statement.

Primary and Secondary Documentary Evidence.

Proof of contents of documents.

92. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

93. (1) Primary evidence means the document itself produced for the inspection of the court.

(2) Where a document has been executed in several parts, each part shall be primary evidence of the document.

(3) Where a document has been executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it.

(4) Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, or photography, each shall be primary evidence of the contents of the rest; but where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

94. Secondary evidence means and includes:—

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (c) copies made from or compared with the original;
- (d) counterparts of documents as against the parties who did not execute them;
- (e) oral accounts of the contents of a document given by some person who has himself seen it.

Secondary evidence.

95. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

96. (1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

- (a) when the original is shown or appears to be in the possession or power—
 - (i) of the person against whom the document is sought to be proved; or
 - (ii) of any person legally bound to produce it; and when, after the notice mentioned in section 97, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost and in the latter case all possible search has been made for it;
- (d) when the original is of such a nature as not to be easily movable;

Proof of documents by primary evidence.

Cases in which secondary evidence relating to documents may be given.

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Identifica-
tion of
person
signing a
document.

100. (1) Evidence that a person exists having the same name, address, business or occupation as the maker of a document purports to have, is admissible to show that such document was written or signed by that person.

(2) Evidence that a document exists to which the document the making of which is in issue purports to be a reply, together with evidence of the making and delivery to a person of such earlier document, is admissible to show the identity of the maker of the disputed document with the person to whom the earlier document was delivered.

Evidence of
sealing and
delivery of a
document.

101. (1) Evidence that a person signed a document containing a declaration that a seal was his seal is admissible to prove that he sealed it.

(2) Evidence that the grantor on executing any document requiring delivery expressed an intention that it should operate at once is admissible to prove delivery.

Proof of
instrument
to validity of
which attes-
tation is
necessary.
(1 & 2 Geo.
6, c. 28, s. 3).

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102. (1) In any proceedings, whether civil or criminal, an instrument to the validity of which attestation is required by law may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

(2) If no attesting witness is alive, an instrument to the validity of which attestation is required by law is proved by showing that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person.

Admission
of execution
by party to
attested
document.

103. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

104. (1) A person seeking to prove the due execution of a document is not bound to call the party who executed the document or to prove the handwriting of such party or of an attesting witness in any case where the person against whom the document is sought to be proved:—

(a) produces such document and claims an interest under it in reference to the subject-matter of the suit, or

(b) is a public officer bound by law to procure its due execution, and he has dealt with it as a document duly executed.

(2) Nothing in this section contained shall prejudice the right of a person to put in evidence any document in the manner mentioned in sections 96 and 122.

105. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

106. An attested document not required by law to be attested may be proved as if it was unattested.

107. (1) In order to ascertain whether a signature, writing, seal or finger impression is that of the person by whom it purports to have been written or made, any signature, writing, seal or finger impression admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing, seal or finger impression has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures or to make finger impressions for the purpose of enabling the court to compare the words, figures or finger impressions so written with any words, figures or finger impressions alleged to have been written or made by such person:

Provided that where an accused person does not give evidence he may not be so directed to write any words or figures or to make finger impressions.

(3) After the final termination of the proceedings in which the court required any person to make his finger impressions such impressions shall be destroyed.

Cases in
which proof
of execution
or of hand-
writing
unnecessary.

Proof when
attesting
witness
denies the
execution.

Proof of
document
not required
by law to be
attested.

Comparison
of signature,
writing, seal
or finger
impressions
with others
admitted
or proved.

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Public and Private Documents.

Public documents.

108. The following documents are public documents:—

- (a) documents forming the acts or records of the acts—
- (i) of the sovereign authority;
 - (ii) of official bodies and tribunals; and
 - (iii) of public officers, legislative, judicial and executive, whether of Nigeria or of any British possession or of a foreign country;
- (b) public records kept in Nigeria of private documents.

Private documents.

109. All documents other than public documents are private documents.

Certified copies of public documents.

110. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

111. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

112. The following public documents may be proved as follows:—

- (a) all proclamations, Acts of State, orders, notifications, nominations, appointments and other official communications of the Government of Nigeria or of any local or native authority—
- (i) which appear in the Gazette, by the production of such Gazette, and shall be *prima facie* proof of any fact of a public nature which they were intended to notify;

- (ii) by a copy thereof certified by the officer who authorised or made such order or issued such official communication;
 - (iii) by the records of the departments certified by the heads of those departments respectively or by the Chief Secretary; or
 - (iv) by any document purporting to be printed by order of Government;
- (b) the proceedings of the Legislative Council—
- by the minutes of that body or by published Ordinances or abstracts, or by copies purporting to be printed by order of Government;
- (c) the proceedings of a municipal body in Nigeria—
- by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;
- (d) proclamations, orders or regulations issued by His Majesty or by the Privy Council, or by any department of His Majesty's Government—
- by copies or extracts contained in the London Gazette, or purporting to be printed by the King's Printer;
- (e) the Acts or Ordinances of any British possession, and the subsidiary legislation made under the authority thereof—
- by a copy purporting to be printed by the Government Printer of the possession; (7 Edw. 7, c. 16)
- (f) treaties or other acts of state of the United Kingdom or proclamations, treaties or acts of state of any British possession or of any foreign state—
- by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign;
- (g) books printed or published under the authority of the government of a foreign country, and purporting to contain the statutes, code or other written law of such country, and also printed and published books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible as evidence of the law of such foreign country; See also section 57.

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- (h) any judgment, order or other judicial proceeding in any foreign court, in any British possession, or any legal document filed or deposited in any court—
- (i) by a copy sealed with the seal of the foreign or other court to which the original document belongs, or, in the event of such court having no seal, to be signed by the judge, or, if there be more than one judge, by any one of the judges of the said court, and such judge must attach to his signature a statement in writing on the said copy that the court whereof he is judge has no seal; or
- (ii) by a copy which purports to be certified in any manner which is certified by any representative of His Majesty in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records;
- (j) public documents of any other class in the United Kingdom or in any British possession or in a foreign country—
by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a consul or diplomatic agent that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

113. (1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorised thereto to be genuine:

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Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

- 114.** Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court shall presume:—
- (a) that the document is genuine;
- (b) that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and
- (c) that such evidence, statement or confession was duly taken.

Presumption as to documents produced as record of evidence. See section 35.

115. The court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of Nigeria or the Gazette of any British possession or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the King's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to gazettes, newspapers, private Acts of Parliament and other documents.

116. When any document is produced before any court, purporting to be a document which, by the law in force for the time being in the United Kingdom would be admissible in proof of any particular in any court of justice in the United Kingdom, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume:—

(a) that such seal, stamp or signature, is genuine, and

(b) that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in the United Kingdom.

Presumption as to document admissible in United Kingdom without proof of seal or signature.

117. The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any court, judge, magistrate, consul or representative of His Majesty, was so executed and authenticated.

Presumption as to powers of attorney.

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Presumption as to age of parties to a document. **128.** The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

Presumption as to statements in documents twenty years old. **129.** Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

Presumptions as to deeds of corporations. **130.** In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary, or other permanent officer or his deputy, and a member of the board of directors, council, or other governing body of the corporation; and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

PART VI.

THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of judgments, contracts, grants and other dispositions of property reduced to a documentary form. **131.** (1) When any judgment of any court or any other judicial or official proceedings, or any contract, or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceedings, or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence:

Proviso.

Provided that any of the following matters may be proved:—
(a) fraud, intimidation, illegality; want of due execution; the fact that it is wrongly dated; existence, or want or failure, of consideration; mistake in fact or law; want of capacity

in any contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract; or any other matter which, if proved, would produce any effect upon the validity of any document, or of any part of it, or which would entitle any person to any judgment, decree, or order relating thereto;

- (b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them;
 - (c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property;
 - (d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property;
 - (e) any usage or custom by which incidents not expressly mentioned in any contract are annexed to contracts of that description; unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract.
- (2) Oral evidence of a transaction is not excluded by the fact that a documentary memorandum of it was made, if such memorandum was not intended to have legal effect as a contract, grant or disposition of property.
- (3) Oral evidence of the existence of a legal relationship is not excluded by the fact that it has been created by a document, when the fact to be proved is the existence of the relationship itself, and not the terms on which it was established or is carried on.

132. (1) Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and words used in a peculiar sense. Evidence as to the interpretation of documents.

(2) Evidence may not be given to show that common words, the meaning of which is plain, and which do not appear from the context to have been used in a peculiar sense, were in fact so used.

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(3) If the words of a document are so defective or ambiguous as to be unmeaning, no evidence can be given to show what the author of the document intended to say.

(4) In order to ascertain the relation of the words of a document to facts, every fact may be proved to which it refers, or may probably have been intended to refer, or which identifies any person or thing mentioned in it. Such facts are hereinafter called the circumstances of the case.

"Circumstances of the case".

(5) If the words of a document have a proper legal meaning, and also a less proper meaning, they must be deemed to have their proper legal meaning, unless such a construction would be unmeaning in reference to the circumstances of the case, in which case they may be interpreted according to their less proper meaning.

(6) If the document has one distinct meaning in reference to the circumstances of the case, it must be construed accordingly, and evidence to show that the author intended to express some other meaning is not admissible.

(7) If the document applies in part but not with accuracy or not completely to the circumstances of the case, the court may draw inferences from those circumstances as to the meaning of the document, whether there is more than one, or only one thing or person to whom or to which the inaccurate description may equally well apply. In such cases no evidence can be given of statements made by the author of the document as to his intentions in reference to the matter to which the document relates, though evidence may be given as to his circumstances, and as to his habitual use of language or names for particular persons or things.

(8) If the language of the document, though plain in itself, applies equally well to more objects than one, evidence may be given both of the circumstances of the case and of statements made by any party to the document as to his intentions in reference to the matter to which the document relates.

(9) If the document is of such a nature that the court will presume that it was executed with any other than its apparent intention, evidence may be given to show that it was in fact executed with its apparent intention.

Application of this Part.

133. (1) Sections 131 and 132 apply only to parties to documents, and their representatives in interest, and only to cases in which some civil right or civil liability is dependent upon the terms of a document in question.

(2) Any person other than a party to a document or his representative in interest may, notwithstanding the existence of any document, prove any fact which he is otherwise entitled to prove.

(3) Any party to any document or any representative in interest of any such party may prove any such fact for any purpose other than that of varying or altering any right or liability depending upon the terms of the document.

(4) Nothing in this Part contained shall be taken to affect any of the provisions of any enactment as to the construction of wills. Provisions as to wills.

PART VII.

PRODUCTION AND EFFECT OF EVIDENCE.

Of the Burden of Proof.

134. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Burden of proof.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

135. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. On whom burden of proof lies.

136. (1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Burden of proof in civil cases.

(2) If such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

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Birth during marriage usually conclusive proof of legitimacy.

147. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown:—

- (a) either that his mother and her husband had no access to each other at any time when he could have been begotten, regard being had both to the date of the birth and to the physical condition of the husband; or
- (b) that the circumstances of their access, if any, were such as to render it highly improbable that sexual intercourse took place between them when it occurred:

Proviso.

Provided that neither the mother nor the husband is a competent witness as to the fact of their having or not having had sexual intercourse with each other where the legitimacy of the woman's child would be affected, even if the proceedings in the course of which the question arises are proceedings instituted in consequence of adultery, nor are any declarations by them upon that subject deemed to be relevant, whether the mother or her husband can be called as a witness or not.

Court may presume existence of certain facts.

148. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume:—

- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
- (b) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;
- (c) that the common course of business has been followed in particular cases;
- (d) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(e) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

149. (1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that any person acted in a public capacity it is presumed that he had been duly appointed and was entitled so to act.

(3) When a person in possession of any property is shown to be entitled to the beneficial ownership thereof, there is a presumption that every instrument has been executed which it was the legal duty of his trustees to execute in order to perfect his title.

(4) When a minute is produced purporting to be signed by the chairman of a company incorporated under the Companies Ordinance, and purporting to be a record of proceedings at a meeting of the company, or of its directors, it is presumed, until the contrary is shown, that such meeting was duly held and convened and that all proceedings thereat have been duly had, and that all appointments of directors, managers and liquidators are valid.

PART VIII.

ESTOPPEL.

150. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing.

151. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Presumptions of regularity and of deeds to complete title.

Cap. 138.

Estoppel of tenant;

and of licensee of person in possession.

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Estoppel of
bailee,
agent and
licensee.

152. No bailee, agent or licensee is permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted:

Proviso.

Provided that any such bailee, agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal or licensee, or that his bailor, principal or licensor wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person who has claimed them from such bailee, agent or licensee.

Estoppel of
person
signing bill
of lading.

153. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive proof of that shipment as against the master or other person signing the same, notwithstanding that some goods or some part thereof may not have been so shipped, unless such holder of the bill of lading had actual notice at the time of receiving the same that the goods had not been in fact laden on board:

Proviso.

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder or some person under whom the holder holds.

PART IX.

WITNESSES.

Competence of Witnesses Generally.

Who may
testify.

154. (1) All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

(2) A person of unsound mind is not incompetent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.

Dumb
witnesses.

155. (1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court.

(2) Evidence so given shall be deemed to be oral evidence.

156. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved in manner provided in section 96 or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause.

Case in
which
banker not
compellable
to produce
books.

157. Subject to the proviso contained in section 147, in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

Parties to
civil suit,
and their
wives or
husbands.

158. Subject to the provisions of this Part, in criminal cases the accused person, and his or her wife or husband, and any person and the wife or husband of any person jointly charged with him, and tried at the same time, is competent to testify.

Competency
in criminal
cases.

159. Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:—

Competency
of person
charged to
give
evidence.
(61 & 62
Vict. c. 36,
s. 1 based
on).

Provided that—

- (a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;
- (c) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
- (d) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

Proviso.

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(ii) he has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence;

Evidence of person charged.

(e) when the only witness to the facts of the case called by the defence is the person charged he shall be called as a witness immediately after the close of the evidence for the prosecution;

Accused to give evidence from witness box.

(f) every accused person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;

Statement can be made by person charged. Right of reply.

(g) nothing in this section shall affect the right of the person charged to make a statement without being sworn;

(h) in cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Evidence by husband or wife: when compellable;

Cap. 21.

Cap. 21.

160. (1) When a person is charged:—

(a) with an offence under any of the enactments contained in sections 217, 218, 219, 221, 222, 223, 224, 225, 226, 231, 235, 300, 301, 340, 341, 357 to 362, 369, 370 and 371 of the Criminal Code; or

(b) subject to the provisions of section 36 of the Criminal Code with an offence against the property of his or her wife or husband; or

(c) with inflicting violence on his or her wife or husband, the wife or husband of the person charged shall be a competent and compellable witness for the prosecution or defence without the consent of the person charged.

When competent.

(2) When a person is charged with an offence other than one of those mentioned in the preceding sub-section the husband or wife of such person respectively is a competent and compellable witness but only upon the application of the person charged.

(3) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage.

(4) The failure of the wife or husband of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution.

Communications made during marriage.

Failure to give evidence not to be commented on.

161. When a person charged with an offence is married to another person by a marriage other than a monogamous marriage such last named person shall be a competent and compellable witness on behalf of either the prosecution or the defence:

Provided that in the case of a marriage by Mohammedan law neither party to such marriage shall be compellable to disclose any communication made to him or her by the other party during such marriage.

Communications during Mohammedan marriage privileged. Proviso.

Competency in Proceedings Relating to Adultery.

162. The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings whether a party thereto or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she has already given evidence in the same proceeding in disproof of the alleged adultery.

Evidence by spouse as to adultery. (15 & 16 Geo. 5, c. 49 s. 193).

Communications during Marriage.

163. No husband or wife shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married; nor shall he or she be permitted to disclose any such communication, unless the person who made it, or that person's representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for an offence specified in sub-section (1) of section 160.

Communications during marriage.

Official and Privileged Communications.

164. No judge and, except upon the special order of the Supreme Court, no magistrate shall be compelled to answer any questions as to his own conduct in court as such judge or

Judges and magistrates.

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magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Information as to commission of offences.

165. No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no officer employed in or about the business of any branch of the public revenue shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Evidence as to affairs of State.

163. Subject to any directions of the Governor in any particular case no one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

167. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Communications between jurors.

163. A juror may not give evidence as to what passed between the jurymen in the discharge of their duties, except as to matters taking place in open court.

Professional communication.

169. (1) No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Proviso.

Provided that nothing in this section shall protect from disclosure:—

- (a) any such communication made in furtherance of any illegal purpose;
- (b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

(3) The obligation stated in this section continues after the employment has ceased.

170. The provisions of section 169 shall apply to interpreters, and the clerks and agents of legal practitioners.

Section 169 to apply to interpreters and clerks.

171. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 169, and, if any party to a suit or proceedings calls any such legal practitioner as a witness, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters, which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence

172. No one shall be compelled to disclose to the court any confidential communication which has taken place between him and a legal practitioner consulted by him, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communication with legal advisers.

173. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of title-deeds of witness not a party.

174. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Production of documents which another person could refuse to produce.

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Witness not to be compelled to incriminate himself.

175. No one is bound to answer any question if the answer thereto would, in the opinion of the court, have a tendency to expose the witness or the wife or husband of the witness to any criminal charge, or to any penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for:

Proviso.

Provided that:—

- (a) a person charged with an offence, and being a witness in pursuance of section 159 of this Ordinance, may be asked and is bound to answer any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
- (b) no one is excused from answering any question only because the answer may establish or tend to establish that he owes a debt or is otherwise liable to any civil suit either at the instance of the Crown or any other person;
- (c) nothing in this section contained shall excuse a witness at an inquiry by direction of the Governor from answering any question required by section 43 (5) (b) of the Criminal Procedure Ordinance.

Cap. 20.

Corroboration.

In actions for breach of promise.

176. No plaintiff in any action for breach of promise of marriage can recover a verdict, unless his or her testimony is corroborated by some other material evidence in support of such promise. The fact that the defendant did not answer letters affirming that he had promised to marry the plaintiff is not such corroboration.

Accomplice.

177. (1) An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice:

Proviso.

Provided that in cases tried with a jury when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular implicating the accused, the judge shall warn the jury that it is unsafe to convict any person upon such evidence, though they have a legal right to do so and in all other cases the court shall so direct itself.

Co-accused not an accomplice.

(2) Where accused persons are tried jointly and any of them gives evidence on his own behalf which incriminates a co-accused the accused who gives such evidence shall not be considered to be an accomplice.

178. (1) Except as provided in this section, no particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses.

(2) (a) No person charged with treason or with any of the felonies mentioned in sections 40, 41 and 42 of the Criminal Code can be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony.

Treason and treasonable offences. Chapter 21.

(b) This sub-section does not apply to cases in which the overt act of treason alleged is the killing of the Sovereign, or a direct attempt to endanger the life or injure the person of the Sovereign.

(3) A person shall not be convicted of committing perjury, or of counselling or procuring the commission of perjury, upon the uncorroborated testimony of one witness, contradicting the oath on which perjury is assigned, unless circumstances are proved which corroborate such witness.

Evidence on charge of perjury.

(4) A person charged under the Motor Traffic Ordinance, 1927, with driving at a speed greater than the allowed maximum shall not be convicted solely on the evidence of one witness that in his opinion he was driving at such speed.

Exceeding speed limit.

Ordinance 10 of 1927.

(5) A person shall not be convicted of the offences mentioned in section 51, 218, 221, 223 or 224 of the Criminal Code upon the uncorroborated testimony of one witness.

Sedition and sexual offences.

Chapter 21.

PART X

TAKING ORAL EVIDENCE AND THE EXAMINATION OF WITNESSES

The taking of Oral Evidence.

179. Save as otherwise provided in sections 181 and 182 all oral evidence given in any proceedings must be given upon oath or affirmation administered in accordance with the provisions of the Oaths and Affirmations Ordinance, 1942.

Oral evidence to be on oath or affirmation. Ordinance 25 of 1942.

180. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, does not for any purpose affect the validity of such oath.

Absence of religious belief does not invalidate oath.

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Cases in which evidence not given upon oath may be received.

181. (1) Any court may on any occasion, if it thinks it just and expedient, receive the evidence, though not given upon oath, of any person declaring that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who, by reason of want of religious belief, ought not, in the opinion of the court, to be admitted to give evidence upon oath.

(2) The fact that in any case evidence not given upon oath has been received, and the reasons for the reception of such evidence, shall be recorded in the minutes of the proceedings.

Unsworn evidence of child.

182. (1) In any proceeding for any offence the evidence of any child who is tendered as a witness and does not, in the opinion of the court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) If the court is of opinion as stated in sub-section (1), the deposition of a child may be taken though not on oath and shall be admissible in evidence in all proceedings where such deposition if made by an adult would be admissible.

(3) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

(23 Geo. V c. 1 & 2 s. 38 (2) based on).
Cap. 21.

(4) If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would if the evidence has been given on oath have been guilty of perjury, he shall be guilty of an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly.

Evidence of first and second class chiefs.

183. Where in any suit brought by or against a first or second class chief in either his official or personal capacity such chief desires to give evidence, or where in any other suit the evidence of such a chief is required, the evidence of the chief shall not be given at the hearing of the suit, but shall be taken in the form of a deposition or otherwise in accordance with the terms of an order to that effect to be made by the court, and the evidence so taken shall be admissible at the hearing if when it was taken the other party to the suit had an opportunity of being present and of cross-examining:

Provided that the evidence of the chief shall be given at the hearing of the suit if he so desires, or if the court, having regard to all the circumstances, considers it to be necessary that his evidence should be so given and makes an order to that effect.

The Examination of Witnesses.

184. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the court.

185. (1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

186. (1) On the application of either party, or of its own motion, the court may order witnesses on both sides to be kept out of court; but this provision does not extend to the parties themselves or to their respective legal advisers, although intended to be called as witnesses.

(2) The court may during any trial take such means as it considers necessary and proper for preventing communication with witnesses who are within the court house or its precincts awaiting examination.

187. (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by a party other than the party who calls him shall be called his cross-examination.

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Re-examination.

(3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

Order of examinations.

188. (1) Witnesses shall be first examined-in-chief, then, if any other party so desires, cross-examined, then, if the party calling him so desires, re-examined.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination by co-accused of prosecution witness.

189. In criminal proceedings where more than one accused is charged at the same time each accused shall be allowed to cross-examine a witness called by the prosecution before the witness is re-examined.

Cross-examination by co-accused of witness called by an accused.

190. Where more than one accused is charged at the same time a witness called by one accused may be cross-examined by the other accused and if cross-examined by the other accused such cross-examination shall take place before cross-examination by the prosecution.

Production of documents without giving evidence.

191. Any person, whether a party or not, in a cause may be summoned to produce a document without being summoned to give evidence, and if he cause such document to be produced in court the court may dispense with his personal attendance.

Cross-examination of person called to produce a document.

192. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

193. Witnesses to character may be cross-examined and re-examined.

Leading questions.

194. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

195. (1) Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief, or in re-examination, except with the permission of the court.

When they must not be asked.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

196. Leading questions may be asked in cross-examination.

When they may be asked.

197. (1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Evidence as to matters in writing.

(2) A witness may however give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

198. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Cross-examination as to previous statements in writing.

199. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend:—

Questions lawful in cross-examination.

- (a) to test his accuracy, veracity or credibility; or
- (b) to discover who he is and what is his position in life; or
- (c) to shake his credit, by injuring his character:

Provided that a person charged with a criminal offence and being a witness may be cross-examined to the effect, and under the circumstances, described in paragraph (d) of the proviso to section 159.

Proviso.

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Re-examination. (3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

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- (b) to discover who he is and what is his position in life; or
- (c) to shake his credit, by injuring his character:

Provided that a person charged with a criminal offence and being a witness may be cross-examined to the effect, and under the circumstances, described in paragraph (d) of the proviso to section 159. Proviso.

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Court to decide whether question shall be asked and when witness compelled to answer

200. (1) If any such question relates to a matter not relevant to the proceedings, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the court shall have regard to the following considerations:—

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(3) The court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

201. No such question as is referred to in section 200 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Procedure of court in case of question being asked without reasonable grounds.

202. If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the Attorney-General or other authority to which such legal practitioner is subject in the exercise of his profession.

Indecent and scandalous questions.

203. The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

204. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Questions intended to insult or annoy.

205. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly:

Exclusion of evidence to contradict answers to questions testing veracity.

Cap. 21.

Provided that:—

Proviso.

(a) if a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction;

See section 224.

(b) if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

206. The party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the court, prove hostile, contradict him by other evidence, or by leave of the court prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

How far a party may discredit his own witness. (28 & 29 Vict. c. 18 s. 3).

207. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the trial, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof of contradictory statement of hostile witness. (28 & 29 Vict. c. 18 s. 4).

208. A witness may be cross-examined as to previous statements made by him in writing relative to the subject-matter of the trial without such writing being shown to him, but if it is intended to contradict such witness by the writing, his attention

Cross-examination as to previous statements in writing. (28 & 29 Vict. c. 18 s. 5)

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Production of documents.

218. (1) A witness, subject to the provisions of section 219, summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the court.

Inspection of documents.

(2) The court, if it sees fit, may inspect the document or take other evidence to enable it to determine on its admissibility.

Translation of documents

(3) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the translator disobeys such direction, he shall be held to have committed an offence under sub-section (1) of section 97 of the Criminal Code.

Cap. 21.

Exclusion of evidence on grounds of public interest.

219. (1) The Chief Secretary may, in any proceedings object to the production of documents or request the exclusion of oral evidence, when, after consideration, he is satisfied that the production of such document or the giving of such oral evidence is against public interest. Any such objection taken before trial shall be by affidavit and any such objection taken at the hearing shall be by certificate produced by a public officer.

(2) Any such objection, whether by affidavit sworn by the Chief Secretary or by certificate under his hand, shall be conclusive and the court shall not inspect such documents or be informed as to the nature of such oral evidence but shall give effect to such affidavit or certificate.

Giving as evidence of document called for and produced on notice.

220. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document, production of which was refused on notice.

221. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Judge's power to put questions or order production.

222. The court or any person empowered by law to take evidence may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or

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irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Ordinance to be relevant, and duly proved: Proviso.

Provided further that this section shall not authorise any judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 161 to 175, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under sections 200 or 201, nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted. Further proviso.

223. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the judge, which the judge himself might put and which he considers proper. Power of jury or assessors to put questions.

PART XI.

Evidence of Previous Conviction.

224. (1) Where it is necessary to prove a conviction of a criminal offence the same may be proved:— Proof of previous conviction.

- (a) by the production of a certificate of conviction containing the substance and effect of the conviction only, purporting to be signed by the registrar or other officer of the court in whose custody is the record of the said conviction;
- (b) if the conviction was before a native court by a similar certificate signed by the clerk of court or scribe of the court in whose custody is the record of the said conviction; or
- (c) by a certificate purporting to be signed by the Director of Prisons or officer in charge of the records of a prison in which the prisoner was confined giving the offence for which the prisoner was convicted, the date and the sentence.

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173A

(2) If the person alleged to be the person referred to in the certificate denies that he is such person the certificate shall not be put in evidence unless the court is satisfied by the evidence that the individual in question and the person named in the certificate are the same.

PART XII.

Wrongful Admission and Rejection of Evidence.

Wrongful admission or exclusion of evidence.

225. (1) The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.

(2) The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same.

(3) In this section the term "decision" includes a judgment, order, finding or verdict.

PART XIII.

Repeal.

Repeal.

226. The Part and sections of the undermentioned Ordinances and code are hereby repealed to the extent indicated opposite thereto:—

- Chapter 20. (a) The Criminal Procedure Ordinance—Sections 27, 47-51 inclusive, the heading immediately before section 48 and Part IIa—the whole;
- Chapter 21. (b) The Criminal Code Ordinance—Sections 7, 8 and 9—the whole;
- Chapter 21 Schedule. (c) The Criminal Code—Section 43—the second and third paragraphs thereof.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so

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far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

K. P. MADDOCKS,
Clerk of the Legislative Council.

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NIGERIA.

NO. 58

Sub

RECORDED
21 MAR 1942
O. O. REGY

Government House,
Nigeria.

4 February, 1942.

175

5-2

My Lord,

30257/37

I have the honour to refer to Confidential Despatch (2) of the 11th of October, 1937, from Mr. Ormsby-Gore (now Lord Harlech) on the subject of the reform of the judicial system of Nigeria and to inform Your Lordship that the Bill for an Ordinance relating to jurors and trial by jury has now been drafted. Three copies of this Bill and of a Report by the Attorney-General are enclosed.

2. It will be observed from the Report that the Bill changes the existing law relating to juries as little as possible, and that 20 of the 28 sections of the Criminal Procedure Ordinance have been included. Some provisions from the laws of British Guiana, of which both the Attorney-General and Mr. Greenidge who was the Solicitor-General when the Bill was first drafted have had experience, have been added. Finally, certain clauses relating to settled practices have been inserted to make the Bill as far as possible self-contained.

3. The Bill is principally the work of the Attorney-General but it has been examined by the Chief Justice, Judges, Magistrates, and Chief Commissioners, and all suggestions received from these sources which were supported by the Chief Justice have been accepted.

4. This Bill is now submitted for Your Lordship's approval, and I should be glad if your comments could be telegraphed or sent by air mail.

and (6)

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble Servant,

B.A. Austin

GOVERNOR.

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S.W.1.

W.H.P.

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COMPARATIVE TABLE

showing

in the first column the clause of the Bill for the Jury Ordinance, 1942; in the second column the section of the Criminal Procedure Ordinance of Nigeria (Ch.20); in the third column the section of the Indictable Offences (Procedure) Ordinance, 1893, of British Guiana (No.19 of 1893, as amended by Ord.25 of 1918); in the fourth column the section of the Jury Ordinance of Trinidad (Ch.7) on which each clause in the Bill is based or to which it is closely related together with certain observations in the fifth column.

The Bill	Nigeria Cap.20.	British Guiana No.19 of 1893.	Trinidad Ch.7.	Remarks.
1				Short title.
2				Definitions.
3	cf.119		3	
4	cf.119		4	Omitting references to property qualification. cf.also 6 Geo.IV, c.50, s.1.
5	cf.119		5	Extended.
6			7	Adapted to local requirements. cf.also 6 Geo.IV, c.50, s.2.
7	120(1)			As substituted by s.24 of Ord.48/1933.
8	120(2)			do.
9	120A			do.
10(1)	120B			do. cf.also 6 Geo.IV, c.50, s.9.
(2)				New.
11	121			
12	122			
13		24		Based on the provisions of sec.24 of 19 of 1893 as substituted by sec.2 of Ord.25 of 1918.
14			6	Former half of T'dad section only.

15(1)

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The Bill	Nigeria Cap.20.	British Guiana No.19 of 1993.	Trinidad Ch.7.	Remarks.
15(1)	123		cf. 9(3)	cf.33 & 34 Vic. c.77, s.19(2).
(2)			9(3)	
16	124			As substituted by s. 6 of Ord. 48/1933.
17			cf.10(2)	The Chief Registrar may have certain information or the Court may know some- thing about a juror. cf.also 6 Geo.IV, c.50, s.12.
18			10(3)	
19				
20			cf.12(1)	
21			13	cf.6 Geo.IV, c.50, s.15.
22			cf.14	
23				
24	127			cf.33 & 34 Vic.c.77, s.19(1).
25			17	As enacted by T'dad Ord.32/1935.
26	103			First half of s.103 only.
27			cf.16	New provisions, but cf. proviso to s. 105 of Cap.20.
28	107			cf.6 Geo.IV, c.50, s.47.
29	110			Modernised.
30				
31			18	As enacted by T'dad Ord. 32/1935. cf.also 6 Geo.IV, c.50, s.26.
32	111			Part only of s.111.
33(1)	111		19	Remainder of s.111. Section extended and explained.
34	112			Pars.(e) & (f) are modifications.
35	113			

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Report on a Bill
for
An Ordinance relating to Jurors and Trial with a Jury.

Section 104 of the Criminal Procedure Ordinance (Chapter 20 of the 1923 edition of the Laws of Nigeria) and section 19 of the Protectorate Courts Ordinance, 1933 (No. 45 of 1933) provide that the Governor in Council may by Order direct that any offence or class of offences arising in such places, as may be specified in the Order, shall be tried with a jury.

2. Offences punishable by death and certain other offences stated in Order in Council No.17 of 1916 have been appropriated to be tried with a jury when the trial is held in the Colony but trial by jury has not yet been established in any part of the Protectorate although it can be so established by Order in Council under the existing Protectorate Courts Ordinance, 1933, and similar provision is made in the new Criminal Procedure Bill. There is no trial by jury in civil cases in any part of Nigeria.

3. The procedure with a trial by jury, so far as it is laid down by local statute, is at present provided for by Parts V and VI (sections 107 to 135 inclusive) of the Criminal Procedure Ordinance. Clause 86 of this Bill will repeal those sections and will substitute for them the provisions contained in this Bill, which is one of the various Bills constituting the judicial reforms being made in Nigeria. The draft for the new Supreme Court and Magistrates' Courts Ordinances have already been approved by the Secretary of State.

4. In paragraph 17 of my memorandum which formed an enclosure to His Excellency the Governor's Confidential

Despatch

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Despatch of the 23rd July, 1937, the question of majority verdicts in non-capital cases was discussed and recommended. In the first half of paragraph 8 of the despatch His Excellency stated this principle would be adopted and this was approved of by the Secretary of State in the first sentence of paragraph 4 of His Confidential (2) Despatch of the 11th October, 1937, but it was not specifically stated in His Excellency's despatch that except in capital cases a smaller jury than 12 would be used, probably because my recommendations in the memorandum clearly showed this. I recommended a jury of either 9 or 7 and suggested the proportions for a jury of 9 but the Bill now submitted requires a jury of 12 with a unanimous verdict for a capital case and a jury of 8 for other cases with a majority verdict; in the latter case in the proportion of either 7 - 1 or 6 - 2. A jury of 8 has been adopted as a majority of 6 - 2 is in the same proportion as 9 - 3 which is a recognised majority verdict with a jury of 12.

5. A comparative table is attached showing wherever possible the sections, in the Criminal Procedure Ordinance of Nigeria and in other colonial legislation, on which the clauses of this Bill are based. It will be seen that twenty of the twenty-eight sections of the Criminal Procedure Ordinance, dealing with juries, have been reproduced, and they have been amplified by sections from the Jury Ordinance (Cap.7) of Trinidad and from the Indictable Offences Procedure Ordinance (No.19 - 1893) of British Guiana as amended by Ordinance No.25 - 1918.

6. The mode of preparation of Jury Lists provided by this Bill follows closely the existing law. It had been hoped to have based the selection of jurors on a property or income qualification but the practical

difficulties

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difficulties were too many, and after many unsuccessful efforts to improve matters in this respect it has been found necessary to adhere to the rather haphazard manner of selecting jurors at present in use, namely, that by which an officer with knowledge of the people selects those persons whom he thinks suitable to be jurors. The difficulty of adopting a property or income qualification is that most property in Nigeria is communally owned and the part owners are generally so numerous and difficult to ascertain that it is extremely difficult to ascertain the value of the property owned by a Nigerian, except in a few cases where they have acquired individually owned property. Parts II and III (clauses 3 to 19) of the Bill therefore follow closely the existing law and practice.

7. While clauses 20 to 27 follow to a considerable extent the phraseology of the Jury Ordinance of Trinidad, they do not introduce any change in principle in the existing law. Clause 31 does however: that reproduces section 18 of the Jury Ordinance of Trinidad, which section was enacted by Ordinance No.32 - 1935 following the discovery that a jury selected in accordance with a method similar to that now in force in Nigeria, namely, the drawing of cards upon which the jurors' names were written, had been packed by a corrupt officer of the court.

8. Clauses 32 to 35 deal with challenges and leave the present law unchanged in substance.

9. Clauses 37 to 39 are designed to set out in statutory form what happens when a jury is to be sworn.

10. Clauses 40 to 73 supply several desiderata in the existing law, which is almost silent on the proceedings after the jury is sworn and until verdict. Most of these provisions have been taken from the Indictable Offences

Procedure

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Procedure Ordinance of British Guiana, with some from the Jury Ordinance of Trinidad.

11. Clauses 41 to 48 have not been reproduced from any particular colonial statute although some of them are touched on in the British Guiana legislation but are simply the putting into statutory form of the firmly established practice of the English courts in this respect. The advantage of having these provisions in the Ordinance is that it will (or at any rate should !) make for uniformity in trials with a jury irrespective of whatever particular judge is presiding and at the same time save unnecessary argument and waste of time on the part of counsel for the defence. It will be observed that the term "counsel for the Crown" is defined yet in clauses 43 (Denman's Act) 44, 67 and the heading before clause 42 there are not references to the "case for the Crown" but the "case for the prosecution". This distinction has been drawn, possibly unnecessarily but advisedly, because in the new Supreme Court Criminal Procedure Bill provision has been made for private individuals prosecuting (after giving security for costs) when a Law Officer or Crown Counsel files an indictment but at the same time certifies that the Attorney-General does not propose to prosecute the case in the public interest.

12. Clause 65 has been inserted to call the attention of all to this important rule of practice.

13. Clauses 74 to 77 are penal sections and clause 78 provides that if this or any other Ordinance does not make provision for any matter relating to trial by jury, the practice and procedure, relating to the trial of indictable offences with a jury, of the High Court of Justice in England, shall apply. This is added solely

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as a precaution.

14. Clause 79 in Part V of the Bill empowers the Court to direct trial with a special jury of any case to be tried with a jury and the three clauses following provide for the summoning and empanelling of a special jury.

15. Part VI contains miscellaneous provisions, namely, indemnifying the sheriff for returning an unqualified person as a juror, authorising the extension of time for any act required to be done in connection with the preparation of jury lists, and rule-making powers:

16. When this Bill was originally drafted it was hoped to have it enacted at the same time as all the other bills relating to the judicial reforms but unfortunately the intervention of the war has temporarily slowed down action on that subject. It is, however, intended to enact and bring into operation the new Supreme Court and Magistrates' Courts Ordinances and it is hoped that this Bill will be introduced at the same time as those if that is found practicable.

17. It may be asked why proceed with this Bill now instead of allowing it to remain and enact it at the same time as the new Criminal Procedure Ordinance? Recently His Honour the Acting Chief Justice recommended that in order to save the time of jurors Order in Council No.17 of 1916 (see page 243 of Vol.III of the 1923 edition of the Laws) should be suspended in respect of all cases except those involving a sentence of death. This recommendation has been considered and it has been decided that instead of taking such steps (which would in effect mean the almost complete temporary abolition of trial by jury in Nigeria) to proceed with the Jury Bill now and thus effect considerable saving of time to the jurors.

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18. Clause 8 calls for some additional comment.

The Bill as originally printed has between the words "Protectorate" and "the Chief Justice" in the third line the following "in order to give effect to an Order made "by the Governor in Council under section of the "Criminal Procedure Ordinance, 1942" and thus fitted in with the new Criminal Procedure Ordinance but that is not yet quite ready. It would accordingly be possible to substitute in the words just quoted a reference to section 19 of the Protectorate Courts Ordinance, 1933 (No.45 of 1933) but if that reference is used and the new Supreme Court Ordinance is enacted in the meantime, the Protectorate Courts Ordinance, 1933, will be repealed and there will thus be a hiatus until the new Criminal Procedure Ordinance can be enacted and the necessary cross-references made in clause 8 of the Bill. It will therefore be simplest to omit the quotation altogether, as has in fact been done, with the result that if and when a jury is necessary in the Protectorate, no matter under what authority, the machinery for obtaining such a jury will be available. When the new Criminal Procedure Ordinance is enacted it will then be possible to insert the appropriate cross-references in clause 8 of this Bill if such a course is then thought necessary.

J. H. C.
 Attorney-General:

Attorney-General's Chambers,
 Lagos, Nigeria:
 9th December, 1941.

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The Bill	Nigeria Cap.20.	British Guiana No.19 of 1893.	Trinidad Ch.7.	Remarks.
36	109			Considerably extended. cf.6 Geo.IV, c.50,s.37.
37			20	This oath is no where prescribed in local legislation. It is thought advisable and helpful to have it set out here in its proper form and place.
38				
39				To enable the practice of swearing jurors collectively in misdemeanours to be recognised by statute.
40			21	See paragraph 11 of the report, ante.
41-48				
49		152		cf.second proviso of Ch.7 of T'dad 1925 edition. Juries are not kept together during murder trials in Nigeria. It is hoped the provision of this section will encourage the contrary.
50		153		
51				
52		154		A juror while deliberating might find it necessary "to leave the room".
53			22(3)	
54		154	23	Chiefly on T'dad, but see 33 & 34 Vict. c.77, s.23.
55				To draw the courts' attention to the fact that this is required by practice.
				56

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The Bill	Nigeria Cap.20.	British Guiana No.19 of 1893.	Trinidad Ch.7.	Remarks.
56		156		Extended for clarity.
57		157		
58		158		
59		160		
60		155		The proportion approved of for Nigeria being of course included.
61				This authorises a majority verdict on a non-capital charge where the indictment is for a capital offence. An extension of s.24(2) of T'dad as substituted by s.7 of No.32/1935.
62				15 & 16 Geo.V,c.86, s.15.
63			24(3)	Practice but based on the T'dad provisions as substituted by s.7 of Ord. 32/1935.
64			18(2), 2nd proviso.	Practice but also given statutory authority by s.7 of Ord.32/1935. cf.also 6 Geo.VI, c.50, proviso to sec.26.
65				See para.12 of the report, ante.
66		44		As substituted by sec.2 of Ord.25 of 1918.
67		148		As substituted by s.4 of Ord.25/1918, but extended in accordance with English practice.
68			22(4)	As substituted by s.7 of Ord.32/1935.
69				To clarify practice.
70		45		As substituted by sec.2 of Ord.25 of 1918.

71.

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The Bill.	Nigeria Cap.20.	British Guiana No.19 of 1893.	Trinidad Ch.7.	Remarks.
71			35(2)	As added by s.10 of Ord.32/1935.
72		170		
73		167(2)		
74	132			cf.6 Geo.IV,c.50, s.38.
75	133			
76	134			
77	135			
78				Safeguarding provi- sion. cf.s.47 in s.2 of 25/1918 of B.Guiana.
79				There is no restrict- ion of the class of case for which a special jury may be ordered.
80)				Clauses 80-82 simply set out clearly the procedure for summ- oning a special jury and the proce- dure at the trial.
81)				
82)				
83			35	Part only of the T'dad section. cf.first part of 6 Geo.IV c.50,s.39.
84			37	
85			38	cf.33 & 34 Vict. c.77 s.24.
86				Repeal clause.

Handwritten signature and date: 9.12.41

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C. O.

Mr. Whitcombe. 1/11/41.

Mr. Goumth 1/11/41

Mr. Williams 3. w/s

Sir W. Batterhill.

Mr. G. L. M. Clauson.

Mr. C. J. Jeffries.

Mr. A. J. Dawe.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

ES.P.

6 NW 1941

C.D.
R 3-NOV
D 3-

DRAFT.

Sir,

NIGERIA.

CONFIDENTIAL.

GOVERNOR.

(2)

I have etc. to acknowledge the receipt of your confidential despatch of the 12th of September transmitting copies of a revised draft Bill for the new Supreme Court Ordinance. I note that as regards the question of the appointment and precedence of judges it has been decided to revert to the arrangements set out in Mr. MacDonald's Confidential despatch (4) of the 25th of April, 1940, and I concur in your proposal to introduce the Bill as now drafted in the Legislative Council.

2. As regards the question of the exclusion

FURTHER ACTION.

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exclusion of Counsel in appeals to the Supreme Court from, or relating to, the decision of a Native Court, [I find it somewhat difficult to understand what objections there can be of a tangible nature and how they can be permitted to outweigh the advantage to the Court itself, and the benefit to the parties, to have the case (no matter from what tribunal the Bill *appeal* is preferred) expertly presented and skilfully argued. It is also for consideration whether it is not unfair to the members of the profession themselves to exclude them from this legitimate practice.] I note that no final conclusions have yet been ~~arrived at~~ *arrived at* in this matter, *but* and I hope that it may be found possible, despite the delicate nature of the problem, to reach a satisfactory solution in the near future;

I have, etc.,

(signed) MOYNE,

is view of the advantage to the Court itself & the benefit to the parties to have cases expertly presented & skilfully argued

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Government House,
Nigeria.
12 September, 1941.

NIGERIA.
CONFIDENTIAL.

RECEIVED
29 SEP 1941
C. O. REGY

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My Lord,

12.0 -/40

I have the honour to refer to the late Lord Lloyd's Confidential despatch of the 3rd of February, and to state that in view of the criticisms therein contained of the proposals made by this Government in regard to the appointment and precedence of judges in Nigeria, it has been decided to abandon them and to revert to the arrangement as set out in the second paragraph of Mr. MacDonald's Confidential Despatch (4) of the 25th of April, 1940.

7.12 +/40

2. A revised draft Bill for the new Supreme Court Ordinance has been compiled and printed and I attach 6 copies for your Lordship's information; it will be noted that effect has been given to all the suggestions contained in Mr. MacDonald's despatch, i.e.:-

- ✓ Clauses 4, 8 and 9 have been amended and reproduced as suggested;
- ✓ The proviso to clause 14 has been deleted;
- ✓ Clause 35 has been deleted;
- ✓ Clause 77 (now 76) has been amended to include the provision indicated;
- ✓ Clause 78 (now 77) has been corrected;
- ✓ Clause 80 (now 79) has been amended.

UK
Am

3. Two other amendments have also been found necessary. One of the areas specified in the First Schedule is no longer a Township, but it is not desired to deprive it of the privileges previously enjoyed. The Schedule has, therefore been amended and a further sub-paragraph added to clause 72 to meet such cases in future. Two further Ordinances have been added to the Second Schedule.

4. No final conclusions have yet been reached in regard to the appearance of legal practitioners as Counsel in appeals to the Supreme Court from or relating to the decision of a Native Court (5th paragraph of Mr. MacDonald's despatch), and the provisions of the existing law are consequently reproduced unaltered (clause 72). The problem is one of considerable delicacy and its solution may take some time.

5.

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S. W. 1.

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5. With this one reservation the draft Bill as it now stands accords with the views communicated to me in the two despatches under reference, and I propose to introduce it into the Legislative Council as soon as possible.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

B. H. Mulla

GOVERNOR.

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THE SUPREME COURT ORDINANCE, 1941.

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A BILL

FOR

AN ORDINANCE FOR THE CONSTITUTION OF A SUPREME COURT OF TITLE.
JUSTICE FOR THE COLONY AND PROTECTORATE OF NIGERIA AND
FOR OTHER PURPOSES RELATING TO THE ADMINISTRATION OF
JUSTICE IN NIGERIA.

, 194 .] Date of
commence-
ment.

WHEREAS it is expedient to merge the Supreme Court of Preamble.
Nigeria and the High Court of the Protectorate of Nigeria into

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a single Court having jurisdiction throughout the Colony and Protectorate of Nigeria and to establish a Supreme Court of Justice for the Colony and Protectorate of Nigeria:

Enactment. BE IT THEREFORE ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Southern Provinces, as follows:—

PART I

PRELIMINARY

Short title, application and commencement. 1. This Ordinance may be cited as the Supreme Court Ordinance, 1941; it shall apply to Nigeria and come into operation on such day as the Governor may by notice in the Gazette appoint.

Definitions. 2. Definitions:—

- "Act" "Act" used with reference to legislation means an Act of Parliament;
- "action" (15 & 16 Geo. 5. c. 49, s. 225.) "action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding;
- "cause" "cause" includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;
- "cause of action" "cause of action" in suits founded on contract does not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;
- "Chief Justice" "Chief Justice" means the Chief Justice of Nigeria;
- "court" "court" includes the Supreme Court of Nigeria, and the Chief Justice, and Puisne Judges of the Supreme Court, sitting together or separately;
- "Court of Appeal" "Court of Appeal" means the West African Court of Appeal, established by Order of His Majesty in Privy Council;

- "defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the court with any crime or offence; "defendant"
- "division" means a Judicial Division of the Supreme Court; "division" (15 & 16 Geo. 5. c. 49, s. 225.) "execution creditor"
- "execution creditor" includes every person having title to enforce a judgment or order by process of execution;
- "existing" shall mean existing at the time appointed for the commencement of this Ordinance; "existing" (36 & 37 Vict. c. 66, s. 100.)
- "first class chief" means a head chief graded as first class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, 1930; "first class chief" No. 14 of 1930.
- "Imperial laws" means any Act and includes general rules or orders of court made thereunder; "Imperial laws"
- "inferior court" includes a magistrate's court established under the Magistrates' Courts Ordinance, 1941, and a native court; "inferior court"
- "judge" means the Chief Justice or a Puisne Judge of the Supreme Court of Nigeria; "judge"
- "judgment" includes a decree; "judgment"
- "judgment debtor" includes every person ordered by a judgment or order in a civil cause or matter to pay money, or to do or abstain from doing any act; "judgment debtor"
- "material part of the cause of action" means any fact which a party must prove in order to substantiate his claim; "material part of the cause of action"
- "matrimonial cause" means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights; "matrimonial cause"
- "matter" includes every proceeding in court not in a cause; "matter"
- "oath" shall include solemn affirmation and statutory declaration; "oath"

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"office copy"	"office copy" means a copy either made under direction of the court or produced to the proper officer of the court for examination with the original, and examined by him therewith, and in either case certified by him as correct;
"order"	"order" shall include rule;
"party" (15 & 16 Geo. 5. c. 49, s. 225.)	"party" includes every person served with notice of or attending any proceeding, although not named on the record;
"petitioner"	"petitioner" includes every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant;
"plaintiff"	"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;
"pleading"	"pleading" includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;
"prescribed"	"prescribed" means prescribed by rules of court;
"registrar"	"registrar" includes the Chief Registrar and all other registrars of the court;
"rules of court"	"rules of court" includes forms;
"second class chief"	"second class chief" means a head chief graded as second class by the Governor under the provisions of the Appointment and Deposition of Chiefs Ordinance, 1930;
No. 14 of 1930.	
"suit"	"suit" includes action;
"Supreme Court"	"Supreme Court" means the Supreme Court of Nigeria established under this Ordinance.

PART II

CONSTITUTION OF THE SUPREME COURT

3. From and after the coming into operation of this Ordinance there shall be one Supreme Court of Justice for Nigeria which shall be the Supreme Court of Nigeria.

4. (1) The court shall consist of a Chief Justice and such other judges as the Governor shall from time to time appoint by letters patent under the public seal of the Colony in accordance with such instructions as he may receive from His Majesty, which Chief Justice and judges shall hold office during His Majesty's pleasure.

(2) The judges shall be called the Senior Puisne Judge, the Second Puisne Judge, the Third Puisne Judge, the Fourth Puisne Judge and Puisne Judges.

(3) The court shall be deemed to be duly constituted notwithstanding any vacancy in the office of the Chief Justice or of any judge thereof.

5. No person shall be appointed to be a judge of the Supreme Court unless:—

- (a) he is qualified to practise as an advocate in a court in England, Scotland, Northern Ireland or some other part of His Majesty's dominions having unlimited jurisdiction either in civil or criminal matters; and
- (b) he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

6. The acceptance by any judge of any other office or place of profit or emolument without the approval of the Governor shall be and be deemed *de facto* an avoidance of his office of judge, and his salary as judge shall cease accordingly from the time of his acceptance of such other office or place.

7. (1) All the judges of the court shall have in all respects save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Ordinance.

(2) Any judge of the court may, subject to this Ordinance and any rules of court, exercise all and any part of the original jurisdiction, civil and criminal, vested by this Ordinance in the court, and for such purpose shall be and form a court.

8. (1) Whenever the office of any judge shall become vacant by death or otherwise, or in case of the absence from duty of any judge owing to illness or any other cause or in case of the absence from Nigeria on duty of any judge it shall be lawful for the Governor in his discretion to appoint a fit and proper person to act in the office of such judge:

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How far the law of England in force.

14. Subject to the terms of this or any other Ordinance, the common law, the doctrines of equity, and the Statutes of general application which were in force in England on the 1st January, 1900, shall be in force within the jurisdiction of the court.

Practice and procedure.

15. The jurisdiction by this Ordinance vested in the Supreme Court shall be exercised (so far as regards procedure and practice) in the manner provided by this or any other Ordinance, or by such rules and orders of court as may be made pursuant to this or any other Ordinance.

Rules as to the application of Imperial laws.

16. (1) All Imperial laws declared to extend or apply to the jurisdiction of the court shall be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future local Ordinances.

(2) For the purpose of facilitating the application of the said Imperial laws, they shall be read with such formal verbal alterations, not affecting the substance, as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances.

(3) Every judge or officer of the Supreme Court having or exercising functions of the like kind, or analogous to the function of any judge or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned judge or officer.

(4) Whenever the great seal or any other seal is mentioned in any such law it shall be read as if the seal of the Supreme Court were substituted therefor.

(5) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment, or otherwise.

Application of native laws and customs.

17. (1) Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any existing native law or custom, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force.

(2) Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

(3) No party shall be entitled to claim the benefit of any local law or custom, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connexion with such transactions should be regulated exclusively by English law or that such transactions are transactions unknown to native law or custom.

(4) In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity, and good conscience.

(5) In deciding questions of native law or custom the court may have regard to any book or manuscript recognised by natives as a legal authority, and may call to its assistance any administrative officer, native chief or other person whom the court considers to have special knowledge of native law or custom and may require him to give evidence on oath of such.

Proof of native law.

Law and Equity.

18. Subject to the express provisions of any other Ordinance, in every civil cause or matter commenced in the Supreme Court law and equity shall be administered by the Supreme Court concurrently and in the same manner as they are administered by His Majesty's High Court of Justice in England.

Law and equity to be concurrently administered. (See ss. 3i-44 15 & 16 Geo. 5, c. 49.)

19. Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court by a judge with or without a jury or assessors it is necessary to ascertain the law of any other country or the native law or custom of Nigeria which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law or custom shall, instead of being submitted to the jury or assessors, be decided by the judge alone.

Questions of foreign and native law or custom to be decided by judge. (15 & 16 Geo. 5, c. 49 s. 102.)

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Determination of matter completely and finally. (15 & 16 Geo. 5, c. 49, s. 43.)

20. The Supreme Court in the exercise of the jurisdiction vested in it by this Ordinance shall, in every cause or matter pending before the court, grant, either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Rules of equity to prevail. (15 & 16 Geo. 5, c. 49, s. 44.)

21. Subject to the express provisions of any other Ordinance in all matters not particularly mentioned in this Ordinance, in which there was formerly or is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in the court so far as the matters to which those rules relate are cognisable by the court.

Probate and Divorce.

In probate, divorce, and matrimonial causes. (See ss. 20 & 21. 15 & 16 Geo. 5, c. 49.)

22. The jurisdiction hereby conferred upon the court in probate, divorce, and matrimonial causes and proceedings may, subject to the provisions of this Ordinance and especially of section 17, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force in England.

Attorney-General to be King's Proctor for Nigeria. Powers and duties of (15 & 16 Geo. 5, c. 49, s. 181.)

23. In the case of any petition for divorce or nullity of marriage:—

- (a) The court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney-General, who is hereby declared to be His Majesty's Proctor in and for Nigeria, and who may, either personally or by counsel, argue before the court any question in relation to the matter which the court deems to be necessary or expedient to have fully argued.
- (b) Any person may at any time during the progress of any proceedings or before the *decree nisi* is made absolute give information to His Majesty's Proctor for Nigeria of any matter material to the due decision

of the case and His Majesty's Proctor for Nigeria may thereupon take such steps as he may consider necessary or expedient.

- (c) If in consequence of any such information or otherwise His Majesty's Proctor for Nigeria suspects that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.
- (d) Any rules and regulations for the time being in force for His Majesty's High Court of Justice in England relating to His Majesty's Proctor in England shall, subject to rules of court, apply to His Majesty's Proctor for Nigeria.

Admiralty.

24. The court shall be a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, and shall have and exercise Admiralty jurisdiction in accordance with the provisions of the said Act in all matters arising upon the high seas or elsewhere or upon any lake, river or other navigable inland waters or otherwise relating to ships and shipping.

Appellate Jurisdiction.

25. The Supreme Court shall have appellate jurisdiction to hear and determine all appeals from the decisions of magistrates' courts in civil and criminal causes and matters given in the exercise of the original jurisdiction of the said courts, as well as cases stated by magistrates in accordance with the provisions of any Ordinance relating thereto.

26. The Supreme Court shall have appellate jurisdiction to hear and determine appeals from native courts and appeals from decisions of magistrates on appeal from native courts in accordance with the provisions of any Ordinance relating thereto.

27. The Supreme Court shall have powers of revision in respect of all proceedings in magistrates' courts in accordance with the provisions of any Ordinance relating thereto.

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Miscellaneous.

Mandamus, injunctions and receivers.

28. (1) The court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Relief against forfeiture for non-payment of rent.

29. In the case of any action for a forfeiture brought for non-payment of rent, the court shall have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as can be imposed by His Majesty's High Court of Justice in England, and if the lessee, his executors, administrators or assigns are so relieved they shall hold the demised premises according to the terms of the lease and without the necessity of any new lease.

Executions of instruments by order of court.

30. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to indorse any negotiable instrument, the court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be indorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Quo warranto.

31. Proceedings in *quo warranto* shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

Reconciliation in civil cases.

32. Where an action is pending the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

33. In criminal cases the court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

Reconciliation in criminal cases.

34. The court shall not enforce against a native living in any area specified by Order of the Governor in Council under this section, which Order the Governor in Council is hereby empowered to make, any obligation incurred by him towards a non-native in respect of a commercial transaction, so far as it is based on credit, if it appear to the court in its discretion that it was not reasonably probable that the native was fully aware of the nature of the obligation and the consequences of failure to perform the same.

Credit to natives

35. (1) Where the plaintiff in any action in the Supreme Court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to any amount and that there is probable cause for believing that the defendant is about to quit Nigeria unless he be apprehended and that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action, the court may, in the manner prescribed by rules of court, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has paid into court the sum claimed and costs, or given security as prescribed by rules of court, that he will not go out of Nigeria without the leave of the court, in a sum not exceeding the amount claimed in the action.

Power to arrest debtor quitting Nigeria.

(2) Where the claim is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, the provisions of sub-section (1) shall apply as if it were an action but it shall not be necessary to prove that the absence of the defendant from Nigeria will materially prejudice the plaintiff in the prosecution of his action and the security given (instead of being that the defendant will not go out of Nigeria) shall be to the effect that any sum recovered against the defendant in the action shall be paid or that the defendant shall be rendered to prison.

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PART IV

SITTINGS, DISTRIBUTION OF BUSINESS

Divisions of
Supreme
Court.

36. (1) For the more convenient despatch of business the court may sit in two or more divisions and the Chief Justice may divide Nigeria into divisions and assign any portion of Nigeria to any division which shall be known as a Judicial Division and may designate such Judicial Division by name and shall direct one or more judges to sit in one or more Judicial Divisions.

(2) Every judge, subject to any directions that may be given by the Chief Justice, shall sit for the trial of criminal and civil causes and for the disposal of other legal business pending at such places in Nigeria and at such times as he may think fit.

Chief
Justice
distributes
business of
court.

(3) The Chief Justice may determine the distribution of the business before the court among the judges thereof and may assign any judicial duty to any judge or judges.

Court open
at all times
for general
business.

37. The court shall be open throughout the year for the transaction of the general legal business pending therein.

Adjourn-
ment of
court in
judge's
absence.

38. In case the judge who should preside over the sitting of the court is from any cause unable or fails to attend the same on the day appointed, and no other judge shall attend in his stead, the court shall stand adjourned from day to day until a judge shall attend or until the court shall be adjourned or closed by order under the hand of a judge.

*Power of Transfer.*Power of
transfer.

39. (1) A judge may at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a magistrate's court or to a judge in the same or any other Judicial Division.

(2) The Chief Justice may at any time or at any stage of the proceedings before judgment similarly transfer any cause or matter before a judge to any other judge.

Manner of
its exercise.

40. (1) The power of transfer shall be exercised by means of an order under the hand of the Chief Justice or a judge, as the case may be, and seal of the court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to

be taken thereon, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such orders be in dependence.

(2) The Chief Justice or judge, as the case may be, may at all times cancel, alter, add to, or amend any such order before final judgment by the court to which a cause or matter has been transferred.

(3) The Chief Justice or judge, as the case may be, may, if it appear expedient, telegraph in the first instance the contents of any such order made by him, and such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

By telegraph
if necessary.

41. Every order of transfer shall operate as a stay of proceedings before the judge to whom it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of the record shall be transmitted to the judge or magistrate to whom the same shall be transferred.

Effects of
order of
transfer.

42. (1) The court may at any stage of the proceedings by order direct that any cause or matter pending before it be transferred to a native court having jurisdiction in such cause or matter.

Power to
transfer
cause to
native
court.

(2) Any order made under sections 39 to 42 (1) inclusive shall not be subject to appeal.

43. Every proceeding in the Supreme Court and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of the Legal Practitioners Ordinance, 1933, be heard and disposed of by a single judge, and all proceedings in an action subsequent to the hearing or trial, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place.

Proceedings
in Supreme
Court to be
disposed of
by single
judge.
(15 & 16
Geo. 5.
c. 49, s. 60.)
No. 57 of
1933.

44. A judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the Supreme Court, in all such causes and matters and in all such proceedings in any causes or matters as may be heard in court or in chambers respectively by a single judge of His Majesty's High Court of Justice in England.

Powers of
single judge
in court and
in chambers.
(15 & 16
Geo. 5.
c. 49, s. 61.)

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Discharge of orders made in chambers. (15 & 16 Geo. 5. c. 49. s. 62.)

45. Subject to the provisions of this Ordinance with respect to appeals in matters of practice and procedure, every order made by a judge in chambers, except orders as to costs only which by law are left to the discretion of the court, may upon notice be set aside or discharged by the judge sitting in court.

PART V

GENERAL PROVISIONS AS TO TRIAL AND PROCEDURE

Trial by Judge or Jury

Mode of trial.

46. Civil and criminal causes shall be tried by a judge alone except where express provision to the contrary is made by this or any other Ordinance.

Assessors.

Trial with assessors. (15 & 16 Geo. 5. c. 49. s. 94.)

47. (1) In any civil cause or matter before the Supreme Court the court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the court.

Inquiries and Trials by Referees.

Reference for report.

48. (1) Subject to rules of court a judge may refer to an official or special referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding.

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Reference for trial.

49. In any cause or matter, other than a criminal proceeding:—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be conducted by the court through its ordinary officers; or

(c) if the question in dispute consists wholly or in part of accounts;

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

50. (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.

Powers and remuneration of referees and arbitrators.

(2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the court or a judge, be equivalent to a finding of the court.

(3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be determined by the court or a judge.

51. The court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Ordinance on the court or a judge in relation to submissions.

Court to have powers as in submissions. Chapter 9.

52. The court or a judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee or arbitrator.

Power to order *habeas corpus* to issue.

53. A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Statement of case pending arbitration.

54. An order made under the provisions of this Ordinance relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the court or a judge thinks fit.

Power of court to impose terms as to costs.

55. In the provisions of this Ordinance relating to inquiries and trials by referees, unless the context otherwise requires:—

Explanation of term "reference."

"reference" means a reference under an order made by the court or a judge under the said provisions.

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manner as similar process issuing out of the Supreme Court; the payment of mileage before or after service or execution; the conditions precedent before any such process or process of certain classes will be served or executed and the procedure to be followed after the service or execution of such process.

(s) for imposing penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court.

(2) Rules of court made under this section shall apply to all proceedings by or against the Crown.

PART VI

MISCELLANEOUS

Officers of Court

Chief Registrar or other officers.

57. (1) The Governor may from time to time appoint a fit and proper person to be the Chief Registrar of the Supreme Court, who shall perform such duties in execution of the powers and authorities of the court as may from time to time be assigned to him by the rules of court or, subject thereto, by any special order of the Chief Justice.

(2) The Chief Justice, with the approval of the Governor, may from time to time appoint registrars, deputy registrars and such other officers as may be deemed necessary, who shall perform all such duties with respect to business before the court as may be directed by rules of court or any order of the Chief Justice.

Negligence or misconduct of officers.

58. If an officer of the court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the fact alleged, the court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order directing payment of money.

Procedure in charges against officers.

59. If an officer of the court is charged with extortion under pretence of the process or authority of the court, or with not duly paying over money levied, or with any other misconduct, the court, if it thinks fit, may (without prejudice to any other liability or

punishment to which the officer would, in the absence of the present provision, be liable) inquire into the charge in a summary manner, and may for that purpose summon and enforce the attendance of all necessary persons as in a suit, and may make such order for the payment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs as the court thinks just; and the court may also, if it thinks fit, impose on the officer such fine, not exceeding twenty pounds for each offence, as the court thinks just.

60. No person in permanent employment as an officer of the court shall or may directly or indirectly or by the intervention of a trustee or otherwise purchase any property sold at execution, and in the event of any such person purchasing or being interested in the purchase of any property at an execution sale, such purchase shall be entirely void:

Restriction on officers of court buying property sold at execution.

Provided that nothing herein contained shall prevent any such person from purchasing by leave of the court at execution sale, any property which it may be necessary for him to purchase in order to protect the interest of himself, his wife or child.

Proviso.

Inspection.

61. In any cause the court may on the application of either party, or of its own motion, make such order for the inspection by the court, the jury, the parties or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute, and to give such direction respecting such inspection as to the court may seem fit.

Inspection.

Costs.

62. Costs shall be allowed to a successful plaintiff on the scale prescribed for similar proceedings in an inferior court in any action brought by him in the Supreme Court which might have been tried in an inferior court in its civil jurisdiction, unless the judge is of the opinion that the action was one which it was proper to bring in the Supreme Court and certifies accordingly.

Disallowance of costs in certain cases.

Keeping of Minutes.

63. (1) In every cause or matter the presiding judge shall take down in writing the purport of all oral evidence given before the court and minutes of the proceedings and shall sign the same at any adjournment of the case and at the conclusion thereof.

Notes of evidence and minutes of proceedings to be kept by presiding officer.

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(2) No person shall be entitled, as of right, to the inspection of or to a copy of the records so kept as aforesaid save as may be expressly provided for by rule of court.

(3) The record so kept as aforesaid or a copy thereof purporting to be signed and certified as a true copy by the registrar shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses

Witnesses.

Allowances to witnesses.

64. (1) The presiding judge may in any cause order and allow to all persons required to attend, or examined as witnesses, such sum or sums of money as may be specified by rules of court as well for defraying the reasonable expenses of such witnesses, as for allowing them a reasonable compensation for their trouble and loss of time.

(2) No person may refuse to attend as a witness, or to give evidence, when so required by process of the court on the ground that his expenses have not been first paid or provided for.

How defrayed.

65. All sums of money so allowed shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit if the court shall so order, and in criminal proceedings they shall, unless by the court ordered to be paid by the party convicted, or the prosecutor, be paid out of the general revenue.

Persons in court may be required to give evidence though not summoned.

66. Any person present in court, whether a party or not in a cause, may be compelled by the court to give evidence, and produce any document in his possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend, and give evidence, or to produce such document, and may be punished for any refusal to obey the order of the court.

In what cases prisoners may be brought by warrant to give evidence. Proviso.

67. A judge may issue a warrant under his hand for bringing up any person confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process to be examined as a witness in any cause depending, or to be inquired of, in the court:

Provided that such warrant shall not be granted as of course, nor unless the judge shall have probable grounds for believing that the evidence of the prisoner is likely to prove material.

68. The Superintendent of Prisons or person in whose custody such prisoner may be shall forthwith obey such warrant by bringing the prisoner to the court in his custody, or by delivering him to an officer of court, as the warrant may order, and if the prisoner shall under the terms of the warrant be delivered to any officer of court, the Superintendent of Prisons or other person shall not be liable for the escape of such prisoner.

Prison officer to produce prisoner.

Saving of Rules of Evidence.

69. Nothing in this Ordinance and nothing in rules of court made under this Ordinance shall affect the mode of giving evidence by the oral examination of witnesses, or the rules of evidence, or the law relating to jurymen or juries:

Ordinance not to affect rules of evidence or juries. (15 & 16 Geo. 5. c. 49. ss. 101 & 103.) Proviso.

Provided that nothing in this section shall:—

- (a) prejudice the operation of any rules of court made in pursuance of the express power conferred by this Ordinance to make rules of court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given; or
- (b) affect the power of the court for special reasons to allow depositions or affidavits to be read.

Representation of Parties.

70. (1) In the case of a prosecution by or on behalf of the Crown or by any public officer in his official capacity, the Crown or that officer may be represented by a law officer, crown counsel, administrative officer, police officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

Representation of the Crown and Government departments.

(2) In any civil cause or matter in which the Crown or any public officer in his official capacity is a party or in any civil cause or matter affecting the revenues of Nigeria the Crown or that officer may be represented by a law officer, crown counsel, administrative officer or by any legal practitioner or other person duly authorised in that behalf by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.

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Representa-
tion of first
and second
class chiefs.

71. In any suit brought by or against a first or second class chief in either his official or personal capacity such chief may be represented in a court established by this Ordinance at any stage of the proceedings by any native of his chiefdom who shall satisfy such court that he has the authority of such chief to represent him.

Employ-
ment of
legal practi-
tioners.

72. (1) The employment of legal practitioners shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before the court.

(2) No legal practitioner shall be allowed to appear for or to assist any party in court in any appeal to the Supreme Court relating to or from the decision of a native court except:—

(a) in the case of a conviction involving sentence of death; and

(b) in a suit which raises any issue as to the title to land or as to the title to any interest in land—

(i) where the value of the property, as stated in the writ of summons and as it appears to a magistrate, exceeds two hundred pounds, and the magistrate allows the employment of a legal practitioner; or

(ii) where the property is situated within any area specified in the First Schedule to this Ordinance;

First
Schedule.

and except in any case which having come before a magistrate's court on appeal from a native court in the Protectorate is transferred to the Supreme Court under the Magistrates' Courts Ordinance, 1941, where a judge allows the employment of a legal practitioner.

No. of
1941.

(3) Where an application is made to a judge to allow a legal practitioner to appear for or to assist any party in the Supreme Court or a magistrate's court in an appeal relating to or from a decision of a native court as aforesaid in a suit which raises any issue as to the title to land or as to the title to any interest in land where the value of the property exceeds two hundred pounds, the application shall be in writing and shall state the question of law (if any) which the appeal involves; the application and the decision thereon shall form part of the proceedings in the appeal.

(4) The Governor may by Order in Council delete from, vary or add to the First Schedule to this Ordinance any area.

(5) Where any township mentioned in the first column of the First Schedule is declared according to law to be no longer a township the provisions of this section shall nevertheless, unless express provision is made to the contrary, apply to the area which was formerly known as the said township; the particulars of such area being ascertained either by a description in the order constituting the township or by a reference to the official plan of the said township area.

First
Schedule.

Commissioners of Oaths.

73. The Chief Justice may appoint under his hand and the seal of the court, from time to time, such and so many persons as may be requisite to be commissioners within Nigeria for taking affidavits and declarations and receiving production of documents, or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in the court, and any order of the court for the attendance and examination of witnesses or production of documents before any such commissioner shall be enforced in the same manner as an order to attend and be examined or produce documents before the court.

Chief
Justice
may
appoint
commis-
sioners
for affidavits
or for
taking
evidence.

74. No action shall be brought against any commissioner in respect of any act or order *bona fide* performed or made by him in the execution, or supposed execution, of the powers or jurisdiction vested in him, but every such act or order if in excess of such powers and jurisdiction shall be liable to be revised, altered, amended or set aside upon summary application to the court.

Protection
of commis-
sioners from
actions.

Protection of Judicial Officers.

75. (1) No judge or other person acting judicially shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Judicial
officers not
liable to be
sued if
acted in
good faith
Proviso.

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any such judge or other person acting judicially, shall be liable to be sued in any court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

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Saving.

Saving of
pending
proceedings.
Chapter 3.

No. 45 of
1933.

76. (1) All proceedings instituted, commenced or taken in accordance with the rules or practice of the Supreme Court established in accordance with the provisions of the Supreme Court Ordinance, or of the High Court established in accordance with the provisions of the Protectorate Courts Ordinance, 1933, in respect of any cause pending at the coming into force of this Ordinance shall be valid and effectual as though they had been instituted, commenced or taken in accordance with the provisions of this Ordinance and such proceedings shall continue before the court in accordance with the provisions of this Ordinance.

(2) All proceedings instituted, commenced or taken in accordance with the Prize Court Rules, 1939, in the Supreme Court established in accordance with the Supreme Court Ordinance shall continue in the court established by this Ordinance.

Saving of
certain
existing
appoint-
ments.

Chapter 3.
No. 45 of
1933.

77. Notwithstanding the provisions of section 4 of this Ordinance nothing in this Ordinance shall be construed to affect the status, appointment or tenure of office of any judge of the Supreme Court or of any judge or assistant judge of the High Court or of any registrar or other officer performing duties on the coming into force of this Ordinance in connexion with a court established in accordance with the provisions of the Supreme Court Ordinance, or of the Protectorate Courts Ordinance, 1933; all judges, registrars and other officers as aforesaid shall be deemed to have been appointed to exercise their respective duties in the Supreme Court established in accordance with the provisions of this Ordinance, in the case of the Chief Justice of Nigeria as the Chief Justice of Nigeria constituted by this Ordinance and in the case of any Puisne Judge of the Supreme Court or of any judge or assistant judge of the High Court as a Puisne Judge of the Supreme Court established by this Ordinance and in the case of the Chief Registrar as Chief Registrar of the Supreme Court of Nigeria, and in the case of all other officers as aforesaid in the Supreme Court of the Judicial Division in which they were serving on the coming into force of this Ordinance and shall thereafter be subject to the jurisdiction and provisions of this Ordinance.

78. Wherever in any Ordinance, rule of court or other document reference is made to the Supreme Court established in accordance with the provisions of the Supreme Court Ordinance, or to the High Court, such reference shall be read, in so far as the context will permit, to mean a reference to the Supreme Court established in accordance with the provisions of this Ordinance, and where in any such Ordinance, rule of court or other document reference is made to any judge, assistant judge, registrar or other officer of the High Court such reference shall be read, so far as the context will permit, to mean a judge, registrar or other officer as aforesaid of the Supreme Court established in accordance with the provisions of this Ordinance.

Certain
references
to Supreme
Court under
Chapter 3
and to High
Court to be
references
to Supreme
Court
under this
Ordinance.

Repeal.

79. The Ordinances set out in the Second Schedule hereto and also rules made thereunder are hereby wholly repealed:

Repeal.
Second
Schedule.

Provided that rules of court made under the Ordinances hereby repealed together with the practice of the Supreme Court and of the High Court which were in force on the coming into operation of this Ordinance shall, in so far as they do not conflict with the provisions of this Ordinance, remain, within the area in which they were operative, in full force and effect with such modifications as may be necessary to make them applicable to the provisions of this Ordinance, unless and until such rules of court shall be revoked, varied, replaced or superseded by rules of court made under this Ordinance

Proviso.

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FIRST SCHEDULE.

(Section 72.)

Township or Town.	Extent of Area.
Bakana	A circle with a radius of two miles having its centre at the customs house, Bakana.
Buguma	A circle with a radius of two miles having its centre at the customs house, Buguma.
Calabar	A circle with a radius of five miles having its centre at the court house, Calabar.
Degema	A circle with a radius of five miles having its centre at the court house, Degema.
Aba	The township and urban district.
Bonny	The area formerly known as the township of Bonny the limits of which are shown in Station Plan No. 84 which was signed by the Governor on the 3rd day of September, 1917, and is deposited in the office of the Land and Survey Department, Lagos.
Burutu	The township.
Enugu	The township and urban district.
Forcados	The township
Koko	The township
Onitsha	The township
Opobo	The township.
Port Harcourt	The township.
Sapele	The township.
Warri	The township.

SECOND SCHEDULE.

(Section 79).

No. and Year.	Short Title of Ordinance.
Cap. 3, 1923 Laws ...	Supreme Court Ordinance.
No. 7 of 1928	Supreme Court (Amendment) Ordinance, 1928.
No. 26 of 1930	Supreme Court (Amendment) Ordinance, 1930.
No. 46 of 1933	Supreme Court (Amendment) Ordinance, 1933.
No. 33 of 1935	Supreme Court (Amendment) Ordinance, 1935.
No. 14 of 1936	Supreme Court (Amendment) Ordinance, 1936.
No. 43 of 1936	Supreme Court (Amendment No. 2) Ordinance, 1936.
No. 7 of 1938	Supreme Court (Amendment) Ordinance, 1938.
No. 45 of 1933	Protectorate Courts Ordinance, 1933.
No. 7 of 1935	Protectorate Courts (Amendment) Ordinance, 1935.
No. 34 of 1935	Protectorate Courts (Amendment No. 2) Ordinance, 1935.
No. 15 of 1936	Protectorate Courts (Amendment) Ordinance, 1936.
No. 22 of 1941	Protectorate Courts (Amendment) Ordinance, 1941.

Objects and Reasons.

This Bill will merge the High Court of the Protectorate into the Supreme Court and will create a Supreme Court of Nigeria with unlimited jurisdiction throughout Nigeria. It follows the existing law closely but contains some additions from English law.

H. C. F. COX,
Attorney-General.

Attorney-General's Chambers,
Lagos, Nigeria.
4th October, 1940.

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NIGERIA.

Confidential.

208

RECEIVED
1941
C. O. REGY

Government House,
Nigeria.

10 September, 1941.

My Lord,

I have the honour to refer to Mr. MacDonald's despatch Confidential (3) of the 25th of April, 1940 and to reply to the three comments on the draft Magistrate's Court Ordinance raised therein.

2. It was intended to confer on magistrate's courts the power to impose sentences of fine and imprisonment for contempt, and Clause 19 was therefore inserted to make the courts inferior courts of record, but I agree that this is undesirable and the clause has been deleted.

3. I agree with the criticism on the proviso to Clause 30 and it has been deleted from both this draft Ordinance and the draft Supreme Court Ordinance. I agree too that there should be a clause providing a saving for pending proceedings and this has been inserted.

4. I would also refer in this connexion to Your Lordship's despatch No. 190 of 14th of June, 1941, wherein criticisms were offered on an amending Ordinance (No. 22 of 1941) to the present Protectorate Courts Ordinance. I had already decided, after consultation with my advisers, and before the receipt of this despatch, not to take any action on those provisions of the amending Ordinance which referred to the appointment as magistrates of the holders of certain offices. Since the Protectorate Courts Ordinance is about to be superseded by the new Supreme Court and Magistrates' Courts Ordinances, the amending Ordinance No. 22 of 1941 becomes a dead letter and I will now discuss the terms of the appointment of magistrates as provided for in the draft of the new Magistrates' Courts Ordinance.

5. In order that Your Lordship may have a clear picture of the exact nature of the various types of magistrate's court that conditions in this country necessitate, I will explain in some detail.

6. The courts fall into two quite distinct categories and the first comprises those presided over by whole time magistrates; they are few in number and appointments to them are restricted to professional members of the Judicial Department though in the event of a temporary shortage of staff an experienced Administrative Officer may be seconded to the Department for duty.

7. The second category comprises the numerous courts of Administrative Officers exercising judicial powers, and it was in connexion with the constitution of these courts that Ordinance No. 22 of 1941 was enacted. There are many districts in Nigeria where the Administrative Officer is required to perform magisterial duties and under

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON S.W.1.

W.M.P.

Sub
(6) or 30257/40

(3) or 30075/41
in circ.

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under the Protectorate Courts Ordinance he must be appointed a magistrate by name. His appointment is in most cases cancelled on his departure from the station, his successor being appointed in his stead. The situation has been reached where although magistrates are appointed "by name" they are more often than not appointed in consequence of the administrative office which they hold rather than on account of their ability as magistrates. This constant making and cancellation of appointments entails considerable and vexatious delay, particularly in remote areas, and it was for this reason that the Protectorate Courts Ordinance was amended to enable the holders of certain offices to be appointed magistrates, ex-officio.

8. However, further consideration showed that this did not provide a really satisfactory solution of the problem and, (largely for reasons similar to those now stated by Your Lordship) it was not pursued.

9. I propose instead that the new Magistrates' Court Ordinance shall provide for three grades of magistrates appointment being in all cases by name. Grade I will be confined to those members of the Judicial Department (or, in an emergency, experienced Administrative Officers seconded to that Department) who are whole time professional magistrates. They will have criminal jurisdiction up to a fine of £200 or two years imprisonment and civil jurisdiction in suits up to £200; this, in either case, represents an increase over the powers at present exercised by magistrates of this class but the increase in respect of criminal jurisdiction has already been approved by your predecessor's despatch Confidential (3) of the 25th of April, 1940 and I now seek formal approval of the increase in civil jurisdiction.

6/1940 free

10. Grades II and III will comprise the many Administrative Officers who are called upon to perform magisterial duties. Those in Grade II will have jurisdiction up to £100 or 12 months and only the more experienced officers will be appointed to it. Grade III will have jurisdiction of £25 or 3 months and will include all other officers who are granted magisterial powers.

11. An Administrative Officer who is called upon to perform magisterial duties will in future, therefore, exercise only such powers as his personal qualifications and experience warrant, and an officer appointed to Grade III will thereafter continue to exercise the powers of that grade irrespective of the administrative duties to which he is posted until he has acquired such degree of experience or shown such proof of ability as will qualify him to exercise the powers of the higher grade.

12. This method will largely avoid the delays and cumbrous procedure associated with the present method of appointment and cancellation of individual appointments and will at the same time I venture to think meet Your Lordship's views as stated in the 4th paragraph of your despatch under reference. It will ensure, where the magisterial duties attached to a particular administrative post require, for example, the powers of Grade II, that only an officer who is personally qualified to exercise those powers will be appointed to that post.

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3.

210
END

13. Fresh clauses to give effect to the proposals in this despatch will now be inserted in the draft of the new Magistrates' Courts Ordinance, but before it is published I should like to have Your Lordship's approval of the increased civil jurisdiction to be granted to magistrates of Grade I, and would be grateful if a reply to this point may be telegraphed.

I have the honour to be,
My Lord,
Your Lordship's most obedient,
humble Servant,

G. H. Meade
Governor.

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1992

1941

~~30268~~

NIGERIA.

CO 585
CO 259

Lagos Municipal Area.

Improvement of Roads & Drains & the Extension of Markets.

Previous							
1940							
Subsequent							
L. 30459/42							
R98.							
1. Library Legal.	26.						
2. Mr. Sidebotham	26/2						
in - ^(R) P.M. to Library.	27/2						
to Mr. Sidebotham	27/2						
R94.	3/3						
R95 (R)	7/3						
Library	11						
R95	11/3						
98	12/3						
Library (Legal)	15/3						
98!							
MR. Foxwell	1/1/43						
R 302							

References -

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FILE A.

30268

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NIGERIA

30268

1

Lagos Municipal Area.

CO 583

CO 259

Improvement of Roads & Drains & the Extension of Markets.

Previous					
1940					
Subsequent					
L. 30459/42					
R98.					
1. Library Legal.	26.				
2. Mr. Sidebottom	26/2				
Mr. Sidebottom	27/2				
Mr. Sidebottom	27/2				
R94.	3/3				
R95 (2/4)	7/3				
Library	11				
R95	11/3				
98	12/3				
Library (Legal)	13/3				
98!					
MR. Forward	11/43				
R-302					

FILE A.

(1517) WLS1212/122 10,000 11/46
N.P.Co. G.684/77a

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C. of
Title

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Rel. Legislation
re. ^{won.}
24/2.

Nigeria 91. _____ 14. 2. 41.
(Spares to library).

They have amended the ordinance though
it is not proposed so far as I am aware
to raise any money under it at
present. I gather from Mr Roberts
ways in note of 11.6 on . 30268/40
that the words 'or any other' are
unobjectionable & we can

? 93.

J. B. Lushington

26/2.

Slabakhan

27/2/

93. & copy ^{ordnance} to C. of Legats L.F. info.

J. B. Lushington

27/2' atna

^{noted}
8/3
15/3/41

2 To Hig 59 (1 ansd) - 4/3 5/3/41

3 To C.A — (w/c not 80 of 1941: B.1c) - 11.3.41

~~Libry/Donor~~
Not other sealed copy
& also other files

MM

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Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony and to the Southern Provinces of the Protectorate, and enacted by me in so far as the provisions hereof relate to the Northern Provinces of the Protectorate this 30th day of January, 1941.

B. H. BOURDILLON,
Governor

(L.S.)

No. 8.



1941.

Colony and Protectorate of Nigeria.
IN THE FIFTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI.

SIR BERNARD BOURDILLON, G.C.M.G., K.B.E.
Governor and Commander-in-Chief.

AN ORDINANCE TO AMEND THE LAGOS (ROADS, DRAINS AND MARKETS IMPROVEMENT) LOAN ORDINANCE, 1938. Title.

[30th January, 1941.]

Date of commencement.

BE IT ENACTED by the Governor of the Colony and Protectorate of Nigeria, with the advice and consent of the Legislative Council so far as the provisions hereof relate to the Colony and to the Southern Provinces, as follows:—

31614/135-136. Enactment.

Reference:—

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2 No. 8 of 1941 *Lagos (roads, drains and markets improvement) (Amendment) Loan.*

Short title. 1. This Ordinance may be cited as the Lagos (roads, drains and markets improvement) (Amendment) Loan Ordinance, 1941.

Amendment of Schedule to No. 19 of 1938. 2. The Schedule to the Lagos (roads, drains and markets improvement) Loan Ordinance, 1938, is hereby amended by inserting the figure 1. before the word "Improvements" therein and by adding the following item thereto:—

" 2. Payment of stamp duties on transfers of stock issued " under this or any other Ordinance of the " Government."

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and in so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, is found by me to be a true and correctly printed copy of the said Bill.

A. G. DALGLEISH,
Clerk of the Legislative Council.

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R E P O R T

on

A BILL ENTITLED AN ORDINANCE TO AMEND THE
LAGOS (ROADS, DRAINS AND MARKETS
IMPROVEMENT) LOAN ORDINANCE, 1938.

6
END

The short title of this Bill is the Lagos (roads, drains and markets improvement) (Amendment) Loan Ordinance, 1940, and in my opinion the assent of His Excellency may properly be given thereto.

2. The object of this amending Bill is to provide an item in the Schedule to the Lagos (roads, drains and markets improvement) Loan Ordinance, 1938, to cover the payment of stamp duties on transfers of stock issued under the authority of this Ordinance. In the past such duties were considered as a part of the general cost of issue but that decision is open to doubt. This amendment will remove any doubt there may be that such duty can be paid out of the loan.

3. To avoid separate small accounts, one central fund will be established for this purpose and for that reason the item is worded in a general manner. This is the first instance of such provision being made in Nigeria.

4. The draft for this Bill was approved of by the Secretary of State in despatch No.410 of 3rd July, 1940, but it was considered advisable to enact the Bill at this stage as it might not be possible to arrange in the future for the amending legislation to be passed as and when the opportunity came for raising the loan under the principal Ordinance.


Attorney-General.

Attorney-General's Chambers,

Lagos, Nigeria.

16th January, 1941.

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Public Record Office

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