

No. 5—1941.

Cocoa Industry.

AN ORDINANCE to amend the Cocoa Industry
Ordinance, Ch. 23. No. 22.

Commencement.

[29th May, 1941.]

Short title.

1. This Ordinance may be cited as the Cocoa Industry (Amendment) Ordinance, 1941, and shall be read as one with the Cocoa Industry Ordinance, hereinafter referred to as the Principal Ordinance.

Construction.

Ch. 23. No. 22.

Section 2 of the
Principal Ordinance amended.

2. Section 2 of the Principal Ordinance is hereby amended—

(a) by inserting as the first definition therein the following:—

“approved fermentary” means the Government Cocoa Fermentary and any other cocoa fermentary which the Governor may declare to be an approved fermentary for the purposes of this Ordinance ;

(b) by deleting therein the definitions of “duly signed” and “duly countersigned” ;

(c) by deleting therein the definition of “producer” and substituting therefor the following:—

“producer” means the person who is the owner of cocoa grown in the Colony immediately before the cocoa is harvested: Provided that, in relation to cocoa acquired from the producer as so defined by an approved fermentary, the approved fermentary shall be deemed for the purposes of this Ordinance to be the producer thereof ; .

3. Subsection (2) of section 4 of the Principal Ordinance is hereby repealed and replaced by the following subsection:—

Section 4 of the Principal Ordinance amended.

(2) Members of the Board so appointed shall hold office during the Governor's pleasure and shall receive such remuneration (if any) as the Governor may generally or specially direct. Any such direction may be given with retrospective effect.

4. (1) Section 6 of the Principal Ordinance is hereby amended by inserting therein immediately after the word "remuneration" the words "of the members of the Board and".

Section 6 of the Principal Ordinance amended.

(2) This section shall be deemed to have come into force on the 31st of December, 1940.

5. Section 10 of the Principal Ordinance is hereby repealed and replaced by the following section:—

Section 10 of the Principal Ordinance repealed and replaced.

10. (1) On the first occasion, being an occasion occurring on or after the harvesting of the cocoa, on which cocoa grown in the Colony is acquired from one person (hereinafter referred to as "the vendor") by another person in the Colony, not being an approved fermentary or a person acquiring otherwise than on sale or gift in the capacity of a special representative as hereinafter defined (which other person is hereinafter referred to as "the purchaser"), there shall be levied, if a ruling price of cocoa being not less than the minimum ruling price at which cess becomes payable under this Ordinance has been gazetted and is applicable at the time of such acquisition, a cess calculated in such manner and payable by such persons as is hereafter provided.

Cess payable on acquisition of locally grown cocoa.

(2) If the purchaser or his servant or agent acting on his behalf in the acquisition of the cocoa shall know or have reason to believe that the cocoa is liable to cess under this section, the

cess shall be payable by the purchaser and the following provisions shall apply namely:—

(a) the purchaser shall—

(i) within seven days after such acquisition pay to the Warden of the county in which the cocoa was produced, or, if an approved fermentary is deemed to be the producer, to the Warden of the county in which the approved fermentary is situated, or to the Accountant General in Port-of-Spain, or to the Sub-Accountant in San Fernando, the cess upon the cocoa and, at the time of such payment, deliver to such Warden, Accountant General or Sub-Accountant a duly signed statement substantially in the form in the First Schedule ;

(ii) at the time of such acquisition deliver to the vendor a duly signed duplicate of such statement ;

(b) the vendor shall, within seven days after such acquisition, deliver to the Secretary the duplicate statement duly countersigned by the vendor.

(3) Any person who shall contravene or fail to comply with the provisions of the preceding subsection shall be guilty of an offence against this Ordinance.

(4) Where cess is payable on cocoa by virtue of subsection (1) of this section but the purchaser of the cocoa is not liable therefor in the terms of subsection (2) of this section, the producer of the cocoa and, if the vendor is not the producer, the vendor shall personally be jointly and severally liable to pay the cess thereon: Provided that a vendor who is not the producer shall not be so liable if he did not know or have reason to believe at the time the cocoa was acquired by the

purchaser that the cocoa was liable to cess. The Board shall not be bound to make any refund under section 17 of this Ordinance of cess paid by virtue of this subsection.

(5) Any vendor of cocoa or any servant or agent of the vendor who refuses to answer or makes any answer which he knows or has reason to believe to be false to any question put to him by the purchaser or his servant or agent, and any servant or agent of a purchaser who refuses to answer or makes any answer which he knows or has reason to believe to be false to any question put to him by his master or principal, being in any such case a question put for the purpose of ascertaining any information as to any fact affecting the liability (whether present, past or future) of such cocoa to cess under this section or information which is necessary to enable an obligation under this section to be discharged, shall be guilty of an offence against this Ordinance. In this subsection the expressions "vendor" and "purchaser" mean respectively any vendor and purchaser of cocoa whatsoever, whether he is a vendor or purchaser as described in subsection (1) of this section or otherwise.

(6) Without prejudice to the operation of the immediately preceding subsection, any person who supplies information which he knows or has reason to believe to be false to any person who is entitled to question him as to such information under that subsection shall be guilty of an offence against this Ordinance.

(7) If any person shall sign any such statement, or shall countersign any such duplicate statement, as is mentioned in this section, or, being a person required by this section to deliver any such statement or duplicate statement, shall deliver the same or cause the same to be delivered, knowing or having reason to believe in any such case that any particulars contained in such statement or duplicate statement are false, or

shall falsify any such statement or duplicate statement, he shall be guilty of an offence against this Ordinance.

(8) For the purposes of this section—

(a) a document shall be deemed to be duly signed or countersigned if it is signed or countersigned by the person required by this section to sign or countersign the same or by some person on his behalf and by his authority ;

(b) the term "special representative" shall mean a legal personal representative of a deceased person, or a trustee, or a mortgagee, or a trustee in bankruptcy, or a liquidator of a company, or a receiver appointed by order of the Supreme Court or by a mortgagee or by debenture holders, or an officer of any Court acting in the execution of any order or process of the Court.

New sections
10A, 10B, and
10C, of the
Principal
Ordinance.

Cess on cocoa
exported by
the producer.

6. The Principal Ordinance is hereby further amended by inserting, immediately after section 10 thereof, the following new sections:—

10A. (1) If any locally grown cocoa shall be exported from the Colony without having become liable to cess under section 10 of this Ordinance and if a ruling price of cocoa being not less than the minimum ruling price at which cess becomes payable under this Ordinance has been gazetted and is applicable at the time of such exportation, there shall be paid by the producer upon such cocoa a cess calculated in the manner hereafter provided.

(2) The provisions of the Customs Ordinance shall have effect, subject to the provisions of this Ordinance, as though the cess leviable by virtue of this section were an export duty leviable by virtue of section 5 of that Ordinance.

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(3) For the avoidance of doubt it is hereby declared that the power to obtain information and evidence in support thereof conferred by section 220 of the Customs Ordinance, shall be deemed to include the power to obtain all such information as may be necessary to enable an officer to determine whether any cocoa exported or about to be exported is liable to cess under this Ordinance.

10B. (1) It shall be the duty of every person having the control or management of an approved fermentary— Special provisions as to approved fermentaries.

(a) to render to the Secretary returns, at such times or at such intervals, giving such particulars in relation to cocoa acquired, treated or disposed of by the fermentary, as the Board may generally or specially direct ;

(b) to comply with any general or special directions given by the Board as to the distribution between the actual producers of cocoa acquired by the fermentary of any refund of cess paid on such cocoa which is made to the fermentary in accordance with the provisions of section 17 of this Ordinance.

(2) Any refund of cess directed in accordance with the preceding subsection to be distributed to any person shall be a debt payable by the fermentary to such person.

(3) Without prejudice to the provisions of subsection (2) of this section, if any person shall fail to comply with any direction given under this section, or shall render any return in pursuance of a direction given under this section knowing or having reason to believe that any particulars stated herein are false, or shall falsify any such return, such person shall be guilty of an offence against this Ordinance.

Interpretation.

10C. For the purposes of this Ordinance, a person shall be deemed to know or have reason to believe any fact unless he proves that, after making all reasonable enquiries, he did not know or have reason to believe such fact.

Section 11 of the Principal Ordinance amended.

7. Section 11 of the Principal Ordinance is hereby amended by substituting a colon for the full stop at the end thereof and by adding the following proviso:—

Provided that a prosecution for any such offence shall not be instituted without the sanction of the Attorney General.

Section 14 of the Principal Ordinance repealed and replaced.

Ruling prices.

8. Section 14 of the Principal Ordinance is hereby repealed and replaced by the following section:—

14. (1) The Board shall, on Thursday of each week, publish in the *Royal Gazette* the average price of cocoa ruling in the Colony during the preceding week as ascertained by the Board: Provided that it shall not be necessary for the Board to gazette any price which is less than the minimum price at which cess is payable in accordance with the provisions of this Ordinance unless the previous gazetted price was not less than such minimum and provided further that when the ruling price is less than such minimum it shall be sufficient for the Board to describe such ruling price as "less than the minimum price at which cess is payable under this Ordinance" or words to the like effect.

(2) Each price gazetted by the Board shall be the ruling price between the day following the date of gazetting and the day following the next date on which a ruling price is gazetted under this section.

(3) For the purposes of this section, the expression "the average price of cocoa ruling in the Colony" means the average price of plantation cocoa based on such statistics as the Board may adopt.

(4) Any such gazetted price shall be deemed for all purposes to have been duly and accurately ascertained in accordance with the provisions of this section.

9. (1) Section 15 of the Principal Ordinance is hereby repealed and replaced by the following section:—

Section 15 of the Principal Ordinance repealed and replaced.

15. (1) The cess payable under sections 10 and 10A of this Ordinance shall be based on the ruling price of cocoa at the date of acquisition or exportation of the cocoa, as the case may be, and shall be an amount which bears the same ratio to the amount shown in column 2 of the Second Schedule corresponding to such ruling price in column 1 of the said Schedule as the weight of the cocoa in lbs. bears to 100 lbs.: Provided that in calculating the amount of cess payable any fraction of one cent shall be taken to be one cent.

Assessment of cess.

(2) It shall be lawful for the Governor in Council, subject to confirmation by resolution of Legislative Council, to vary from time to time the scale of ruling prices and rates of cess specified in the Second Schedule hereto and, upon the publication in the *Royal Gazette* of any variation so confirmed, this Ordinance shall have effect as though the Schedule as so varied was the Second Schedule to this Ordinance.

(2) This section shall be deemed to have come into force on the 31st of December, 1940, and any cess heretofore collected in excess of the amount payable by virtue of this section shall be refunded.

10. Section 17 of the Principal Ordinance is hereby amended—

Section 17 of the Principal Ordinance amended.

(a) by repealing subsection (3) thereof and replacing the same by the following subsection:—

(3) Any cocoa estate which is precluded by the express terms of the Scheme or by a decision of the Board made in accordance

with the Scheme from participation in the benefits of the Scheme shall be deemed to be a non-participating estate.

- (b) by inserting in subsection (4) thereof immediately after the word "section" the words "other than the provisions of subsection (3) thereof" and by deleting in subsection (4) thereof the words "and which is not an estate precluded for the time being by the express terms of the Scheme from participating in the benefits of the Scheme" ;
- (c) by inserting in subsection (6) thereof immediately before the words "a trustee appointed by deed or will" the words "a trustee in bankruptcy, the liquidator of a company,".