



Ordinances

OF THE

Transvaal,

1903,

**With INDEX, TABLES OF CONTENTS (Alphabetical and
Chronological), and TABLES OF LAWS, &c.,
REPEALED and AMENDED by these
ORDINANCES.**

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ORDINANCE

To Establish a Code of Criminal Procedure.

**ORD.
No. 1
of
1903.**

WHEREAS IT IS DESIRABLE to consolidate and amend the law relating to Criminal Procedure;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

CHAPTER I.

PRELIMINARY.

1. This Ordinance may be cited as "The Criminal Procedure Code 1903" and is hereinafter referred to as "this Code." Title.

† It shall come into force on the first day of February 1903 and shall apply to all proceedings in respect of offences other than offences prosecuted summarily before Inferior Courts commenced on or after that day at whatever time the offences may have been committed. It shall also as far as may be apply to proceedings pending on that day.

2. The Laws mentioned in Schedule A to this Code and so much of any other Law as may be repugnant to or inconsistent with the provisions of this Code are hereby repealed. Laws repealed.

3. In this Code the following words and expressions are used in the following senses unless a different meaning appears from the context; Interpretation of terms.

§ "Circuit Court" shall mean a Circuit Court for any District in this Colony to be hereafter established and shall include the Witwatersrand High Court.

"Company" means an incorporated company.

"Justice" denotes a Justice of the Peace.

"Money" includes all coined money whether current in the Transvaal or not and all bank-notes bank-drafts cheques orders warrants or authorities for the payment of money.

† See Ord. No. 10 of 1903 sect. 1.

‡ See Ord. No. 10 of 1903 sect. 3.

**ORD.
No. 1
of
1903.**

“Offence” is an act or omission punishable by law.

“Peace officer” includes any Magistrate or Justice of the Peace the Sheriff Deputy Sheriff and any officer non-commissioned officer constable or trooper of the town police or of the South African Constabulary or any member of any other police force established in this Colony the keeper and guards of any prison inspector of natives pass officer and any person employed for the preservation and maintenance of the public peace or for the service or execution of civil process and any person specially required by any warrant lawfully issued by any Judge Magistrate or Justice of the Peace to perform any duty.

“Person” and “Owner” and other like terms when used with reference to property or acts include corporations of all kinds and any other associations of persons capable of owning or holding property or doing acts; they also when relating to property include His Majesty.

“Police officer” includes any officer non-commissioned officer constable or trooper of police.

“Property” includes everything animate or inanimate corporeal or incorporeal capable of being the subject of ownership.

“Public Service.” A person employed in the “public service” includes any person who is by law authorised or required to execute a particular duty towards the public whether he acts gratuitously or not whether he is paid by salary or fees and whether he exercises any other profession or follows any other calling besides the performance of his public duties.

“Summary conviction” means summary conviction before a Court of Resident Magistrate or other interior Court exercising summary jurisdiction.

“Superior Court” or “Court” means the Supreme Court the Witwatersrand High Court or any Circuit Court. Every other Court is an inferior Court.

“Valuable security” includes any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover or receive any property.

4. The jurisdiction of Courts of Justice with respect to the trial of persons accused of committing any offence is set forth in the laws relating to the constitution and jurisdiction of such Courts respectively.

Jurisdiction of Superior Courts.

5. The procedure upon the prosecution of offenders in order to their summary conviction and for enforcing summary convictions and orders made by inferior Courts upon such prosecutions is set forth in the laws relating to such Courts their powers and authorities.

Procedure in Inferior Courts.

CHAPTER II.

PUBLIC PROSECUTIONS.

6. The Attorney-General is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of the King all offences committed in or triable by the Courts of this Colony.

Attorney-General vested with right of prosecuting all crimes.

This right and power of prosecution in the Attorney-General is absolutely under his own management and control.

7. The Attorney-General may appear personally or by any other person appointed by him to conduct any prosecution or examination before any Court of this Colony.

Prosecution by Attorney-General in person or by duly appointed qualified substitute.

8. If through any cause whatsoever the person so appointed to conduct the prosecution before any Court is unable to act or in case no person shall have been appointed the Magistrate of the district in which such Court is held shall by writing under his hand appoint some fit and proper person to prosecute in such cases as shall be triable before such Court.

Magistrate may appoint Prosecutor in certain cases.

9. The Attorney-General may at any time before conviction stop all prosecutions commenced by him or by any other person

Attorney-General's power of stopping prosecutions

**ORD.
No. 1
of
1903.**

Power of ordering liberation of persons committed for further examination sentence or trial.

charged with the prosecution of criminal cases; but in the event of the accused having been already arraigned upon any charge he shall be entitled to a verdict of acquittal in respect of such charge.

10. The Attorney-General may unless he has been served with notice by some private person entitled to prosecute under the provisions of this Code that such person intends to prosecute in case the Attorney-General declines to do so order the liberation of any person committed to prison for further examination sentence or trial; for which liberation a writing setting forth that the Attorney-General sees no grounds for prosecuting such person and subscribed by him shall be a sufficient warrant.

Neither acquittal nor conviction a bar to civil action for damages.

11. Neither conviction nor acquittal following on any prosecution is a bar to a Civil action for damages at the instance of any person who may have suffered any injury from the commission of any alleged offence.

CHAPTER III.

PRIVATE PROSECUTIONS.

Private prosecution on refusal of Attorney-General to prosecute.

12. In all cases where the Attorney-General declines to prosecute for any alleged offence it shall be competent for any private party who can show some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually has suffered by the commission of any such alleged offence to prosecute in any Court competent to try the same the person alleged to have committed such offence.

What other persons entitled to prosecute.

13. The following persons also possess this right of prosecution;

- (a) a husband in respect of offences committed against his wife;
- (b) the legal guardians or curators of minors or lunatics in respect of offences committed against their wards;
- (c) the wife or children or where there is no wife or child any of the next of kin of any deceased person in respect of any offence by which the death of such person is alleged to have been caused.

14. Where in virtue of the right of prosecution hereinbefore given to private parties any private party desires to prosecute any person for whose liberation from prison any warrant has been issued by the Attorney-General for any offence it shall be competent for such private party to apply to the Supreme Court or in case such Court shall not then be sitting to any Judge thereof for a warrant for the further detention of such person and such Court or Judge shall make such order as to it or him seems right under the circumstances.

Private prosecutor must apply to Court for warrant.

**ORD.
No. 1
of
1903.**

15. It shall not be competent for any private party to obtain the process of any Court for summoning any party to answer any indictment unless such private party shall produce to the officer authorized by law to issue such process a copy of the charge or indictment having endorsed thereon a certificate signed by the Attorney-General that he has seen the charge or indictment and declines to prosecute at the public instance; and in every case in which the Attorney-General declines to prosecute he shall at the request of the party intending to prosecute grant the certificate above mentioned on every indictment submitted to him by such private party.

Certificate of Attorney-General that he declines to prosecute.

16. No private party shall take any proceedings by virtue of the powers conferred upon him by this Chapter until he shall;

Recognizances to be entered into by private prosecutor.

- (a) have entered into a recognizance in the sum of fifty pounds with two sufficient securities in the sum of twenty-five pounds each (to be approved by the Registrar of the said Supreme Court) to prosecute the charge against the accused to a conclusion without delay;
- (b) have given security in such amount and in such manner as the said Registrar may direct that he will pay the accused such costs incurred by him in respect of his defence to the charge as the Court before which the case is tried may order him to pay.

**ORD.
No. 1
of
1903.**

Mode of
conducting
private
prosecutions.

17. A private prosecution shall be proceeded with in the same manner as if such prosecution were being conducted at the public instance.

Power of
Magistrate
to stop
summary
prosecution
and necessity
for the
production
of certificate
in cases of
magnitude.

18. Where in the course of the proceedings in any summary prosecution at the instance of a private party it shall appear that the offence complained of is from its nature or magnitude one which ought not to be permitted to be prosecuted at the instance of the private party until the Attorney-General or other Officer who is lawfully entitled to prosecute at the public instance in such Court shall have exercised his discretion whether he will prosecute the offender at the public instance the Magistrate shall stop all further proceedings in such case until the party prosecuting shall produce to such Magistrate a certificate under the hand of and subscribed by the Attorney-General or such Officer as aforesaid that he has seen the complaint and declines to prosecute at the public instance for the offence therein set forth.

Competency
of Attorney-
General to
take up and
conduct
prosecution
at the public
instance in
all cases of
summary
private
prosecution.

19. In every case of any summary prosecution at the instance of a private party it shall be lawful and competent for the Attorney-General or other Officer who by law is entitled to prosecute at the public instance in such Court to apply by motion to the Magistrate to stop all further proceedings in such case in order that a prosecution for the same offence may be instituted at the public instance in some other form or Court; and such Magistrate shall in every such case be bound to make an order in the terms of such motion.

Costs of
private
prosecution.

20. Where a person prosecuted at the instance of a private party is acquitted the Court in which the prosecution was brought may adjudge the prosecutor to pay to the party prosecuted the whole or any part of the expenses including the costs both before and after committal which may have been occasioned to him by the prosecution.

CHAPTER IV.

PRESCRIPTION OF OFFENCES.

21. The right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other offence whether at the instance of the Public Prosecutor or of the private party injured shall unless some other period is expressly provided by law be barred by the lapse of twenty years from the time when the offence was committed.

Prosecution for murder not barred by lapse of time for other offences barred by lapse of 20 years.

**ORD.
No. 1
of
1903.**

CHAPTER V.

ARRESTS.

A.—*Without Warrant.*

22. It shall be lawful for any Judge of the Supreme Court or any Magistrate or Justice who has knowledge of any offence by seeing it committed himself to arrest the offender or by a verbal order to authorise others so to do who shall be authorised and required to follow such offender if he fly and to execute the said order on him out of the presence of such Judge of the Supreme Court Magistrate or Justice.

Arrest and verbal order to arrest for offences committed in the presence of Judges Magistrates and Justices of the Peace.

23. The Sheriff and his deputies the Commissioner of Police and his deputies and all Police Officers and other Peace Officers and other officers of the law proper for the execution of criminal warrants are hereby authorised and required to arrest without warrant every person who shall commit any offence in their presence; as also every person whom they shall have reasonable grounds to suspect of having committed any of the offences mentioned in Schedule B to this Code; as also every person whom they shall see engaged in committing any affray or whom they shall find attempting to commit an offence or clearly manifesting an intention so to do.

Arrest by Sheriff or Police Officer for offences committed in their presence and on reasonable grounds of suspicion as to certain offences.

24. Any peace officer may without any order or warrant arrest;

When peace officer may arrest without warrant.

(a) any person having in his possession any implement of house-breaking without lawful excuse the burden of proving which excuse shall lie on such person;

**ORD.
No. 1
of
1903.**

- (b) any person in whose possession anything is found which may reasonably be suspected to be stolen property or property dishonestly obtained and who may reasonably be suspected of having committed an offence with respect to such thing;
- (c) any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;
- (d) any person reasonably suspected of being a deserter from His Majesty's Army or Navy;
- (e) any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of this Colony which if committed in this Colony would have been punishable as an offence and for which he is under any law relating to extradition or under the Fugitive Offenders Act 1881 or otherwise liable to be apprehended or detained in custody in this Colony;
- (f) any person being or loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence.

Arrest by private person for certain offences committed in his presence.

25. Every private person in whose presence any of the offences mentioned in Schedule B to this Code is committed or attempted to be committed or who has knowledge that any such offence has been recently committed is authorised to arrest or forthwith to pursue the offenders; every other private person to whom the purpose of such pursuit shall be made known is authorised to join and assist in the same. And every private person who on such pursuit being made shall come up with any person having the property which has been stolen or otherwise unlawfully obtained in his possession or with any person whose traces have conducted his pursuers from the place where

the offence was committed to the place where he shall be overtaken is hereby authorised to arrest such person having such property stolen or otherwise unlawfully obtained in his possession or being traced as aforesaid.

26. Every private person is authorised to arrest any person whom he may see engaged in committing an affray in order to prevent such person from continuing the affray and to deliver him over to be dealt with according to law.

Arrest by private person in case of an affray.

27. Any person who finds another person by night committing any offence may arrest him without a warrant.

In case of offence committed by night.

28. The owner of any property on or in respect to which any person is found committing an offence or any person authorised by such owner may arrest without warrant the person so found.

Owners of property may arrest in certain cases.

29. It shall be lawful for any private person to arrest any other person upon reasonable suspicion that he has committed any of the offences specified in Schedule B to this Code; but every arrest or attempt to arrest made by any private person upon suspicion shall be made at his own peril in respect of any damages which may be claimed for wrongful arrest.

Arrest by private person for certain offences on reasonable suspicion but at his own peril.

30. Where any person may without warrant arrest another for committing an offence such person may also arrest without warrant any person who offers to sell pawn or deliver to him any property which on reasonable grounds he believes to have been acquired by such person by means of any such offence.

Arrest of persons offering stolen property for sale, &c.

B.—With Warrant.

31. It shall be lawful for any Judge of the Supreme Court or any Magistrate or Justice to grant a warrant for the apprehension of any person on a written application setting forth the offence alleged to have been committed and that from information taken upon oath there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought subscribed by the Attorney-General or by the Commissioner of Police or by the Public

Warrant of apprehension by Judge Magistrate or Justice.

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Prosecutor of the district; or upon the information to the like effect of any person made on oath before the Judge or Magistrate or Justice granting the warrant; provided always that it shall not be lawful for any Magistrate or Justice to grant any such warrant except when the offence charged has been committed within the jurisdiction of such Magistrate or Justice or except when the person against whom the warrant is issued shall at the time when such warrant is so issued be known or suspected on reasonable grounds to be within the jurisdiction of the Magistrate or Justice issuing such warrant. Every such warrant may be granted or issued on a Sunday as on any other day and shall remain in force until it is cancelled by the person who issued it or until it is executed.

Endorsement
of warrants.

32. Every Magistrate and every Justice on production to him of a warrant or summons or other process relating to any criminal matter issued by any other Magistrate or Justice is bound to grant his concurrence to it by an endorsement thereof after which the warrant summons or other process may be executed within the local limits of the jurisdiction of the Magistrate or Justice so endorsing it; provided always that whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Justice within the local limits of whose jurisdiction the warrant summons or other process is to be executed will prevent such execution the officer of the law to whom it is directed may execute the same without such endorsement in any place beyond such local limits.

Execution
of warrants.

33. Every officer of the law within this Colony proper for the execution of criminal warrants is hereby authorised and required to obey and execute every such warrant issued by any of the Judges of the Supreme Court: and every such officer of the law is hereby authorised and required to obey and execute every such warrant issued or endorsed by the Magistrate or any Justice of the district in which such officer of the law has been appointed to act; and every criminal warrant issued by any of the Judges of

the Supreme Court or any Magistrate or Justice shall have effect and when endorsed as in the last preceding section provided if such endorsement is necessary may lawfully be executed anywhere within the limits of the Colony by any officer of the law or by any private person to whom it shall be directed.

34. Every one duly authorised to execute a warrant to arrest who thereupon arrests a person believing in good faith and on reasonable and probable grounds that he is the person named in the warrant shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant. Every one called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant was issued and every gaoler who is required to receive and detain such person shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

Arresting
the wrong
person.

35. Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law and ignorance of the law shall in such case be an excuse; provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Irregular
warrant or
process.

36. Nothing in this Code shall take away or diminish any authority given by any law in force for the time being to arrest detain or put any restraint on any person.

Saving of
other powers
of arrest.

37. Every warrant issued as hereinbefore prescribed shall be to apprehend the person

Tenor of
warrant.

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described therein and to bring him before a Magistrate or Justice for examination. Every officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and if so required shall show him the warrant; when the arrest is made without warrant the person arrested shall likewise be notified of the cause of arrest.

C.—General.

Assistance
by private
persons
called on by
officers of
the law.

38. Every male inhabitant between the ages of sixteen and sixty when called upon by any officer of the law is authorised and required to assist such officer in making any arrest which by law such officer is authorised to make of any person charged with or suspected of the commission of any offence. And any such person who shall refuse without sufficient excuse to do so shall on conviction be liable to a fine not exceeding thirty pounds or to imprisonment for any period not exceeding three months.

Breaking
open of doors
after failure
in obtaining
admission
for the
purpose of
arrest or
search.

39. It shall be lawful for any peace officer or private person who shall by law be authorised or required to arrest any person known or suspected to have committed any offence for that purpose to break open the doors and windows of and to enter and search any house or place in which such person is known or suspected to be; provided always that such officer or other person as aforesaid shall have previously failed to obtain admission after having audibly demanded the same and notified the purpose for which he seeks to enter such house.

Arrest how
made.

40. In making an arrest the police or other peace officer or other person authorised to arrest shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

Resisting
arrest.

41. When any peace officer who by the provisions of this Code is authorised and required to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected of having committed any of the offences mentioned in Schedule B to this Code shall attempt to make such arrest and the person so attempted to be

arrested shall fly or resist and cannot be apprehended and prevented from escaping by other means than by such officer killing the person so flying or resisting such homicide shall be deemed in law justifiable homicide.

Nothing in this section shall give a right to cause the death of a person who is not accused of or suspected of having committed one of the offences mentioned in Schedule B to this Code the offence of theft being limited for the purposes of this section to theft in a dwelling-house between sunset and sunrise and theft of stock.

42. If a person in lawful custody escapes or is rescued the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in this Colony.

Power to retake on escape.

43. When any person is arrested under any of the provisions of this Code the person making the arrest shall with all convenient speed carry the prisoner before the nearest Magistrate or Justice within the district in which the arrest is made unless such arrest is made by virtue of a warrant in which the Magistrate or Justice before whom the prisoner is to be brought is named in which case the prisoner shall be brought before such Magistrate or Justice.

Prisoner to be carried before the Magistrate named in the warrant or if the warrant be general to the nearest Magistrate.

44. Whenever any person is arrested by a police officer under any of the provisions of this Code the officer making the arrest may search such person and place in safe custody all articles other than necessary wearing apparel found on him; whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.

Prisoner may be searched and his goods detained.

CHAPTER VI.

SEARCH WARRANTS, SEIZURE AND DETENTION OF PROPERTY CONNECTED WITH OFFENCES, CUSTODY OF WOMEN UNLAWFULLY DETAINED FOR IMMORAL PURPOSES.

45. If it appears to a Magistrate or Justice on complaint made on oath that there are reasonable grounds for suspecting that there is in any house tent vehicle vessel receptacle

Search warrants.

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or place within the jurisdiction of the Magistrate or Justice to whom the information is transmitted or before whom the information is made

- (a) stolen property or anything with respect to which any offence has been or is suspected on reasonable grounds to have been committed; or
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence;

he may issue his warrant directing a police officer or police officers named therein or all police officers to search such house tent vehicle vessel receptacle or place and to seize any such thing if found and to take it before a Magistrate to be dealt with according to law.

Any such warrant shall be executed by day unless the Justice or Magistrate by the warrant specially authorises it to be executed by night in which case it may be so executed. Such warrant may be issued and executed on Sunday as on any other day.

Search by
police with-
out warrant.

46. If a police officer above the rank of sergeant believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search he may himself search or by an order in writing direct some other police officer not below the rank of sergeant to search without warrant for any such thing as in the last preceding section mentioned and to seize such thing if found and take it before a Magistrate.

Such search must as far as possible be made in the day time and in the presence of two or more respectable inhabitants of the locality in which the search is made.

Property
found on
offenders on
arrest.

47. When on the arrest of any person on a charge of an offence relating to property the property in respect of which the offence is alleged to be committed is found in his possession the person arresting him may take such property before a Magistrate to be dealt with according to law.

48. If it shall appear from information on oath that any person is in possession of any book of account or document or any other thing whatsoever which is necessarily required in evidence in any criminal proceeding it shall be lawful for any Judge or Magistrate presiding at such proceeding to issue an order directing the officer to whom such order is addressed to take possession of such book or document or thing and to hand it over to such person as may be named in such order; and thereupon such officer may lawfully execute such order and any person who shall resist or hinder or shall aid incite or encourage any other person to resist or hinder such officer in executing the same shall upon conviction be liable to imprisonment with or without hard labour for any period not exceeding twelve months.

Judge or Magistrate may order seizure of books or documents in possession of accused in criminal proceedings.

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49. If any person finds in any place whatever or in the possession of any person who has the same without lawful authority or excuse

Seizure of counterfeit coin, etc.

- (a) any counterfeit coin or any forged bank-note or bank-note paper;
- (b) any tool instrument or machine adapted and intended for making any such counterfeit coin or forged bank-note or bank-note paper;
- (c) any filings or clippings of gold or silver or any gold or silver in bullion dust solution or any other state which may be suspected on reasonable grounds to have been obtained by dealing with any current gold or silver coin in such a manner as to diminish its weight;

the person who finds the same may seize the thing or things found and take the same forthwith before a Magistrate to be dealt with according to law.

50. When any thing is seized or taken under the provisions of this Code the person seizing or taking it is required forthwith to carry it before a Magistrate.

Disposal of property seized.

The Magistrate may cause the thing so seized or taken to be detained in such custody as he may direct taking reasonable care for its preservation until the conclusion

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of any investigation that may be held in respect to it; and if any person is committed for trial for any offence committed with respect to the thing so seized or taken or committed under such circumstances that the thing so seized or taken is likely to afford evidence at the trial he may cause it to be further detained in like manner for the purpose of being produced in evidence at such trial.

Whenever property is seized under this section marks of identification when practicable should be placed thereon by the person seizing the same at the time of seizure or as soon thereafter as can conveniently be done.

If no person is so committed the Magistrate is required to direct that the thing be returned to the person from whose possession it was taken unless he is authorised or required by law to dispose of it otherwise.

If the thing so seized or taken is anything forged or counterfeit or is of such a nature that a person who has it in his possession without lawful authority or excuse is guilty of an offence then if any person is committed for trial for any offence committed with respect to it or committed under such circumstances as aforesaid and is convicted the Court before which he is convicted or in any other case any Judge or Magistrate may cause it to be defaced or destroyed or if of any value sent to the Colonial Treasurer as soon as it appears that it will not be required or further required in evidence against the person who had it in his possession.

Offensive
weapons
seized under
search war-
rants.

51. If any offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the Magistrate directs unless the owner thereof proves to the satisfaction of such Magistrate that such offensive weapons were not kept for any purpose dangerous to the public peace and any person from whom any such offensive weapons are so taken may if the Magistrate upon whose warrant the same were seized upon application made for that purpose refuses to restore the same apply

to a Judge of the Supreme Court for the restitution of such offensive weapons upon giving ten days' notice of such application to such Magistrate and such Judge shall make such order for the restoration or safe custody of such offensive weapons as upon such application appears to him to be proper.

52. If goods or things in respect or by means of which it is suspected that an offence relating to the forgery of trade marks or fraudulent marking of merchandise has been committed are seized under a search warrant and brought before a Magistrate such Magistrate shall determine summarily whether the same are not forfeited under the laws relating to the forgery of trade marks or fraudulent marking of merchandise; and if the owner of any goods or things which if the owner thereof had been convicted would be forfeited under the aforesaid laws is unknown or cannot be found an information or complaint may be laid for the purpose only of enforcing such forfeiture and the said Magistrate may cause notice to be advertised stating that unless cause is shewn to the contrary at the time and place named in the notice such goods or things will be declared forfeited; and at such time and place the Magistrate unless the owner or any person on his behalf or other person interested in the goods or things shows cause to the contrary may declare such goods or things or any of them forfeited.

53. If it appears to a Magistrate on complaint made on oath by a parent husband relative or guardian of a woman or girl or any other person who in the opinion of the Magistrate is acting in good faith in the interest of a woman or girl that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within his jurisdiction he may issue a warrant directed to a police officer and authorising him to search for such woman or girl and when found to take her to and detain her in a place of safety until she can be brought before a Magistrate; and

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Forfeiture of goods bearing forged trade or false merchandise marks.

Women detained for immoral purposes.

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the Magistrate before whom she is brought may cause her to be delivered up to her parents husband relatives or guardians or otherwise dealt with as the circumstances may permit and require.

The Magistrate issuing the warrant may by warrant direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other Magistrate having jurisdiction and may direct proceedings to be taken for punishing him according to law.

A woman or girl is deemed to be unlawfully detained for immoral purposes if she

- (a) being under the age of sixteen years is so detained ; or
- (b) being of or over the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or husband or of any other person who has the lawful care or charge of her ; or
- (c) being of or above the age of eighteen years is so detained against her will ;

and in any such case is detained by any person in order to her being unlawfully carnally known by any man whether a particular man or not.

A person authorised by warrant under this section to search for a woman or girl may enter if need be by force any house or other place specified in the warrant and may remove the woman or girl therefrom.

The warrant must be executed by the police officer mentioned in it who must unless the Magistrate otherwise directs be accompanied by the parent husband relative guardian or other person by whom the complaint is made if such person so desires.

CHAPTER VII.

PREPARATORY EXAMINATIONS.

Preparatory
examination.

54. Any person charged with the prosecution of criminal cases on receiving information of any offence having been committed within his district (unless it shall plainly appear to be proper for the cognizance of a Court of summary jurisdiction) shall apply

for a summons for the attendance of or for a warrant for the apprehension of any person who from information upon oath may be reasonably suspected of having committed the said offence unless such person is already in custody or has been summoned to appear to undergo a preparatory examination before the same or some other Magistrate. Upon such application the Magistrate may if he thinks fit issue his warrant to apprehend the person charged or proceed by summons and issue a summons against him; provided that notwithstanding the issue of a summons a Magistrate may issue his warrant at any time either before or after the time mentioned in the summons for the appearance of the accused.

55. When the accused is summoned the summons shall be issued by a Magistrate and shall be directed to the accused and shall state shortly the matter of complaint and shall require him to appear at a time and place to be therein mentioned. No summons shall be signed in blank.

Contents of
summons.

Every summons shall be served by the person authorised to serve criminal process in the Magistrate's Court or other duly authorised person upon the person to whom it is directed either by delivering it to him personally or if such person cannot conveniently be met with by leaving it for him at his place of business or most usual or last known place of abode with some inmate thereof.

The service of any such summons may be proved by the testimony upon oath of the person effecting the same or by the affidavit of such person purporting to be made before a Magistrate or Justice or by due return of service under his hand.

56. When the accused is before a Magistrate having jurisdiction whether voluntarily or upon summons or after being apprehended with or without a warrant or while in custody for the offence of which he is accused or any other offence the person charged with the prosecution of criminal cases shall institute a preparatory examination before the Magistrate and the Magis-

Inquiry by
Magistrate.

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Proceedings when accused is insane.

Irregularities not to affect the proceedings.

The Magistrate may adjourn the case.

Magistrate may summon witnesses.

Summons how served.

Warrant to be issued when witness fails to attend.

trate shall proceed to enquire into the matters charged against such person in the manner hereinafter defined.

57. If at the commencement or during the course of a preparatory examination the accused appears to be insane the Magistrate holding the enquiry shall proceed in the manner laid down in Part II. of The Lunacy Proclamation 1902.

58. No irregularity or defect in the substance or form of the summons or warrant or in the manner of arrest and no variance between the charge contained in the summons or warrant and the charge contained in the information or between either and the evidence adduced on the part of the prosecution at the enquiry shall affect the validity of any proceeding at or subsequent to the hearing.

59. If it appears to the Magistrate that the accused has been deceived or misled by any such variance in any summons or warrant he may adjourn the hearing of the case to some future day and in the meantime may remand such person or admit him to bail as hereinafter mentioned.

60. If it appears to the Magistrate that any person being or residing in this Colony is likely to give material evidence on such inquiry either for the prosecution or for the accused he may whether requested by the parties or not issue a summons under his hand requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge and to bring with him any document or thing in his possession or under his control relating to or necessary or considered desirable for the purpose of investigating such charge.

If the Magistrate when requested deems it unnecessary or useless to issue such process he shall decline to do so recording his reasons.

61. Every such summons shall be served in the manner provided in section *fifty-five*.

62. If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby and no just excuse is offered for

such non-appearance then (after proof upon oath that such summons has been served as aforesaid or that the person to whom the summons is directed is evading service) the Magistrate before whom such person ought to have appeared being satisfied by proof on oath that he is likely to give material evidence may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other Magistrate to testify as aforesaid.

Such warrant may be executed anywhere within the local limits of the jurisdiction of the Magistrate by whom it is issued or if necessary endorsed as provided in section *thirty-two* and executed anywhere in this Colony.

If a person summoned as a witness under the provisions of this part of this Code is brought before a Magistrate on a warrant issued in consequence of refusal to obey the summons such person may be detained on such warrant before the Magistrate who issued the warrant or in the prison or lock-up or any other place of confinement or in the custody of the person having him in charge with the view to secure his presence as a witness on the day fixed for the examination or in the discretion of the Magistrate such person may be released on recognizance with or without sureties conditioned for his appearance to give evidence as therein mentioned and to answer for his default in not attending upon the said summons as for contempt and the Magistrate may in a summary manner examine into and dispose of the charge of contempt against such person who if found guilty thereof may be fined or imprisoned or both such fine not to exceed twenty-five pounds and such imprisonment to be without hard labour and not to exceed the term of one month and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody. Any person fined or imprisoned under this section shall have the right of appeal as in the case of a summary conviction.

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Tender of witness' expenses not necessary.

Witness refusing to be examined or to produce may be committed.

63. No prepayment or tender of expenses to witnesses shall be necessary in the case of inquiries into and trials of offences under this Code.

64. Whenever any person appearing either in obedience to a summons or by virtue of a warrant or being present and being verbally required by the Magistrate to give evidence refuses to be sworn or having been sworn refuses to answer such questions as are put to him or refuses or neglects to produce any document or thing which he is required to produce without in any such case offering any just excuse for such refusal such Magistrate may adjourn the proceedings for any period not exceeding eight clear days and may in the meantime by warrant commit the person so refusing to prison unless he sooner consents to do what is required of him. If such person upon being brought up upon such adjourned hearing again refuses to do what is so required of him the Magistrate if he sees fit may again adjourn the proceedings and commit him for the like period and so again from time to time until such person consents to do what is required of him.

Nothing in this section shall prevent such Magistrate from sending any case for trial or otherwise disposing of the same in the meantime according to any other sufficient evidence taken by him.

No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the summons unless he actually has it in Court.

When a trial in an inferior Court should be stopped and a preparatory examination should be instituted.

65. When in the course of any trial in any inferior Court it shall appear that the offence under trial is from its nature or magnitude only subject to the jurisdiction or more proper for the cognizance of a superior Court then the Magistrate before whom such inferior Court is held shall either of his own motion or on the application of the Public Prosecutor for the district stop the trial of the person accused and the proceedings shall thereupon be those of a preparatory examination. It shall not be necessary for the Magistrate to recall any witness who has already given

evidence at the trial but the Magistrate's record of the evidence so given certified by him to be correct shall for all purposes whatsoever have the same force and effect and shall be receivable in evidence in the same circumstances as the depositions made in the course of a preparatory examination in the manner provided in the next succeeding section; provided that as often as it shall appear to the Magistrate himself or be made to appear to him either by the prosecutor or by the accused that the ends of justice might be served by having a witness already examined recalled for further examination then such witness shall be summoned and examined accordingly. The examinations so taken shall be recorded in the manner hereinafter directed as to other examinations.

66. All preparatory examinations shall except when an oath is by law dispensed with be taken upon oath and every witness before giving his evidence shall make oath before the Magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth the whole truth and nothing but the truth and each witness shall be examined apart from the others. The depositions shall be taken down in writing in the presence of the accused or if taken in his absence shall be afterwards read over to him in the presence of the witnesses making the same whom he shall be entitled to cross-examine; and in such case the prosecutor may re-examine them and such depositions shall be signed by the Magistrate and by the witnesses and in case of their incapacity or refusal then the same shall be signed by two persons in whose presence the same were taken.

67. The deposition of any witness taken upon oath before any Magistrate in the manner directed and required by the last preceding section in the presence of any person who has been brought before such Magistrate on a charge of having committed any offence shall be admissible in evidence on the trial of any such person for such offence or for any offence for which he may be indicted by the Attorney-General

Evidence on oath at preparatory examinations.

Admissibility in criminal cases of depositions at preparatory examination of witness since deceased or kept away by the contrivance of the prisoner.

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on the preparatory examination; provided it shall be proved on oath to the satisfaction of the Court that the deponent is dead or is incapable of giving evidence or that he is too ill to attend or that he is kept away from the trial by the means and contrivance of the prisoner and that the deposition offered in evidence is the same which was sworn before the Magistrate without any alteration; provided always that it shall appear on the record or be proved to the satisfaction of the Court that the person accused by himself his counsel attorney or agent had a full opportunity of cross-examining the witness. The evidence of a witness given at a former trial shall under like circumstances be admissible on any subsequent trial upon the same charge.

Where the witness cannot be found after diligent search or cannot be compelled to attend the Court may in its discretion allow his depositions to be read as evidence at the trial subject to the conditions hereinbefore mentioned.

Recognizance of witness to appear on trial.

68. Every Magistrate before whom any preparatory examination is taken may lawfully require any witness either alone or together with one or more sufficient sureties to the satisfaction of the said Magistrate to enter into a recognizance under condition that the said witness shall at any time within twelve months from the date thereof appear and give evidence at the trial of the said case upon being served with a summons at some certain place to be selected by such witness; and if any witness being so required to enter into any such recognizance shall refuse or fail so to do it shall be lawful for the said Magistrate to commit and detain in prison the witness so refusing or failing until such recognizance shall have been entered into as aforesaid.

• Every recognizance so entered into shall specify the name and surname of the person entering into it his occupation or profession if any the place of his residence and the name and number if any of the street in which it may be and whether he is owner or tenant thereof or a lodger therein.

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All such recognizances shall be liable to be estreated in the same manner as any forfeited recognizance is by law liable to be estreated by the Court before which the principal party thereto was bound to appear.

69. Whenever any person is bound by recognizance to give evidence or is likely to give material evidence before a Magistrate or any Criminal Court in respect of any offence any Magistrate or Judge of the Supreme Court if he sees fit upon information being made in writing and on oath that such person is about to abscond or has absconded may issue his warrant for the arrest of such person; and if such person is arrested any Magistrate or Judge upon being satisfied that the ends of justice would otherwise be defeated may commit such person to prison until the time at which he is required to give evidence unless in the meantime he produce sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

Absconding witness may be arrested.

70. Any witness who refuses to enter into any such recognizance as aforesaid may be committed by the Magistrate holding the examination by warrant to the prison for the place where the trial is to be held there to be kept until after the trial or until the witness enters into such a recognizance as aforesaid before a Magistrate having jurisdiction in the place where the prison is situated; provided that if the accused is afterwards discharged any Magistrate having jurisdiction shall order such witness to be discharged.

Witness refusing to enter into recognizance.

71. After the examination of the witnesses in support of the charge in the presence of the accused the Magistrate shall ask the said accused what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement but that what he shall say may be used in evidence against him. The accused may then or at any later stage of the proceedings make any statement or statements which shall be taken down in writing in so far as the

Accused at the close of examination in support of the charge to be cautioned that he is not obliged to make any statement criminating himself.

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same may be relevant to the charge and the same after being read over to him shall be subscribed by him if he will subscribe the same and also by the Magistrate and shall be received in evidence before any Court or tribunal upon its mere production without further proof thereof unless it shall be proved that such statement was not in fact duly made or that the signatures or marks thereto are not in fact the signature or marks of the persons whose signatures or marks they purport to be. After the accused's statement (if any) has been made as aforesaid he may call and examine witnesses in his defence.

Nothing in this section contained shall prevent the Magistrate receiving further evidence for the prosecution after hearing any evidence given on behalf of the accused or re-opening the examination.

Admissions may be given in evidence.

72. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession or other statement made at any time by the accused which by law would be admissible against him.

If accused at preparatory examination admits previous conviction his admission to be reduced to writing.

73. As often as it shall appear at any preparatory examination that the accused has been previously convicted of some crime or offence the presiding Magistrate shall inform the accused of the particulars of such alleged previous conviction and shall call upon him to admit or deny that he was so previously convicted and if the accused shall admit that he was so previously convicted his admission shall be reduced to writing and subscribed by him and also by the Magistrate; and any such written admission purporting to be so made and subscribed shall be received in evidence as proof of such previous conviction before any Court or tribunal upon its mere production unless it shall be proved that such admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the persons whose signatures or marks they purport to be.

74. When all the witnesses on the part of the prosecution and the accused have been heard the Magistrate shall if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial discharge him; and in such case any recognizances taken in respect of the charge shall become void unless within twenty-one days the Attorney-General shall as hereinafter provided order that the accused be committed for trial or that a further examination shall take place.

Discharge of accused when no sufficient case is made out.

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Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if for reasons to be recorded by such Magistrate he considers the charge to be groundless.

75. When there shall appear to any Magistrate sufficient grounds for putting any person brought before him on trial for any offence the Magistrate shall grant a warrant to commit him to the prison of the district there to be detained till brought to trial for the said offence or till liberated in due course of law; which warrant shall clearly express the offence with which the prisoner is charged.

Committal of accused for trial.

A Magistrate may make an order of committal or discharge although part of the examination has been taken by another Magistrate and he has not been present during the whole time during which the examination has been taken.

76. (1) Except when the charge is one of high treason or murder if the accused person in any of his statements referred to in section *seventy-one* says that he is guilty of the charge then the Magistrate shall further say to him the words following or words to the like effect:—"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not you will now be committed for sentence instead of being committed for trial and you will not afterwards be allowed to deny your guilt."

Proceedings on admission of guilt.

(2) If the accused in answer to such question as aforesaid shall state that he does not wish the witnesses again to appear

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to give evidence against him his statement shall be taken down in writing and read to him and shall be signed by the Magistrate and by the accused and shall be kept with the depositions of the witnesses and sent to the Attorney-General.

†(3) In any such case as is mentioned in the last preceding sub-section the Magistrate shall instead of committing the accused for trial order him to be committed for sentence before some Court of competent jurisdiction as the Attorney-General may determine and in the meantime the Magistrate shall by his warrant¹ commit him to prison to be there safely kept until the sittings² of that Court or until he is admitted to bail or delivered by due course of law.

Admission to be received as evidence on mere production.

77. The statement of the accused made under the last preceding section shall be received in evidence upon its mere production without further proof thereof by the Court before which he is brought for sentence.

When offence committed on the boundaries of districts or on a journey or on a railway.

78. (1) Where an offence is committed on the boundary or boundaries of two or more magisterial districts or within the distance of two miles of any such boundary or boundaries the preparatory examination may be held in any of the said districts.

(2) Where an offence is committed on any person or in respect of any property in or upon any vehicle whatever employed on any journey or on board any vessel whatever employed on any voyage or journey upon any river within or forming the boundary of any part of this Colony the preparatory examination may be held in any magisterial district through any part whereof or on or within the distance of two miles of the boundary whereof such coach cart wagon cart carriage or vessel has passed in the course of the journey or voyage during which such offence was committed.

(3) Where an offence is committed on any person or in respect of any property upon any line of railway the preparatory examination may be held in any magisterial district in or through any part whereof such line of railway passes.

† See Rules of Court for Criminal Procedure; Government Notice No. 275 of 1903 *Gazette* (27th March 1903) p. 538.

79. (1) Where a person is charged with committing any offence the preparatory examination may be held in any magisterial district within which the offence was committed or within which any act or omission or event which is an element of the offence has taken place or in which the accused was arrested or is in custody.

Districts in which preparatory examination may be held.

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(2) Where a person is charged with stealing or obtaining by any offence any property the preparatory examination may be held in any magisterial district within which any part of the property so stolen or obtained by any such offence is found in his possession.

(3) Where a person is charged with an offence which involves the receiving of any property by him the preparatory examination may be held in any magisterial district within which he has any part of the property in his possession.

(4) Where a person is charged with counselling or procuring the commission of an offence or with becoming an accessory after the fact to an offence the preparatory examination may be held in any magisterial district within which the preparatory examination in the case of the principal offender might be held.

(5) Where a person is charged with kidnapping child-stealing or abduction the preparatory examination may be held in the magisterial district in which the kidnapping child-stealing or abduction took place or in any magisterial district through or in which he conveyed or concealed or detained the person kidnapped stolen or abducted.

(6) In special cases not falling within any of the preceding provisions the Attorney-General may authorise the preparatory examination to be held in any other magisterial district.

(7) In case of any doubt or dispute as to the magisterial district in which a preparatory examination should be held or of an objection on the part of the accused to the holding of such examination in any particular district the matter shall be referred to the Attorney-General whose decision shall be final.

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Committal
by Magistrate
if the offence
be committed
in other
than his own
district.

80. In every case in which any person charged with any crime or offence shall be summoned or arrested and brought before any Magistrate of any district other than that in which such crime or offence is alleged to have been committed and where such Magistrate shall see cause to commit such person for trial or sentence or further examination it shall be lawful for such Magistrate to grant a warrant to commit such person either to the prison of the district in which the offence is alleged to have been committed or to the prison of the district within which such Magistrate has jurisdiction to act.

Removal of
prisoner from
prison of
one district
to that of
another.

81. The Magistrate of any district shall on an application to that effect signed by the Attorney-General grant a warrant for the removal of any person detained in virtue of any legal warrant within the prison of such district on any criminal charge to the prison of any other district specified in such application therein to be detained for further examination trial or sentence or until liberated or removed therefrom in due course of law.

Committal
for further
examination.

82. Where sufficient grounds do not appear for at once committing the prisoner for trial or for discharging him and there shall appear to the Magistrate probability that further evidence may be produced the Magistrate may grant a warrant for committing him for a period not exceeding eight days for further examination. Such committal for further examination may if necessary take place more than once upon sufficient cause appearing to the Magistrate which cause shall be expressed in the warrant of recommitment; and every warrant of commitment for examination shall specify the time when the prisoner is again to be brought before the Magistrate for examination; provided however that the Magistrate may with the consent of the accused proceed with the examination before the expiration of the period mentioned in such warrant.

Discretion-
ary powers of
the Magis-
trate.

83. A Magistrate holding a preparatory examination may
(a) change the place of hearing of the matter to any other place within his

jurisdiction if through the inability from illness or other cause of the accused or a witness to attend at the place where the Magistrate usually sits or from any other reasonable cause it appears desirable to do so and may adjourn the examination for that purpose;

- (b) order that no person other than the prosecutor and accused their Counsel Attorney or Agent shall have access to or remain in the room or building in which the examination is held (which shall not be an open Court) if it appears to him that the ends of justice or the interests of public morality will be best served by so doing;
- (c) regulate the course of the inquiry in any way which may appear to him desirable and which is not inconsistent with the provisions of this Code or of any other law.

84. Until the warrant for commitment for trial or sentence is made out no prisoner can insist on being admitted to bail; but except when the crime is murder or high treason it is in the discretion of the Magistrate to admit a prisoner to bail before the preparatory examination is concluded.

Bail before conclusion of examination in the Magistrate's discretion.

If the accused person when admitted to bail before he is committed for trial or sentence does not appear at the time and place mentioned in the recognizance then the Magistrate may declare such recognizance forfeited adjourn the examination and issue a warrant for his apprehension as hereinbefore provided.

85. It is the duty of the person charged with the prosecution or the Magistrate who conducts the preparatory examination to make or cause to be made any local inspections which the particular circumstances of the case may render necessary; and in cases of homicide or of serious injury to the person of any individual to cause the dead body or the person injured to be examined by a regularly admitted medical practitioner if any such can be procured and if not then by the best qualified person or persons obtainable who shall draw up

The prosecutor or Magistrate conducting preparatory examination to make local inspection and to cause *post mortem* and other examinations to be made.

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All articles to be used in evidence on the trial to be labelled for identification and to be kept in safe custody.

Records of preparatory examination to be sent to Attorney-General.

Powers of Attorney-General.

and subscribe a written statement of the appearances and facts observed on such examination.

86. The Magistrate conducting the preparatory examination shall cause all writings and other articles exhibited by the witnesses in the course of the preparatory examination and likely to be used in evidence on the prisoner's trial to be inventoried and labelled or otherwise marked in the presence of the person producing the same so that they may be capable of being identified at the prisoner's trial and shall cause the same to be kept in safe custody until the trial and to be then produced.

87. Where any preparatory examination has been held by any Magistrate such Magistrate shall forward a copy of the record of such examination to the Attorney-General for his consideration.

88. After considering the preparatory examination submitted to him the Attorney-General may

- (a) order that the accused (if in prison) be forthwith liberated unless he has received notice from some person entitled to commence a private prosecution against the accused for the offence charged that such person intends to institute such a prosecution;
- (b) in cases in which the Magistrate has discharged the accused order that the accused be committed for trial if in his opinion the accused ought to have been so committed. The Attorney-General may also order the committal for trial of the accused for any offence disclosed by the evidence taken at the preparatory examination;
- (c) remit the case to be tried by the Magistrate under his ordinary jurisdiction;
- (d) remit the case to be dealt with by the Magistrate under the jurisdiction conferred by section *ninety*; or
- (e) remit any person committed for sentence under section *seventy-six* to be dealt with by the Magistrate either under his ordinary jurisdiction or under that conferred by section *ninety*;

- (f) order that a further examination of the accused take place; or
 (g) take such measures and give such directions for the trial of the prisoner before such competent Court as he may deem most expedient.

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89. Cases remitted under the provision of the last preceding section shall be proceeded with in like manner in all respects as if no preparatory examination had been previously taken in such cases save that when the Magistrate who shall try any such case shall be himself the person before whom the preparatory examination was taken it shall not be imperative upon him to recall any witness who formerly gave evidence in the presence of such Magistrate and of the accused but it shall be competent and sufficient to read as evidence the deposition of such witness; provided that except as in sections *ninety-five* and *two hundred and ten* provided no deposition of any witness not previously examined in the presence of both such Magistrate and such accused shall be read or used at the subsequent trial but such witness if a necessary one shall be again summoned and be examined in like manner as if he had not been before examined in the case; and provided also that as often as it shall appear to such Magistrate himself or be made to appear to him by either the prosecutor or accused that the ends of justice might be served by having a witness formerly examined in the presence of such Magistrate and of the accused summoned again for further examination then such witness shall be summoned and examined accordingly.

Procedure on remittal.

90. If an accused person whose case shall have been remitted under the provisions of section *eighty-eight* to be dealt with under this section be convicted the Magistrate may sentence him to a fine not exceeding one hundred and fifty pounds or to imprisonment with or without hard labour for any period not exceeding one year or to whipping when such punishment can by law be inflicted for the offence in any number of strokes not exceeding twenty-five or to both such fine and such imprisonment

Punishment.

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Powers of
Supreme
Court to
review.

Accused to
be committed
for trial by
an inferior
Court before
trial in
Superior
Court.

or to such imprisonment and such whipping : provided that whipping shall not except when specially imposed by law for a first offence be inflicted except in the case of a second or subsequent conviction of some offence within the space of three years.

91. The provisions of sections *thirty-nine* to *forty-three* of The Magistrates' Court Proclamation 1902 shall extend and apply to all cases remitted to Magistrates' Courts under section *eighty-eight* of this Code to be dealt with under the last preceding section.

92. No person shall be tried in any Superior Court for any offence unless he shall have been previously committed for trial by some competent Court or Magistrate or by order of the Attorney-General under the powers conferred upon him by clause (b) of section *eighty-eight* for or in respect of the offence charged in such indictment; provided always that nothing herein contained shall be construed so as to deprive the Supreme Court or any Judge thereof of any power which such Court or Judge may by Law possess to direct upon the application of any party interested any Magistrate to take a preparatory examination or to order any person to be committed for trial whether any preparatory examination shall have been taken against such person or not; and provided that any accused shall be deemed and taken to have been committed for trial for or in respect of the offence charged in such indictment as often as the depositions taken before the committing Magistrate shall contain an allegation of any fact or facts upon which the accused might have been committed upon the charge named in the indictment although the committing Magistrate may when committing the accused upon such depositions have committed him for some offence other than that charged in the indictment or for some other offence not known to the Law of this Colony; provided also that any accused who shall be in actual custody when brought to trial or who shall appear to take his trial in pursuance of any recognizance entered into before any Magistrate shall be

deemed and taken to have been duly committed for trial upon the charge stated in the indictment unless he shall prove the contrary.

93. Every person who shall be held to bail or committed to prison for any offence shall be entitled to require and have within a reasonable time in that behalf from the person who shall have the lawful custody thereof and who is hereby required to deliver the same a copy of the depositions of the witnesses respectively upon whose depositions he has been so held to bail or committed to prison and of his own statement on payment of a reasonable sum not exceeding ninepence for each folio of one hundred words; provided that if such demand shall not be made before the day appointed for the commencement of the trial of the person on whose behalf such demand shall be made such person shall not be entitled to have any such copy as aforesaid unless the Judge presiding at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to the trial; but it shall nevertheless be competent for such Judge if he shall think fit to postpone such trial on account of such copy not having been previously had by the accused.

94. Every person under trial shall be entitled at the time of the trial to inspect without fee or reward all depositions (or copies thereof) which have been taken and the statement made at the preliminary examination of such person.

95. If it is proved that the accused has absconded and that there is no immediate prospect of arresting him the Court or Magistrate competent to try or commit for trial such person for the offence complained of may on the instruction of the Attorney-General in the absence of the accused examine the witnesses (if any) produced on behalf of the prosecution and record their depositions. On the arrest of the accused any such deposition may with the permission of the Court be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the

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Persons bailed or committed to prison entitled to receive copy of depositions of witnesses.

Persons under trial may inspect depositions without charge at trial.

Record of evidence in absence of accused.

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deponent is dead too ill to attend or after diligent search cannot be found or from any other cause is incapable of giving evidence or is kept away from the trial by the contrivance of the accused.

True copy of warrant of commitment to be furnished to prisoner under a penalty of £50.

96. In every case where a person is committed for trial or sentence he shall be entitled to demand a true copy of the warrant under the hand of the officer the bearer thereof or keeper of the prison in which he is imprisoned who shall be liable to a penalty not exceeding fifty pounds if he refuse to give it within six hours after it is demanded by the prisoner or his agent.

CHAPTER VIII.

BAIL.

Bailable offences.

97. Every prisoner committed for trial in respect of any offence except treason or murder is entitled as soon as the warrant of commitment for trial or sentence is made out to be admitted to bail.

Verbal application at the time of commitment to be admitted to bail.

98. It shall be competent for the prisoner at the time of the commitment to apply verbally to the Magistrate or Judge granting the warrant of commitment to be immediately liberated on bail.

After commitment application to be made in writing to the Magistrate who granted the warrant or the Magistrate of the district or any Judge of the Supreme Court.

99. At any period subsequent to the time of commitment it shall be competent for the prisoner to apply by writing to the Magistrate or Judge who granted the warrant of commitment or to the Magistrate within whose district he is imprisoned or to the Supreme Court or to any Judge thereof to be admitted to bail. But when the commitment is on a warrant issued by the Supreme Court or any Judge thereof it shall only be competent to apply for bail to the said Supreme Court or to one of the Judges thereof. Every such written application for bail shall be in form of a petition and shall be accompanied by a copy of the warrant of commitment or affidavit that a copy is denied.

100. Every Magistrate to whom an application for bail is made shall within twenty-four hours after such application if the offence is bailable by him fix the amount of the bail to be given and failing to do so shall be liable in the penalty of a sum not exceeding one hundred pounds.

In determining whether the offence for which the prisoner has been committed is bailable or not by the Magistrate he shall in the ordinary case take the charge against the prisoner as he finds it on the face of the warrant of commitment.

101. The Supreme Court has power at any stage of the proceedings to admit to bail in all cases whatever whether capital or not.

102. In cases where a doubt may arise concerning the degree and quality of the offence from the uncertain issue in the case of an injury of which it cannot be foretold whether the person injured shall die or recover every Judge or Magistrate to whom application for bail is made may refuse to grant the same until all hazard of the life of the person injured be at an end.

103. The amount of the bail to be taken in each case shall be at the discretion of the Judge or Magistrate to whom the application to be admitted to bail shall be made; provided that no person shall be required to give excessive bail.

104. Whenever a prisoner considers himself aggrieved by the refusal of any Magistrate to admit him to bail or by such Magistrate having required excessive bail it shall be competent to such prisoner to apply to the Supreme Court; or in case such Court shall not then be sitting to any of the Judges thereof who shall make such order thereon as to it or him in the circumstances of the case shall seem just.

105. The recognizance shall be taken by the Court Judge or Magistrate either from the prisoner alone or from the prisoner and one or more sureties at the discretion of the Court Judge or Magistrate according to the nature and circumstances of the case and the conditions of such recognizance shall be that the prisoner shall appear and

Magistrate to determine whether the offence is bailable and notify the bail in twenty-four hours.

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Power of Supreme Court to admit to bail.

Refusal of bail from the uncertain issue of the act committed.

Excessive bail not to be required.

Prisoner aggrieved may apply to the Supreme Court.

Condition of recognizance that the prisoner shall appear to answer to an indictment at any time within twelve months and

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that he will accept service at some certain place by him elected.

undergo any further examination which the Magistrate or Attorney-General may consider desirable and also answer to any indictment or charge that shall be presented or made against him in any competent Court for the offence wherewith he is charged at any time within the space of twelve months from the date thereof that he will also attend during the hearing of the case and to receive sentence; and that he will accept service of any summons to undergo further examination and any such indictment notice of trial and summons thereon at some certain and convenient place within this Colony by him elected and therein expressed. The recognizance shall continue in force notwithstanding any disagreement of the jury.

Accused may be required to find further sureties.

† 106. If through mistake fraud or otherwise insufficient sureties have been accepted or if they afterwards become insufficient the Court Judge or Magistrate granting the bail may issue a warrant of arrest directing that the person released on bail be brought before it or him and may order him to find sufficient sureties and on his failing so to do may commit him to prison.

Discharge of sureties.

107. (1) All or any sureties for the attendance and appearance of a person charged with any offence and released on bail may at any time apply to the Court Judge or Magistrate before whom the recognizance was entered into to discharge the recognizance either wholly or so far as relates to the applicants.

(2) On such application being made the Court Judge or Magistrate shall issue a warrant of arrest directing that the person so released be brought before it or him.

(3) On the appearance of such person pursuant to the warrant or on his voluntary surrender the Court Judge or Magistrate shall direct the recognizance to be discharged either wholly or so far as relates to the applicants and shall call upon such person to find other sufficient sureties and if he fails to do so may commit him to prison.

Render in Court.

108. The sureties may bring the person charged and released on bail as aforesaid into the Court at which he is bound to

† Sections 106 to 110 inclusive and section 113 are applied *mutatis mutandis* to bail allowed by Magistrates trying persons summarily (see Ordinance No. 15 of 1903 section 4).

appear during the sitting thereof and then by leave of the Court render him in discharge of such recognizance at any time before sentence and such person shall be committed to prison there to remain until discharged by due course of law; but such Court may admit such person to bail for his appearance at any time it deems meet.

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109. The arraignment and conviction of any person charged and released on bail as aforesaid shall not discharge the recognizance but the same shall be effectual for his appearance during the trial and until sentence is passed or he is discharged; nevertheless the Court may commit such person to prison upon his arraignment or trial or may require new or additional securities for his appearance for trial or sentence as the case may be notwithstanding such recognizance; and such commitment shall be a discharge of the sureties.

Sureties not discharged until sentence or discharge of prisoner.

110. Whenever a person charged with any offence has been released on bail under any of the provisions of this Code it shall be lawful for any Judge or Magistrate if he sees fit upon the application of any police officer and upon information being made in writing and upon oath by such officer or by some person on his behalf that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice to issue his warrant for the arrest of the person so bailed and afterwards upon being satisfied that the ends of justice would otherwise be defeated to commit such person when so arrested to prison until his trial.

Person released on bail may be arrested if about to abscond.

111. When any person is required by any Court Judge or Magistrate to execute a bond with or without sureties under any of the provisions of this Code such Court Judge or Magistrate may except in the case of a bond for good behaviour permit him to deposit a sum of money or Government securities to such amount as the Court Judge or Magistrate may fix in lieu of executing such bond.

Deposit instead of recognizance.

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On failure of accused to appear at the trial recognizance to be forfeited.

112. When it shall appear by the indorsement made on the writ by the officer executing the same or by other sufficient proof that the copy of the indictment and notice of trial or sentence have been duly served and the accused on the day appointed for the trial or sentence does not appear it shall be competent for the prosecutor to apply to the Judge for his warrant for the apprehension of the accused and it shall also be competent for the prosecutor to move the Court that the accused and his sureties may be called upon their recognizance and in default of his appearance that the same may be then and there estreated.

The Attorney-General may in his discretion remit any portion of the amount so estreated and enforce payment in part only.

Death of surety.

113. When a surety to a recognizance dies before any forfeiture has been incurred his estate shall be discharged from all liability in respect of the recognizance but the accused may be required to find a new surety.

CHAPTER IX.

INDICTMENTS.

Indictment.

114. When a person charged with an offence has been committed for trial or sentence and it is intended to prosecute him before the Supreme Court or any Circuit Court having jurisdiction the charge shall be in writing in a document called an indictment.

When the prosecution is at the public instance the indictment shall be in the name of and shall be signed by the Attorney-General. When the prosecution is a private one the indictment shall be in the name of the party at whose instance it is preferred (who must be described therein with certainty and precision) and must be signed by such private party or by some advocate for him.

It shall not be competent for two or more persons to prosecute in the same indictment except in the case where two or more persons have been injured by the same offence.

115. As soon as the indictment in any criminal case brought in any Superior Court shall have been duly filed with the Registrar of such Court such case shall be deemed to be pending in such Court.

When the case is pending.

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116. Any person charged with an offence may be indicted either before the Supreme Court or before any Circuit Court having jurisdiction over the Magisterial district in which the accused is in custody or in which the preparatory examination in respect of such offence has or might have been held under the provisions of section *seventy-eight* and clauses (1) to (5) of section *seventy-nine* or in which such examination has been held under clauses (6) and (7) of such last-mentioned section.

In what Courts indictment may be tried.

117. If on the trial of a person charged with any offence before any Court it appears that he is not properly triable before that Court under any of the provisions of the last preceding section he is not by reason thereof entitled to be acquitted but the Court may at the request of the accused discharge the jury from giving a verdict and direct that he be tried before some proper Court and may remand him for trial accordingly.

Persons brought before wrong Court.

If he does not make such request the trial is to proceed and the verdict and judgment shall have the same effect in all respects as if the Court had originally had jurisdiction to try the accused.

This section does not affect the right of the accused to plead to the jurisdiction of a Court.

118. Any number of counts for any offences whatever may be joined in the same indictment. Provided that to a count charging murder no count charging any offence other than murder shall be joined.

Joinder of counts.

When there are more counts than one in an indictment they shall be numbered consecutively and each count may be treated as a separate indictment.

If the Court thinks it conducive to the ends of justice to do so it may direct that the accused shall be tried upon any one or more of such counts separately. Such order may be made either before or in the

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course of the trial and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed. The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been found in a separate indictment.

If one sentence is passed upon any verdict of guilty on more counts than one the sentence shall be good if any of such counts would have justified it.

Where it is doubtful what offence has been committed.

119. If a single act or series of acts is of such a nature that it is doubtful which of several offences is constituted by the facts which can be proved the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some or one of the said offences.

Essentials of indictment.

120. Subject to the provisions hereinafter contained each count of the indictment must set forth the offence with which the accused is charged in such manner and with such particulars as to the alleged time and place of committing the offence and the person (if any) against whom and the property (if any) in respect of which the offence is alleged to have been committed as may be reasonably sufficient to inform the accused of the nature of the charge.

A count may refer to any section of any statutory enactment creating the offence charged therein and in estimating the sufficiency of such count the Court shall have regard to the reference.

Where any of the particulars herein referred to are unknown to the prosecutor it shall be sufficient to state that fact in the indictment.

Court may order delivery of particulars.

121. The Court may either before or at the trial in any case if it thinks fit direct particulars to be delivered to the accused of any matter alleged in the indictment and may if necessary adjourn the trial for the purpose of such delivery.

Such particulars as aforesaid shall be delivered to the accused or his attorney without charge and such particulars shall

be entered in the record and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particulars.

In determining whether a particular is required or not and whether a defect in the indictment is material to the substantial justice of the case or not the Court may have regard to the preparatory examination.

122. Whenever on the trial of any indictment there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof or if it appears that any words or particulars that ought to have been inserted in the indictment have been omitted or that any words or particulars that ought to have been omitted have been inserted or that there is any other error in the indictment the Court before which the trial shall be held may if it shall consider such variance omission insertion or error not material to the merits of the case and that the accused cannot be prejudiced thereby in his defence on such merits order such indictment to be amended so far as it is necessary by some officer of the Court or other person both in that part of the indictment where such variance omission insertion or error occurs and in every other part of the indictment which it may become necessary to amend on such terms (if any) as to postponing the trial and directing it to be held before the same or another jury as such Court shall think reasonable. The indictment is thereupon to be amended in accordance with the order of the Court and after any such amendment the trial shall proceed at the appointed time upon the amended indictment in the same manner and with the same consequences in all respects as if the indictment had been originally in its amended form.

Certain discrepancies between indictment and evidence may be corrected.

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The fact that any such indictment has not been amended as provided in this section shall not unless the Court has refused to allow the amendment affect the validity of the proceedings thereunder.

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Verdict as valid as if indictment had been originally correct.

123. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Code shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

Indictments for libel.

124. No count for publishing a blasphemous seditious obscene or defamatory libel or for selling or exhibiting any obscene book pamphlet newspaper or other printed or written matter shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof; provided that the Court may order that a particular shall be furnished by the prosecutor stating what passages in such book pamphlet newspaper printing or writing are relied on in support of the charge.

Indictments for giving false evidence.

125. In an indictment for an offence which relates to taking or administering an oath or engagement or to giving false testimony or to making a false statement on solemn declaration or otherwise or to procuring the giving of false testimony or the making of a false statement it is not necessary to set forth the words of the oath or engagement or testimony or statement but it is sufficient to set forth the purport thereof or so much of the purport as is material.

In an indictment which relates to giving false testimony or procuring or attempting to procure the giving of false testimony it is not necessary to allege the jurisdiction or state the nature of the authority of the Court or tribunal before which the false testimony was given or intended or proposed to be given.

Rules applicable to particular indictments.

126. (1) In an indictment for an offence relating to a testamentary instrument it is not necessary to allege that the instrument is the property of any person.

(2) In an indictment for an offence relating to anything fixed in a square or street or in a place dedicated to public use or ornament or to anything in or taken from a public place or office it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(3) In an indictment for an offence relating to a document which is evidence of title to land or an interest in land the document may be described as being evidence of the title of the person or some one of the persons having an interest in the land to which the document relates the land or some part thereof being described in some manner sufficient to identify it.

(4) In an indictment for stealing anything whatsoever let to the offender the thing may be described as the property of the person who actually let it to hire.

(5) In an indictment against a person employed in the public service for an offence committed with respect to anything which came into his possession by virtue of his employment the thing in question may be described as the property of His Majesty.

(6) In an indictment for an offence committed with respect to anything in the occupation or under the management of any public officer or commissioner the thing may be described as belonging to such officer or commissioner without naming him.

(7) In an indictment for an offence committed with respect to any property movable or immovable whereof any body corporate has by law the management control or custody the property may be described as belonging to such corporate body.

(8) In an indictment for an offence respecting any property if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed the property may be described as being the property of one or other of such persons naming each of them but without specifying which of them; and the indictment will be sustained so far as regards the allegation of ownership upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

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Joint-stock companies and co-partnership may be named in indictments by their style or firm.

127. In every case in which it shall be necessary in any indictment to name any joint-stock company or co-partnership it shall be sufficient to state the name style or firm of such company or co-partnership without naming any of the officers or shareholders of such joint-stock company or any of the partners in such co-partnership and one individual trading under the style or title of a firm may be described by such style or title.

It shall be sufficient where two or more persons not partners are joint owners of property to name one of such persons adding the words "and another" or "and others" as the case may be and to state that the property belonged to the person so named and another or others as the case may be.

Means or instrument by which act is done need not be stated.

128. It shall not in any indictment be necessary to set forth the manner in which or the means or instrument by which any act is done unless the manner means or instrument is an essential element of the offence.

In indictment for murder or culpable homicide charge as to fact sufficient.

129. It shall be sufficient in every indictment for murder to charge that the defendant did wrongfully unlawfully and maliciously kill and murder the deceased and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.

In indictment for forgery and other cases copy of instrument not necessary.

130. In any indictment for forging uttering stealing destroying concealing or otherwise unlawfully dealing with any instrument it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or facsimile thereof or otherwise describing the same or stating the value thereof.

In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument whether the same consists wholly or in part of writing print or figures it shall be sufficient to describe such instrument by any name or designation by which the same may be

usually known or by the purport thereof without setting out any copy or facsimile or the whole or any part thereof.

131. In an indictment for an offence relating to an insolvent it is not necessary to set forth any debt act of insolvency adjudication or other proceeding in any Court or any order warrant or document made or issued out of or by the authority of any Court.

Certain particulars not required in case of an offence relating to insolvency.

132. It shall be sufficient in any indictment for forging uttering offering disposing of or putting off any instrument whatsoever or for obtaining or attempting to obtain any thing by means of false pretences or for obtaining or attempting to obtain any thing by means of a fraudulent trick or device or any other fraudulent means or for inducing by means of any such trick or device or fraudulent means the payment or delivery of any money or thing or for attempting to commit or to procure the commission of any such offence to allege that the accused did the act with intent to defraud without alleging the intent of the accused to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the accused to defraud any particular person but it shall be sufficient to prove that the accused did the act charged with an intent to defraud.

Proof of intent to defraud sufficient without proving whom it is intended to defraud.

In the case of any such offence it is not necessary to mention the owner of the property in question or to set forth the details of the pretence or trick or device or fraud.

133. If on the trial of any person charged with any offence it shall appear to the Jury upon the evidence that the accused did not complete the offence charged but that he was guilty only of an attempt to commit the same such person shall not by reason thereof be entitled to be acquitted but the Jury shall be at liberty to return as their verdict that the defendant is not guilty of the offence charged but is guilty of an attempt to commit the same or of an attempt to commit any other offence of which he might be convicted on the indict-

On trial for commission of an offence accused may be found guilty of attempt.

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of
1903.**

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of
1903.**

If charge
of robbery
fail and
assault with
intent be
proved.

ment under any of the provisions of this Code and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular offence of which he is found guilty; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

134. If upon the trial of any person upon any indictment for robbery it shall appear to the Jury upon the evidence that the accused did not commit the crime of robbery but that he did commit an assault with intent to rob or an assault or theft forming part of the crime of robbery charged in the said indictment the accused shall not by reason thereof be entitled to be acquitted but the Jury shall be at liberty to return as their verdict that the accused is guilty of an assault with intent to rob or of an assault or of theft and thereupon such accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob or of assault or theft; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried or for the assault or theft forming part of the said crime of robbery. And as often as any person shall be charged with the crime of assault with intent to murder he may be found guilty of an assault with intent to do some grievous bodily harm or of a common assault; and in like manner a person charged with assault with intent to do some grievous bodily harm or with an assault with any other particular intent specified in the indictment may be found guilty of common assault.

A person charged with rape or assault with intent to commit rape may be found guilty of indecent assault or common assault.

Person in-
dicted for
murder may
be convicted
of culpable

135. Any person charged with murder in regard to whom it shall be proved to the satisfaction of the jury that he wrongfully caused the death of the person whom he is

charged with killing but without intent may be found guilty of culpable homicide. And any person charged with murder or culpable homicide in regard to whom it shall not be proved to the satisfaction of the Jury that he caused the death of the person whom he is charged with killing may in case the Jury shall be satisfied that he is guilty of having assaulted such deceased person be found guilty if charged with murder of assault with intent to do some grievous bodily harm or of common assault and if charged with culpable homicide of assault with intent to do some grievous bodily harm or of common assault.

homicide or assault; or when indicted for assault with any particular intent may be convicted of common assault.

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136. In other cases not hereinbefore enumerated if the commission of the offence with which the accused is charged as defined in the statutory enactment creating the offence or as set forth in the indictment includes the commission of any other offence the accused person may be convicted of any offence so included which is proved although the whole offence charged in the indictment is not proved.

Conviction for part of crime charged.

137. If on the trial of a person charged with an offence the evidence establishes that he is guilty of another offence of such a nature that upon an indictment charging him with it he might have been convicted of the offence with which he is actually charged he may be convicted of the offence with which he is so charged.

When evidence shows offence of a similar nature.

A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence unless the Court before which the trial is held thinks fit to discharge the Jury from giving any verdict and to direct that the accused person be indicted for that offence; in which case he may be dealt with in all respects as if he had not been previously put upon his trial.

138. On the trial of any person upon any indictment or charge of theft the Jury before whom such case shall be tried should they consider that the evidence though not sufficient to substantiate the charge of theft is sufficient to show that the prisoner was guilty of receiving stolen goods knowing them to have been stolen may find that

Persons indicted for theft may on such indictment be convicted of receiving stolen goods knowing them to have been stolen.

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the prisoner is guilty of receiving stolen goods knowing them to have been stolen and upon any such finding the prisoner shall be liable to suffer and shall suffer the same penalty as if convicted of the like offence on an indictment or charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

Stealing and receiving may be joined in the same indictment.

139. Charges of stealing any property and of receiving the same property or any part thereof knowing it to have been stolen may be joined in the same indictment and the accused may according to the evidence be convicted either of stealing the property or of receiving it or any part of it knowing it to be stolen.

Upon an indictment charging two or more persons jointly with an offence of which the receiving any property is an element if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence such one or more of the accused may be convicted of the offence or offences so established by the evidence.

When such an indictment is preferred against two or more persons all or any of the accused may according to the evidence be convicted of theft of the property or of receiving it or any part of it knowing it to have been stolen; or according to the evidence one or more of them may be convicted of theft of the property and the other or others of them of receiving it or any part of it knowing it to have been stolen.

Persons implicated in same offence may be tried together.

140. Any number of persons charged with committing or with procuring the commission of the same offence although at different times or of being accessories after the fact to the same offence although at different times and any number of persons charged with receiving although at different times any property which has been obtained by means of an offence or any part of any property so obtained may be charged with substantive offences in the same indictment and may be tried together notwithstanding

that the principal offender or the person who so obtained the property is not included in the same indictment or is not amenable to justice.

141. A person who counsels or procures another to commit an offence or who aids another person in committing an offence or who becomes an accessory after the fact to an offence may be charged in the same indictment with the principal offender and may be tried with him or separately or may be indicted and tried separately whether the principal offender has or has not been convicted or is or is not amenable to justice.

142. Upon an indictment charging a person with the murder of any person if upon the evidence it appears that the person alleged to have been killed was a child of which a woman had recently been delivered the accused may be convicted of the offence of endeavouring by the secret disposition of the dead body of the child to conceal the birth if this offence is established by the evidence.

143 If upon any indictment for theft it shall appear that the property alleged in such indictment to have been stolen at one time was stolen at different times the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed and the accused shall be liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

144. It shall be lawful in any indictment for theft to allege that the goods charged to have been stolen were taken at divers times between any two certain days stated in the indictment and upon such an indictment proof may be given of the theft of the goods charged to have been stolen upon any day or days between the two certain days aforesaid.

145. In an indictment for theft of money the accused may be charged and proceeded against for the amount of a general deficiency notwithstanding that such general deficiency is made up of any number of specific sums of money the taking of which extended over any space of time.

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of
1903.**

Principal and accessories may be tried together.

Concealment of birth.

Proceedings if property alleged to have been stolen at one time shall have been stolen at different times.

It shall be sufficient to allege the dates between which thefts took place.

Indictment may charge general deficiency.

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No. 1
of
1903.**

Not necessary to specify particular coin or bank note stolen.

146. In every indictment in which it shall be necessary to make averment as to any money or any bank-note it shall be sufficient to describe such money or bank-note simply as money without specifying any particular coin or bank-note and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin or of any bank-note although the particular species of coin of which such amount was composed or the particular nature of the bank-note shall not be proved and in cases of money or bank-notes obtained by false pretences or by any other unlawful act by proof that the offender obtained any coin or any bank-note or any portion of the value thereof although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly.

Certain omissions or imperfections not to invalidate an indictment.

147. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved; nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name; nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence; nor for stating the offence to have been committed on a day subsequent to the filing of the indictment or on an impossible day or on a day that never happened; nor for want of or imperfection in the addition of any accused or any other person; nor for want of the statement of the value or price of any matter or thing or the amount of damage injury or spoil in any case where the value or price or the amount of damage injury or spoil is not of the essence of the offence; provided that as often as any particular day shall be laid in any indictment as the day on which any act or offence was committed proof that such act or offence was committed on any other day or time not more than three months before or after the day

laid in the indictment shall be taken to support such averment in case time be not of the essence of the offence; and provided that in the case of the last preceding proviso mentioned proof may be given that the act or offence in question was committed on a day or time more than three months before or after the day laid in the indictment unless it shall be made to appear to the Court before which the trial shall be held that the accused is likely to be prejudiced thereby in his defence upon the merits; provided however that as often as such Court shall consider that the accused is likely to be thereby prejudiced in his defence upon the merits such Court shall reject such proof and shall discharge the Jury from giving a verdict in the said case and the defendant shall be in the same plight and condition as if he had not been arraigned.

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of
1903.**

148. If in any case the defence of any accused shall be that commonly called an *alibi* and the Court before which the trial shall be held shall consider that the accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time laid in the indictment then although the day or time proposed to be proved shall be within the space of three months before or after the day laid in the indictment the said Court shall reject such proof and thereupon the same consequences shall take place as are in the last proviso of the last preceding section mentioned anything in the said section to the contrary notwithstanding. And if in any case no day shall be stated in the indictment or an impossible day or a day that never happened then it shall be lawful for the accused at any time before his arraignment to apply to the Supreme Court or any Judge thereof or to the Court in which he is indicted and such Court or Judge thereof upon being satisfied by affidavit or otherwise that such accused is likely to be prejudiced in his defence upon the merits unless some day or time were stated shall make such order in that behalf as in the

Proceedings
if defence be
an *alibi*.

ORD.
No. 1
of
1903.

Objections to indictment how and when to be made.

circumstances of the particular case shall to justice appertain.

149. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by exception or by motion to quash such indictment before the Jury shall be sworn and not afterwards; and every Court before which any such objection shall be taken for any formal defect may if it be thought necessary cause the indictment to be forthwith amended in such particular by some officer of the Court or other person and thereupon the trial shall proceed as if no such defect had appeared.

CHAPTER X.

TRIAL.

Persons committed to be brought to trial at the first Session provided thirty-one days have elapsed from commitment.

150. Every prisoner committed for trial and whom the Attorney-General has decided to prosecute before the Supreme or any Circuit Court shall be brought to trial at the first Session of the Supreme Court for the trial of criminal cases or of the Circuit Court having jurisdiction to try the accused held after the date of the commitment or else shall be admitted to bail provided that thirty-one days have elapsed between the date of the commitment and the time of holding such Court; unless it shall be made to appear to the satisfaction of the Court that in consequence of the absence of material evidence or of some other sufficient cause the trial cannot then be proceeded with without defeating the ends of justice; or unless before the close of such first Session of such Supreme Court or such Circuit Court a warrant shall have been obtained from some competent Court under the provisions of the next succeeding section for his removal for trial elsewhere.

And if such prisoner is not brought to trial at the first Session of the Supreme Court or Circuit Court of the district which shall be held after the expiration of six months from the date of his committal for trial or sentence and has not previously

been removed for trial or sentence as aforesaid he shall be discharged from his imprisonment for that offence for which he has been committed for trial.

For the purposes of this section a person shall not be deemed to have been committed for trial in any case in which the Attorney-General has ordered a further examination to be taken under the provision of section *eighty-eight* of this Code until such further examination has been completed.

The accused with his own consent in writing and with the consent of the Attorney-General may be brought to trial at any time after his commitment notwithstanding that the period of thirty-one days shall not have expired.

151. When an indictment has been presented against any person in a Superior Court the Court may at any stage of the proceedings on the application of the † Attorney-General or of the accused order that the trial shall be held at some place other than that named in the indictment and at a time to be named in the order.

Change of
place of trial.

In any such case the indictment and other proceedings shall be transmitted to the proper officer of the Court to which the trial is so removed and that Court shall have the same jurisdiction to try the accused as if he had originally been indicted before it and the accused if released on bail is bound to attend to be tried and the witnesses are bound to attend to give evidence at the time and place to which the trial is removed without entering into any fresh recognizances for that purpose in the same manner as if they had respectively been originally bound by their recognizances to appear and to attend and give evidence at the time and place to which the trial is removed.

Notice of such time and place must be given to the persons bound by the recognizances otherwise there recognizances cannot be forfeited.

If the accused is in custody the Court may release him on bail.

† See Rule of Court under which an application for change of venue may be made by the Attorney-General or the accused without notice. Government Notice No. 375 of 1903 *Gazette* (17th April 1903) p. 666

**ORD.
No. 1
of
1903.**

Such prisoners not brought to trial at second session after commitment entitled to discharge from imprisonment.

152. When a case has been removed for trial elsewhere and the accused is in custody the Court granting the order of removal shall issue a warrant directing his transmission forthwith to the prison of the district to which the case has been removed. Such prisoner shall be tried at the next session of the Court to which the case has been removed held for the trial of criminal cases or otherwise shall be discharged from his imprisonment for that offence for which he was transmitted for trial; provided that if such session shall be held within twenty-one days after the transmission of such prisoner to and his arrival at the prison aforesaid he shall not be tried at such session unless by his own consent in writing and that of the Attorney-General.

Trial of pending case may be postponed.

153. Subject to the provisions of section *one hundred and fifty* it shall be competent for the Court before which any case is pending to postpone the trial of the said case until such time and place and upon such terms as to such Court may seem proper.

Adjournment of trial.

154. A trial may be adjourned at any period of the trial whether a Jury has or has not been sworn and whether evidence has or has not been given.

When the trial of an accused is adjourned after the Jury have been sworn the Court may discharge the Jury.

On postponement or adjournment of trial accused may be admitted to bail.

155. When a trial is so postponed or adjourned the Court may admit the accused to bail or enlarge his bail if he has already been admitted to bail and may enlarge the recognizances of the witnesses.

Accused to plead to the indictment.

156. At the time appointed for the trial or sentence of the accused upon any indictment he shall appear or be placed at the Bar; and he is to be informed in open Court of the offence with which he is charged as set forth in the indictment and he shall be required to plead instantly thereto unless where the accused shall object and the Court shall find that he has not been duly served with a copy of the indictment.

157. The accused may before pleading apply to the Court to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge or that it is formally defective.

Motion to
quash
indictment.

**ORD.
No. 1
of
1903.**

Upon such motion the Court may quash the indictment or may order it to be amended in such manner as the Court thinks just or may refuse the motion

If the accused says that he is wrongly named in the indictment the Court may on being satisfied by affidavit or otherwise of the error order the indictment to be amended.

158. If the accused does not object that he has not been duly served with a copy of the indictment or apply to have it quashed under the provisions of the last preceding section he shall either plead to it or except to it on the ground that it does not disclose any offence cognizable by the Court. If he pleads he may plead either

Pleas.

- (1) that he is guilty of the offence charged in the indictment or with the consent of the prosecutor of any other offence of which he might be convicted on the indictment; or
- (2) that he is not guilty; or
- (3) that he has already been convicted on an indictment on which he might have been convicted of the offence with which he is charged or has already been convicted of an offence of which he might be convicted on the indictment; or
- (4) that he has already been acquitted on an indictment on which he might have been convicted of the offence with which he is charged or has already been acquitted of an offence of which he might be convicted on the indictment; or
- (5) that he has received the Royal pardon for the offence charged in the indictment; or
- (6) that the Court has no jurisdiction to try him for the offence; or
- (7) that the prosecutor has no title to prosecute.

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Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.

The accused may plead and except together.

Notice of motion to quash indictment and of certain pleas to be given.

159. When the accused intends to apply to have the indictment quashed under the provisions of section *one hundred and fifty-seven* or to except or to plead any of the pleas mentioned in the last preceding section except guilty or not guilty he shall give four days' notice to the Attorney-General and when the prosecution is a private one to the private prosecutor also stating the grounds upon which he seeks to have the indictment quashed or upon which he bases his exception or plea; provided that on good cause shown the Court may adjourn the trial to enable such notice to be given.

Truth of defamatory matter to be specially pleaded.

160. A person charged with the unlawful publication of defamatory matter who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made shall plead that matter specially and may plead it with any other plea except the plea of guilty.

Notice of such plea shall be given as in the last preceding section provided.

Person committed for sentence.

161. When a person has been committed by a Magistrate for sentence for an offence he shall be called upon to plead to the indictment in the same manner as if he had been committed for trial and may plead either that he is guilty of the offence charged in the indictment or with the consent of the prosecutor of any other offence of which he might be convicted on the indictment.

If he pleads that he is not guilty the Court upon being satisfied that he duly admitted before the Magistrate that he was guilty of the offence charged in the indictment shall direct a plea of guilty to be entered notwithstanding his plea of not guilty. A plea so entered has the same effect as if it had been actually pleaded.

If the Court is not satisfied or if notwithstanding that the accused pleads that he is guilty it appears to the Court upon the examination of the depositions of the witnesses that he has not in fact committed the offence charged in the indictment or any other offence of which he might be convicted on the indictment the plea of not guilty shall be entered and the trial is to proceed as in other cases when that plea is entered.

A person who has been committed for sentence may plead any of the other pleas mentioned in section *one hundred and fifty-eight*.

162. If the accused when called upon to plead to an indictment will not plead or answer directly to the indictment the Court may if it thinks fit order a plea of not guilty to be entered on behalf of the accused. A plea so entered has the same effect as if it had been actually pleaded.

Accused refusing to plead.

163. In any plea of a former conviction or acquittal it shall be sufficient for any accused to state that he has been lawfully convicted or acquitted as the case may be of the offence charged in the indictment or of the other offence of which he alleges that he has been convicted or acquitted.

Statement of accused sufficient plea of former conviction or acquittal.

164. Upon a plea to the jurisdiction of the Court the Court shall proceed to satisfy itself in such manner and upon such evidence as it thinks fit whether it has jurisdiction or not and may ascertain the fact by the verdict of a Jury or otherwise.

Trial on plea to the jurisdiction.

165. If the accused pleads any plea or pleas other than the plea of guilty or a plea to the jurisdiction of the Court he is by such plea without any further form deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury and is entitled to have them tried accordingly.

Issues to be tried by Jury.

166. When the accused excepts only and does not plead any plea the Court shall proceed to hear and determine the matter forthwith. If the exception is overruled he shall be called upon to plead to the indictment.

Exceptions.

**ORD.
No. 1
of
1903.**

When the accused pleads and excepts together it is in the discretion of the Court whether the plea or exception shall be first disposed of.

Separate trials.

167. When two or more persons are charged in the same indictment whether with the same offence or with different offences the Court may at any time during the trial on the application of the prosecutor or of any of the accused direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them and for that purpose may if a Jury has been sworn discharge the Jury from giving a verdict as to any of the accused in respect of whom such application is made.

Defence by counsel.

168. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined or cross-examined by his counsel.

Presence of accused.

169. The trial shall take place and the witnesses shall unless otherwise expressly provided by law give their evidence *vidæ voce* in open Court in the presence of the accused unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable in which case the Court may order him to be removed and may direct the trial to proceed in his absence.

If the accused absents himself during the trial without leave the Court may direct a warrant to be issued to arrest him and bring him before the Court forthwith.

The judge may at any time during the trial order that any or every person who is to be called as a witness other than the accused himself shall leave the Court and remain absent until he is called.

The Judge may if he thinks fit at any time during the trial order the Court to be cleared or that any persons or class of persons shall leave the Court.

Procedure on trial.

170. When the Jury have been sworn and before any evidence is given at the trial of the accused person the counsel for the prosecution is entitled to address the Jury for the purpose of explaining the charge and opening the evidence intended to be

adduced for the prosecution but without comment thereon.

The counsel for the prosecution shall then examine his witnesses and put in and read any documentary evidence which may be admissible. He may also read any evidence given by the accused as well as his statement made in the presence of the Magistrate at the preparatory examination.

If at the close of the case for the prosecution the Court considers that there is no evidence that the accused committed the offence charged in the indictment or any other offence of which he might be convicted on the indictment it may then direct the Jury to return a verdict of not guilty.

If the Court considers that there is evidence that the accused committed the offence charged or any other offence of which he might be convicted on the indictment the Court shall call on the accused to enter on his defence.

At the close of the evidence for the prosecution the proper officer of the Court is required to ask each of the accused if more than one whether he intends to adduce evidence in his defence. If he answers in the affirmative he may by himself or his counsel address the Jury for the purpose of opening the evidence intended to be adduced for the defence but without comment thereon. He or his counsel shall then examine his witnesses and put in and read any documentary evidence which may be admissible.

171. After all the evidence has been led the counsel for the prosecution shall be entitled to address the Jury summing up the whole case and the accused and each of the accused if more than one is entitled by himself or his counsel to address the Jury in reply.

Summing up
by Counsel.

172. After the evidence is concluded and the counsel or the accused person or persons as the case may be have addressed the Jury or stated that they do not wish to do so it is the duty of the Judge to instruct the Jury as to the law applicable to the case with such observations on the evidence as the Judge thinks fit to make.

Summing up
by Judge.

**ORD.
No. 1
of
1903.**Duty of
Court.

173. It is the duty of the Judge

- (a) to decide all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for the Jury and upon this point his decision shall bind the Jurors.

The Judge may if he thinks proper in the course of his summing up express to the Jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceeding.

Jury to
consider
verdict.

174. After the Judge has instructed the Jury they are to consider their verdict and if necessary they may retire for that purpose.

Duty of
Jury.

175. It is the duty of the Jury

- (a) to decide which view of the facts is true and then to return the verdict which under such view ought according to the direction of the Judge to be returned;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not;
- (c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is ascertained by law in either of which cases it is the duty of the Judge to decide their meaning.

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176. In any case in which it appears to the Court that the question whether the accused ought or ought not to be convicted of an offence may depend upon some specific fact or that the proper punishment to be awarded upon conviction may depend upon some specific fact the Court may require the Jury to find specially as to the existence or non-existence of that fact.

Special
verdict.

177. Notwithstanding the provisions of the last preceding section the Jury on the trial of a person charged with the unlawful publication of defamatory matter may give a general verdict of guilty or not guilty upon the whole matter in issue.

General
verdict on
charge of
defamation.

178. Except as hereinafter provided after the Jury have been sworn and the charge has been stated to them by the proper officer they shall not separate until they have given their verdict or are discharged by the Court.

Jury not to
separate.

If the Jury shall desire to withdraw for the purpose of considering their verdict they shall be kept by an officer of the Court in some convenient private place apart by themselves until they are agreed upon their verdict or be discharged by the Court; and the said officer shall be sworn that he will suffer none to have access to them or to speak to or have communication with them except by leave of the Court and that he will not speak to them himself except to ask whether they are agreed upon the verdict or to communicate between them and the Court.

The Court may in its discretion permit the Jury to separate before considering their verdict for such period during any adjournment of the trial as the Court may think fit. If any person disobeys the directions of this section he may be punished summarily as for contempt of Court.

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The validity of the proceedings is not affected by any such disobedience but if the fact is discovered before the verdict is given the Court if it is of opinion that such disobedience is likely to prejudice the fair trial of the accused may discharge the Jury and may direct that a fresh Jury be sworn during the same session of the Court or may adjourn the trial.

Verdict to be given in open Court.

179. When the Jury have arrived at a verdict the foreman shall inform the Judge in open Court and in the presence of all the Jury and of the prisoner what their verdict is and such verdict shall be thereupon recorded by the proper officer of the Court. The Jury shall either pronounce a general verdict of "guilty" or "not guilty" or else shall return a special verdict finding the facts of the case.

The Jury may acquit the accused of a part of the charge against him and find him guilty of the remainder.

Jury to return a verdict on each count.

180. Unless otherwise ordered by the Court the Jury shall return a verdict on each count on which the accused is tried and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Such questions and the answers to them shall be recorded.

Amending verdict.

181. When by accident or mistake a wrong verdict is delivered the Jury may before or immediately after it is recorded amend the verdict and it shall stand as ultimately amended.

View by Jury.

182. The Court may in any case if it thinks fit direct that the Jury shall view any place or thing which the Court thinks it desirable that they should see and may give any necessary directions for that purpose.

The validity of the proceedings is not affected by disobedience to any such directions but if the fact is discovered before the verdict is given the Court if it is of opinion that such disobedience is likely to prejudice the fair trial of the accused may discharge the Jury and may direct that a fresh Jury be sworn during the same session of the Court or may adjourn the trial.

183. If the Jury cannot agree as to the verdict to be given or if any emergency arises of such a nature as to render it in the opinion of the Court necessary or highly expedient for the ends of justice to do so the Court may in its discretion discharge the Jury without giving a verdict and may direct that a fresh Jury be sworn during the same session of the Court or may adjourn or postpone the trial until such time and place and upon such terms as to such Court may seem proper.

Discharge of
Jury.

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Such an exercise of discretion is not subject to review by any Court.

The provisions of section *one hundred and fifty-five* shall apply to cases postponed under this section.

184. If the presiding Judge becomes incapable of proceeding with the trial or directing the discharge of the Jury it is the duty of the senior officer of the Court to discharge the Jury.

Incapacity of
Judge.

In any such case the accused unless already released on bail must remain in custody and may be again put on his trial. But he has the same rights with respect to admission to bail as upon an original committal for trial for the offence with which he is charged and the Court or Magistrate may in a proper case admit him to bail accordingly.

185. If at any time during the trial a Juror dies or becomes in the opinion of the Court incapable of continuing to act as a Juror or is absent the Court may in its discretion discharge the Jury under the provisions hereinbefore contained or may if it thinks fit at the request of the accused and with the consent of the prosecutor discharge the Juror so becoming incapable or being absent and direct that the trial shall proceed with the remaining Jurors. In any such case the verdict of the remaining Jurors not being less than six shall have the same effect as if all the Jurors had continued present.

Incapacity of
Juror.

186. The taking of a verdict or any other proceeding of the Court is not invalid by reason of its happening on a Sunday.

Verdict on
Sunday.

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CHAPTER XI.

JURY.

Criminal cases to be tried by Judge and Jury of nine persons.

187. In any criminal case depending before a Superior Court the trial of the accused shall be before any one or more of the Judges of the Supreme Court and a Jury of nine men whose verdict must be unanimous.

Summoning of Jurors.

188. Jurors shall be summoned to attend for the trial of persons indicted before a Superior Court in the manner prescribed by the law relating to Juries.

Want of qualification of Juror not to affect verdict.

189. No verdict in any case shall be open to objection or shall be in any way affected by reason of the want of qualification or the disqualification of any Juror nor by reason of any Juror being summoned from beyond the limits of the Jury district nor by reason of any error informality or omission with respect to the Jury lists or Jury books.

Accused to be informed of his right to challenge.

190. When the accused has demanded to be tried by a Jury the proper officer of the Court shall inform him in open Court that the persons whose names are to be called are the Jurors to be sworn for his trial and shall further inform him that if he desires to challenge any of them he must do so before they are sworn.

Challenging the whole panel.

191. Either the accused or the prosecutor may challenge the whole panel on the ground of partiality fraud or wilful misconduct on the part of the Sheriff or his deputies by whom the panel was returned but on no other ground. The objection shall be made in writing and shall state that the person returning the panel was guilty of partiality fraud or wilful misconduct as the case may be.

If partiality fraud or wilful misconduct as the case may be is denied the Court shall decide whether the ground of challenge is true or not. If it finds that the alleged ground of challenge is true in fact or if the party who has not challenged the panel admits that the ground of challenge is true in fact the Court shall direct a new panel to be returned.

If the accused desires to object to the whole panel of Jurors he must do so before any Juror is sworn for his trial.

192. The prosecutor or the accused in each case may challenge and set aside three Jurors without assigning any cause; and may in addition challenge and set aside any number of Jurors for any of the following causes; that is to say

Challenging Jurors.

- (1) that the Juror is not qualified by law to act as a Juror;
- (2) that the Juror is not indifferent as between the prosecution and the accused;
- (3) that the Juror is related to the accused within the fourth degree of consanguinity or affinity.

193. An objection to a Juror either by way of peremptory challenge or by way of challenge for cause may be made at any time before the Juror has been sworn but not afterwards.

Time for challenging.

194. If several accused persons are jointly indicted and it is proposed to try them together they or any of them may either join in their challenges in which case the persons who so join shall have only as many challenges as a single person would be entitled to or each may make his challenges in the same manner as if he were intended to be tried alone in which case he may at the option of the prosecutor be tried alone.

Joint trials.

195. If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge the fact shall be tried by the Court.

Ascertainment of facts as to challenge.

196. Whenever after the proceedings hereinbefore provided the panel has been exhausted and a complete jury cannot be had by reason thereof then upon request made by the prosecutor the Court may order either verbally or in writing the Sheriff or other proper officer forthwith to summon such number of persons whether qualified Jurors or not as the Court deems necessary and directs in order to make a full Jury; and such persons may if necessary be summoned by word of mouth.

Ordering a tales.

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The names of the persons so summoned shall be added to the general panel for the purposes of the trial and the same proceedings shall be taken as to challenging such persons as are hereinbefore provided with respect to the persons named in the original panel except that persons summoned under this section shall not be challenged on the ground merely that they are not qualified Jurors.

Trial of
insane
persons.

197. If on the arraignment or during the trial of any person charged with an offence it is alleged or appears that he is not of sound mind or if on the trial of any person the defence is set up that the accused was not criminally responsible on the ground of insanity for the act or omission alleged to constitute the offence such person shall be dealt with in the manner provided by Part II. of the Lunacy Proclamation 1902.

Doubt as to
capacity of
accused to
understand
the pro-
ceedings.

198. If when the accused is called upon to plead to the indictment it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial so as to be able to make a proper defence a Jury of nine men to be chosen from the panel of Jurors shall be impanelled forthwith who shall be sworn to find whether or not he is so capable.

If the Jury find that he is so capable of understanding the trial shall proceed as in other cases.

If the Jury find that he is not so capable the finding shall be recorded and the Court may order the accused to be discharged or may order him to be kept in custody in such place and in such manner as the Court thinks fit until he can be dealt with according to law.

A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

Jury to be
sworn and
informed of
the charge.

199. The Jury shall be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

When the Jury have been sworn the proper officer of Court shall inform them of the charge set forth in the indictment and of their duty as Jurors upon the trial.

200. If before or after a Juror has been sworn it appears to the Court from his own statement that he is not indifferent as between the prosecution and the accused or that for any other reason he ought not to be allowed or required to act as a Juror on the trial the Court may before any evidence has been given without discharging the whole of the Jury discharge that particular Juror and direct another Juror to be sworn in his place.

Discharge of
Juror by
Court.

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201. If a Juror is personally acquainted with any relevant fact it is his duty to inform the Judge that such is the case whereupon he may be sworn examined and cross-examined in the same manner as any other witness.

Juror may be
examined as
a witness.

CHAPTER XII.

WITNESSES.

202. Every witness duly summoned to attend and give evidence at any criminal trial before any court of criminal jurisdiction shall be bound to attend and to remain in attendance throughout the trial unless excused by the Court.

Attendance
of witnesses.

203. Any Court may at any stage of any inquiry trial or other proceeding under this Code summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case.

Court may
examine any
person in
attendance
or recall
witness.

204. Upon proof to the satisfaction of the Court of the service of the summons upon any witness who fails to attend or remain in attendance or upon its appearing that any witness at the preparatory examination has entered into a recognizance to appear at the trial and has failed so to appear and that the presence of such witness is material to the ends of justice the Court may by warrant cause such witness to be apprehended and forthwith brought before it to give evidence and to answer for his disregard of the summons; and such witness may be detained on such warrant before the Court

Compelling
attendance
of witnesses.

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or in the prison or lock-up with the view of securing his presence as a witness or in the discretion of the Court he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance; and the Court may in a summary manner examine into and dispose of the charge against such witness who if he is found guilty thereof shall be liable to a fine not exceeding twenty-five pounds or to imprisonment with or without hard labour for a term not exceeding three months or to both and the recognizance of such witness and his sureties (if any) entered into at the preparatory examination shall be estreated.

Witnesses
from prison.

205. When the attendance of any person confined in any prison in this Colony is required in any Court of criminal jurisdiction in any case cognizable therein by indictment the Court before whom such prisoner is required to attend or any Judge of the Supreme Court may before or during the sittings or session of the Court at which the attendance of such person is required make an order upon the gaoler or other person having the custody of such prisoner to deliver such prisoner to the person named in such order to receive him; and such person named shall at the time prescribed in such order convey such prisoner to the place at which such person is required to attend there to receive and obey such further order as to the said Court seems fit.

Summons to
give evidence
before Circuit
Court may be
served on
persons
beyond the
district.

206. In any criminal case prosecuted in any Superior Court the process of such Court may be sued out for summoning as a witness in such case any person required to give evidence although such person shall reside or be within some district of the Colony other than that in or for which such Court shall be appointed to be held. As often as it shall be necessary to summon any such last-mentioned person the process of the Court in which such criminal case is pending shall be forwarded for execution to the Deputy Sheriff of the district in which such witness shall reside or be or such other officer in such district as shall be proper

for the execution of similar process when issued by or out of a Superior Court of or for such last-mentioned district and such Deputy Sheriff or other officer receiving such process shall execute the same in like manner as if it were the process of the Superior Court of or for such last-mentioned district and shall return such process together with what he has done in the execution thereof to the officer by whom the same was sued out and forwarded to him and the return made by such Deputy Sheriff or other officer shall be *prima facie* evidence of the service of such process in manner and form as in such return stated and such process shall have the same force and effect and entail the same consequences as if the person so summoned had been served in the district for which the Court in which the case is pending shall be held.

207. Subject to any rules made by the Lieutenant-Governor any Court or Magistrate may if it or he thinks fit order payment out of public moneys of the reasonable expenses of any witness attending for the purpose of any inquiry trial or other proceeding before such Court or Magistrate under this Code.

Payment of expenses of witnesses.

CHAPTER XIII.

COMMISSION FOR THE EXAMINATION OF WITNESSES.

208. Whenever in the course of an inquiry trial or any other proceeding under this Code it appears to the Supreme Court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay expense or inconvenience which under the circumstances of the case would be unreasonable such Court may dispense with such attendance and may issue a commission to any Magistrate or where the witness is resident outside this Colony to any person authorised by the Supreme Court to take evidence on commission in civil cases without this Colony within the local limits of whose jurisdiction such witness resides to take the evidence of

Taking evidence on commission.

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such witness; provided that in any such application as aforesaid the specific fact or facts with regard to which the evidence of the said witness is required shall be set out and the Court by its order may confine the examination of the witness to such facts and provided further that when the application is on behalf of the Crown the Court may should it see fit so to do direct as a condition of such order that the expense necessary to the representation of accused by Attorney or Counsel at such examination shall be paid by the Crown.

The Magistrate or other person to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner as in the case of an ordinary preparatory examination taken before himself or where the commission is executed out of this Colony in the same manner as a commission to take evidence in civil cases is executed.

Parties may
examine
witness.

209. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court directing the Commission may think relevant to the issue and the Magistrate or other person to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or other person by counsel attorney or agent or if not in custody in person and may examine cross-examine and re-examine as the case may be the said witness.

Return of
commission.

210. After a commission under section *two hundred and eight* has been duly executed it shall be returned together with the deposition of the witness examined thereunder to the Court which issued it; and the commission the return thereto and the deposition shall be open at all reasonable times to the inspection of the parties and may subject to all just exceptions be read in evidence in the case by either party and shall form part of the record.

Any deposition so taken may also be received in evidence at any subsequent stage of the case before another Court.

211. In every case in which a commission is issued under section *two hundred and eight* the inquiry trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjournment of inquiry or trial.

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CHAPTER XIV.

SPECIAL RULES OF EVIDENCE.

212. On the trial of a person charged with treason evidence cannot be admitted of any overt act not alleged in the indictment unless relevant to prove some other overt act alleged therein.

Evidence on a charge of treason.

213. On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element a certificate setting out the substance and effect only without the formal parts of the indictment or complaint and the proceedings at the trial and purporting to be signed by the officer having the custody of the records of the Court where the indictment or complaint was tried or by his deputy is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

Evidence on trials for perjury and subornation.

214. On the trial of a person charged with incest—

Evidence of relationship on charge of incest.

(1) It is sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the lineal ascendant descendant or sister step-mother or step-daughter of the other party to the incest.

(2) The accused person is until the contrary is proved presumed to have had knowledge at the time of the alleged offence of the relationship existing between him or her and the other party to the incest.

215. When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against such person is false or counterfeit it shall not be necessary to prove the same to be false or counterfeit by the evidence of any officer of His Majesty's mint or other person employed in producing

Evidence as to counterfeit coin.

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the lawful coin in His Majesty's Dominions or elsewhere whether the coin counterfeited is current coin of any part of His Majesty's Dominions or of any foreign country but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any credible witness.

Evidence of common gaming-house.

216. When any cards dice balls counters tables or other instruments of gaming used in playing any unlawful game are found in any house room tent vehicle or place suspected to be used as a common gaming-house and entered under a warrant or order issued under any law or about the person of any of those who are found therein it shall be *prima facie* evidence on the trial of a prosecution for keeping a common gaming-house that such house room or place is used as a common gaming-house and that the persons found in the room tent vehicle or place where such tables or instruments of gaming are found were playing therein although no play was actually going on in the presence of the officer entering the same under the warrant or order or in the presence of those persons by whom he is accompanied.

Evidence of common gaming-house.

217. In any prosecution for keeping a common gaming-house it shall be *prima facie* evidence that a house room tent vehicle or place is used as a common gaming-house

(a) if any constable or officer authorised to enter any house room tent vehicle or place is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(b) if any such house room tent vehicle or place is found fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing removing or destroying any instruments of gaming.

Evidence of gaming.

218. On the trial of a person charged with the offence referred to in the last two preceding sections it is not necessary to prove that any person there found playing at any game was playing for any money wager or stake.

Evidence on charge of receiving.

219. When proceedings are taken against any person for having received stolen goods knowing them to be stolen or for having

in his possession stolen property or anything obtained by means of an offence knowing the same to have been stolen or so obtained evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen or obtained by some such offence as aforesaid within the period of twelve months preceding the time when such person was first charged before a Magistrate with the offence for which he is being proceeded against and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen or obtained by some such offence as aforesaid; provided that not less than three days' notice in writing has been given to the accused that proof is intended to be given of such other property stolen or obtained by some such offence as aforesaid within the preceding period of twelve months having been found in his possession; and such notice shall specify the nature or description of such other property and the person if known from whom the same was stolen or obtained by means of an offence.

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220. When proceedings are taken against any person for having received goods knowing them to be stolen or for having in his possession stolen property or property obtained by means of an offence and evidence has been given that the stolen property or property obtained by means of an offence has been found in his possession then if such person has within five years immediately preceding the time when such person was first charged before a Magistrate with the offence for which he is being proceeded against been convicted of any offence involving fraud or dishonesty evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew that the property which was proved to be in his possession was stolen or property obtained by means of an offence; provided that not less than

Evidence of
previous
conviction
on charge of
receiving.

ORD.
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1903.

Evidence of
counterfeit
coin.

three days' notice in writing has been given to the accused that proof is intended to be given of such previous conviction.

221. Upon the trial of any person accused of any offence respecting currency or coin no difference in the date or year or in any legend marked upon the lawful coin described in the indictment and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin or upon any die plate press tool or instrument used constructed devised adapted or designed for the purpose of counterfeiting or imitating any such lawful coin shall be considered a just or lawful cause or reason for acquitting any such person of such offence and it shall in any case be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

Evidence on
trial for
defamation.

222. On the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical after evidence sufficient in the opinion of the Court has been given of the publication by the accused of the number or part of the periodical containing the matter complained of other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published and containing a printed statement that they were published by or for the accused are admissible in evidence on either side without further proof of their publication.

Evidence on
charge of
stealing
against clerk
or servant.

223. On the trial of a person charged with theft while employed in the Public Service of money which was the property of His Majesty or which came into the possession of the accused by virtue of his employment or charged with theft while a clerk or servant of money which was the property of his employer or which came into his possession on account of his employer an entry in any book of account kept by the accused or kept in under or subject to his charge or supervision purporting to be an entry of the receipt of any

money is evidence that the money so purporting to have been received was so received by him.

On the trial of a person charged with any such offence it is not necessary to prove the theft by the accused of any specific sum of money if on the examination of the books of account or entries kept or made by him or kept or made in under or subject to his charge or supervision or by any other evidence there is proof of a general deficiency and if the Jury are satisfied that the accused stole the deficient money or any part of it.

224. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the Post Office in any part of His Majesty's Dominions or in any foreign country a despatch from one of His Majesty's Principal Secretaries of State or from the Governor of the Colony affected transmitting to the Governor or Lieutenant-Governor of this Colony any stamp mark or impression and stating it to be a genuine stamp mark or impression of a die plate or other instrument provided made or used by or under the direction of the proper authority of the country in question for the purpose of expressing or denoting any stamp duty or postal charge is admissible as evidence of the facts stated in the despatch; and the stamp mark or impression so transmitted may be used by the Court and Jury and by witnesses for the purposes of comparison.

Evidence on charges relating to seals and stamps.

225. Whenever any instrument which has been forged or fraudulently altered is admitted in evidence the Court Judge or person who admits the same may at the request of the Crown or of any person against whom the same is admitted in evidence direct that the same shall be impounded and kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as to the Court Judge or person admitting the same seems fit.

Impounding documents.

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of
1903.**Cutting
counterfeit
coin.

226. If any false or counterfeit coin is produced on any trial for an offence against currency or coin the Court shall order the same to be cut in pieces in open Court or in the presence of a Magistrate and then delivered to or for the lawful owner thereof if such owner claims the same.

Unstamped
instruments
admissible in
criminal
cases.

227. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceedings although it may not be stamped as required by law.

Admissions.

228. The accused may admit on the trial any fact alleged against him and such admission is sufficient proof of the fact without other evidence.

CHAPTER XV.

DISCHARGE OF PRISONER.

Dismissal of
charge in
default of
prosecution.

229. If the prosecutor having given notice of trial shall not appear to prosecute the indictment against the accused before the close of the session of that Court before which he gave notice of trial it shall be competent for the accused to move the Court to discharge him therefrom; and when the accused or any other person on his behalf has been bound by recognizance for the appearance of the said accused so to take his trial that the said recognizance may be discharged; and where the indictment is at the instance of a private party it shall be competent to the accused to move the Court that the said private prosecutor and his sureties shall be called on their recognizance and in default of his appearance that the same be estreated.

The accused may also apply for an order directing that the private prosecutor pay the costs incurred by the accused in preparing his defence.

Nothing in this section shall be taken to deprive the Attorney-General of the right of withdrawing any indictment at any time before the accused is given in charge to the Jury and presenting a fresh indictment before the same or any other competent Court.

230. The keepers of all the prisons within the district of Pretoria shall at each session of the Supreme Court for the trial of criminal cases and the keepers of all the prisons within the district of each Circuit Court at each session of each Circuit Court shall under a penalty of five pounds deliver to the Court a list of all the untried prisoners confined within their respective prisons which list shall specify the date of arrest and committal for trial of each prisoner and the cause of his imprisonment and the name of the committing Magistrate.

Prison returns to be delivered by the keepers of the prison to the Court at the Criminal Sessions and Circuit Courts.

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231. Every Superior Court shall at the close of each of its said sessions discharge all such prisoners as by law shall then be entitled thereto.

Liberation of prisoners by Superior Court.

232. Neither discharge from imprisonment nor the expiration of the recognizance shall be a bar to any person being brought to trial in any competent Court for any offence for which he was formerly committed to prison or admitted to bail.

Discharge from imprisonment or expiration of recognizance no bar to trial.

233. No person who has been admitted to bail and who has not been duly brought to trial or who has been discharged from prison pursuant to section *two hundred and thirty-one* shall be obliged to find further bail or shall be liable to be committed to prison either for examination or trial for the same offence in respect of which he was formerly admitted to bail; provided that the Attorney-General may notwithstanding the release of the accused from prison pursuant to section *two hundred and thirty-one* or the expiration of his bail at any time before the period of prescription for such offence has run out indict the accused in any competent Court and if the accused having being duly served with such indictment and notice of trial fails to appear at the time mentioned in such notice the Court in which he is indicted may on the application of the Attorney-General grant a warrant for his arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on the said indictment.

Accused not brought to trial not obliged to find further bail.

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of
1903.**

Former conviction not to be charged in indictment.

CHAPTER XVI.

PREVIOUS CONVICTIONS.

234. It shall not be lawful in any indictment against any person for any offence to charge or allege that such person had been formerly convicted of any offence; nor except as hereinafter is provided shall it be competent to prove at the trial of any person for any offence that he was formerly convicted of any offence; provided that if upon the trial of any person for any offence such person shall give evidence of his good character it shall be lawful for the prosecutor in answer thereto to give evidence of the former conviction of such person of any offence.

Nothing in this section contained shall affect the provisions of section *two hundred and twenty* of this Code or of section *eleven* of the Law of Evidence Proclamation 1902.

Notice that proof of former conviction will be offered.

235. In case any person indicted for any offence shall have been formerly convicted of any offence it shall be lawful for the prosecutor in cases in which the procedure laid down in section *seventy-three* has not been followed or where he has denied such conviction to give notice to such person that in the event of his pleading guilty or being found guilty of the offence for which he is indicted proof will be given of such former conviction.

Mode of proof of former conviction.

236. Whenever notice shall have been duly served on such person that evidence of such former conviction would be offered against him as provided by the last preceding section of this Code it shall be lawful on such person pleading guilty or being found guilty for the prosecutor before sentence is pronounced to offer to prove such former conviction or convictions and thereupon the Court shall ask the prisoner whether he confesses that he is the person so appearing to have been formerly convicted and whether he was so convicted as alleged and if he shall not confess such matters or shall not have admitted them at the preparatory examination in manner laid down in section *seventy-three* then in case of such person pleading guilty the Court shall empanel a

Jury and in case of such person not pleading guilty shall direct the Jury which convicted him to try the truth of such matters or such of them as the prisoner shall not confess or shall not have admitted; and if on such trial the said previous convictions or such of them as he shall not confess or shall not have admitted shall be proved or if he shall confess or shall have admitted such previous convictions or any of them then the Court shall take into account such of them as shall be proved or confessed or admitted in awarding sentence for the offence to which such prisoner shall have pleaded or of which he shall be found guilty.

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CHAPTER XVII.

VERDICT: JUDGMENT.

237. When an indictment containing more counts than one is framed against the same person and when a conviction has been had on one or more of them the prosecutor may withdraw the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction be set aside in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the trial of the charge or charges so withdrawn.

Withdrawing charges.

238. A person convicted of an offence whether on his plea of guilty or otherwise may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

Arrest of judgment.

Upon the hearing of the motion the Court may allow any such amendments of the indictment as it might have allowed before verdict.

The Court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Supreme Court as hereinafter provided and may notwithstanding pass sentence forthwith.

239. Any Judge presiding at the sittings of a Court at which any person is tried for an offence may reserve the giving of his

Judge's decision may be reserved.

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Sentence.

final decision on questions raised at the trial; and his decision whenever given shall be considered as given at the time of trial.

240. If a motion in arrest of judgment is not made or is dismissed the Court may either pass sentence upon the offender forthwith or may discharge him on his recognizance as hereinbefore provided conditioned that he shall appear and receive judgment at some future session of the Court or when called upon.

If the trial was held before a Circuit Court the recognizance may in the discretion of the Court be conditioned to appear and receive judgment before the Supreme Court at some fixed future time or when called upon.

If sentence is not passed forthwith any Judge of the Court may at any subsequent sitting of the Court at which the offender is present pass sentence upon him.

The Court may before passing sentence receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

Who may
issue
warrant.

241. Every warrant for the execution of any sentence may be issued either by the Judge who passed the sentence or by any other Judge of the Supreme Court.

CHAPTER XVIII.

PUNISHMENTS.

Punish-
ments.

242. The following punishments may be inflicted by a Superior Court;

- (1) death;
- (2) imprisonment with or without hard labour and with or without solitary confinement;
- (3) detention in a reformatory;
- (4) fine;
- (5) whipping;
- (6) forfeiture of property;
- (7) putting under recognizance to keep the peace and to be of good behaviour.

Accused only
liable to
punishment
on
conviction.

243. Whenever a person doing or omitting a certain act is declared to be liable to punishment therefor it shall be understood that such person shall only be liable to such

punishment after being duly convicted of such act.

244. The sentence to be pronounced upon a person who is convicted of an offence punishable with death is that he be returned to his former custody and that at a time and place to be appointed by the Lieutenant-Governor he be hanged by the neck until he is dead.

Sentence of death.

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245. The sentence of death shall be carried into effect in the manner provided by sections *thirteen to fifteen* of The Sheriffs' Proclamation 1902.

Manner of carrying out death sentences.

246. When sentence of death is passed upon a woman she may apply at any time after the passing of such sentence for an order to stay execution on the ground that she is with child of a quick child.

Sentence of death upon a woman who is pregnant.

If such an application is made the Court is required to direct one or more legally qualified medical practitioners to be sworn to examine the woman in some private place either together or successively and to ascertain whether she is with child of a quick child or not.

If upon the report of any of them on oath it appears that she is with child of a quick child the Court is required to order that the execution of the sentence be respited until she is delivered of a child or until it is no longer possible in the course of nature that she should be delivered.

247. Where any person is liable under any statutory enactment to a sentence of imprisonment for life or for any term he may be imprisoned for any shorter term and where he is liable to be sentenced to imprisonment with hard labour he may be sentenced to imprisonment without hard labour. A person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount.

Discretion of the Court as to the amount of punishment.

Where any person is liable to any punishment other than a fine except death he may be sentenced by a Superior Court to pay a fine instead of or in addition to such imprisonment; provided that subject to the provisions of this Code or of any other law such fine shall not exceed one thousand pounds.

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How fine is
to be
recovered.

Levy of fine.

Suspension
of execution
of imprison-
ment.

The provisions of this section shall not apply to any offence for which a minimum penalty is prescribed in the statutory enactment creating the offence.

248. Where any person is condemned to pay a fine such fine may be recovered as in the next succeeding section provided but the Court inflicting the fine if it appears or is made to appear to it that the offender has not sufficient goods wherewith to satisfy the fine may in its discretion order that he be forthwith imprisoned; provided that the term of such imprisonment to be imposed in case the fine is not paid shall not either alone or together with the term of any imprisonment imposed as a punishment exceed the longest term of imprisonment which can be imposed as a punishment for the offence.

249. Whenever an offender is sentenced to pay a fine the Court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any movable property belonging to the offender although the sentence directs that in default of payment of the fine the offender shall be imprisoned.

Such warrant when issued by a Superior Court may be executed anywhere within the Colony. If issued by a Magistrate it shall authorise the distress and sale of the movable property of the offender within the local limits of such Magistrate's jurisdiction and also without such limits when endorsed by the Magistrate having jurisdiction in the place where the property is found.

250. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the Court issues a warrant under the last preceding section it may suspend the execution of the sentence of imprisonment and may release the offender upon his executing a bond with or without sureties as the Court thinks fit conditioned for his appearance before such Court or some other Court on the day appointed for the return to such warrant such day not being more than fifteen days from the time of executing the

bond; and in the event of the fine not having been realised the sentence of imprisonment shall be carried into execution at once.

(2) In any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1) of this section and in default of his doing so may at once pass sentence of imprisonment as if the money had not been recovered.

251. When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing the prosecutor may levy the fine if any and costs out of any property of the offender in like manner as in civil actions.

Levy of costs on conviction for defamation.

252. Subject to the next succeeding section a sentence of imprisonment upon a conviction before a superior Court shall take effect from the day on which such sentence is passed unless it is suspended under the provisions of this Code or the offender is released on bail pending the decision of the Supreme Court on a question reserved in which cases the sentence shall take effect from the date on which he surrenders or is taken into custody to undergo his sentence.

Commencement of punishment.

A sentence of imprisonment upon a summary conviction shall take effect from the date of the offender being taken into custody under the conviction.

253. When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence the Court may sentence him to such several punishment for such offence or for such last offence as the case may be as the Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration setting aside or remission of the other in such order as the Court may direct unless the Court directs that such punishments shall run concurrently.

Cumulative sentences.

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1903.**

Escaped
prisoners.

254. A prisoner who escapes from lawful custody while undergoing a sentence of imprisonment is liable upon recapture to undergo the punishment which he was undergoing at the time of his escape for a term equal to that during which he was absent from prison after the escape and before the expiration of the term of his original sentence whether at the time of his recapture the term of that sentence has or has not expired.

Imprison-
ment.

255. When any person shall be sentenced to imprisonment it shall be lawful for the Lieutenant-Governor to order from time to time the removal of such person during the period prescribed for his imprisonment from any prison in which he is confined to any other prison or place within this Colony.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

If before the expiration of the term of imprisonment fixed in default of payment such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid the imprisonment shall terminate.

Whipping.

256. When any person is liable to be sentenced to be whipped such punishment may be inflicted in addition to or in substitution for any punishment to which the offender is otherwise liable and the number of strokes to be inflicted not to exceed fifty shall subject to the provisions of any statutory enactment be in the discretion of the Court. The Court is required to specify in the sentence the number of strokes which are to be given.

Whipping
not to be
inflicted
unless
offender in
a fit state.

257. The punishment of whipping shall not be inflicted unless a medical officer if present certifies or if there is not a medical officer present unless it appears to the Magistrate or officer present that the offender is in a fit state of health to undergo such punishment.

If during the execution of a sentence of whipping a medical officer certifies or it appears to the Magistrate or officer present that the offender is not in a fit state of

health to undergo the remainder of the sentence the whipping shall be finally stopped.

258. In any case in which under the last preceding section a sentence of whipping is wholly or partially prevented from being executed the offender shall be kept in custody until such sentence be revised by the Court which passed it or if such Court be not sitting by the Supreme Court and the Court may at its discretion either remit such sentence or sentence the offender in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed to imprisonment for any term not exceeding twelve months which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law or that which the said Court is competent to inflict.

259. When a male person under the age of sixteen years is convicted of any offence the Court may sentence him to be whipped in substitution for any other punishment.

No female shall be whipped or put to hard labour on any road street or public place.

†260. When an offender is sentenced to whipping or solitary confinement such sentence shall be carried out in conformity with such regulations and restrictions as may be issued by the Lieutenant-Governor for the purpose of preventing injurious consequences to such offender.

261. A person convicted of an offence not punishable with death may instead of or in addition to any punishment to which he is liable be ordered to enter into his own recognizances with or without sureties in such amount as the Court thinks fit that he shall keep the peace and be of good behaviour for a time to be fixed by the Court and may be ordered to be imprisoned until such recognizance with sureties if so directed is entered into; provided that the imprisonment for not entering into the recognizance shall in no case exceed one year.

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Procedure if whipping cannot be inflicted.

Minors and females.

Whipping and solitary confinement.

Recognizances to keep the peace and be of good behaviour.

† For Regulations see Government Notice No. 989 of 1903 *Gazette* (11th September 1903) p. 935.

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No. 1
of
1903.**

Recognizances to come up for judgment.

Discharge without verdict.

Court may order accused to pay compensation.

262. When a person is convicted of an offence not punishable with death the Court may instead of passing sentence discharge the offender upon his entering into his own recognizances with or without sureties in such sum as the Court may think fit to appear and receive judgment at some future sittings of the Court or when called upon.

263. In any case where the Court considers that the offence deserves no more than a nominal punishment the Court may in its discretion after all the evidence has been heard direct the discharge of the accused without taking any verdict and such discharge shall have all the effects of an acquittal.

CHAPTER XIX.

COSTS, COMPENSATION, AND RESTITUTION.

264. (1) When any person shall have been convicted of an offence which has caused damage to or loss of property belonging to some other person the Court trying the case may after recording such conviction and upon the application of the injured party forthwith award him compensation for such damage or loss where the compensation claimed does not exceed two hundred pounds.

(2) For the purpose of determining the amount of compensation or the liability of the accused therefor the Court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbal.

(3) In all cases the Court may at any stage of the proceedings refer the injured party claiming compensation under this section to his remedy under the ordinary law.

(4) The Court may award and adjudge a person convicted upon a private prosecution the costs and expenses of such prosecution in addition to the sum (if any) awarded under sub-section (1) of this section.

(5) Any award of compensation costs or expenses under this section may at the instance of any interested party be made a

civil judgment of the Court making the award by filing a copy of such award certified by the proper officer in such Court and thereon such award shall be recorded and have the same effect as any civil judgment of such Court.

(6) Any costs awarded shall be taxed according to the scale in civil cases of the Court of which the award is made a judgment unless a special tariff for such cases shall have been framed by some competent authority.

(7) Where any moneys of the accused have been taken from him upon his apprehension the Court may order payment in satisfaction or on account of the award as the case may be to be made forthwith from such moneys.

(8) Any person against whom an award has been made under this section shall not be liable at the suit of the person in whose favour an award has been so made to any other civil proceedings in respect of the injury for which compensation has been awarded.

265 When any accused person has been convicted of theft or unlawfully obtaining any property and it appears to the Court by the evidence that he sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained and that money has been taken from the accused on his apprehension the Court may on the application of such purchaser and on restitution of such property to its owner order that out of the money so taken from the prisoner (if it is his) a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser.

Compensation to innocent purchaser of stolen property.

266. If any person is convicted of stealing or knowingly receiving or otherwise unlawfully obtaining any property such property may be restored to the owner or his representative on application by him.

Restitution of stolen property.

In every such case the Court before which such person is tried for any such offence shall have power to award from time to time writs of restitution in respect of the said property or to order the restitution thereof in a summary manner.

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If it appears before any award is made that any valuable security has been *bond fide* paid or discharged by any person liable to the payment thereof or being a negotiable instrument has been *bond fide* taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that the same had by any offence been stolen or otherwise unlawfully obtained or if it appears that the property stolen or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto the Court shall not award or order the restitution of such security or property.

CHAPTER XX.

APPEALS.

Appeal from
arrest of
judgment.

267. When the Court before which any person is convicted arrests judgment the Court is required on the application of the counsel for the prosecution to reserve a case for the consideration of the Supreme Court.

On the hearing of the case the Supreme Court may affirm or reverse the order arresting judgment. If the order is reversed the Court is to direct that judgment be pronounced upon the offender and he is to be ordered to appear at such time and place as the Court may direct to receive judgment and any Justice may issue his warrant for the arrest of the offender.

An offender so arrested may be admitted to bail by order of the Supreme Court or a Judge thereof which order may be made at the time when the order directing judgment to be pronounced is made or afterwards.

Accused may
appeal on
ground of
irregularity
or illegality
of
proceedings.

268. If any accused person who shall be tried upon any indictment in a Superior Court shall think that any of the proceedings of the Court before which the trial takes place are irregular or not according to law it shall be lawful for him either during his trial or after his conviction to apply to such Court to direct a special entry to be made on the record showing the nature of the proceedings alleged to be irregular or illegal. If such a special entry

be directed to be made it shall be drawn up by the Registrar of the Court and the accused and the prosecutor or their counsel and attorneys shall be permitted to see it and to copy it and if either party shall object to its terms it shall be settled by the Judge of the Court before which the case was tried.

269. If any person convicted of any offence shall obtain leave for such a special entry to be made on the record as is hereinbefore provided for it shall be lawful for him by leave of the Court before which the case shall have been tried to appeal against his conviction on the ground of the irregularity or illegality of such proceedings as stated in such special entry aforesaid; provided that within fourteen days after verdict notice of such appeal shall be given to the Registrar of the Court appealed from. Such Registrar shall forthwith after receiving such notice give notice of appeal to the Attorney-General and transmit to the Registrar of the Supreme Court an authenticated copy of the record including copies of the evidence whether oral or in writing taken or admitted at the trial and of the special entry made on the record in manner aforesaid.

Leave to be applied for.

270. If any question of law shall arise on the trial of any person for any offence in a Superior Court it shall be lawful for such Court of its own motion or at the request either of the prosecutor or of the accused to reserve such question for the consideration of the Supreme Court sitting as a Court of Appeal in criminal cases. If the Court shall determine to reserve any such question and the accused shall be convicted the Court shall state the question or questions reserved and shall direct such case to be specially entered in the record and a copy thereof to be transmitted to the Supreme Court.

Reservation of question of law.

271. The execution of the sentence of a Court shall not be suspended by reason of any appeal against a conviction or by reason of a question having been reserved for consideration of the Court of Appeal in criminal cases unless

When execution of sentence may be suspended.

- (a) the sentence shall be that the accused suffer death or be whipped in either

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of which cases the sentence shall not be executed until the appeal or question reserved shall have been heard and decided; or

- (b) the Court from which the appeal is made or by which the question is reserved shall think fit to order that the accused be admitted to bail or if he is sentenced to any punishment other than simple imprisonment that he be treated as an unconvicted prisoner until the appeal or the question reserved shall have been heard and decided: provided that when the accused is ultimately sentenced to imprisonment the time during which he is so released on bail shall be excluded in computing the term for which he is so sentenced.

Powers of Court in cases where question of law is reserved.

272. In case of any appeal against a conviction or any question being reserved as aforesaid it shall be lawful for the Supreme Court sitting as aforesaid to

- (a) confirm the judgment of the Court below in which case if the accused having been convicted and admitted to bail is in Court the Court may forthwith commit him to custody for the purpose of undergoing any term of imprisonment to which he may have been sentenced; or
- (b) order that the judgment shall be set aside notwithstanding the verdict which order shall have for all purposes the same effect as if the accused had been acquitted; or
- (c) remit the case to such Court if it has not delivered judgment in order that it may deliver judgment; or
- (d) give such judgment as ought to have been given at the trial; or
- (e) make such other order as justice may require;

provided that no conviction shall be set aside by reason only of some irregularity or illegality whereby the accused was not prejudiced in his defence or because evidence was improperly admitted or rejected by which no substantial wrong was in the opinion of the Supreme Court done to the accused.

273. The order or direction of the Supreme Court shall be certified under the hand of the presiding Judge to the Registrar of the Court before which the case was tried and such order or direction shall be carried into effect and shall authorise every person affected by it to do whatever is necessary to carry it into effect.

Order of Court to be certified.

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274. Nothing herein contained shall in any way affect or limit the powers and jurisdiction of the Supreme Court as a Court either of review or appeal in criminal cases in relation to inferior Courts.

Power of review and appeal from inferior Courts not affected.

CHAPTER XXI.

PARDON AND COMMUTATION.

275. Nothing in this Code shall affect His Majesty's Royal Prerogative of mercy.

Prerogative.

276. In any case in which the Governor or Lieutenant-Governor is authorised to extend the Royal mercy conditionally to an offender under sentence of death he may without the consent of the offender commute the punishment for any other punishment provided by law.

Governor or Lieutenant-Governor may commute sentence.

Any such commutation is to be signified in writing to the Attorney-General and the Attorney-General is required thereupon to allow the offender the benefit of the conditional pardon and to make an order that he be punished in the manner directed by the Governor or Lieutenant-Governor. Such allowance and order shall have the effect of a valid sentence passed by the Court before which the offender was convicted.

277. A pardon by the Governor or Lieutenant-Governor on behalf of His Majesty shall have the effect of discharging the convicted person from the consequences of the conviction.

Effect of pardon.

278. In any case in which the Governor or Lieutenant-Governor is authorised on behalf of His Majesty to extend the Royal mercy to an offender under sentence of imprisonment with or without hard labour he may extend mercy upon condition of the offender entering into a recognizance conditioned as in the case of offenders discharged by the Court upon suspension of

Conditional remission of sentence by the Governor or Lieutenant-Governor.

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the execution of a sentence. The offender is thereupon liable to the same obligations and to be dealt with in all respects in the same manner as a person discharged by the Court on recognizance upon such suspension.

CHAPTER XXII.

MISCELLANEOUS.

How notice
is to be
served.

279. Unless some other period is expressly provided the notice of trial and any other notice or document required to be served upon the accused shall be served by delivering the same to the accused ten days at least before the day specified therein for his trial or where the accused cannot be found by leaving a copy of such notice or document with some one of his household at his dwelling-house or if no person belonging to his household can be found then by affixing such copy to the principal outer door of the said dwelling-house.

Where the accused has been admitted to bail any such notice or document may either be served upon him personally or left at the place specified in the recognizance as that at which notice of trial and service of the indictment may be made.

The officer serving any such notice as aforesaid shall forthwith deliver or transmit to the official from whom he shall have received such notice for service a return of the mode in which such service was made and such return shall be *prima facie* evidence that the service of such notice was made in manner and form as in such return stated.

Power to
make rules.

280. The Judges of the Supreme Court may make general rules prescribing forms of complaints summons depositions indictments judgments records convictions warrants and recognizances and other forms to be used in any Court or before a Magistrate when holding a preparatory examination in respect of any offence; and every form so prescribed shall be deemed sufficient for the purposes and sufficiently to state the offence or matter for or in respect of which it is prescribed and may be varied as circumstances may require.

† The Judges may also make general rules not inconsistent with the provisions of this Code for regulating the sitting of the Courts for criminal purposes and the proceedings upon the trial of persons charged with offences for regulating bail and costs for regulating the duties of the officers of the Court and generally for every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

281. The provisions of this Code shall apply to all proceedings in inferior Courts except

Certain provisions to apply to inferior Courts.

- (a) where it appears from the context that such provisions are not applicable to inferior Courts;
- (b) where such provisions relate to matters of procedure which are provided for by any law rule or regulation prescribing the procedure of inferior Courts.

SCHEDULE A.

REPEALS.

LAW.	EXTENT OF REPEAL.
Ordinance No. 5 of 1864 (No. 9 of 1866)	The whole.
Law No. 1 of 1895	The whole.
Law No. 7 of 1896	The whole.

SCHEDULE B.

- Treason.
- Murder.
- Culpable Homicide.
- Rape.
- Robbery.
- Assault with intent to commit any of these offences or in which a dangerous wound is given.
- Arson.
- Housebreaking with intent to commit an offence.
- Theft.

† For rules, see—

Government Notice No. 275 of 1903 *Gazette* (27 March 1903) p. 558

Government Notice No. 316 of 1903 *Gazette* (3 April 1903) p. 602

Government Notice No. 375 of 1903 *Gazette* (17 April 1903) p. 666

Government Notice No. 404 of 1903 *Gazette* (2 Oct. 1903) p. 933

**ORD.
No. 2
of
1903.**

No. 2 of 1903.]

[Assented to 13 Jan. 1903.]

ORDINANCE

To Amend the Liquor Licensing Ordinance 1902.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Amendment
of section
thirty-six
of Ordinance
32 of 1902.

The Liquor Licensing Ordinance 1902 is hereby amended by adding the following proviso to section *thirty-six*;
“provided that nothing herein contained shall apply to mynpachts on the farm Elandsfontein No. 1 numbered 302A 302B 333 and 337 on which the townships of Germiston and George Town. are situated.

**ORD.
No. 3
of
1903.**

No 3 of 1903.]

[Assented to 21 Jan. 1903.]

ORDINANCE

† Conferring Borrowing Powers on Johannesburg Municipality.

WHEREAS it is expedient that the Municipality of Johannesburg be empowered to raise moneys by the issue of stock and otherwise for the purposes of the Municipality;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

I. PRELIMINARY.

Name of
Stock.

1. The stock issued in pursuance of this Ordinance shall be known collectively as the “Johannesburg Municipal Stock.”

Definitions.

2. In this Ordinance unless the context otherwise by necessary implication requires “Municipality” means the Municipality of Johannesburg as constituted for the time being.

† See Ordinance No. 9 of 1903 conferring special borrowing powers for certain purposes by the issue of bills.

“The Council” means the Council for the Municipality of Johannesburg established under Proclamation No. 16 of 1901 and their successors in office.

“Town Clerk” means the Town Clerk of the Municipality and includes any person for the time being acting in such capacity.

“Town Treasurer” means the treasurer of the Municipality and includes any person for the time being acting in such capacity.

“Registrar” means the person for the time being appointed by the Council to have the care and management of the nominal register of inscribed stock hereinafter provided.

II. ISSUE OF STOCK.

§ 3. The Council may from time to time by the issue of stock subject to the provisions of this Ordinance raise moneys for the purposes of the Municipality in such amounts as the Lieutenant-Governor shall authorise by writing under the hand of the Colonial Secretary.

Power to issue Stock.

4. Every such power to raise money shall be construed to authorize the Council to create such an amount of stock and from time to time to issue such nominal amounts thereof as will in the aggregate according to the price of issue produce the actual amount of money for the time being raiseable under such power.

Stock to be created to such amount as will produce actual amount of money raiseable.

5. In any such issue of stock the following provisions shall be observed that is to say;

Provisions as to issue.

(a) the stock shall be redeemable within a period fixed by the written authority aforesaid or in default thereof by the resolution of the Council referred to in the next succeeding sub-section determining upon the issue of the stock but so that such period shall not in any case exceed the term of sixty years from such issue;

(b) the resolution of the Council determining upon the issue of any stock shall fix subject to the provisions of this Ordinance the rate of interest to be paid in respect of the stock so

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issued and shall include such subsidiary provisions as may be advisable for the convenient issue of the stock and the service of the same when issued. The provisions of such resolution (hereinafter called the "conditions of issue") shall not be subsequently varied;

- (c) all such stock shall be entitled to the benefit of the charge and security hereinafter expressed and the interest and Redemption Funds hereinafter constituted and the provisions for enforcing payment hereinafter contained and no holder of stock shall have any priority or preference by reason of the date of issue of the stock held by him or on any other ground;
- (d) the stock shall be issued at and for such a price in money as the Council shall resolve and the Council may from time to time by subsequent resolution alter or modify as regards any stock remaining unissued the price fixed by any previous resolution relating thereto;
- (e) the issue of any stock determined upon shall be in such amounts at such times and payable in such manner whether by instalment or otherwise and upon and subject to such reasonable conditions as the Council shall from time to time by resolution determine and the certificates of stock shall be made out in such sums or amounts as shall be found expedient;
- (f) the Council may notwithstanding that the whole nominal amount of any particular issue of stock has not been issued resolve with the authority of the Lieutenant-Governor as hereinbefore provided to make a further issue of stock differing from such previous issue as to rate of interest or term or other incidents of redemption;
- (g) the Council may at any time resolve not to proceed with the issue of any stock which has been authorised

**ORD.
No. 3
of
1903.**

under any previous resolution but has not been issued whether the said stock be the whole or a part of the stock so remaining unissued;

(h) the Council may out of the proceeds of any stock pay the brokerage commission allowances or other costs or expenses of and incident to the issue of such stock.

6. The stock shall be issued as Inscribed Stock or as Stock to Bearer as may be prescribed in the conditions of issue or where there is no express provision in such conditions then in either form according as the applicant therefor shall before the actual issue request in writing. Any stock which has been issued in the one form in the absence of such express provision as aforesaid may be converted into the other form pursuant to the provisions hereinafter contained.

Varieties of stock.

7. In default of such express provision as aforesaid or of such written request from the applicant the stock shall be issued as inscribed stock.

In default of express provision or request stock to be inscribed.

8. The Council shall pay or cause to be paid the interest on the stock as and when such interest shall be due and the principal thereof at the time fixed for the payment thereof in accordance with the provisions of this Ordinance.

Obligations to pay interest and principal.

III. INSCRIBED STOCK.

9. The certificates for inscribed stock shall be in the form set forth in the schedule hereto with such variations if any as circumstances may require.

Certificate of inscribed stock.

10. The Council shall cause a register (hereinafter called the "nominal register") of Inscribed Stock to be kept in one or more books and there shall be entered in such register the following particulars arranged under separate headings in respect of each separate issue of inscribed stock namely;

Register of inscribed stock.

(a) the names and addresses of the owners for the time being of any amount thereof;

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(b) a statement of the amount of such stock held by each owner and the date at which the name of any person was entered in the nominal register in respect of such stock.

- Register. 11. The nominal register may be in duplicate and shall be kept either under the supervision of the Council at the Council's Office or by such bank as the Council shall from time to time entrust with the keeping of such register or jointly by the Council and by such bank.
- Effect of register. 12. Such nominal register shall be *prima facie* evidence of the title of any person in respect of stock of which he is entered as owner and of any other matters hereby directed or authorised to be inserted therein.
- Inspection. 13. Any person may inspect the nominal register at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the Council and shall be entitled to obtain from the Town Treasurer or the Registrar copies or extracts of the register certified by him to be true copies or extracts upon payment of such fee as the Council shall fix not exceeding five shillings (three figures to count as one word) with the addition of sixpence for every fifty words thereof and any copy or extract so certified shall be admissible in evidence but without prejudice to the right of any person to disprove the correctness thereof.
- Issue of stock certificate. 14. On demand in writing from a person entitled to inscribed stock paid up in full for which no certificate has been issued the Council shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid in the name or names either of himself or of such other persons as he shall direct and such certificate or certificates shall be *prima facie* evidence of the title of the person named therein to the stock therein specified.
- Transfer of inscribed stock. 15. Inscribed stock shall be transferable by the owner for the time being either by entry in the books of the Council or by a deed.

16. The following provisions shall apply in the case of stock transferred by entry in the books of the Council;

Transfer in book.

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- (a) the registrar shall keep books (herein referred to as "Inscribed Stock Transfer Books") wherein transfers of inscribed stock so transferred shall be entered;
- (b) every such entry shall be conceived in proper words for the purpose of transfer and shall be signed by the person making the transfer or if absent by his agent thereunto lawfully authorised by writing under his hand;
- (c) a fee not exceeding two shillings and sixpence shall be paid to the Registrar upon any such transfer;
- (d) the Registrar shall enter in the nominal register of inscribed stock a memorial relating to the transfer containing the particulars specified in section *ten* hereof;
- (e) the Registrar shall on demand in writing by any person or party to a transfer or his legal representatives or other person thereunto lawfully authorised in writing under his hand give to such person a certificate signed by himself stating the date and other short particulars of such transfer for which certificate a fee not exceeding two shillings and sixpence shall be paid.

17. In the case of the transfer of any inscribed stock by deed the following provisions shall apply;

Transfer by deed.

- (a) the deed of transfer may be either:
 - (1) an instrument separate from the stock certificate or
 - (2) a cession endorsed on the stock certificate;
- (b) the deed shall in either case be in the form in this behalf set forth in the schedule hereto with such variations if any as the circumstances may require and the deed shall relate only to the transfer and shall not contain any recital trust power or proviso whatever;

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- (c) when the deed is a separate instrument the same after due execution shall be delivered to and kept by the Registrar who shall enter in the nominal register of inscribed stock a memorial thereof containing the particulars specified in section *ten* hereof;
- (d) when the deed is by way of cession endorsed on the stock certificate the person to whom such stock is ceded shall produce the stock certificate to the Registrar who shall thereupon pursuant to section *ten* hereof enter in the nominal register the name of such person as the owner of the inscribed stock comprised in such stock certificate and the other particulars specified in section *ten* hereof;
- (e) in case of any such transfer as aforesaid the Council or the Registrar shall on demand and delivery up of the stock certificate transferred deliver a new stock certificate to the person entitled thereto. A fee of five shillings shall be paid on the registration of any such transfer;
- (f) until any such transfer has been registered as aforesaid the Council shall not be affected by the same or any notice thereof or any claims or demands purporting to be by virtue thereof.

Investigation
as to transfer.

18. Before any transfer is entered in the register of inscribed stock the Council or the Registrar may if the circumstances appear to make it expedient require proof to its or his satisfaction of the title of any person claiming a right to make or receive or be entitled to a transfer.

Closing the
registers.

19. The Council may as regards the inscribed stock or any part thereof cause the nominal register of inscribed stock and the inscribed stock transfer books to be closed at such time or times as they may think fit but so that such books be not at any one time kept closed for more than fifteen days. Due notice shall be given of such intended closing by notice published in one or more newspapers circulating in Johannesburg and in any other place where

such books may be kept at least fourteen days before the date of such closing. During the period for which such books are closed no transfer of inscribed stock shall be registered.

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IV. STOCK TO BEARER.

20. The certificates for stock to bearer shall be in the form set forth in the schedule hereto with such variations as the circumstances may require.

Form of certificate.

21. On demand in writing from a person entitled to stock to bearer for which no certificate has been issued the Council shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid.

Issue of certificate.

22. Annexed to each certificate of stock to bearer shall be coupons for the payment of the interest thereon covering such a period as the Council shall determine. At the end of that period fresh coupons may be issued for such further period as the Council shall determine and so on for successive periods. But the Council may in lieu of issuing fresh coupons in respect of any certificate of stock to bearer give in exchange a fresh certificate with coupons.

Coupons.

23. Stock to bearer and coupons relating thereto shall respectively pass and the title thereto be transferred by delivery of the stock certificate or the coupons as the case may be.

Transfer of bearer stock and coupons.

V. CHANGES OF FORM OF STOCK.

24. Subject to the provisions in this behalf contained in section *six* of this Ordinance ;

Change of inscribed stock to bearer stock and *vice versa*.

(a) any person registered as the owner of inscribed stock may on delivering up his stock certificate require the Council to issue to him a certificate or certificates of stock to bearer for and in respect of such inscribed stock and such certificate or certificates shall be made and issued accordingly ;

(b) any person holding a certificate of stock to bearer may on delivering up such certificate with all unpaid

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coupons thereto belonging require the Council to issue to him a certificate or certificates of inscribed stock and such certificate or certificates shall be made and issued accordingly and such person shall be entered in the nominal register as the owner of such stock;

- (c) any certificates and coupons delivered up as aforesaid shall be cancelled;
- (d) all necessary entries shall be made in the proper books to keep a true record of the transactions;
- (e) a fee not exceeding five shillings shall be paid for each new certificate so issued.

VI. INTEREST ON STOCK.

Payment
interest on
inscribed
stock.

25. The interest on inscribed stock shall be paid at such place or places as the Council may fix in the conditions of issue by cheque or banker's draft to be posted to the registered address for the time being of each registered owner of such stock.

Payment
through the
Post.

26. The posting by or on behalf of the Council of a letter containing a cheque or draft addressed to an owner of inscribed stock at his registered address shall as respects the liability of the Council or of any bank entrusted with the payment of such interest or any official thereof be equivalent to the delivery of the same to such owner himself.

Joint
Owners.

27. Where more persons than one are registered as the joint owners of inscribed stock a cheque or draft as aforesaid in payment of the interest on such stock may be delivered or posted to any one of them and any one of them may give an effectual receipt for any interest due unless as to either matter notice to the contrary has been given in writing to the Council or the bank aforesaid.

Investiga-
tion of title.

28. The Council or such bank as aforesaid before allowing the payment of any interest on any inscribed stock may if the circumstances of the case appear to make it expedient require evidence of the title of

any person claiming such interest. And in such case the evidence shall be an affidavit of one or more competent persons or of such other nature as the Council or the bank aforesaid may require.

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29. With respect to interest on stock to bearer ; Interest on bearer stock.

- (a) each coupon shall state the amount of interest payable in respect thereof and the date of payment ;
- (b) payment to the bearer of a coupon of the amount expressed therein at or after the date named shall be a full discharge to the Council and shall exempt the Council the bank aforesaid and any official thereof from all liability in respect of that coupon and the amount represented thereby ;
- (c) the provisions of the last preceding section shall apply *mutatis mutandis* with regard to coupons and the payment of the interest thereby represented.

VII. SECURITY FOR STOCK.

30. All stock issued under this Ordinance and any interest due thereon shall be charged indifferently on the whole of the lands rents and property belonging to the Municipality and on all rates levied by the Council under Proclamation No. 38 of 1902, or under any law for the time being empowering the Council to levy a general rate upon property subject to all charges existing on the taking effect of this Ordinance and shall be a first charge thereon after those charges. First charge on the Municipal Rates and Revenue.

VIII. INTEREST AND REDEMPTION FUNDS.

31. For payment of interest on the stock and for redemption and extinction of the stock there shall be created two funds hereinafter called the Interest Fund and the Redemption Fund respectively which shall be maintained applied and dealt with in manner hereinafter provided. Creation of Interest and Redemption Funds.

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Payments to
Interest
Funds and
Redemption
Fund.

32. (1) There shall be paid and transferred to the Interest Fund in each year for the payment of interest on the stock a sum equal to the aggregate amount of all the interest payable in that year on the outstanding stock.

(2) There shall be paid and transferred to the Redemption Fund the sums specified below as and when they become payable or receivable that is to say;

(a) the net proceeds of any sales of fixed property belonging to the Municipality;

(b) all other incomings of the Council or the Municipality in respect of any sales of rights or interests in the nature of or analogous to fixed property easements or servitudes;

(c) the income of the investments of the Redemption Fund;

(d) the payments mentioned in section *fifty-five* hereof;

(e) any payments which may be required under the provisions of sub-section (2) of section *thirty-six* of this Ordinance.

Investment
of
Redemption
Fund.

33. The Redemption Fund so far as not immediately required for the purposes in the next section mentioned shall be invested as the Council may direct in one or more of the stocks funds and securities following namely;

(a) the stocks funds and securities from time to time styled in the Law of England "Trustee Securities";

(b) the stocks and securities issued or guaranteed by the Government of any Colony or Dependency of the British Empire;

(c) the debentures mortgages or debenture stock of any railway tramway dock harbour or waterworks corporation created by special legislative enactment within the British Empire;

(d) the Municipal Fund or Town Debt of any town in South Africa constituted by or pursuant to any general or special statute ordinance or statutory enactment;

- (e) Johannesburg Municipal Stock ; provided that any stock so purchased shall not again be sold.

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34. The Redemption Fund shall be applied from time to time in redemption of the stock according to the provisions of this Ordinance and may also be applied in the manner and subject to the conditions herein provided ;

Application
of
Redemption
Fund.

- (1) where any power has been conferred on the Council under the provisions of sections *three* and *four* of this Ordinance to raise money by the issue of stock such power may be exercised either wholly or partially by using for this purpose any moneys for the time being standing to the credit of the Redemption Fund ;
- (2) in every case where the Council proposes to use the Redemption Fund for the above-mentioned purpose it shall first pass a resolution authorising the withdrawal of the moneys from the Redemption Fund in accordance with the conditions herein prescribed and specifying the account of the said fund from which the moneys are to be withdrawn and if they are to be withdrawn from more than one of such accounts the amount to be withdrawn from each such account ;
- (3) the amount to be withdrawn shall be equal to the sum which is to be raised by this means ;
- (4) immediately on the withdrawal of such moneys as aforesaid the same payments shall be made and the same procedure observed *mutatis mutandis* as if such amount had been raised by an issue of new stock bearing interest at the same rate as the stock represented by the account from which the said amount was withdrawn and repayable at the same date as such stock is repayable ; provided that all sums payable as aforesaid by way of interest on the amount so withdrawn shall be paid into the Redemption Fund to the account from which such amount was withdrawn.

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Redemption
Fund not to
be pledged.

Accounts of
Redemption
Fund.

35. The Council shall not create or purport to create any lien or charge upon or against the Redemption Fund or any part thereof or any moneys applicable thereto whether expressed to be subsequent or subject to the sole charge hereinbefore expressed or otherwise.

36. (1) All proper books and accounts shall be kept and entries made to show from time to time the position of the Redemption Fund and in particular the investments thereof. Full and detailed accounts of the Redemption Fund and the investments thereof and of all payments and receipts in connection therewith during the year shall be published yearly with the general accounts of the Municipality in a form to be approved by the Colonial Secretary and a copy thereof shall be furnished to the Colonial Secretary.

(2) For the purpose of such accounts the Council shall each year cause a valuation to be made of the Redemption Fund and shall at the same time ascertain what would be the amount at the date of such valuation of a sinking fund constituted by equal annual payments in respect of each issue of stock sufficient if accumulated with compound interest at the rate of three and a half per centum per annum to redeem the whole outstanding stock of such issue at the expiration of thirty years from the issue thereof or at the expiration of any period being less than thirty years which may have been prescribed for the redemption of such stock. If it shall then appear that the value of the Redemption Fund is less than the amount of a sinking fund so constituted and accumulated as aforesaid the Council shall cause a further payment to be made into the Redemption Fund so that the value thereof shall not be less than the said amount.

(3) All such books and accounts shall be audited by the Auditor-General of the Colony and for that purpose shall at all reasonable times be open for inspection by him or by any person authorised by him in writing thereto. The accounts referred to in sub-section (1) hereof shall not be passed by the Council in any year without a certificate from the said Auditor-General that he is

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satisfied both as to the correctness of the accounts and books and as to the maintenance of the Redemption Fund at the amount required by this Ordinance.

37. Any owner of stock or person authorized by him in writing may inspect the books and accounts of the Redemption Fund at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the Council and shall be entitled to obtain from the Town Treasurer copies or extracts of or from the said books and accounts certified by him to be true copies or extracts upon payment of such fee as the Council shall fix not exceeding five shillings with the addition of sixpence for every fifty words (three figures to count as one word).

Inspection of
books and
accounts.

IX. REDEMPTION.

38. The Council may at any time purchase the stock at such price as may be agreed upon. The purchase money may be paid out of any moneys other than the Redemption Fund which may be available for such purpose. The stock purchased shall be immediately cancelled.

Purchase for
cancellation.

39. Any stock not previously cancelled shall on the date fixed for redemption by the conditions of issue become payable at the nominal amount thereof and such amount shall together with any interest then due be paid to the owner of any inscribed stock or the bearer of any certificate of stock to bearer.

Redemption.

X. ENFORCING PAYMENT OF STOCK.

40. If at any time any interest due on any stock remain unpaid for three months after demand therefor in writing has been lodged with the Town Treasurer by the person entitled thereto or his duly authorized representatives proceedings to enforce payment may be instituted and proceeded with subject to the provisions contained in sections *forty-one forty-two and forty-three* hereof.

Default of
payment of
interest.

41. The owner of any stock in respect whereof such default has been made may apply to any competent Court for the appointment of a receiver of the assets hereby charged with the payment of the

Proceedings
to enforce
payment.

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principal and interest of the stock. On the hearing of such application the Court may make such order and give such directions as under the circumstances shall seem expedient for raising and payment of the moneys due. In particular the Court may order and declare that a rate or rates of such amount or amounts as it shall fix be levied upon all rateable property within the Municipality. And such rate so ordered shall have the same incidence as any rate imposed by the Council and may be enforced in like manner and the proceeds thereof shall be paid into Court or otherwise as the Court shall direct.

Further proceedings.

42. In the event of such default in payment of interest in whole or part being continued for a further period of three months the owner or owners aforesaid may apply to the Court for a declaration that the principal of all the stock for the time being outstanding has become due and the Court shall make such declaration accordingly with all such consequential orders and declarations unless satisfied that in the interests of owners of stock it would be advisable to otherwise deal with the application and in such case the Court may postpone the application and may ultimately make or refuse an order according to the circumstances.

Default in payment on expiration of period for redemption.

43. In case default shall be made in payment of the principal of any stock which has become repayable for one month then the like proceedings *mutatis mutandis* as specified in sections *forty-one* and *forty-two* may be instituted and proceeded with at the suit or on the application of any owner of stock. The Court may also order a realisation of the Redemption Fund or a sale of any assets charged as aforesaid and may make such order as it shall think fit for the due carrying out of such sale or realisation and for the application of moneys raised thereby.

Regard to wishes of stockholders.

44. (1) In making or refusing any order as aforesaid the Court shall have regard to the wishes of the owners of stock as a whole and may order meetings to be held to ascertain such wishes and give all necessary directions as to such meetings and may

direct any persons not parties to the proceedings to be made parties and to be served.

(2) Any order made shall be deemed to be made on behalf of and shall inure to the benefit of all the owners of stock interested in or affected by such order.

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XI. SUBSIDIARY PROVISIONS.

45. The Registrar shall not enter in the nominal register or the inscribed stock transfer books or any other book or document or be otherwise affected by any notice of any alleged right interest trust power or claim of or by any person in respect of any stock other than a person entered in such books as owner of inscribed stock or lawfully entitled to be so entered in accordance with the provisions of this Ordinance.

No trust or notice of interest recognised.

46. If any stock certificate or coupon is worn out or damaged the owner on delivery up of the same and payment of a fee not exceeding five shillings may require the Council to cancel it and issue to him a similar certificate or coupon.

Renewal of certificates.

47. If any stock certificate or coupon is lost or destroyed the owner on proof of the same to the satisfaction of the Council and on payment of a fee not exceeding five shillings together with all costs and expenses reasonably incurred by the Council and on giving indemnity to the satisfaction of the Council may require the Council to issue a similar certificate or coupon.

Lost certificates.

48. If the name of any person is without sufficient cause entered in or omitted from the nominal register or the inscribed stock transfer books or if any incorrect or improper entry is made or if default is made or unnecessary delay takes place in making any entry in such nominal register or transfer books any person aggrieved may apply to the Court for an order that the nominal register or transfer books may be rectified. The Court may on such application make such order both with regard to the issue and as to costs as to it may seem fit.

Proceedings to rectify the Registers.

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Proceedings
in case of
non-com-
pliance with
provisions of
Ordinance.

49. (1) If it shall at any time appear to the Colonial Secretary from the returns to be rendered as hereinbefore required or otherwise that the Council has failed to comply with the requirements of this Ordinance with regard to any payment application or investment in relation to the stock or Redemption Fund it shall be his duty to bring the matter to the notice of the Council and to request that the default may be made good within a time to be specified.

(2) If the Council shall fail to comply with such request it shall be competent for the Court on the application of the Colonial Secretary or of any ratepayer of the Municipality or of any owner of stock to make an order for the due enforcement of the provisions of this Ordinance. The Colonial Secretary shall be awarded the costs of any such application made by him.

Meaning of
Court.

50. "The Court" in the two last preceding sections means as regards proceedings instituted in the Transvaal the Supreme Court of the Transvaal or the Witwatersrand High Court and the jurisdiction hereby given may be exercised in a summary manner in chambers.

Power to
issue bills.

51. Instead of raising for any purposes by the creation and issue of stock money which they are authorised to raise under this Ordinance the Council may if they see fit raise for those purposes such money by means of bills subject to and in accordance with the following provisions;

(1) bills issued by the Council shall be called "Johannesburg Municipal Bills;"

(2) a Johannesburg Municipal Bill shall be a bill in the form prescribed by regulations made in pursuance of this Ordinance for the payment of the sum named therein in the manner and at the date therein mentioned so that the date be not less than three or more than twelve months from the date of the bill;

(3) such bills may be offered for purchase by tender in such manner on such conditions and after public advertise-

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- ment in such manner as the Council determine;
- (4) the bills shall be issued under the authority of a warrant sealed by the Council;
 - (5) each bill shall be for the amount directed by the Council not being less than five hundred pounds;
 - (6) each bill shall be under the seal of the Council;
 - (7) a register of the bills issued and renewed by the Council shall be kept by the Town Treasurer or such other person as may be appointed by the Council and such register shall show the amount of each bill the principal money raised by such bill the statutory borrowing power in respect of which the bill is issued the date of issue the date when the same falls due and the date of payment thereof. Such register shall at all reasonable times be open to inspection without payment of any fee by any creditor of the Council;
 - (8) the Council shall not issue bills payable to bearer;
 - (9) the Council shall before issuing any bill under this Ordinance from time to time make regulations with respect to bills subject to and in accordance with this Ordinance and shall furnish to the Colonial Secretary and the Auditor-General a copy of any regulations so made. Such regulations shall provide;
 - (a) for regulating the preparation form mode of issue mode of payment and cancellation of bills;
 - (b) for regulating the issue of a new bill in lieu of one defaced lost or destroyed;
 - (c) for preventing by use of counterfoils or of a special description of paper or otherwise fraud in relation to bills;
 - (d) for the proper discharge to be given upon the payment of a bill;

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- (10) the Council may enter into such arrangements with any bank for carrying into effect the provisions of this Ordinance with respect to the issue of bills and to the payment of the principal sum named therein and to all matters relating thereto and for the proper remuneration of such bank with reference thereto as they may think proper. Such remuneration shall be paid out of the general funds of the Council;
- (11) the amount of money received by the Council in respect of a bill shall be deemed to be principal money raised by means of such bill and the difference between the amount payable in respect of a bill and the amount received in respect thereof shall be deemed to be interest on the principal money so raised;
- (12) the Council shall provide from the same source and pay at the appropriate times into the Interest and Redemption Funds created under this Ordinance the same sums for payment of interest and repayment of the principal money so raised as they would have done in respect of the stock in the place of which such bills have been issued;
- (13) the aggregate amount payable on bills current at any one time shall not exceed the sum of one hundred† thousand pounds except by the amount payable on bills issued shortly before any other bills fall due in order to pay off those bills;
- (14) the Council may subject to the provisions of the preceding sub-section renew bills at maturity;
- (15) money raised by the issue of bills shall be employed by the Council for the purposes of the several borrowing powers in respect of which the bills are respectively issued;
- (16) for the repayment of the principal money raised by bills the Council may raise money by the creation of stock or issue of further bills but

† This sub-section was amended by Ordinance No. 23 of 1903 by the substitution of the words "five hundred thousand" for the words "one hundred thousand."

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save as aforesaid the powers given to the Council to raise moneys by the creation of stock shall be suspended to the extent to which moneys have been raised by the issue of bills;

(17) a Johannesburg Municipal bill shall entitle the holder to payment at maturity of the sum expressed in such bill to be payable and shall be charged on all the revenues of the Council;

(18) the Town Clerk shall within twenty-one days after the thirtieth day of June in any year during which any bills have been issued paid off or are outstanding under this section transmit to the Colonial Secretary and Auditor-General a return in such form as the Colonial Secretary may prescribe and containing all such particulars as he may require in regard to the issue and payment of bills by the Council.

52. (1) It shall be lawful for the Council Overdrafts. from time to time as circumstances may require to borrow money by way of overdraft from any bank which for the time being may be acting as the bankers of the Council. No such overdraft shall exceed in amount the sum of ten thousand pounds or extend for a period of more than ninety days.

(2) Save as aforesaid it shall not be lawful for the Council to raise or borrow money otherwise than in the manner and under the conditions prescribed in this Ordinance.

53. A person in good faith applying for any stock on the issue thereof or purchasing taking or holding stock once issued or advancing money in good faith to the Council for or on the security of stock issued or to be issued shall not be concerned to enquire or to take notice whether the creation or issue thereof was or was not authorised under the issuing or borrowing powers of the Council or otherwise in accordance with any Ordinance relating to such borrowing powers or whether or not the Council or any meeting thereof was properly constituted or convened or whether or not the proceedings at any meeting of

Protection of
persons
taking stock
in good
faith.

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the Council were legal and valid or regular or whether or not the conditions of issue were valid or have been duly observed or to see to any application of any moneys raised by the stock. A certificate of stock valid as to form once issued purporting to be by or on behalf of the Council to a person taking the same in good faith and for good consideration shall be legal and valid for all purposes in the hands of such person and anyone taking from or through him notwithstanding any defect informality or illegality in the creation or issue of any of the stock in respect of which such certificate is or purports to be issued or in the making or issue of such certificate or that the amount of stock authorised or resolved on has been or will be exceeded or that such certificate is a duplicate or repetition of any certificate previously issued.

Transfer of stock free of municipal taxes.

54. The stock shall be issued and be transferable free of any municipal rate or assessment; provided that nothing herein contained shall apply to the payment of fees prescribed by this Ordinance.

Unclaimed interest.

55. If at any time any interest is not claimed at the time for payment thereof and remains unclaimed for a period of two years thereafter the amount thereof shall be paid into the Redemption Fund without prejudice to the right of any person at any time thereafter to establish his claim to such interest which shall thereupon be paid to him less any costs and expenses of the Council incident to the proof of such claim but without any interest in respect of the period during which any such sum has remained unpaid.

Unclaimed stock.

56. (1) If at the end of the period within which any stock is required to be redeemed according to the provisions of this Ordinance the Council shall not be able to redeem any such stock by reason of the owner thereof being unknown or not being forthcoming the Council shall invest in any securities in which the Redemption Fund may be invested a sum equal to the nominal value of such stock and thereupon such stock shall be taken to have been redeemed for the purposes of this Ordinance.

(2) Any sums invested as aforesaid shall unless used to satisfy any legal claim in respect of the stock represented thereby be kept invested as aforesaid for a period of ten years after which time it shall be transferred by the Council to the Colonial Treasurer to be dealt with according to law.

57. In case of any action or other proceeding civil or criminal relating to stock or coupons or the rights or interests of persons alleging claims thereto or alleged offences in respect of stock or coupons copies of entries in or extracts from the nominal register or the Inscribed Stock Transfer Books or any book or document of the Council the Registrar or any bank referred to in sections *eleven* or *twenty-six* hereof duly certified as correct by the Town Clerk the Town Treasurer or Registrar in writing under his hand shall be admissible in evidence but the Court before whom such action or proceeding is pending may for good cause order the production of the original of any of the books or documents aforesaid.

Evidence.

58. This Ordinance may be cited for all purposes as the Johannesburg Municipality Borrowing Powers Ordinance 1903.

Title.

SCHEDULE.

A.—Form of Inscribed Stock Certificate.
Johannesburg Municipality.

No..... £.....
This is to certify that is the proprietor of.....pounds of Johannesburg Municipal Stock subject to Ordinance No..... of 1903 relating thereto and to the conditions of issue.
Signed on behalf and by authority of the Johannesburg Town Council at.....this.....day of.....19.....

B.—Form of Bearer Stock Certificate.
Johannesburg Municipality.

No..... £.....
This is to certify that the Bearer of this Certificate is entitled topounds of Johannesburg Municipal Stock with interest thereon at the rate of.....per cent. per annum subject to Ordinance No..... of 1903 relating thereto and to the conditions of issue.
The Coupons attached to this Certificate are payable at.....
When the Coupons are exhausted this Certificate will be exchanged on presentation at.....for a new Certificate with fresh Coupons attached.
Signed on behalf and by authority of the Johannesburg Town Council at.....this.....day of.....19.....

JOHANNESBURG MUNICIPALITY BORROWING POWERS.
EXPLOSIVES LAW AMENDMENT.

**ORD.
No. 3
of
1903.**

C.—Deed of Transfer.

Johannesburg Municipal Stock.

I.....for consideration received do hereby transfer unto.....of.....the sum of.....pounds Johannesburg Municipal Stock part of the Stock standing in my name in the Books of the Johannesburg Municipality subject to the several conditions on which I hold the same at the execution hereof.

Signed at.....this.....day of.....19.....

Witness:

D.—Cession by Endorsement on Certificate.

I hereby transfer the within Stock unto.....of.....subject to the several conditions on which I hold the same at the execution hereof.

Signed at.....this.....day of.....19.....

Witness:

**ORD.
No. 4
of
1903.**

No. 4 of 1903.]

[Assented to 26 Feb. 1903.]

ORDINANCE

WHEREAS it is deemed desirable to amend the Law relating to Explosives;

Preamble.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Amendment of Article *eighty-six* of Law 27 of 1896.

Repeal of Laws.

Lieutenant-Governor to frame rules.

1. Article *eighty-six* of Law 27 of 1896 is hereby amended by the omission of the words "and at factories of explosives."

2. So much of the said Law or of any other Law as may be repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed.

3. †It shall be lawful for the Lieutenant-Governor to frame rules for

(a) the protection of life and property in factories of explosives;

(b) regulating the importation removal and storage of safety fuse.

Every such rule shall be published in the *Gazette* and any person guilty of any contravention thereof shall be liable to the penalty provided therein and where no penalty is so provided to a fine not exceed-

† For Rules see Government Notice No. 1230 of 1903 *Gazette* (30 October 1903) page 1117.

ing seventy-five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

4. It shall be lawful for any Magistrate to issue permits for the transport within this Colony of explosives in quantities not exceeding one thousand pounds in weight.

5. This Ordinance may be cited as The Explosives Law Amendment Ordinance 1903.

Magistrates may issue permits for local transport.
Title.

**ORD.
No. 4
of
1903.**

No. 5 of 1903.]

[Assented to 25 Feb. 1903.]

**ORD.
No. 5
of
1903.**

ORDINANCE

To Amend the Peace Preservation Ordinance of 1902.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Sections *nineteen twenty twenty-one twenty-two twenty-three* and *twenty-four* of the Indemnity and Peace Preservation Ordinance No. 38 of 1902 are hereby repealed.

Repeal.

2. After the date of this Ordinance no person shall enter or reside in this Colony unless he is possessed of a permit issued to him under the provisions of this Ordinance or can give satisfactory evidence that he belongs to one of the following classes;

Permit required to enter Colony.

- (1) persons resident and actually in this Colony or the Orange River Colony on the 31st May 1902;
- (2) persons who before the date of this Ordinance have received a permit or other formal authorisation to enter this Colony from some person duly authorised to issue the same;
- (3) persons coming within the provisions of Article *two* of the Terms of Surrender signed at Pretoria on the 31st day of May 1902 and published in the *Gazette Extraordinary* dated 3rd June 1902;

**ORD.
No. 5
of
1903.**

(4) persons employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony;

provided that the exemption in this section contained shall not apply to any person who has been expelled from or ordered to leave this Colony or the Orange River Colony.

Persons by whom permits may be issued.

3. Permits to enter the Colony shall be in the form prescribed by the Governor and shall be issued by such persons as he may appoint for that purpose.

Limitation on issue of permits.

4. (1) No permit to enter this Colony shall be granted to any person who having been a Burgher of the South African Republic or the Orange Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor.

(2) Subject to the above limitation the granting or withholding of permits shall be in the absolute discretion of the Governor.

Persons called on to produce permits on pain of arrest.

5. Any person entering or residing in this Colony may be called upon by any member of any Constabulary or Police Force or other person authorised thereto by the Colonial Secretary to produce a permit issued under this Ordinance or to give satisfactory evidence that he belongs to one of the classes exempted from the necessity of having such a permit under the provisions of section *two*. If the person so called upon fails to produce such a permit or to give such evidence as aforesaid he may be arrested without a warrant and dealt with as hereinafter provided.

Persons arrested to be brought before a Magistrate.

6. Every person so arrested shall with all convenient speed be brought before a Magistrate and if he fails to satisfy the Magistrate that he is duly authorised to enter or reside in this Colony under the provisions of this Ordinance the Magistrate may make an order in writing directing such person to leave this Colony within such time as may be specified in such order provided that if such person declares upon oath that he has already obtained a

permit and gives satisfactory reasons for his inability to produce the same or if he declares upon oath that he can produce satisfactory evidence that he belongs to one of the classes exempted from the necessity of obtaining a permit by the provisions of section *two* hereof he may be released upon entering into a recognizance with or without sureties to produce before any Magistrate named in such recognizance and within the time stated therein such permit or evidence as the case may be. If such person fails to comply with the conditions of his recognizance it shall be forfeited.

**ORD.
No. 5
of
1903.**

7. Any person who may be ordered to leave this Colony and fails to do so within the time specified in the order and any person whose recognizance has been forfeited under the provisions of the last preceding section may be arrested without warrant and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and not more than six months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

Penalties.

8. If any person imprisoned under the terms of the last preceding section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this section without obtaining permission in writing from the Colonial Secretary to remain in the Colony the burden of proving which shall be upon him he may be arrested without a warrant and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

Further penalties for failure to leave Colony.

**ORD.
No. 5
of
1903.**

Offences
relating to
permits.

9. Any person who
- (1) obtains or attempts to obtain or incites any person to obtain or aids or abets any person in obtaining a permit by any fraud misrepresentation false pretence falsehood or other improper means;
 - (2) uses or attempts to use or incites any person to use or aids or abets any person in using any permit so obtained;
 - (3) enters or attempts to enter this Colony on a permit so obtained or on a permit not issued to him by proper authority;

shall be liable to a fine not exceeding five hundred pounds or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

Persons who
may be
ordered to
leave Colony.

10. It shall be lawful for the Lieutenant-Governor on its being shewn to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within such time after service of such order as may be stated therein. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in manner prescribed in sections *seven* and *eight* of this Ordinance and shall be subject to the penalties therein provided.

Title.

11. This Ordinance may be cited as the Peace Preservation Ordinance 1903 and shall be read as one with the Indemnity and Peace Preservation Ordinance 1902.

No. 6 of 1903.]

[Assented to 25 Feb. 1903.]

**ORD.
No. 6
of
1903.****ORDINANCE****To further Amend Proclamation Transvaal No. 35
of 1902.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Section *eighteen* of the Registration of Mining Rights Proclamation No. 35 of 1902 is hereby amended by omitting the words "or to transfer more than one stand or the lease of more than one stand or of more than one lot." Amendment of section *eighteen* of Proclamation No. 35 of 1902.

2. The Registration of Mining Rights Proclamation No. 35 of 1902 is hereby amended by the omission of section *twenty-six* thereof as amended by section *one* subsection (8) of the Registration of Mining Rights Amendment Ordinance No. 6 of 1902 and by the substitution therefor of the following; Repeal of section *twenty-six* of Proclamation No. 35 of 1902 and substitution of new section.

- (1) Every registered holder of any mining right a diagram whereof is not filed in the Registration of Mining Rights Office on the coming into force of this Ordinance shall within two months after the date upon which this Ordinance comes into force in the case of mining rights existing before the said date and within two months after pegging in the case of claims pegged after the said date file at the Office of the District Registrar of the District within which such right is situated a diagram in quadruplicate of such mining right framed by an admitted surveyor provided that the Registrar of Mining Rights may for reasons which seem to him sufficient extend the period herein mentioned.
- (2) Every registered holder of any stand not situated in a stand township a diagram of which stand is not filed in the Registration of Mining Rights Office shall within two months after

**ORD.
No. 6
of
1903.**

the coming into force of this Ordinance file at the Office of the District Registrar of Mining Rights of the District within which such stand is situated a diagram in quadruplicate of such stand framed by an admitted surveyor.

- (3) In lieu of the diagram required by sub-sections (1) and (2) hereof a plan framed and signed by any person not being an admitted surveyor may be filed in the case of alluvial claims and of mining rights or stands in any Mining District or portion thereof in which the Commissioner of Mines may from time to time where in his opinion the services of an admitted surveyor are not reasonably procurable direct by notice in the *Gazette* that diagrams framed by a surveyor shall not be required; provided always that any plans not framed by an admitted surveyor shall contain such data as may be required by the Beacon Inspector of the division within which such mining rights or stands are situated and shall be approved by him.

Repeal of section *thirty* of Proclamation No. 35 of 1902 and substitution of new section.

3. Section *thirty* of the Registration of Mining Rights Proclamation No. 35 of 1902 is hereby repealed and the following substituted therefor;

† It shall be lawful for the Lieutenant-Governor to make regulations providing for the size form and materials of beacons the pegging out of claims and generally for the proper carrying out of the duties of Beacon Inspectors but no regulations framed under this section shall be of any force or effect unless and until published in the *Gazette*. The regulations published under Government Notice No. 55 of 1903 and purporting to be framed under the section hereby repealed are to be deemed valid.

Penalties.

4. On non-compliance by any person with the provisions of section *two* hereof or with any regulation framed under or validated by section *three* hereof it shall be lawful

† For Regulations see:

Government Notice No. 55 of 1903 *Gazette* (6 Feb. 1903) p. 313.

Government Notice No. 140 of 1903 *Gazette* (27 Feb. 1903) p. 410.

Government Notice No. 311 of 1903 *Gazette* (9 April 1903) p. 635.

for the District Registrar to fix a time during which such provision or regulation shall be complied with and if such provision or regulation be not complied with within the time so fixed the District Registrar shall not renew the license for any mining right or stand in respect of which such provision or regulation has not been complied with and such mining right or stand shall be treated in the manner provided in the case of lapsed claims by article *eighty-five* of Law No. 15 of 1898; provided always that no mining right or stand shall be given back to the previous holder until such provision or regulation has been complied with.

**ORD.
No. 6
of
1903.**

5. It shall be lawful for the Lieutenant-Governor to appoint one or more persons to the office of Deputy Assistant Registrar of Mining Rights who shall subject to such directions as the Commissioner of Mines may from time to time issue have power and authority to sign and register any deeds and other documents which under the Registration of Mining Rights Proclamation No. 35 of 1902 require to be signed or registered by the Registrar of Mining Rights.

Appointment
of Deputy
Assistant
Registrars of
Mining
Rights.

6. This Ordinance may be cited as the Registration of Mining Rights Ordinance 1903.

Title.

No. 7 of 1903.]

[Assented to 25 Feb. 1903.

**ORD.
No. 7
of
1903.**

ORDINANCE

Public Education.

WHEREAS it is expedient that the Government of this Colony shall as far as the resources of the Colony permit provide the means for free elementary education for children of European parentage; and whereas it is desirable to offer facilities for higher and technical education and for the training of teachers in certain centres of population within the Colony; and

**ORD.
No. 7
of
1903.**

whereas it is desirable to provide for the conduct of public examinations; and whereas it is desirable to promote the industrial and other education of children other than those both of whose parents are of European birth or descent;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Lieutenant-Governor may establish a Department of Public Education.

1. It shall be lawful for the Lieutenant-Governor out of the public revenue of the Colony to;

(a) establish a Department of Public Education under the Director of Education whose duties in regard to this Colony shall be defined by regulation;

(b) provide for the establishment maintenance inspection and control of any or all of the following kinds of Government schools classes and institutions for children both of whose parents are of European birth or descent;

schools to afford elementary education in all districts;

high schools;

classes in such subjects as are usually studied in the Universities of the United Kingdom and other countries;

normal schools for the training of teachers;

mining agricultural and other technical schools;

schools for the mentally or physically defective;

reformatory schools;

and such other kinds of schools classes or institutions as may seem to him necessary;

(c) provide for the establishment maintenance inspection and control of Government schools for children not provided for in clause (b) hereof in which due provision shall be made for industrial training and also subject to such conditions as he may deem fit make grants towards the establishment and maintenance of schools for

- such children controlled by such religious and other bodies as may be approved by him;
- † (d) provide bursaries and scholarships to assist the education of deserving scholars;
- (e) provide for or make grants towards the establishment and maintenance of such hostels and orphanages in connection with Government schools as are subject to Government inspection;
- (f) provide for the conduct of all Government examinations in the Colony;
- (g) make grants of money towards the establishment and maintenance of public libraries;
- (h) make other provision for the administration of public education in accordance with this Ordinance.

2. The Lieutenant-Governor in Council shall decide whether instruction in the schools classes and institutions enumerated in section *one* clause (b) shall be given free or whether fees shall be charged; provided that wherever in a Government school affording elementary education under section *one* clause (b) the average daily attendance calculated by the month of scholars between the ages of six and fourteen shall not fall below thirty such education shall be provided free of cost to all scholars.

Education in Government schools may be free.

3. (1) All teachers in schools maintained by Government shall after the first day of January one thousand nine hundred and four hold a certificate of the Director of Education issued in accordance with regulations to be prescribed by the Lieutenant-Governor entitling them to teach within the Colony; provided that it shall be lawful for such Director with the special authority of the Lieutenant-Governor in Executive Council to issue a license to teach to any teacher though not holding such certificate.

Teachers in Government schools to hold certificates or licenses.

(2) All teachers in Government schools and other persons employed in the Department of Public Education not being civil servants shall be engaged under a form of contract which shall set forth the terms under which the engagement is made.

† For Regulations as to Bursaries see Government Notice No. 822 of 1903 *Gazette* (21 August 1903) page 710.

**ORD.
No. 7
of
1903.**

Holidays to be fixed by regulation.

Religious instruction to be given.

4. The school holidays shall be fixed by regulation of the Lieutenant-Governor in Council.

5. (1) In all schools established under section *one* clause (b) of this Ordinance in which elementary education is provided not being expressly established for the children of persons belonging to other than Christian bodies instruction shall be given by the teachers in Bible History for periods not exceeding in all two hours a week. Such instruction may be given in the Dutch language.

(2) Whenever parents or guardians request on behalf of their children that supplementary religious instruction may be given according to the specific doctrines of the denominations to which the said parents or guardians belong opportunity shall be afforded to ministers of religion recognised by Government to give supplementary instruction of this character in the usual school hours and within such portion of the school premises as may be set apart for the purpose; provided always that no scholar shall be required to be present whose parent or guardian has not expressed a desire for such instruction; provided further that such instruction shall not occupy more than one hour in each week. Such instruction may be given in the Dutch language.

(3) No scholar shall be required to attend such instruction in Bible History or any other religious instruction or observance if exemption therefrom is requested by his parent or guardian.

Instruction in the Dutch language may be given.

6. Any scholar shall at the request of his parent or guardian receive instruction in the Dutch language for three hours a week. The instruction under this section may be additional to instruction in Bible History and religious instruction given in the Dutch language under the provisions of the last preceding section; provided that the total time devoted to instruction given in the Dutch language under this section and the last preceding section shall not exceed five hours a week.

7. (1) The Principal of any school not established under this Ordinance at which ten or more scholars are enrolled shall register such school at the office of the Department of Public Education and shall furnish a true quarterly return of the number names and qualifications of the teachers employed and shall keep such registers of attendance of scholars and make such returns thereof as may be prescribed by the Department of Public Education.

(2) Such Principal shall conform to all sanitary regulations laid down by the Department of Public Health.

(3) It shall be lawful for any officer authorised thereto in writing by the Director of Education to enter any such school during school hours for the purpose of inspection of the registers or the sanitary condition of the premises.

(4) The penalty for non-compliance on the part of the principal of any such school with the provisions of the first and second sub-sections hereof or for obstruction of any such officer duly authorised as in sub-section (3) in the discharge of his duties shall be for the first offence a fine not exceeding ten pounds or in default of payment thereof imprisonment for a term not exceeding one month and for any subsequent offence a fine not exceeding fifty pounds or in default of payment thereof imprisonment for a term not exceeding three months.

In the event of a second or subsequent conviction under the provisions of this sub-section it shall be lawful for the Magistrate to order that such premises shall be closed for school purposes.

(5) All teachers in such schools shall after the first day of February one thousand nine hundred and six be required to hold such certificates or licenses to teach as are by sub-section (1) of section *three* required of teachers in similar positions in Government schools. After such date it shall be lawful for the Lieutenant-Governor to order that any premises in which a teacher is employed not having such certificate or license shall be closed for school purposes. Any person who shall use for school purposes

Private schools to be registered and subject to sanitary regulations and inspection.

**ORD.
No. 7
of
1903.**

PUBLIC EDUCATION.
CUSTOMS DUTY (SUGAR) SUSPENSION.†

**ORD.
No. 7
of
1903.**

any premises ordered to be closed under this or the last preceding sub-section except by the authority of the Lieutenant-Governor shall be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment for a term not exceeding three months.

(6) When the principal of any such school shall have conformed to the requirements in the foregoing sub-sections and shall apply for inspection as regards the methods of instruction and the educational efficiency in such school it shall be lawful for the Director of Education if he is satisfied with the results of such inspection to place from time to time at the disposal of such principal the services of special teachers attached to the Normal or other Government schools.

Lieutenant-Governor may appoint local Committees.

† 8. It shall be lawful for the Lieutenant-Governor in Council to appoint local Consultative and Advisory Committees and to define by regulation the functions and duties of such Committees.

**ORD.
No. 8
of
1903.**

No. 8 of 1903.]

[Assented to 25 Feb. 1903.]

§ ORDINANCE.

WHEREAS it is desirable to make temporary provision for the suspension or reduction of the duty levied on the importation into this Colony of Sugar produced in British South Africa;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Power to suspend or reduce in British South Africa the duty on sugar.

§§ 1. It shall be lawful for the Lieutenant-Governor by Proclamation to suspend or reduce the duty on sugar the produce of British South Africa imported into this Colony up to and including the thirty-first day of August one thousand nine hundred and three or such later date as may be notified by the Lieutenant-Governor by Proclamation.

† For constitution and duties of local Committees see Government Notice No. 860 of 1903 *Gazette* (21 August 1903) p. 718.

‡ Extended by Ordinance No. 12 of 1903 to other articles of produce or manufacture of British South Africa.

§§ See Proclamation No. 1 of 1903 *Gazette* (17 March 1903) p. 519.

2. Any such suspension or reduction shall only be granted on production by the importer of such sugar of such evidence as may be required by the Director of Customs with regard to the origin of the sugar and shall be subject to any regulations † made by the Director of Customs governing the importation of such sugar.

Evidence of origin to be produced.

**ORD.
No. 8
of
1903.**

3. This Ordinance may be cited as The Customs Duty (Sugar) Suspension Ordinance 1903.

Title.

No. 9 of 1903.]

[Assented to 26 Feb. 1903.

**ORD.
No. 9
of
1903.**

ORDINANCE

To confer special borrowing powers on the Council for the Municipality of Johannesburg.

WHEREAS by the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance No. 27 of 1902 the Council for the Municipality of Johannesburg is empowered to liquidate out of moneys raised on loan all or any of the liabilities of the late Stadsraad;

And whereas the amount of the said liabilities which it is desirable to liquidate without delay is two hundred thousand pounds or thereabouts;

And whereas it is expedient that the said Council be empowered and authorised to raise money by the means of bills for the purpose of liquidating such liabilities;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Council for the Municipality of Johannesburg is hereby empowered and authorised to raise by means of bills in addition to any sum that may be so raised under the Johannesburg Municipality Borrowing Powers Ordinance No. 3 of 1903 a sum not exceeding two hundred thousand pounds which shall be applied for the purpose of liquidating certain of the liabilities of the late Stadsraad constituted under

Council specially empowered to borrow £200,000.

† For Regulations see Notice No. 157 of 1903 *Gazette* (1 May 1903) p. 745.

**ORD.
No. 9
of
1903.**

Application
of section
fifty-one of
Ordinance
No. 3 of 1903.

Power to
renew bills.

Title.

Law No. 9 of 1899 on such terms and conditions as the Lieutenant-Governor may approve and such further sums as are mentioned in section *three* hereof.

2. Bills issued under this Ordinance shall be subject to all the provisions of section *fifty-one* of the Johannesburg Municipality Borrowing Powers Ordinance No. 3 of 1903 and any regulations made thereunder except that sub-sections (13) and (14) of the said section shall not apply.

3. The Council may renew the bills issued under this Ordinance at maturity and may raise such further sums by means of bills as may be necessary from time to time for the purpose of paying off any bills issued under this Ordinance; provided however that all bills issued under this Ordinance shall be paid off within eighteen months from the date hereof and no further bills shall thereafter be issued by virtue of the powers hereby conferred.

4. This Ordinance may be cited as the Johannesburg Municipality Special Borrowing Powers Ordinance 1903.

**ORD.
No. 10
of
1903.**

No. 10 of 1903.]

[Assented to 26 Feb. 1903.

ORDINANCE

**To extend the Jurisdiction of the Supreme Court and
to provide for the holding of Circuit Courts.**

WHEREAS it is desirable to confer jurisdiction in criminal cases on the Supreme Court of this Colony and on the Witwatersrand High Court;

And whereas it is desirable to make provision for the holding of Circuit Courts in this Colony and to define the jurisdiction of such Courts;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Supreme Court shall have jurisdiction over all offences triable within this Colony.

Jurisdiction of Supreme Court and High Court in criminal cases.

The Witwatersrand High Court shall have jurisdiction over all offences committed in the Witwatersrand District.

This jurisdiction shall have effect on and after the first day of April one thousand nine hundred and three and shall extend to offences whether committed before or after the first day of September one thousand nine hundred.

†2. The Supreme Court consisting of not less than three Judges thereof shall be a Court of Appeal in Criminal Cases and appeals shall be allowed thereto in manner provided in the Criminal Procedure Code 1903.

Supreme Court to be a Court of Appeal in criminal cases.

3. It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to divide this Colony into two or more circuit districts and to fix the boundaries of every such district and to alter such boundaries from time to time as occasion may require.

Lieutenant-Governor to divide this Colony into Circuit Court Districts.

4. Courts to be called Circuit Courts shall be held at least twice in every year commencing from such date as may be fixed by the Lieutenant-Governor by Proclamation in the *Gazette* in each of the districts referred to in the last preceding section; and each of the said Circuit Courts shall be held by a Judge of the Supreme Court at such times and at such place or places within each of the said districts as the Lieutenant-Governor shall from time to time direct and appoint.

Circuit Courts to be held twice a year.

5. There shall be attached to each of the said Circuit Courts a Registrar who shall keep the records of the said Court together with so many officers as may be found necessary. Such officers shall be appointed in the same manner as is provided for the appointment of officers of the Supreme Court.

Appointment of officers.

6. Each of the said Circuit Courts shall be a Court of Record and shall subject to the provisions of section *eleven* within the District in which it may be held have and exercise concurrently with the Supreme Court the same jurisdiction powers and authority including the jurisdiction conferred

Jurisdiction of Circuit Courts.

† See sections 267 to 274 inclusive of Criminal Procedure Code (Ord. No 1 of 1903).

**ORD.
No. 10
of
1903.**

Removal of cases to and from Circuit Court to any other competent Court.

Transmission of records to Supreme Court.

Appeals in civil cases from Circuit Court to Supreme Court.

Rules to be framed by Supreme Court.

Witwatersrand High Court and Circuit Courts not to have appellate jurisdiction.

Process &c. of Circuit Courts may be executed anywhere in the Colony.

by section *one* of this Ordinance as are vested in the Supreme Court throughout the whole of this Colony.

7. The provisions of section *twenty-nine* of the Administration of Justice Proclamation 1902 as read in conjunction with Ordinance No. 2 of 1902 shall apply *mutatis mutandis* to the removal of cases to and from any Circuit Court to any other competent Court.

8. Within one month of the close of each Circuit Court the Registrar or other officer thereof shall transmit the records and proceedings in all cases civil and criminal heard and determined before such Court to the Registrar of the Supreme Court at Pretoria to be kept by him and filed of record in like manner as the records of the said Supreme Court save and except so far as the Judge presiding at such Circuit Court may otherwise order.

9. The provisions of sections *thirty-three thirty-four thirty-five thirty-six thirty-seven and thirty-eight* of the Administration of Justice Proclamation 1902 read in conjunction with Ordinance No. 2 of 1902 relating to appeals from the Witwatersrand High Court to the Supreme Court shall *mutatis mutandis* apply to appeals from any Circuit Court in a civil suit or proceeding to the Supreme Court.

10. It shall be lawful for the Judges of the Supreme Court or the majority of them to frame such rules orders and regulations as to them shall seem meet concerning all matters relating to the practice and procedure in Circuit Courts in civil cases the process of the said Courts and the mode of executing the same and the custody of the records of such Court.

11. Nothing in this Ordinance contained shall be deemed to confer on the Witwatersrand High Court or any Circuit Court any appellate jurisdiction or the power of reviewing the proceedings of inferior Courts.

12. Every process writ order judgment or sentence of the Witwatersrand High Court or any Circuit Court may subject to any Rule made by the Judges of the Supreme Court be executed in any district

of the Colony in the same manner and by the same officers as if such process writ order judgment or sentence had been issued made given or passed by the Supreme Court.

**ORD.
No. 10
of
1903.**

13. The Special Criminal Court at Pretoria and the Special Criminal Court at Johannesburg shall notwithstanding anything in this Ordinance or the Criminal Procedure Code 1903 continue to exercise the jurisdiction vested in them by law immediately preceding the first day of February one thousand nine hundred and three until such Courts are † dissolved in manner provided in section *fifteen* of Proclamation No. 6 of 1900. § Upon the dissolution of the said Courts every criminal case or proceeding pending in such Court may be proceeded with in the Supreme Court or Witwatersrand High Court respectively in exactly the same manner as if such case or proceeding had been originally commenced therein.

Jurisdiction
of the
Special
Criminal
Courts.

All records minutes and proceedings whatsoever of and belonging to the said Special Criminal Courts shall upon the dissolution of such Courts be delivered over to and deposited for safe custody in the Supreme Court.

14. In every case in which any judgment decree or order of any Circuit Court or of the Special Criminal Courts at Pretoria and Johannesburg shall require to be proved inspected or in any manner referred to in any other Court a copy of such record certified under the signature of the Registrar of such Court or where the records have been transmitted to the Supreme Court under the signature of the Registrar of the Supreme Court shall be taken and received as *prima facie* evidence of such record; provided that it shall not be necessary in regard to any certified copy to prove the handwriting of the Registrar to any such copy.

Copy of
record duly
certified to
be admitted
as evidence.

15. This Ordinance may be cited as the Title.
Superior Courts Criminal Jurisdiction
Ordinance 1903.

† The Special Criminal Courts were dissolved by Proclamation No. 6 Administration of 1903 *Gazette* (20 March 1903) page 520.

‡ Clerical error "1900" should read "1901" (See Correction of Errors in Laws Ordinance 1904)

ORD.
No. 11
of
1903.

No. 11 of 1903.]

[Assented to 26 Feb. 1903.

ORDINANCE

To facilitate a Trigonometrical Survey of this Colony and to provide for the Preservation of Trigonometrical Beacons.

WHEREAS it is advisable that a trigonometrical survey of this Colony should be made; and whereas certain trigonometrical beacons will be accurately fixed during the conduct of such survey; and whereas it is important that such beacons should be preserved and maintained;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Interpreta-
tion of terms.

1. "Superintendent" means an officer appointed by the Lieutenant-Governor to conduct and superintend the Trigonometrical Survey of this Colony and shall include any person employed by him or acting under his instructions;

"Beacon" shall signify any trigonometrical station signal beacon or other survey mark.

Superinten-
dent may
enter upon
lands for
purpose of
carrying out
survey.

2. It shall be lawful for the said Superintendent to enter upon any land whether belonging to the Crown or to any private person with such animals and vehicles as may be necessary for the purpose of carrying out the survey and to erect any beacon whether on above or below the surface of the ground for the purpose of such survey and to examine and if necessary repair or re-cover or cause to be repaired and re-covered any such beacon and to take from such land or any adjoining land such material as he may deem necessary for the purpose of erecting or repairing any such beacon; provided that if any injury be done thereby to land which has been improved by cultivation or otherwise compensation shall be paid to the owner or occupier of such land the amount of such compensation in the absence of agreement being determined in the manner provided by The Expropriation of Lands and Arbitration Clauses Proclamation 1902.

CUSTOMS DUTY COLONIAL PRODUCE SUSPENSION.

3. Any person who shall obstruct hinder or prevent the said Superintendent from entering on any land for the purposes of the said survey or who shall obstruct hinder or prevent the said Superintendent from erecting examining repairing or recovering any beacon or from carrying out the said survey in any other respect shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for obstructing Superintendent.

**ORD.
No. 11
of
1903.**

4. Any person who shall injure remove or destroy or cause to be injured removed or destroyed any beacon shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for injuring beacons.

5. This Ordinance may be cited as The Trigonometrical Survey Ordinance 1903.

Title.

No. 12 of 1903.]

[Assented to 2 April 1903.]

**ORD.
No. 12
of
1903.**

ORDINANCE

WHEREAS it is desirable to extend the provisions of Ordinance No. 8 of 1903 to other articles the produce growth or manufacture of British South Africa;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

† 1. The provisions of Ordinance No. 8 of 1903 shall be and are hereby extended so as to apply to all articles the produce growth or manufacture of British South Africa save and except spirits.

Extension of provisions of Ordinance No. 8 of 1903.

2. This Ordinance may be cited as The Customs Duty Colonial Produce Suspension Ordinance 1903.

Title.

† See Proclamation No. 9 Admn. 1903 *Gazette* (17 April 1903) p. 658 and Proclamation No. 11 Admn. 1903 *Gazette* (24 April 1903) p. 690 and Notice No. 157 of 1903 *Gazette* (1 May 1903) p. 745.

APPROPRIATION.
WILLS (ATTESTATION AND EXECUTION).

**ORD.
No. 13
of
1903.**

Schedule, Etc.—(continued.)

	Estimate for 1902-3.	Vote in Supplemen- tary Supply.
	£	£
14. Grants in aid to local bodies (Colonial Secretary)	66,046	24,900
15. Immigration	2,000	15,000
16. South African Constabulary (Treasury)	1,250,000	—
17. Grants to Volunteer Corps (Treasury)	75,000	30,000
18. Miscellaneous (Colonial Secretary)	10,000	15,850
19. Expenses of Commissions (Colonial Secretary)	—	3,000
20. Compensation for Surrendered Arms (Ordinance No. 13 of 1902)—Colonial Secretary)	—	71,000
21. Contribution to Municipal Bodies in lieu of rates (Colonial Secretary)	—	16,000
22. Land Department	—	60,200
		£904,010
Less savings on Estimates		112,706
	£3,702,765	£791,304
	—————	
Total	£4,494,069	

**ORD.
No. 14
of
1903.**

No. 14 of 1903.]

[Assented to 7 April 1903.

ORDINANCE

Amending the Law as to the Execution of Wills and other Testamentary Writings.

WHEREAS it is desirable to make provision for the execution of Wills and Codicils in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Mode of execution of non-privileged wills on or after the 1st January 1904.

1. No will or other testamentary instrument not being a privileged will made or executed upon or after the first day of January 1904 shall be valid unless it shall be executed in the manner hereinafter mentioned that is to say; it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more competent witnesses

**ORD.
No. 14
of
1903.**

present at the same time and such witnesses shall attest and subscribe the will or other testamentary instrument in the presence of the person executing the same; and where the instrument shall be written upon more sheets than one the person executing the same and also the witnesses shall sign their names upon every sheet upon which the instrument shall be written; provided always that nothing herein contained shall be deemed to prevent a mark being a sufficient signature.

2. Every will or other testamentary instrument attested at any time heretofore or hereafter by a person whether male or female above the age of fourteen years who is competent to give evidence in any court of law in this Colony shall in respect of the qualification of such person to attest be deemed to have been validly attested and every such person shall be deemed to be qualified to attest the execution of a will or other testamentary instrument.

Persons competent to attest execution of a will or other testamentary instrument.

3. If any person shall attest the execution of any will or other testamentary instrument to whom or to whose wife or husband any beneficial devise legacy estate interest gift or appointment of or affecting any property (other than and except charges and direction for the payment of any debt or debts) shall be thereby given or made such devise or legacy estate interest gift or appointment shall so far only as concerns such person attesting the execution of such will or other testamentary instrument or the wife or husband of such person or any person claiming under such person or wife or husband be null and void.

Persons attesting execution of a will to forfeit any interest conferred upon them in such will.

4. If any person shall attest the execution of any will or other testamentary instrument and such person or the wife or husband of such person shall in and by such will or other testamentary instrument be nominated or appointed executor administrator or guardian thereunder the appointment of such person or the wife or husband of such person as such executor administrator or guardian shall be null and void.

Persons attesting execution of a will to forfeit any appointment made as executor guardian etc. in such will.

WILLS (ATTESTATION AND EXECUTION).
MAGISTRATES' COURTS BAIL.

**ORD.
No. 14
of
1903.**

Notarial wills to be valid though not read over in the presence of witnesses.

5. No notarial will whether made before or after the taking effect of this Ordinance shall be deemed or be taken to be invalid null or void by reason that the same was not read over by the notary before whom such will was passed or by any other person to the testator in the presence of the subscribing witnesses to such will.

Laws repealed.

6. The following laws and so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed;

Law No. 7 of 1895 so far as it affects the execution of Wills;

Ordinance No. 10 of 1864 if and so far as it may be in force.

Title.

7. This Ordinance may be cited for all purposes as the Wills Ordinance 1903.

**ORD.
No. 15
of
1903.**

No. 15 of 1903.]

[Assented to 7 April 1903.

ORDINANCE

Preamble.

WHEREAS it is expedient to remove certain doubts which have arisen as to the powers of Resident Magistrates and Assistant Resident Magistrates to admit to bail accused persons undergoing trial under the ordinary jurisdiction of or under any special jurisdiction by any law conferred on such Magistrates and to make further provision as to the forfeiture of recognizances entered into by such accused persons;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Power to Magistrate to admit to bail in cases ' summarily triable under his ordinary or special jurisdiction

1. Where any accused person is before a Court of a Resident Magistrate charged with an offence summarily triable by such Magistrate under the jurisdiction conferred upon him by Proclamation (Transvaal) No. 21 of 1902 or any law amending the same or under any special jurisdiction conferred

**ORD.
No. 15
of
1903.**

on such Magistrate by any other law if the hearing of the case shall be at any time adjourned and such accused person be remanded it shall be lawful for such Magistrate in his discretion to admit such accused person to bail in manner hereinafter provided.

2. The amount of the bail to be taken in such case shall be in the discretion of the said Magistrate; provided that no person shall be required to give excessive bail.

Amount of bail in Magistrate's discretion.

3. When any Magistrate shall decide to admit to bail any such accused person as aforesaid a recognizance shall be taken by such Magistrate either from such accused person alone or from such accused person and one or more sureties according to the nature and circumstances of the case and the conditions of such recognizance shall be that such accused person shall appear at a time and place to be therein specified and as often as may thereafter be necessary within a period of six months from the date thereof until final judgment in his case shall have been given to answer to the charge of the offence alleged against him or to the charge of any other offence summarily triable by the Magistrate as aforesaid which may appear to have been committed by the said accused person.

Recognizances to be entered into by accused and sureties.

4. The provisions in sections *one hundred and six to one hundred and ten* inclusive and *one hundred and thirteen* of the Criminal Procedure Code 1903 shall *mutatis mutandis* apply to any recognizances entered into by sureties under the last preceding section.

Applications of provision of Criminal Procedure Code to Sureties.

5. When it shall appear to such Magistrate as aforesaid that default has been made in the conditions of any recognizance taken by him under the provisions of this Ordinance such Magistrate may issue an order declaring such recognizance forfeited and such order shall have the effect of a judgment on the recognizance for the amounts therein named against the accused person and his sureties respectively.

Forfeiture of recognizances by order of Magistrate.

6. This Ordinance may be cited as the **Title.**
Magistrates' Courts (Bail) Ordinance 1903.

ORD.
No. 16
of
1903.

No. 16 of 1903.]

[Assented to 7 April 1903.

ORDINANCE

WHEREAS it is desirable to confer upon the Magistrate of the Native Court for the Witwatersrand District the powers conferred on a Resident Magistrate by Proclamation (Transvaal) No. 10 of 1901;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

Power to hold inquests conferred on Magistrates and Assistant Magistrates of Native Court.

1. All the powers and jurisdiction conferred on a Resident Magistrate by Proclamation (Transvaal) No. 10 of 1901 shall be and are hereby conferred on the Magistrate and Assistant Magistrates of the Native Court for the Witwatersrand District.

Title.

2. This Ordinance may be cited for all purposes as the Magistrates (Native Courts) Extended Jurisdiction Ordinance 1903.

ORD.
No. 17
of
1903.

No. 17 of 1903.]

[Assented to 8 April 1903.

ORDINANCE

To authorise the Licensing of Police and Volunteer Corps Canteens for the sale of Liquor and to amend in certain respects the Liquor Licensing Ordinance 1902.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

Interpretation of terms.

1. In this Ordinance;

“Commanding Officer” means;

(a) in the case of the South African Constabulary the Inspector-General;

(b) in the case of the Town Police the Commissioner of Police;

(c) in the case of a Volunteer Corps the Commanding Officer thereof;

**ORD.
No. 17
of
1903.**

“Canteen” means and includes any canteen club institute mess or other similar institution established for the use of members of the South African Constabulary or of the Town Police or of any duly established Volunteer Corps with the consent of the Commanding Officer thereof;

“Canteen Liquor License” means a license to sell intoxicating liquors by retail to be consumed on the premises in which they are sold to any member of any of the forces mentioned in this section for whose use the canteen in respect of which the license is granted has been established not being a person to whom liquor is prohibited to be sold or supplied by the Liquor Licensing Ordinance 1902 or any other law but to no other person; provided always that such license issued in respect of a canteen established for any duly established Volunteer Corps shall authorize the holder thereof only to sell to members of such corps when assembled in or during the time of any camp of training or instruction.

2. (1) It shall be lawful for the Receiver of Revenue for the district in which any canteen is situated to issue without requiring any payment or the certificate of any licensing Court a Canteen Liquor License to the Commanding Officer applying therefor or any Officer or non-Commissioned Officer whom he may designate in writing.

Receiver of Revenue to issue licenses.

(2) The said license shall be available at such place and for such period as may be stated in the application.

3. The holder of a Canteen Liquor License save as otherwise provided in this Ordinance shall for the purpose of the Liquor Licensing Ordinance 1902 be deemed and taken to be the holder of a general retail liquor license.

Penalties.

4. The Liquor Licensing Ordinance 1902 shall be and is hereby amended as follows;

Amendments in Liquor Licensing Ordinance 1902.

(1) By substituting the words “Resident Magistrate” for the words “Licensing

**ORD.
No. 17
of
1903.**

- Court" and "Court" in sub-section (2) (c) of section *seven* of the said Ordinance.
- (2) By omitting the words "in case the application shall be granted or allowed" in section *twenty-two* of the said Ordinance.
- (3) By omitting in section *twenty-five* of the said Ordinance the words "personally or."
- (4) By the addition at the end of section *twenty-nine* of the said Ordinance of the words "to commence from the day after the last day of the sitting of the Court by which the renewal of his license had been refused or from the termination of his existing license whichever is later."
- (5) By inserting in sub-section (1) of section *thirty-two* of the said Ordinance after the words "two hundred and fifty" the words "or any portion thereof."
- (6) By the addition at the end of sub-section (1) of section *fifty-three* of the said Ordinance of the words "and notice of such order shall be given by the Magistrate to the senior officer of Police in his district who shall forthwith communicate the same to the person mentioned in the said order and as far as possible to every holder of a license in the district in which such person resides"
- (7) By adding after sub-section (6) of section *fifty-six* the following new sub-section (7) "Sell or dispose of liquor contrary to the conditions of his license or in any manner not authorised by the provisions of section *seven* applicable to such license."
- (8) By inserting after the word "consent" in sub-section (2) of section *fifty-nine* of the said Ordinance the words "of the President and two members."

Amendment
of section
thirty-four
of the
Ordinance.

5. All the words after "business" shall be omitted from section *thirty-four* sub-section (1) of the said Ordinance and there shall be substituted for the words so omitted the

words "shall be deemed to be guilty of a contravention of this Ordinance and shall be liable on conviction to a penalty of twenty-five pounds."

6. For the purposes of section *thirty-five* of the said Ordinance a recognised town or village shall mean any town or village having fifty white male inhabitants above the age of sixteen years resident within such town or village.

7. This Ordinance may be cited as the Liquor Licensing Further Amendment Ordinance 1903 and shall be read as one with the Liquor Licensing Ordinance 1902 and the Liquor Licensing Amendment Ordinance 1903.

**ORD.
No. 17
of
1903.**

Definition of
"recognised
town or
village."

Title.

No. 18 of 1903.]

[Assented to 14 April 1903

**ORD.
No. 18
of
1903.**

ORDINANCE

To confer Powers of Arrest on certain Railway Officials and to provide for the appointment of Railway Police.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. All station masters and station officials permanent way inspectors ticket inspectors and collectors and all such like officers appointed by the Commissioner of Railways (in this Ordinance referred to as "the Commissioner") may arrest remove from any carriage and detain any person found trespassing on the railway or any of the works or buildings connected therewith or contravening any law relating to any such railway or any regulation or bye-law made under any such law; provided that no person shall be arrested or detained under the powers conferred by this section unless there shall exist reasonable ground for believing that except by arresting the person offending he could not be found or made answerable to justice without delay trouble or expense.

Powers of
railway
officials to
arrest.

**ORD.
No. 18
of
1903.**

The person arresting shall with all convenient speed deliver or cause to be delivered over to some constable policeman or other officer of the law the person so arrested to be dealt with according to law.

Magistrate may appoint constable.

2. Any Resident Magistrate may on the application of the Commissioner appoint any persons recommended for that purpose to act as constables on and in connection with the railways within the district of such Magistrate; and every person so appointed shall take an oath or make a solemn declaration set forth in the Schedule to this Ordinance.

Power of constables.

3. Every constable so appointed who has taken such oath or made such declaration may act as a constable for the preservation of the peace and for the security of persons and property against offences and other unlawful acts on such railway and on any works belonging thereto and on and about any trains roads warehouses lands and premises belonging to such railway whether the same are within the district for which he was appointed or in any other district through which the railway passes and in all places not more than a quarter of a mile distant from such railway and shall have the same powers protection and privileges for apprehending offenders as well by night as by day and for doing all things for the prevention discovery and prosecution of offences and for keeping the peace which any duly appointed member of any police force in this Colony has within the district for which he is appointed.

Dismissal of constables.

4. Every constable appointed under the provisions of this Ordinance may be dismissed by the Resident Magistrate of the district within which he has been appointed to act or by the Commissioner and upon every such dismissal all powers protection and privileges which belonged to any such person by reason of such appointment shall wholly cease; and no person so dismissed shall be again appointed or act as constable for any such railway without the consent of the authority by whom he was dismissed.

5. The Commissioner shall cause to be sent to the Resident Magistrate of every district through which the railway passes the name and designation of every constable so appointed at his instance the date of his appointment and the name of the Magistrate making it and also the fact of every dismissal of any such constable the date thereof and the authority who dismisses within one week of the date of such appointment or dismissal as the case may be and such Magistrate shall record such appointments and dismissals in such form as the Attorney-General may direct.

Commissioner to cause lists of appointments and dismissals to be sent to Magistrates.

**ORD.
No. 18
of
1903.**

6. Every such constable who is guilty of any neglect or breach of duty in his office of constable shall be liable upon summary conviction to a fine not exceeding twenty-five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding two months. Such fine may be deducted from any salary due from the Commissioner to such offender and paid to the Magistrate imposing the same.

Punishment of constable for breach of duty.

7. This Ordinance may be cited as The ^{Title.} Railway Police Ordinance 1903.

SCHEDULE.

I, A.B., having been appointed a constable to act upon and in connection with the Central South African Railways under the provisions of Ordinance No. 18 of 1903 do swear that I will well and truly serve His Majesty the King in the said office of constable without favour or affection malice or ill-will and that I will to the best of my power cause the peace to be kept and prevent all offences against the peace and that while I continue to hold the said office I will to the best of my skill and knowledge discharge the duties thereof faithfully according to law.

**ORD.
No. 19
of
1903.**

No. 19 of 1903.]

[Assented to 30 April 1903.

ORDINANCE

To provide for the Expropriation of Land and Buildings within a certain area (as defined in Schedule hereto) within the Municipality of Johannesburg.

WHEREAS it is desirable to give the Town Council of Johannesburg power to expropriate the land and buildings within a certain area a great portion of which is in an insanitary condition and dangerous to the public health for the improvement of the said area and for other purposes as hereinafter set forth;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Definitions.

1. The term "Council" as used in this Ordinance shall mean the Council for the Municipality of Johannesburg and the term "Town Clerk" shall include any person acting for the time being in the capacity of Town Clerk for the said Municipality.

Power of Council to expropriate land or buildings within area specified in schedule on giving three months' notice.

2. It shall be lawful for the Council at any time within five months after the taking effect of this Ordinance upon giving not less than three months' previous notice of its intention so to do by advertisement in three consecutive issues of the *Gazette* and of one or more newspapers published in Johannesburg as well as by means of placards posted in conspicuous places within the area referred to in the schedule hereto annexed and also by leaving a notice thereof affixed to some place on each occupied stand proposed to be taken to enter upon expropriate and take and hold possession of all or any land or buildings situate within the area set forth in the schedule hereto annexed; and thereupon all persons owning or occupying such lands or buildings or any part thereof or holding any interest whatever therein shall give up possession or occupation thereof or any interest therein as the case may be to the Council leaving all questions as to compensation to be paid for or in respect to the ownership or occupation

of which they may be so dispossessed to be settled as hereinafter provided; and any Court of Resident Magistrate may on the affidavit of the Town Clerk that any such person neglects or refuses to give up the possession or occupation of any such lands or buildings issue an order against such person for ejection from the premises. Any person against whom such order is issued refusing or neglecting to obey such order shall be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

The Council shall in addition to the notice required as aforesaid as far as possible send a notice by registered letter to each registered owner or mortgagee of land proposed to be taken.

3. From and after the first publication of the advertisement mentioned in the last preceding section no transfer or mortgage of any right of ownership or other interest in any lands and buildings situate within the said area and included in the said advertisement shall be made to any person other than the Council except a transfer in pursuance of a *bonâ fide* sale concluded prior to the said date or a transfer to the holder of a mortgage bond in satisfaction of such bond.

No transfer or mortgage to be made after notice has been given.

4. Five months after the taking effect of this Ordinance the freehold title in so much of the said area as the Council shall have entered upon or taken possession of under section *two* shall *ipso facto* vest in the Council and may be registered in the name of the Council in the Deeds Office of this Colony without payment of any transfer duty; provided always that it shall be lawful for the Lieutenant-Governor within twelve months from the taking effect of this Ordinance to appropriate to the use of the Crown such portions of land in the said area taken by the Council as may be necessary as sites for police and educational purposes without payment of any consideration by way of rent or otherwise to the Council.

Vesting of freehold title in Council and power of Lieutenant-Governor to appropriate sites.

**ORD.
No. 19
of
1903.**

**ORD.
No. 19
of
1903.**

Extinction of all rights and interests in land freehold title of which so vests.

5. Upon the vesting of the freehold title in the Council as aforesaid all rights and interests in any land so vesting registered in the Deeds Office of this Colony or in the Office of the Registrar of Mining Rights at Johannesburg shall except for purposes of compensation under this Ordinance *ipso facto* become extinguished without any transfer thereof to the Council and all records of either of the said offices shall on the request in writing of the Town Clerk be altered and amended accordingly without payment of any transfer duty.

Power of Council to close or divert streets.

6. At any time after the entering upon and taking possession of any portion of the said area by the Council it shall be lawful for the Council to close all or any of the streets and thoroughfares therein or to divert or alter the same.

Agreement between Council and persons interested as to amount of compensation.

7. Every owner of or holder of an interest in land or buildings within the said area may at any time after the date of the first publication of notice of intention on the part of the Council to make entry as aforesaid up to the date of such entry forward to the Town Clerk a statement in writing specifying the nature and extent of his ownership or of any interest held by him and under what title the same is held and what sum of money he claims as compensation for dispossession as aforesaid and the Council may thereupon treat and agree with such owner or holder as to the amount of compensation to be paid to him and in case of an agreement being so arrived at then the amount so agreed upon shall be payable by the Council to such holder or owner on the date of the Council making the entry as aforesaid.

Payment of mortgage bonds and preferent charges and surrender of documents to Council.

8. Upon payment by the Council of the amount (or portion thereof as in section *nine* hereof) of any mortgage bond or other preferent charge registered either in the Office of the Registrar of Mining Rights Johannesburg or in the Deeds Office of this Colony together with (in the case of bonds or charges passed before the date of this Ordinance and not yet due) interest in lieu of notice for the unexpired period of such bond or charge not exceeding six months

the documents representing the same shall be surrendered to the Council and cancellation thereof shall be obtained by and at the request of the Council; provided that in case there shall be included in the operation of any such mortgage bond or other preferent charge any other property or in case of a bond containing a general clause being in excess of the amount of compensation payable by the Council then and in either such case in place of the cancellation of such mortgage bond or other preferent charge as aforesaid the property or properties within the said area and in respect of which compensation shall be payable as aforesaid shall be released therefrom and thereafter such bond or other documents surrendered to the Council shall be returned to the legal holder thereof; provided further that the amount payable in respect of interest in lieu of notice on bonds or other charges not yet due as herein provided shall not be deducted from the amount of compensation payable by the Council to the mortgagor.

9. If the amount of any mortgage bond or other preferent charge shall exceed the amount of compensation payable in respect of any land or interest therein hypothecated under such bond or charge then and in every such case the Council shall only pay the amount of such compensation in full satisfaction and discharge thereof so far as the Council is concerned but without prejudice to any further rights of the holder of such mortgage bond or other preferent charge as against his debtor and in case of their being more than one such mortgage bond or other preferent charge the same shall be satisfied in their legal order of priority and to the extent only to which such compensation shall extend.

10. If at the date of the Council making entry as aforesaid the amount of compensation payable by the Council to any owner or holder as aforesaid shall not have been agreed to as aforesaid then the amount thereof shall be settled by arbitration as hereinafter set forth; provided however that nothing herein contained shall prevent an

**ORD.
No. 19
of
1903.**

Where the amount of mortgage bond or preferent charge exceeds amount of compensation then Council shall be discharged on paying the amount of compensation.

In the absence of agreement the amount of compensation to be settled by arbitration.

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No. 19
of
1903.**

agreement between the parties as to the amount to be paid being made between the parties either prior to or after the commencement of arbitration proceedings nor shall anything herein contained prevent the payment by the Council at any time if it shall so think fit of the amount of any mortgage bond or other preferent charge upon the property in respect of which any claim shall be made whether the amount of compensation payable in respect of such property shall have been settled or not; but if any such mortgage bond or other preferent charge shall be so paid in advance by the Council it shall be considered as a payment on account of the amount of compensation payable in respect of such property.

Notice to be served by Council on owner or holder of property or rights calling upon him to refer the amount of compensation to arbitration.

11. If it shall become necessary to arrive at the amount of compensation payable as aforesaid by means of arbitration the Council shall within fourteen days after entry cause to be served upon the owner or holder of any property or rights in property upon which entry shall have been made as aforesaid or upon the agent or representative of such owner or holder a written notice offering as compensation whatever sum shall be deemed sufficient and calling upon such owner or holder in case he shall refuse to accept such sum as sufficient to refer the amount of compensation to arbitration as hereinafter provided and in case such owner or holder shall not within twenty-one days from the service of such notice accept the sum so offered he shall be deemed to have refused to accept the same and the matter shall forthwith be submitted to arbitration.

Appointment of arbitrators.

12. The Supreme Court shall upon application by the Council appoint three arbitrators in the manner herein provided to whom shall be referred all questions of disputed compensation and the decision of the majority of whom shall be final. At least fourteen days before making such application as aforesaid the Council shall give notice by advertisement in the *Gazette* and in one or more daily newspapers published in Johannesburg of its intentions so to do and shall publish in such notice a list of one or more persons whose names will be submitted by

it to the Supreme Court for appointment as arbitrators and any other party interested in the arbitration may appear upon such application and propose any person or persons to the Supreme Court for appointment as arbitrators and the Supreme Court shall appoint one arbitrator from the list submitted by the Council and one from among the persons proposed by other parties interested and the persons so appointed shall select a third arbitrator; provided that if upon such application either the Council or the other parties interested do not propose any fit person as arbitrator or if the arbitrators appointed do not within fourteen days of such appointment select a third arbitrator the Supreme Court shall make the necessary appointments so that the number of arbitrators shall be three and no more; provided further that in any case in which the compensation claimed shall be under one hundred pounds or in which the compensation claimed being in excess of such sum the claimant and the Council shall so agree the same shall be settled by a single arbitrator to be appointed by the Supreme Court upon application by the Council after fourteen days' notice by advertisement as aforesaid to deal with all such cases.

13. If any arbitrator appointed for the purpose of this Ordinance dies or becomes incapable to act or fails to act for fourteen days after his appointment it shall be lawful for the Supreme Court on the application of the Council or other parties interested after similar notice to that required in the last preceding section to appoint some other person as arbitrator in place of the person so dying or becoming incapable or failing to act as aforesaid.

14. The arbitrator or arbitrators appointed as aforesaid shall immediately upon his or their appointment as the case may be sit for the hearing and determination of all matters referred to him or them respectively and shall continue so to sit with such adjournments as he or they may from time to time deem fit until all matters referred shall have been heard and determined and it

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Where arbitrator dies or becomes incapable or fails to act another may be appointed.

Arbitrators to sit to hear all matters referred.

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1903.**

Award of arbitrators to be given within twenty-one days.

Arbitrators may call for production of documents and examine witnesses.

Commissions' Powers Ordinance 1902 to apply to proceedings before arbitrators.

Notice to be given by arbitrators to parties interested.

Parties may appear before arbitrators.

shall be in the discretion of such arbitrator or arbitrators as the case may be to arrange the order in which such matters referred to him or them respectively shall be so heard and determined.

15. An award or decision shall be given by the arbitrator or arbitrators as the case may be in each matter referred and such award shall in each case be given within twenty-one days after the first hearing of evidence in regard thereto or within such extended time (if any) as shall be appointed for that purpose by such arbitrator or arbitrators as the case may be.

16. The said arbitrator or arbitrators may call for the production of any document in the possession or power of either party except any valuation of property or rights expropriated which either party may have made for his own purpose which he or they may think necessary for determining the matter referred and the arbitrator or arbitrators as the case may be may examine the parties or their witnesses on oath or affirmation and may administer the oaths necessary for that purpose.

17. The provisions of the Commissions' Powers Ordinance 1902 shall *mutatis mutandis* apply to all proceedings before any arbitrator or arbitrators appointed under this Ordinance as if he or they were a commission appointed by the Lieutenant-Governor for the purpose of enquiring into the matters referred to him or them under this Ordinance; the summonses for the attendance of witnesses or the production of documents may be signed by any arbitrator.

18. The arbitrator or arbitrators as the case may be shall give to each party concerned at least five days' notice of the time when the place where it is intended to hold any sitting for hearing any evidence or arguments in connection with any particular matter referred

19. Upon all proceedings before any arbitrator or arbitrators each party may appear in person or by counsel solicitor or admitted and licensed law agent and may produce such witnesses and documentary

evidence as the arbitrator or arbitrators shall allow.

20. The arbitrator or arbitrators as the case may be shall deliver his or their award in writing to the Council and the Council shall retain the same and shall within two days furnish a copy thereof to the other party concerned if he can be found and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award of arbitrators to be delivered to Council.

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No. 19
of
1903.**

21. The award of the arbitrator or arbitrators may be made a rule of the Supreme Court or of the Witwatersrand High Court on the application of either party.

Award may be made a rule of Court.

22. All the costs of the arbitration and incident thereto shall be borne by the Council unless the arbitrator or arbitrators shall award the same or a less sum than shall have been offered by the Council as provided in section *eleven* of this Ordinance in which case each party shall bear its own costs and the costs of the arbitrators shall be borne by the Council. Any costs recoverable by one party from the other shall be taxed by the Taxing Officer of the Witwatersrand High Court on the scale of charges allowed in that Court.

Costs of arbitration.

23. It shall be lawful for the Lieutenant-Governor in case he shall at any time think fit so to do to appoint any person or persons to represent and act for the purpose of this Ordinance on behalf of any owner or holder of any rights in land or buildings within the said area who may be absent from this Colony or may be under any disability to act for himself or who cannot after reasonable enquiry be found and in the event of any such appointment being made such person or persons so appointed shall be authorised and empowered to act for all the purposes of this Ordinance for and on behalf of every such owner or holder on whose behalf he or they shall have been so appointed.

Lieutenant-Governor may appoint persons to represent persons interested.

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of
1903.**

In case of dispute as to person entitled money may be paid to Master of the Supreme Court.

Basis on which compensation is to be assessed.

24. In case of any dispute as to who is entitled to receive any money to be paid under this Ordinance or in case of any money payable to any person who cannot be found or in case of any interdict with respect to such money it shall be lawful for the Council to pay such money to the Master of the Supreme Court to hold the same in trust for the person or persons entitled thereto and thereupon all liability of the Council in respect of such payment shall come to an end.

25. The amount of compensation payable by the Council whether by agreement or arbitration shall not exceed the market value as on the date on which this Ordinance is promulgated of any then existing property or rights taken by the Council as aforesaid together with such damages as the owners of such property or rights shall immediately and directly sustain by reason of the carrying out of the purposes for which such property or rights shall be taken; and provided that in calculating such damages any enhanced or improved value which may accrue to such property or rights by reason of the carrying out of the said purposes or any loss of prospective or anticipated profits except loss arising from the diminution of the goodwill of any trade or business established before and actually carried on upon such property on the said date and except such loss of profits if any of such trade or business during the time necessarily occupied by removal of the same shall not be taken into account; and provided further that no addition to or improvements of any such property made after the said date (except such addition or improvement was necessary for the maintenance of the property in a proper state of repair) shall be taken into account and in the case of any interest acquired after the said date no separate estimate of the value thereof shall be made so as to increase the amount of compensation to be paid for such property or rights; and provided further that interest shall be payable at the rate of seven per cent. per annum from the date of entry and expropriation by the Council

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as provided in section *two* of this Ordinance on so much of the compensation payable by the Council as shall remain unpaid until such amount shall be paid.

26. It shall be lawful for the Council after making entry upon and acquiring any land or buildings within the said area to remove all such buildings and to carry out all such drainage and other works and to make and construct all such roads and thoroughfares and lay out such building lots upon or otherwise sub-divide such land as it shall think fit with a view to the improvement of the said area; it shall also be lawful for the Council to dispose of by public auction any freehold or leasehold interest in any such building lots or other sub-divisions or to use or set apart for any municipal purposes the whole or any part of the said area or to erect any buildings thereon for any municipal purpose or for the purposes of sale or hire or otherwise to deal with such land and with any buildings thereon as it shall deem fit.

Power of Council to do works on land acquired and to sell or lease the same.

27. The Council shall provide to the satisfaction of the Colonial Secretary for the accommodation in suitable dwellings situate within or near the said area of such number of the persons displaced as the Colonial Secretary may require; provided that if the Colonial Secretary shall be satisfied that suitable accommodation has been or is about to be forthwith provided for such persons or any class of such persons at some place other than within the said area or the immediate vicinity thereof the requirements of this section shall be deemed to have been complied with to the extent to which accommodation is so provided; and provided further that no such person shall be displaced until accommodation is provided as required by this section.

Council to provide accommodation for persons displaced to satisfaction of Colonial Secretary.

28. All land within the said area entered upon and taken possession of by the Council shall be thereupon withdrawn from the operation of Law No. 15 of 1898 or any amendment thereof and shall be and be deemed to be unproclaimed ground anything in the said Law or in any other Law or elsewhere to the contrary notwithstanding.

All land within area taken by Council to be withdrawn from operation of Law No. 15 of 1898.

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No. 19
of
1903.**

Costs of
Commission
to be borne
by Council.

29. All costs of the Commission appointed by the Governor's Commission of the sixteenth day of September 1902 to enquire into and report on the Johannesburg Insanitary Area Improvement Scheme shall be borne by the Council with the exception of any costs incurred by any person or persons in appearing before the said Commission and objecting to the said scheme.

Service of
notices.

30. When any notice is required by this Ordinance to be given to any person it shall be deemed to be a sufficient service of such notice if such notice is left at or is sent by registered post to the last known address of the person on whom it is to be served.

Title.

31. This Ordinance may be cited as the Johannesburg Insanitary Area Expropriation Ordinance 1903.

SCHEDULE.

The area within which the Council is authorised to make entry upon land and buildings in terms of the foregoing Ordinance is the area comprised within a line starting from a point on the southern boundary of the Central South African Railways' (late N.Z.A.S.M.) property where an extension of the line of the eastern side of Malherbe Street meets such boundary and extending eastwards along the boundary of the said Central South African Railways' property to the junction of Locatie and Henri Streets; thence following the boundary of the said South African Railways' property to a point on the said boundary 275.52 feet north of the northern boundary of President Street; thence eastwards and parallel with President Street for a distance of 104.96 feet; thence southwards to the northern boundary of President Street; thence westwards along the northern boundary of President Street to the point of its intersection with the line of the west side of Wolluter Street; thence southwards to the south-east corner of Stand No. 1,075A (the said Stand being as shown on the general plan of 69 Stands in the Brickfields at Johannesburg prepared by the Surveyor Ewan Curry and dated May 1897); thence along the southern boundaries of Stands Nos. 1,075A, 1,073A, 1,072A and a portion of 1,071A to the point where the southern boundary of a portion of Stand No. 1,071A first meets the southern boundary of the farm Braamfontein and thence continuing in the same line in a westerly direction to the eastern boundary of the Robinson Mynpacht; thence along the boundary of the Robinson Mynpacht to its north-east beacon; thence along the boundary of the Robinson Mynpacht in a south-westerly direction until it meets the northern side of the Fordsburg Main Road and thence along the northern boundary of the Fordsburg Main Road to the south-west corner of Stand No. 668 Fordsburg; thence southwards across the Fordsburg Main Road to the north-east corner of Stand No. 594 Fordsburg; thence along the eastern boundary of Stand No. 594 to its south-east corner and thence following the boundary of the Robinson Mynpacht to a point on the said boundary 108.07 feet to the east of its junction with the east side of Pine Avenue; thence in a north-easterly direction to a point on the south side of Fountain Road being the north-east corner of

Stand No. 831; thence in a south-easterly direction along the southern boundary of Fountain Road to the south-east corner of Fountain Road and Park Lane; and thence in a north-easterly direction along the east side of Park Lane to the north-east corner of Park Lane and Main Road being the south-west corner of Stand No. 943; and thence in a south-easterly direction along the northern boundary of Main Road to the north-west corner of Main and Sydenham Roads; and thence in a north-easterly direction along the west side of Sydenham Road to the northern boundary of Avenue Road at the south-east corner of Stand No. 960; and thence in a westerly direction along the northern boundary of Avenue Road to the north-east corner of Avenue Road and Park Lane; and thence in a north-easterly direction along the east side of Park Lane until it meets the northern boundary of Fordsburg; and thence in a north-westerly direction along the northern boundary of Fordsburg Township to the western corner of Stand No. 265; and thence in a north-easterly direction across Roos Street to the south-east corner of Stand No. 260; and thence in a northerly direction along the eastern boundaries of Stands Nos. 260 252 241 229 217 205 193 181 169 157 and crossing Minnaar Vorster Theron and Watermeyr Streets to the north-east corner of Stand No. 157; and thence in westerly direction along the south boundary of Malan Street to the north-west corner of Stand No. 150; and thence in a northerly direction along the eastern boundary of Malherbe Street to the point of commencement provided that this area shall not include Stands Nos. 902 903 904 905 906 907 908 and 909 Burghersdorp the property of the Johannesburg Cold Storage Company and Stands Nos. 881 882 883 884 887 888 889 and 890 Burghersdorp the property of the Imperial Cold Storage Company as will more fully appear from a plan marked E and certified under date 27th day of April 1903 by W. E. Davidson, Colonial Secretary, and filed in the Office of the Town Clerk Johannesburg.

**ORD.
No. 19
of
1903.**

No. 20 of 1903.]

[Assented to 30 April 1903.]

**ORD.
No. 20
of
1903.**

ORDINANCE

To provide for the Expropriation of Land for Railway Purposes.

WHEREAS it is expedient to consolidate and amend the various Volksraad Resolutions and other laws relating to the construction of railways and the expropriation of land for railway purposes;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. (1) The Volksraad Resolutions mentioned in the Schedule to this Ordinance are hereby repealed. Repeal.

(2) The word "railways" when it occurs in section *two* of The Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall be omitted.

**ORD.
No. 20
of
1903.**

Definitions.

2. In this Ordinance unless there is something repugnant in the subject or context;

“Railway” includes all lines of railway constructed for the use of the public and all lands sidings stations offices dwelling-houses warehouses workshops manufactories fixed plant and machinery and other works of whatsoever description or nature appertaining to or used in connection with a railway;

“railway purposes” includes the obtaining a supply of water for the use of a railway or any locomotive engine or rolling stock used upon or in connection with a railway.

Notification
by Governor
of land
required for
railway
purposes.

3. (1) Whenever it appears to the Governor that land in any locality is likely to be needed for railway purposes a notification to that effect shall be published in the *Gazette* and the Magistrate shall cause public notice of the substance of such notification to be given at convenient places in the locality.

(2) Thereupon it shall be lawful for any officer either generally or specially authorised by the Governor in this behalf and for his servants and workmen;

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purposes;

to set out the boundaries of the land proposed to be taken and the intended line of railway if any proposed to be made thereon;

to mark such levels boundaries and line by placing marks and cutting trenches;

and when otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop fence or brush-wood;

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No. 20
of
1903.**

provided that no person shall enter into any building or upon any enclosed yard or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least twenty-four hours' notice in writing of his intention to do so.

(3) For the purpose of carrying out the operations authorised by this section it shall be lawful for the said officer his servants and workmen to erect tents or other temporary dwellings or stores and to graze upon such land all such animals as they may require and to take from any well spring or stream upon such land water for their necessary use.

4. It shall be lawful for the Governor to enter upon take possession of and use any land required for the purpose of making any railway authorised by him or for any accommodation or other works connected therewith or for the purpose of obtaining a water supply for railway purposes and to that end to

Powers of
the Governor

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

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

**ORD.
No. 20
of
1903.**

- (c) make alter or repair drains or conduits into through or under any lands for the purpose of conveying water from or to the railway;
- (d) erect and construct such houses warehouses offices and other buildings and such yards stations engines machinery apparatus and other works and conveniences as he may think proper;
- (e) alter repair or discontinue such buildings works and conveniences as aforesaid or any of them and substitute others in their stead;
- (f) take carry away and use any earth stone timber gravel or sand or any other materials or things out of any land contiguous to or adjoining such railway and other works and which may be proper or necessary for making maintaining altering repairing or using such railway or works;
- (g) sink wells construct dams and all other works necessary for providing a water supply;
- (h) do all other acts necessary for making maintaining altering or repairing and using the railway.

Governor may instead of acquiring the ownership acquire a servitude.

5. In any case where the Governor has power to take and appropriate land for railway purposes and it appears to him that a servitude in or over such land will be sufficient for those purposes he may instead of taking and appropriating such land purchase and take and the owner thereof shall sell and transfer accordingly a servitude in over and the right of using the same for such purposes.

Powers in case of accident.

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

7. Whenever the Governor requires any land or any right interest or servitude in or over any land or any materials for the purposes of this Ordinance it shall not be necessary before taking possession of such land right interest servitude or materials to settle the compensation to be paid for or in respect thereof but it shall be lawful for the Governor or any person authorised by him either generally or specially to enter upon take possession of and use any such land right interest servitude or materials which may be required whenever he may think fit leaving all questions of compensation to be paid for or in respect thereof to be afterwards settled by voluntary agreement or in default thereof to be ascertained by arbitration in manner provided by The Expropriation of Lands and Arbitration Clauses Proclamation 1902.

Governor may take land before compensation is ascertained.

**ORD.
No. 20
of
1903.**

Provided that where there are improvements upon any such land in respect of which compensation may be claimed under section *nine* such improvements shall not be interfered with until twenty-one days' notice shall have been given to the person entitled to such compensation if he can be found in order that he may be afforded an opportunity of having such improvements valued. If such person cannot be found the compensation for such improvements may be ascertained in manner provided by section *twenty-eight* of the aforesaid Proclamation.

8. The Governor may take or cause to be taken water for railway purposes

- (a) from any river stream pan or other natural source;
- (b) from any dam furrow or artificial works used for the storage or distribution of water upon payment of compensation to the owner of such dam or furrow or artificial works;

Governor may take water for railway purposes.

provided that a sufficient supply be left to the owners or occupiers of land entitled to the use of such water for household and agricultural purposes and for watering their stock.

**ORD.
No. 20
of
1903**

Compensation when payable and how ascertained.

9. Compensation to be ascertained in manner prescribed by the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall be paid for or in respect of any land or any right interest or servitude in or over any land or any material taken therefrom or for any right injuriously affected by the exercise of the powers conferred under the provisions of this Ordinance provided that no compensation shall be payable in respect of

- (a) unimproved land (except stands or erven) occupied by the railway line of a uniform width of one hundred feet or such greater width as may be judged necessary for raising embankments or making cuttings but in no case shall the amount of unimproved land so taken without compensation exceed one-twentieth of the extent of land held under one title;
- (b) indirect damage or loss of profits;
- (c) anything done with the object of obtaining compensation therefor;

and provided further that in fixing the amount of compensation to be paid the benefit which the person claiming compensation may derive in consequence of the construction of the railway may be taken into consideration.

By whom expropriation may be carried out.

10. The duties assigned to the Secretary to the Department of Public Works under the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall so far as the expropriation of land or other rights under this Ordinance is concerned be performed by such officer as the Governor may appoint for that purpose.†

Cutting down trees.

11. In either of the following cases namely;

- (a) when there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic;
- (b) when a tree obstructs the view of any fixed signal;

the Commissioner of Railways may cause the tree to be cut down or dealt with in such manner as will in his opinion avert the danger or remove the obstruction as the case may be.

† The Commissioner of Railways has been appointed such officer. See High Commissioner's Notice No. 39 of 1903. *Official Gazette* (12 June 1903).

12. No line of railway shall be so constructed as to obstruct or interfere with or injuriously affect the working of or the access or adit to any mine then open or for opening which preparations are at the time of such placing being lawfully and openly made.

Line not to be constructed so as to injuriously affect mines.

**ORD.
No. 20
of
1903.**

13. No person shall at any time be compelled to sell or transfer or give possession of a part only of any house or other building or manufactory if such person is able and willing to sell and transfer and give possession of the whole unless in the opinion of the Court or Arbitrators assessing the compensation such portion can be severed from the whole without material detriment thereto.

No person to be compelled to part with portion of property where willing to part with whole.

14. Whoever wilfully obstructs any person in doing any of the acts authorised by section *three* or section *four* or wilfully fills up destroys damages or displaces any excavation trench beacon or mark made under section *three* shall on conviction before a Magistrate be liable to imprisonment for any period not exceeding one month or to a fine not exceeding twenty-five pounds or to both such fine and imprisonment.

Penalty.

15. (1) All land or other rights which have hitherto been or may hereafter be expropriated for railways shall vest in the Governor.

Land expropriated to be vested in the Governor.

(2) No formal transfer to the Governor of any such lands shall be necessary but the same shall vest in the Governor as fully absolutely and effectually as if transfer and conveyance thereof had been duly passed according to the law and custom of this Colony.

16. This Ordinance may be cited as the Railway Expropriation of Lands Ordinance 1903.

Title.

SCHEDULE.

Volksraad Resolution of the 13th May 1889 Article 32 :
Volksraad Resolution of the 8th August 1890 Article 1220 :
Volksraad Resolutions of the 27th and 28th July 1892 Articles 960
963 965 967 and 971.

**ORD.
No. 21
of
1903.**

No. 21 of 1903.]

[Assented to 30 April 1903.

ORDINANCE

To enable the Town Council of Johannesburg to obtain and approve Plans of certain Townships within the added area of the Municipality.

WHEREAS the boundaries of the Municipality of Johannesburg as defined by Proclamation No. 16 of 1901 have under the powers given by the said Proclamation been altered and extended and the existing boundaries are defined in the schedule to a Proclamation entitled Proclamation No. 13 (Administration) of 1902 dated the twenty-second day of November 1902 and published in the *Gazette*;

And whereas it is expedient to require the owners of townships existing on the said twenty-second day of November 1902 within the areas added to the Municipality as aforesaid to deposit with the Town Council of Johannesburg plans of the said townships and to provide for the approval by the said Town Council of such plans;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Plans of townships in added area and existing on 22nd November 1902 to be deposited with the Council.

1. Every owner of a now existing township within the areas added to the Municipality by Proclamation No. 13 (Administration) of 1902 which was in existence on the twenty-second day of November 1902 and which contains one or more streets or thoroughfares shall within ninety days after the date of this Ordinance file at the office of the Town Engineer a plan certified by a Government Surveyor shewing all the stands or lots and all the roads streets or thoroughfares and all squares or other open spaces within such Township existing on the twenty-second day of November 1902 and set apart by such owner for the use of the public or represented by such owner either on a plan or otherwise as intended for public use; and every such first-mentioned plan if and when approved by the Council or settled by arbitration as hereinafter provided

**ORD.
No. 21
of
1903.**

shall for all municipal purposes be deemed to be the authorised plan of such township and all the streets roads thoroughfares squares and open spaces shewn thereon and set apart or represented as aforesaid shall be vested in and be under the control and management of the Council.

2. The provisions of sections *sixteen* to *twenty-one* inclusive of the Johannesburg Municipality Amendment Proclamation 1902 shall be incorporated with this Ordinance provided that the following words and expressions used in the said sections shall be read and construed in the following manner;

Application of certain sections of Johannesburg Municipality Amendment Proclamation 1902.

the expression "on the date above referred to" in section *sixteen* of the said Proclamation shall be read as "on the twenty-second day of November 1902;"

the words "previous section" in the said section *sixteen* shall be read as "section *one* of this Ordinance;"

the word "Proclamation" where it last occurs in the section *nineteen* of the said Johannesburg Municipality Amendment Proclamation shall be read as "Ordinance."

3. For the purposes of this Ordinance the term "township" shall mean any piece of land divided into stands or lots for the purposes of sale or lease and the term "Owner" shall mean the holder or holders whether in freehold or otherwise of every such piece of land who shall have so divided the same and his or their successors in title other than the holders of such stands or lots.

Definition of terms.

4. This Ordinance may be cited as the Johannesburg Municipality Plan of Townships Ordinance 1903.

Title.

**ORD.
No. 22
of
1903.**

No. 22 of 1903.]

[Assented to 30 April 1903.

ORDINANCE.

WHEREAS in the fourth clause of the Conditions of Surrender signed at Pretoria on the thirty-first day of May 1902 it is provided that no proceeding civil or criminal for any acts in connection with the prosecution of the war will be taken against any of the Burghers surrendering under the said Conditions or against prisoners of war at the date of the signing of the said Conditions outside South Africa returning to the Transvaal after duly declaring their acceptance of the position of subjects of His Majesty King Edward the VII.;

And whereas it is desirable that the provisions of the said clause should be made of legal force and effect;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Fourth
Clause of
Conditions of
Surrender to
be of legal
force and
effect.

1. The fourth clause in the Conditions of Surrender which is as follows;

“no proceedings civil or criminal will be taken against any of the Burghers so surrendering or so returning for any acts in connection with the prosecution of the war. The benefit of this clause will not extend to certain acts contrary to the usage of war which have been notified by the Commander-in-Chief to the Boer Generals and which shall be tried by Court Martial immediately after the close of hostilities;”

shall be of full force as law within this Colony from the date of the signing of the Conditions of Surrender to wit the thirty-first day of May 1902; and it shall be a defence to any civil or criminal proceedings taken against any person being one of the persons referred to in the said clause that the act in respect of which such proceedings are taken

JOHANNESBURG MUNICIPALITY BORROWING POWERS
AMENDMENT.

was an act in connection with the prosecution of the late war between His Majesty and the late Governments of the South African Republic and Orange Free State.

**ORD.
No. 22
of
1903.**

2. This Ordinance may be cited for all purposes as the Indemnity (Burgher) Ordinance 1903. Title.

No. 23 of 1903.]

[Assented to 30 April 1903.

**ORD.
No. 23
of
1903.**

ORDINANCE

To amend the Johannesburg Municipality Borrowing Powers Ordinance 1903.

WHEREAS it is desirable to extend the limit of the aggregate amount which may under the provisions of the Johannesburg Municipality Borrowing Powers Ordinance 1903 be raised by the Town Council of Johannesburg by the issue of bills; Preamble.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Johannesburg Municipality Borrowing Powers Ordinance 1903 shall be and is hereby amended by substituting for the words "one hundred thousand" in section *fifty-one* sub-section (13) thereof the words "five hundred thousand." Amendment of section *fifty-one* sub-section (13) of Ordinance No. 3 of 1903.

2. This Ordinance may be cited as the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 and shall be read as one with the Johannesburg Municipality Borrowing Powers Ordinance 1903. Title.

ORD.
No. 24
of
1903.

No. 24 of 1903.]

[Assented to 30 April 1903.

ORDINANCE

To amend the Protection of Stock Ordinance 1902.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Power
to Commis-
sioner of
Lands to
grant permits
for slaughter
of stock
incapable of
breeding.

1. Notwithstanding anything in the Protection of Stock Ordinance 1902 contained it shall be lawful for the Commissioner of Lands to issue permits to an owner of farm stock authorising him to slaughter any of the animals mentioned in section *one* of the said Protection of Stock Ordinance 1902 which are no longer capable of breeding: provided always that no such permit as aforesaid shall be granted unless the said owner of farm stock shall produce to the said Commissioner of Lands a certificate signed by a Government Veterinary Surgeon that the animals in respect of which the said owner applies for the said permit are incapable of breeding.

Power
of Commis-
sioner of
Lands to
grant permits
for slaughter
of stock con-
fined in
infected area.

2. Notwithstanding anything in the Protection of Stock Ordinance 1902 contained it shall be lawful for the Commissioner of Lands to grant permits authorising the slaughter of any stock confined within an area which has under the provisions of the Diseases of Stock Ordinance 1902 been declared an infected area whenever it shall seem † expedient to the said Commissioner that such slaughter is expedient.

Title.

3. This Ordinance may be cited as the Protection of Stock Amendment Ordinance 1903 and shall be read as one with the Protection of Stock Ordinance 1902.

† By the "Correction of Errors in Laws Ordinance 1904" the word "expedient" is to be omitted in this section when it first occurs.

No. 25 of 1903.]

[Assented to 30 April 1903.]

**ORD.
No. 25
of
1903.****ORDINANCE****To facilitate Military Manœuvres.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. †(1) The Lieutenant-Governor in Council may authorise the execution of Military Manœuvres within specified limits and during a specified period not exceeding three months; provided that the same limits or any part thereof shall not be specified more than once in any period of two years.

Lieutenant-Governor in Council may authorise manœuvres.

(2) Notice of the intention to make the order shall not less than three months before the order is to come into force be published three times in the *Gazette* and in at least one newspaper circulating generally within the district.

2. Where the execution of Military Manœuvres are authorised as in section *one* provided such persons as are under the authority of His Majesty engaged in the manœuvres (in this Ordinance referred to as the authorised forces) may under the direction of the Lieutenant-Governor within the specified limits and during the specified period;

Execution of manœuvres to be subject to certain limitations and liabilities.

(1) pass over and encamp construct military works not of a permanent character and execute military manœuvres on any land whether under cultivation or not;

(2) supply themselves with water from any sources of water and for that purpose dam up any running water; provided always that such damming up of water does not interfere with the carrying on of any trade or industry and that nothing in this Ordinance shall authorise the taking of water from any source of supply belonging to a private owner or public authority

† See Proclamation No. 15 Admn. of 1903 *Gazette* (15 June 1903) p. 1101.

**ORD.
No. 25
of
1903.**

except subject to the supply shown to be required by those entitled to use such water supply;

provided as follows;

- (1) nothing in this Ordinance shall authorise entry on or interference with any dwelling-house place of worship school factory workshop store or premises used for the carrying on of any trade business or manufacture farmyard garden orchard pleasure ground or nursery ground burial ground ground attached to any place of worship or school or any tent or other enclosure attached to any dwelling-house;
- (2) the Officer in command of the authorised forces shall take care that there is no interference with any picturesque or valuable timber or other natural features of exceptional interest or beauty and shall be empowered to prevent trespass or damage to property by persons not belonging to the forces and shall cause all lands used under the powers conferred by this Ordinance to be restored as soon and as far as practicable to their previous condition or pay compensation;
- (3) subject to the provisions of this Ordinance with respect to;
 - (a) the closing of roads and footpaths; and
 - (b) obstruction of or interference with military manœuvres; and
 - (c) entering or remaining in a camp;

nothing in this Ordinance shall prejudicially affect any public right or any right of common.

Resident
Magistrate
may close
roads on
application
of Com-
manding
Officer for
forty-eight
hours.

3. (1) The Resident Magistrate may if he shall think fit on the application of a commissioned officer in command of the authorised forces or of part thereof by order suspend for a time not exceeding forty-eight hours any right of way over any roads or footpaths within the specified limits within his jurisdiction; provided that any such

order shall only be made with regard to any main road for a time not exceeding twelve hours and after seven days' notice of such intended application published in at least one newspaper circulating generally in the district and subject to such terms and conditions as may be required by the said Magistrate for the protection of individuals or of the public or of public bodies.

(2) The officer in command of the authorised forces shall cause such public notice of the order as the Magistrate may require to be given not less than twelve hours before the order comes into force and shall give all reasonable facilities for traffic whilst the order is in force.

4. (1) Where the execution of military manœuvres has been authorised as in this Ordinance provided full compensation shall be made for any damage to person or property arising from putting in force any of the provisions of this Ordinance and occasioned by the acts or defaults of the authorised forces including therein all expenses reasonably incurred in protecting person property rights and privileges.

Compensation for damage to person or property.

(2) Compensation shall be determined by two persons one being a landowner to be appointed by the Lieutenant-Governor and the other by the Officer Commanding the district who shall determine as speedily as possible the amount of compensation to be paid for any damage sanctioned under this Ordinance and such amount if agreed to by the claimant shall as soon as practicable be paid by such Officer. If the amount of compensation determined as aforesaid is not agreed to by the claimant the amount of compensation payable shall be referred to a third person to be appointed by the Lieutenant-Governor whose decision shall be final and as soon as practicable after such decision is given such amount shall be paid to the claimant by such Officer as aforesaid.

(3) The Lieutenant-Governor may after consultation with the General Officer Commanding the Forces make regulations with respect to the procedure for making and

**ORD.
No. 25
of
1903.**

**ORD.
No. 25
of
1903.**

Offences.

determining claims for compensation for limiting the time within which claims must be made and for regulating the mode in which compensation is to be paid.

5. (1) If within the limits and during the period specified in an order authorising military manœuvres under this Ordinance any person;

(a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres; or

(b) without due authority enters or remains in any camp;

he shall be liable on summary conviction to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding seven days and he and any animal or vehicle under his charge may be removed by any constable or by order of any commissioned officer of the authorised forces.

(2) If within the limits and during the period aforesaid any person;

(a) without due authority moves any flag or other distinguishing mark for the purposes of the manœuvres; or

(b) maliciously cuts or damages any telegraph or telephone wire or instrument laid down by or for the use of the authorised forces;

he shall be liable on summary conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Title.

6. This Ordinance may be cited for all purposes as the Military Manœuvres Ordinance 1903.

No. 26 of 1903.]

[Assented to 30 April 1903.

ORD.
No. 26
of
1903.

† **ORDINANCE**

To make temporary Provision for the government of the Municipality of Pretoria.

WHEREAS it is desirable to make temporary provision for the government of the Municipality of Pretoria owing to the resignation of the members of the Council thereof;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. *It shall be lawful for the Lieutenant-Governor by Proclamation in the "Gazette" to appoint a Commission of three or more members one of whom shall be the Chairman thereof to exercise the powers and discharge the duties hereby vested in them until such time as a Council may be elected by the inhabitants of the Municipality.*

Lieutenant-Governor may appoint Commissioners to take place of Council of Municipality Pretoria.

2. *All the powers privileges and jurisdiction conferred on the Council of the Municipality of Pretoria and on the Chairman thereof by Proclamation No. 7 of 1902 or any amendment thereof or by any law or bye-laws shall be and are hereby conferred respectively on the said Commission and on the Chairman thereof; and whenever in the said laws or bye-laws the term "Council" or "Chairman of the Municipality" or "Chairman" is used the said Commission or Chairman thereof respectively shall be meant thereby.*

Commission to have powers and privileges of Council.

3. *The said Commission shall be vested with and entitled to all rates assets and claims which at the date of the taking effect of this Ordinance the Council of the said Municipality was vested with and entitled to and shall be subject and liable to every contract engagement debt and demand to which the said Council was subject and liable and all actions brought by or against the said Commission shall be brought by or against it in the name of the Chairman thereof.*

Assets vested in Council.

4. *This Ordinance shall be cited as the Title. Pretoria Municipal Commission Ordinance 1903.*

† A Town Council has now been elected for Pretoria under Ordinance No. 38 of 1903; and the provisions of Ordinance No. 58 of 1903 applied to such Council.

**ORD.
No. 27
of
1903.**

No. 27 of 1903.]

[Assented to 30 April 1903.]

ORDINANCE

To Amend Proclamation Transvaal No. 37 of 1901.

WHEREAS it is desirable to amend in certain respects Proclamation Transvaal No. 37 of 1901;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Amendments
in Pro-
clamation
Transvaal
No. 37 of
1901.

1. Proclamation Transvaal No. 37 of 1901 shall be and is hereby amended in the following respects;

(1) by the omission of the words "on public diggings" in the preamble to the said Proclamation and in sub-section (3) of section *one* thereof and substituting the words "in this Colony" in lieu thereof in the preamble and omitting the words "on such diggings" in the said sub-section;

(2) by omitting the word "knowingly" in the first line of section *two* of the said Proclamation;

(3) by omitting the words "in or about any Mine" in sub-section (*a*) of section *five* of the said Proclamation;

(4) by inserting the following new sub-section (*d*) in section *five* of the said Proclamation to wit;

"(*d*) to enter any place occupied by Natives and to arrest any offender against regulations made under † this Proclamation or any amendment thereof and where the offence is not one which the Inspector is authorised to deal with under this and the next succeeding section to deliver such offender to a Constable to be brought before the Court of the Resident Magistrate;"

(5) by adding the words "actually earned by him" at the end of section *seven* after the word "Native."

† For regulations see Proclamation No. 18 Admn. of 1903 *Gazette*

2. The definition of the term "Native" in the *fourth* section of the said Proclamation is hereby amended and from and after the date of this Ordinance the term "Native" when it occurs in the said Proclamation or in the regulations made thereunder shall mean a male person over fourteen years of age both of whose parents are members of some aboriginal race or tribe of Africa.

Definition of Native.

**ORD.
No. 27
of
1903.**

3. This Ordinance may be cited as the Native Pass Proclamation Amendment Ordinance 1903 and shall be read as one with the Native Passes Proclamation 1901.

Title.

No. 28 of 1903.]

[Assented to 5 May 1903.

ORDINANCE

**ORD.
No. 28
of
1903.**

To Amend the Jury Ordinance 1902.

† **W**HEREAS it is desirable to amend the Jury Ordinance 1902;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Notwithstanding anything to the contrary in the Jury Ordinance 1902 the Sheriff or his lawful deputy shall in drawing Jurors to serve on juries in the trials of criminal cases in the Supreme Court and Witwatersrand High Court draw such number being a multiple of twenty-seven as may be directed by the Attorney-General. Each of the Jurors so drawn shall be summoned in the prescribed manner to attend upon such days as may be stated in the summons requiring him to attend as a Juror; provided that not less than twenty-seven Jurors shall be summoned to attend upon any day on which the Criminal Sessions of either such Courts is held. Any Juror actually serving on a jury in any case must continue to serve until the jury have given their verdict or are discharged by the Court notwithstanding that the period for which such Juror has been summoned to attend shall have expired.

Additional powers of Sheriff as to the number of Jurors summoned under the Jury Ordinance 1902.

† The Jury Ordinance 1902 has been further amended by Ordinances Nos. 39 and 69 of 1903.

LEGALIZATION OF MARRIAGES (COLOURED PERSONS).

**ORD.
No. 28
of
1903.**

Power to Sheriff to summon additional Jurors for present Witwatersrand Criminal Session and validation of steps taken for that purpose.

2. It shall be lawful for the Sheriff or his lawful deputy to take the necessary steps to summon such number of additional Jurors as the Attorney-General may direct to serve on juries at the Session of the Witwatersrand High Court for the trial of criminal cases now being held at Johannesburg and the Jurors at present serving may be discharged from further service at the present Session from such date as may be fixed by the presiding Judge.

Any steps taken to summon the additional Jurors referred to in this section before the passing of this Ordinance shall be as valid and effectual as if taken after the passing thereof.

Title.

3. This Ordinance may be cited as the Jury Ordinance 1902 Amendment Ordinance 1903.

**ORD.
No. 29
of
1903.**

No. 29 of 1903.]

[Assented to 5 May 1903.]

ORDINANCE

Legalising certain Marriages between Coloured Persons.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Marriages between coloured persons solemnized prior to operation of Law No. 3 of 1897 to be valid.

1. All marriages between coloured persons solemnized by a minister of religion authorised to solemnize marriages before the coming into operation of Law No. 3 of 1897 shall be as valid to all intents and purposes as if such marriages had been duly solemnized after the coming into operation of the said Law in the manner prescribed therein; provided that neither of the parties shall after such marriage have lawfully intermarried with any other person; and provided further that the said marriages be registered with the marriage officers appointed in the several districts under Article 2 of Law No. 3 of 1897.

Duties of registering officer.

2. Before registering any such marriage as in the last preceding section mentioned the marriage officer shall satisfy himself by

calling for the production of a marriage certificate or otherwise that such marriage was solemnized by a minister of religion authorised to solemnize marriages and shall charge for such registration the sum of two shillings and sixpence to be denoted by stamps to be affixed to a certificate of registration which shall after cancellation of the stamps by the said marriage officer be delivered to the parties to the said marriage.

3. This Ordinance may be cited as the Title.
Legalization of Marriages of Coloured Persons Ordinance 1903.

**ORD.
No. 29
of
1903.**

No. 30 of 1903.]

[Assented to 5 May 1903.]

ORDINANCE

**ORD.
No. 30
of
1903.**

To Amend the Game Preservation Ordinance 1902.

WHEREAS it is desirable to amend the Game Preservation Ordinance 1902 so as to enable the Lieutenant-Governor to make regulations for the proper carrying out of the objects of the said Ordinance;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. † It shall be lawful for the Lieutenant-Governor to make rules and regulations and to provide penalties for the breach thereof such penalties not to exceed a fine of fifty pounds or in default of payment imprisonment with or without hard labour for any period not exceeding three months with regard to;

Lieutenant-Governor may make rules and regulations.

(a) the protection and preservation of game within any reserve established under section *twenty* of the Game Preservation Ordinance 1902;

(b) the appointment of wardens and rangers for any such reserve;

(c) the regulation of traffic through any such reserve;

(d) generally the proper carrying out of the objects of the said Ordinance.

2. This Ordinance shall be cited as the Title.
Game Preservation Amendment Ordinance 1903.

† For Regulations see Government Notice No. 806 of 1903 *Gazette*

**ORD.
No. 31
of
1903.**

No. 31 of 1903.]

[Assented to 5 May 1903.

ORDINANCE

For the raising of a sum of Thirty-five Millions by the Colony of the Transvaal.

WHEREAS it is desirable to raise a loan of thirty-five millions for the purpose set forth in the schedule to this Ordinance;

And whereas it is contemplated that this loan shall be guaranteed by the British Treasury under an Act of the Parliament of the United Kingdom of Great Britain and Ireland;

And whereas provision will be made by an Order in Council whereby the net revenues of the Central South African Railways (in this Ordinance referred to as the railway revenue) shall be allocated to the payment of the interest on the loan and the sinking fund payments in respect of it and for the purposes of this Ordinance shall be deemed and taken to be portion of the general revenues and assets of the Government of this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Lieutenant-Governor may borrow thirty-five millions.

1. The Lieutenant-Governor may borrow the sum of thirty-five million pounds by means of the issue of inscribed stock under this Ordinance.

Loan to be a charge upon general revenues and assets.

2. The principal moneys and interest secured by the inscribed stock issued under the provisions of this Ordinance and the sinking fund payments in respect thereof are hereby charged upon and made payable out of the general revenues and assets of the Government of the Colony with priority over any charges thereon not existing at the date of the passing of this Ordinance or of the passing of the South African Loan and War Contribution Act 1903 of the Imperial Parliament whichever date is earliest.

Repayment to Treasury of payments on guarantee.

3. Any sums issued out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland on account of the guarantee of the loan by the British Treasury shall be repaid to the Treasury out of the general revenues and assets of the Government of

**ORD.
No. 31
of
1903.**

the Colony with interest thereon at the rate of four per cent. per annum and shall be charged on those revenues and assets immediately after the charge for and in respect of the loan created under the preceding section of this Ordinance.

4. The stock for the purposes of the loan shall be issued in England by the Bank of England under the provisions of the Act of the Imperial Parliament entitled the Colonial Stock Act of 1877 at such times and on such terms and at such rate of interest not exceeding three per cent. per annum as the Secretary of State for the Colonies with the consent of the Treasury may determine.

Borrowing
upon
inscribed
stock.

5. All the inscribed stock which may be created under the provisions of this Ordinance shall be redeemable at par on a date to be named in that behalf by the Bank of England when issuing the stock such date not being later than fifty years from the first day of April 1904. From and after that date all interest on the principal money secured by the stock shall cease and determine whether payment of the principal shall have been demanded or not.

When the
principal is
to be repaid.

6. The Lieutenant-Governor shall in each half-year remit;

Provision of
interest and
sinking fund.

(1) a sum equal to one half-year's interest on the whole of the outstanding stock; and

(2) an additional sum for the formation of a sinking fund equal to ten shillings per cent. on that amount or if the Treasury certify that a greater sum is necessary for making the sinking fund sufficient for the repayment of the loan at the expiration of fifty years such greater sum.

The amount for the payment of interest shall be remitted to the Bank of England in time to enable them to pay the current half-year's interest on the day when it falls due.

The amount for the formation of the sinking fund shall be remitted to the Crown Agents for the Colonies.

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No. 31
of
1903.**

Trustees of
the sinking
fund.

The amounts to be remitted under this section shall so far as not provided for out of railway revenues or otherwise be appropriated and paid out of the general revenues and assets of the Government of the Colony.

7. The Trustees for the investment and management of the sinking fund shall be the Permanent Secretary of the Treasury and two of the Crown Agents for the Colonies to be nominated by the Secretary of State for the Colonies.

Creation of
sinking fund.

8. The Crown Agents shall pay over the money so remitted to them for the formation of a sinking fund to the Trustees of that fund who shall apply it to the purchase of the stock in the market whenever it can be purchased at a price less than par and failing such purchase shall invest such money in the purchase of such debentures stock or other security as may from time to time be approved by the Treasury and the Secretary of State for the Colonies and may from time to time with the like approval change any such investment and shall hold such fund in trust for the repayment of the principal moneys for the time being secured by the inscribed stock and the income arising from any stock purchased or any investments made under this section shall be applied or invested in the like manner and accumulated.

Expenses to
be paid out
of sinking
fund.

9. All expenses of or incidental to the management of the sinking fund shall be paid out of the sinking fund.

Application
of money
raised by
loan.

10. Any money raised under this Ordinance shall subject to the provision made thereby for the expenses of the issue of the loan be applied for the purposes set forth in the schedule to this Ordinance either in the Transvaal or Orange River Colony.

The Lieutenant-Governor may from time to time with the approval of the Secretary of State for the Colonies apply any savings which may be made under any head or heads in the Schedule to any other head.

Conversion
of existing
debt.

11. If arrangements should be made for the conversion of any existing debt or for the extinction of any liability included in the Schedule by the issue of stock instead

of cash the Bank of England shall have power to issue stock for the purpose to such persons and in such manner as the Lieutenant-Governor directs.

**ORD.
No. 31
of
1903.**

12. (1) The Bank of England shall have the management of the loan and may issue stock certificates to bearer. Management of loan.

(2) The expenses of and incidental to the issue of the loan shall be paid out of the proceeds of the loan and the expenses of the management of the loan shall be paid out of the revenues of the Colony.

13. This Ordinance may be cited as the Title.
Transvaal Guaranteed Loan Ordinance 1903.

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SCHEDULE.
—

	£	£
I. Existing Liabilities of the Transvaal and Orange River Colony:		
A. Deficit of the Transvaal 1901-2 ...	1,500,000	
B. Former debt of the South African Republic	2,500,000	
C. Compensation to Loyalists in Cape Colony and Natal	2,000,000	
		6,000,000
II. Acquisition of Existing Railways in the Transvaal and Orange River Colony		14,000,000
III. Repatriation and Compensation in the Transvaal and Orange River Colony:		
A. Advances by way of Loan	3,000,000	
B. Other charges	2,000,000	
		5,000,000
IV. New development in the Transvaal and Orange River Colony:		
A. New Railways	5,000,000	
B. Land Settlement	3,000,000	
C. Other Public Works	2,000,000	
		10,000,000
Total		£35,000,000

ORD.
No. 32
of
1903.

No. 32 of 1903.]

[Assented to 8 May 1903.

ORDINANCE

To establish a Water Board for the Witwatersrand Area.

WHEREAS the existing supply of water for the area known as the Witwatersrand District is inadequate to meet the growing demands of the inhabitants industries and trades of and within the said area;

And whereas it is desirable to establish and incorporate a Board for the purpose of supplying the said area with water;

And whereas it is necessary for the purpose aforesaid that the said Board should be incorporated by Ordinance;

Now therefore be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Interpreta-
tion of terms.

1. In this Ordinance unless the context otherwise requires;

“The Board” means the Rand Water Board as established and constituted by this Ordinance;

“Local Authority” includes the Town Council of the Municipality of Johannesburg and the Town Council of any other Municipality and any Health Board or Urban District Board established or hereafter to be established and any Board (other than the Board authorised by this Ordinance) or other body of persons having power to distribute water within the limits of supply as hereinafter defined;

“Limits of Supply” means the area included within the Witwatersrand District or any extension thereof under the provisions of section *twenty-six* of this Ordinance

“Land” means and includes;

- (a) land and other fixed property or the usufruct thereof;
- (b) all land held under any tenure or under lease or stand or claim license;
- (c) any servitude over land.

2. There shall be and is hereby established a board to be known as The Rand Water Board for the purpose of supplying water within the limits of supply.

Establishment of Board.

3. The members of the Board for the time being shall be a body corporate with perpetual succession and a Common Seal.

Incorporation of Board.

4. The Board shall consist of eleven members of whom one shall be a Chairman appointed and removable by the Lieutenant-Governor and five shall represent and be members of the Transvaal Chamber of Mines and three shall represent and be members of the Town Council of Johannesburg and one shall represent the Local Authorities (other than the said Town Council) established or to be established in the Witwatersrand District situate to the East of Johannesburg and within the limits of supply and one shall represent the Local Authorities (other than the said Town Council) established or to be established in the Witwatersrand District situate to the West of Johannesburg and within the limits of supply. The said Chamber of Mines Town Council of Johannesburg and Local Authorities are hereinafter collectively referred to as "the Constituent Authorities" and separately as "the Constituent Authority."

Constitution of the Board.

5. The first members of the Board shall be appointed and removable by the Lieutenant-Governor and shall unless and until removed by the Lieutenant-Governor hold office until the appointment of their successors in the year 1906. Subsequent members of the Board representing each of the constituent authorities shall be appointed by that constituent authority in the month of January 1906 and in the month of January in every third succeeding year thereafter. The appointment of the two members of the Board representing the Local Authorities established or to be established in the Witwatersrand District to the East and West of Johannesburg respectively shall be made by such Local Authorities respectively acting through a Joint Committee to be constituted in such manner as the Lieutenant-Governor may by notice in the *Gazette* from time to

Appointment of Members of Board.

**ORD.
No. 32
of
1903.**

Increase of
number of
members of
Board.

time determine. Any member of the Board retiring from office shall unless disqualified be capable of re-appointment.

6. The Lieutenant-Governor may from time to time increase the number of members of the Board to be appointed by the constituent authorities in such proportion as he may think fit, provided that the number of members representing the Transvaal Chamber of Mines shall always be equal to one-half of the total number of members of the Board at any one time exclusive of the Chairman. Any members added to the Board under this section shall be appointed by the constituent authorities in the same manner as is provided in the preceding section of this Ordinance.

Disqualifi-
cation.

7. If any member of the Board required by this Ordinance to be a member of the constituent authority which he represents ceases to be so he shall *ipso facto* cease to be a member of the Board; provided that this section shall not apply to the first members of the Board appointed by the Lieutenant-Governor.

Casual
vacancies.

8. Any casual vacancy in the Board occurring by death resignation disqualification or otherwise shall be filled up by the constituent authority represented by the vacating member as soon as reasonably practicable after the occurrence of the vacancy but a member so appointed shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

Members'
interests in
contracts
with the
Board.

9. Any member of the Board either individually or as a member of a partnership company or corporation may provided that he first discloses to the Board that he is interested and that such disclosure is duly minuted contract with the Board or be interested in any operation undertaking or business of the Board and may derive or retain for his own use any profits resulting therefrom. No member of the Board shall vote in respect of any matter in which he is so interested as aforesaid.

10. A person shall be disqualified for being a member of the Board if he is convicted of any crime and sentenced to imprisonment with hard labour without the option of a fine or to any greater punishment or is adjudged insolvent or is declared to be of unsound mind.

Disqualification of member guilty of crime or adjudged insolvent, etc.

11. No act of the Board shall be rendered invalid or illegal by reason only of any vacancy in the Board or of any irregularity in the appointment or continuance in office of any member of any of the constituent authorities or in the appointment of any member of the Board or of any person not qualified or ceasing to be qualified as a member of the Board.

Acts of Board not to be invalidated.

12. Any member of the Board may be granted leave of absence from the meetings of the Board for such period as the Board may think fit; provided that the constituent authority represented by such absent member may appoint another member under the provisions of section *five* of this Ordinance to represent such constituent authority and to act in the place of the absent member during the period for which leave of absence may have been granted by the Board.

Leave of absence.

13. The Chairman of the Board may be granted leave of absence by the Lieutenant-Governor and it shall be lawful for the Lieutenant-Governor to appoint some person to be an acting chairman of the Board during the absence on leave of the Chairman.

Leave of absence for Chairman.

14. (1) Meetings of the Board shall be held at such time and place as the Board from time to time may resolve and appoint.

Meetings of the Board.

(2) The Chairman may at any time call an extraordinary meeting. If the Chairman refuses to call a meeting after a requisition for that purpose signed by three members of the Board has been presented to him any three members of the Board may forthwith on that refusal call a meeting. If the Chairman (without so refusing) does not within seven days after such presentation call a meeting any three members of the Board may on the expiration of those seven days call a meeting.

**ORD.
No. 32
of
1903.**

Notice of
Meetings.

15. Three clear days' notice of a meeting of the Board shall be given to all the Members of the Board in such manner and form as the Board may from time to time determine. The Chairman may in any case of urgency direct that any less notice shall be sufficient for summoning a meeting of the Board provided that the reasons for such urgency shall be specified in the notice summoning the meeting. The accidental omission to give any such notice as is referred to in this section to any of the Members of the Board shall not invalidate any resolution passed at any such meeting.

Quorum at
Meetings of
the Board.

16. The quorum at all meetings of the Board from time to time shall be not less than five members.

Deputy
Chairman of
the Board.

17. At the first meeting of the Board and subsequently at a meeting to be held in the month of February in each year the Board shall appoint one of their number to be Deputy Chairman for the ensuing year. At all meetings of the Board the Chairman or in his absence the Deputy Chairman or in the absence of both the Chairman and the Deputy Chairman some member of the Board chosen by the Members present shall preside.

Minutes.

18. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose and shall be signed by the Chairman of the meeting to which they refer or of that at which they are read. Every such minute when so entered and signed shall in the absence of proof of error therein be considered a correct record.

Standing
Orders for
regulation
of business.

19. Subject to the provisions of this Ordinance the Board may make and when made vary or revoke standing orders for the regulation of their proceedings and business and the proceedings and business of any Committee of the Board and for all other matters connected with or incidental to the internal management of the Board and its business and duties.

Committees
of the Board.

20. The Board may by resolution appoint and dissolve Committees for such purposes as they may see fit and may delegate to

any of such Committees such of the duties and powers of the Board as they may think fit.

21. The Board shall pay to the Chairman such salary as the Lieutenant-Governor shall from time to time determine and may appoint pay and remove a Secretary and Treasurer and such other officers and servants as they may think fit.

Salary of Chairman and appointment of Officers.

22. The Board shall cause proper books of account and other books in relation thereto to be kept and shall prepare yearly balance sheets made up to such date in each year as the Board may from time to time determine showing in all necessary detail the assets and liabilities receipts and expenditure of the Board and shall transmit a copy of such balance sheet to each of the constituent authorities within two months of the date to which such balance sheet shall be made up.

Accounts.

23. The accounts of the Board shall be audited once at least in every year by the Auditor-General of this Colony and the expenses of and incidental to such audit shall be borne and paid by the Board. The Auditor-General shall report to the Board whether in his opinion the balance sheet referred to in his report is properly drawn up so as to exhibit a true and correct view of the state of the Board's affairs as shown by the books of the Board. A copy of the auditor's report shall be sent together with the balance sheet referred to in the preceding section to each of the constituent authorities.

Audit.

24. All questions arising at a meeting of the Board shall be decided by a majority of the members present at the meeting exclusive of the Chairman of the Board. In the case of an equality of votes of the members aforesaid the Chairman of the Board shall have a casting vote. At any meeting presided over by the Deputy Chairman of the Board or by a Chairman chosen by the members present such Deputy Chairman or other Chairman as aforesaid shall have an original but not a second or casting vote.

Questions to be decided by majority of votes or by casting vote of Chairman.

**ORD.
No. 32
of
1903.**

Powers of
Board.

25. The Board shall forthwith after the taking effect of this Ordinance proceed to formulate a scheme or schemes for supplying the area situate within the limits of supply with water and for such purpose may by themselves or any persons authorised thereto;

(a) search excavate and bore for water either within or without the limits of supply;

(b) from time to time and at all times enter and encamp upon any land within this Colony and make plans and surveys thereof and search dig excavate bore and carry out any other works necessary for the discovery or measurement of water or for meteorological observations on in or under any land so entered upon provided;

(i.) that seven clear days' notice at the least be given to the owner and occupier (if any) of such land prior to the entry thereon by the Board;

(ii.) that the Board shall do as little damage as may be to such land and shall make full compensation for all damage done by them the amount thereof in case the parties differ to be settled by arbitration in manner and form *mutatis mutandis* provided by The Expropriation of Land and Arbitration Clauses Proclamation 1902;

(iii.) that no entry or encampment shall be made or work done upon in under or within one hundred yards of any homestead house works or buildings save with the consent of the owner or occupier thereof;

(c) make surveys plans sections maps drawings and estimates for the purpose of the said scheme or schemes;

(d) take any steps or construct any temporary works necessary for the gauging or measurement of the water

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No. 32
of
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- rising from any spring well or fountain or flowing in any stream river watercourse or channel;
- (e) take any steps necessary to determine the levels and direction of flow of water in any underground reservoirs or channels;
- (f) employ such engineers architects surveyors and other experts on such terms as to remuneration and otherwise as they may think fit;
- (g) promote legislation for the purpose of carrying out the said scheme or schemes and pay all costs charges and expenses of or incidental to the same;
- (h) exercise put in force possess use and enjoy all such powers rights and privileges as may be hereafter conferred upon them by legislation;
- (i) enter into any provisional agreements with any company or person for the erection or construction of any works necessary or expedient for the purpose of carrying out the said scheme or schemes or for the acquisition of such information as the Board may require;
- (j) enter into any provisional agreements with any local authority company or person within the limits of supply for the supply of water when obtained to any such authority company or person respectively in bulk for any purpose and for such remuneration and on such terms and conditions and for such period as may be provisionally agreed upon; provided that in any provisional agreement for the supply of water to any consumer entered into by the Board regard shall as far as possible be had to the point at which such water would leave the pipes mains or other works of the Board and enter the pipes mains reservoirs tanks cisterns or other works of the consumer and to the distance and altitude of such point from and in comparison with the reservoirs rivers watercourses

**ORD.
No. 5
of
1903.**

springs pumping-stations boreholes or other water supplies or works of the Board from which such water is drawn or by means of which such water is supplied to the consumer;

- (k) enter into any provisional agreements with any company or person for the acquisition of or option over any land or over any existing waterworks spring river watercourse or other source of water which in the opinion of the Board may be suitable for the purpose of carrying out the said scheme or schemes;
- (l) enter into any provisional agreements with any company or person for the raising guaranteeing underwriting or subscribing any loan debentures or debenture stock proposed to be issued or created by the Board for the purpose of the said scheme or schemes;
- (m) generally employ such funds or moneys as may from time to time be in the possession or under the control of the Board in the promotion of the said scheme or schemes in such manner as the Board may think fit;
- (n) do and execute all such other acts matters or things as may be incidental to or connected with the formation of the said scheme or schemes.

Lieutenant-Governor may alter limits of supply.

26. The Lieutenant-Governor may from time to time extend or vary the area comprised in the limits of supply and any such extension or variation shall when published in the *Gazette* be deemed to be for all purposes the limits of supply as defined in this Ordinance.

Lieutenant-Governor may advance moneys to the Board from time to time.

27. It shall be lawful for the Lieutenant-Governor to advance to the Board from time to time such moneys as he may think fit for the proper carrying out of the provisions of this Ordinance as well as for liquidating any costs charges or expenses or other debts incurred prior to the taking effect of this Ordinance in or about the promotion or preparation of the same or in or about furtherance of any scheme or schemes for the purpose of supplying water

within the limits of supply and to charge the Board interest thereon at a rate not less than four per cent. per annum and on such terms and conditions as to repayment as to the Lieutenant-Governor may seem proper. The moneys so advanced and the interest thereon shall constitute a liability of the Board and their successors in office whether appointed under this Ordinance or appointed under any other Ordinance hereafter to be promulgated and shall be a first charge on all the property capital moneys income or revenue present or future of the Board or their successors in office.

**ORD.
No. 32
of
1903.**

28. This Ordinance may be cited for all purposes as the Rand Water Board Incorporation Ordinance 1903. Title.

No. 33 of 1903.]

[Assented to 9 June 1903.

ORDINANCE

**ORD.
No. 33
of
1903.**

To confirm a Contract modifying the Concession granted to the National Bank of South Africa, Limited.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Contract in the Schedule hereto entered into between the Colonial Treasurer and the General Manager of the National Bank of South Africa Limited formerly known as "De Nationale Bank der Zuid Afrikaansche Republiek (Beperkt)" modifying in certain respects the Concession granted by the Government of the late South African Republic and thereafter confirmed by the Volksraad of the said South African Republic is hereby confirmed.

Confirmation of Contract with the National Bank of South Africa Limited.

2. Article *eighteen* of Law No. 2 of 1893 and so much of any other law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed. The other provisions of Law No. 2 of 1893 shall apply to the said bank in all respects. Repeal.

**ORD.
No. 33
of
1903.**

SCHEDULE.

BE IT HEREBY MADE KNOWN that on this the 11th day of November in the year of Our Lord One Thousand Nine Hundred and Two before me EDWARD ROTH of Pretoria Transvaal Notary Public by lawful authority duly sworn and admitted and in the presence of the subscribing Witnesses personally came and appeared:

PATRICK DUNCAN

of Pretoria in his capacity as Colonial Treasurer acting for and on behalf of the Administration of the Transvaal he the Appearer being duly authorised and empowered thereto under and by virtue of Executive Council's Resolution bearing date 3rd November 1902 certified copy of which remains filed in my Protocol of the one part and

THOMSON HENDERSON

of Pretoria in his capacity as General Manager of the National Bank of South Africa Limited (hereinafter called the Bank) he the said Thomson Henderson acting for and on behalf of the Bank and being duly authorised and empowered thereto under and by virtue of certain Resolution passed by the Board of Directors of the Bank at Pretoria on the 19th September 1902 certified copy whereof remains filed in my Protocol of the other part.

And these Appearers did respectively declare that whereas on the fifth day of August 1890 the Government of the late South African Republic granted a Concession to Messrs. Labouchere Oyens & Co. and Dr Wilhelm Knappe to form and establish a Bank to be called De Nationale Bank der Zuid Afrikaansche Republiek Beperkt and to carry on banking business as also to establish a State Mint in the said Republic which Concession was ratified and confirmed by the Volksraad of the said late Republic by its Resolution dated 9th August 1890 Article 1231 under and by virtue of which Resolution the said Nationale Bank der Zuid Afrikaansche Republiek Beperkt was incorporated and the liability of its Shareholders limited: And whereas thereafter to wit on the 15th day of June 1899 certain alterations in and modifications of the said Concession were approved of ratified and confirmed by the First Volksraad of the said late Republic by its Resolution of that day's date: And whereas the name of the said Nationale Bank der Zuid Afrikaansche Republiek Beperkt has recently been changed to

THE NATIONAL BANK OF SOUTH AFRICA LIMITED:

And whereas up to the date of these Presents the Bank has carried on its business and operations under and by virtue of the said Concession and the alterations and modifications therein and thereof aforesaid: And whereas the said Concession grants certain exclusive rights and privileges to the Bank as hereinafter specified and set forth and imposes certain restrictions on it and gives the Government certain rights and privileges as hereinafter specified and set forth: And whereas it is desirable that the said rights and privileges and the said restrictions shall be waived cancelled and annulled and the said Concession modified accordingly:

NOW THEREFORE THESE PRESENTS WITNESS

that the Appearers on behalf of their respective Principals have contracted and agreed as they do hereby contract and agree each with the others as follows to wit;

- (1) The Bank hereby waives and consents and agrees to the withdrawal and cancellation of all and singular the rights and privileges which are granted by or contained in certain Articles of the said Concession set forth and specified in the Schedule hereunto annexed and marked "A" and especially all exclusive privileges granted and secured to it in the said Concession including the right to issue Notes which are legal tender the right to issue Notes free of Stamp Duty and to exemption from payment of licenses on its branches.

- (2) The Administration of the Transvaal (hereinafter called the Administration) hereby waives and consents and agrees to the withdrawal and cancellation of certain rights and privileges granted to the Government of the late South African Republic as also of certain restrictions imposed upon the Bank under and by virtue of certain Articles of the said Concession set forth and specified in the Schedule hereunto annexed and marked "B" and especially the right to exercise any control or supervision over the management or administration of the business or affairs of the Bank or over any alteration or amendment in its Memorandum or Articles of Association.
- (3) The said Concession is hereby modified and amended in terms of paragraphs 1 and 2 of these presents and the Articles thereof specified and mentioned in the said Schedules A and B are hereby cancelled and annulled.
- (4) All the clauses of the said Concession as also the provisions of the said Volksraad resolution of the 15th June 1899 shall subject to the provisions of paragraphs 1 2 and 3 of these presents remain of full force and effect provided however that the Bank shall not have the right to coin or issue BRITISH STERLING from the Mint referred to in said Concession.
- (5) This Contract is entered into subject to the approval of the Shareholders of the Bank. The Bank promises and undertakes to submit these presents for such approval without delay.

Thus done and executed at Pretoria the day month and year first before written in the presence of the witnesses Thomas Cadell and William Patrick Jones who together with the appearers and me the notary have subscribed to the original hereof now remaining filed in my protocol.

Quod Attestor,

(Sgd.) E. ROOTH,
Notary Public.

(Seal)

SCHEDULE "A."

4. These notes shall be legal tender in the South African Republic.

The Bank shall do the Banking business of the Government (shall be banker of the Government) without charging any brokers' commission and shall effect all other internal affairs of the Government (for instance the transport of gold etc.) for a remuneration in proportion to the work attached to it. This remuneration shall be fixed from time to time in concurrence with the Government.

15. The Government gives the preference to the Bank for the execution of all its foreign financial transactions (with the exception of such transactions which were already in the hands of others before the signing of this document) and on the same conditions as offered for the same by others.

All sums which at any time the Government may owe the Bank in consideration of what is stipulated in Art. 13 as described in the foregoing aliena may be taken into account when calculating the above percentage as regards the legal coin or bullion. Consequently the amount of specie which the Bank is obliged to possess can be reduced by this amount.

24. The Bank is not obliged to make any payments for loss or destroyed bank notes.

25. The Government binds itself during the term of this Concession to give to none of the existing or afterwards established banks similar privileges to those specified in Arts. 27 and 28.

All obligations binding on De Nationale Bank der Zuid Afrikaansche Republiek Beperkt in the matter of gold reserve publishing or balance sheets and payment of bank notes on presentation in the South African Republic shall also be enforced upon the Banks which issue notes.

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26. Whenever the Government during the term of this concession issues paper money of its own it shall thereby forfeit its share in the profits of the Bank unless such paper money is covered in full by gold in which case its share in the profits shall not be forfeited.

27. The bank notes issued by institutions established or represented in the South African Republic shall twelve months after the Bank has commenced its business be no longer accepted by the Government Offices.

The Bank Notes issued by the Nationale Bank der Zuid Afrikaansche Republiek shall be legal tender for transactions in the South African Republic. But if the Bank shall at any time fail to pay its notes in cash on presentation in accordance with clause 22 hereof the Government may thereupon declare that the notes of the Bank are either temporarily or permanently no longer legal tender.

28. The notes of the Nationale Bank der Zuid Afrikaansche Republiek shall at all times be free from stamp duty.

29. The Bank shall be free from license duty as imposed by law and its officials free from personal military service except when Martial Law is proclaimed.

SCHEDULE "B."

4. The Government however reserves itself the right after the first 25 years have passed to make such alterations in this concession as it shall deem necessary and desirable as regards the rights privileges stipulations contained therein.

5. The Government has the right to subscribe at each further issue at the same emission rate for which the public and the holders of Founders' Shares can subscribe and for an amount of ten (10) per cent. at the outside of such an issue and with conditions that the amount subscribed for by the Government in above manner shall be allotted to the same.

The Government binds itself always to consult the Bank before selling such shares thus obtained.

8. The management of the Bank is conducted by a Board of Directors consisting of not more than eleven persons of which the majority shall have to reside in the South African Republic; two of them are appointed by the Government and the others by the Shareholders of the Bank it being understood that at least half of the number appointed by the Shareholders must be persons approved of by the Government.

The Board of Directors appoint two Managers which appointment requires the approval of the Government. These Managers are charged with the daily management according to instructions to be given to them by the Board of Directors.

9. These articles must be submitted to the Government and require its approval.

No alterations may be made in these articles without having first obtained the approval of the Government.

10. In case of either of the Managers being unable to fulfil his duties the same shall be undertaken by one of the Directors not being one appointed by the Government.

11. The Domicile of the Bank as well as the Head Office shall be Pretoria where the ordinary meetings of the Directors shall be held.

Branches and Agencies may be established by resolution of the Board of Directors. The Government shall have the right to demand the establishment of an Agency in each district at such a place as may appear desirable to it.

Whenever the Board of Directors consider it desirable and with the approval of the Government local Directors may be appointed from time to time whose sphere of business rights and duties are to be defined by the Board of Directors.

The Branches and Agencies are entirely subject to the orders of the Board of Directors in Pretoria who control as much as possible these branches; amongst other things by periodic inspection of the cash in hand.

12. Whenever the Bank resolves to issue Debentures the conditions on which the same may be issued must be arranged with the Government.

The Bank is not allowed;

- (a) to buy or lend money on its own shares;
- (b) to grant blank credits. Under blank credits shall not be understood such balances of account as the Bank for the conduct of its exchange business with foreign countries may have to its credit with the Bankers;
- (c) to issue Debentures for a larger amount than the moneys secured upon mortgage;
- (d) hold more real estate than it requires for its own business or may have been obliged to take in foreclosure nor hold these for more than two years without the approval of the Government;
- (e) advance upon mortgage more than 3-4ths (three-fourths) of the valuation made by competent valuers;
- (f) to take anything but first mortgage;
- (g) to take securities which from the nature thereof are subject to fluctuation and therefore difficult to estimate;
- (h) to give credit to an individual person to a greater amount than 10 (ten per cent.) of the paid-up capital of the Bank;
- (j) to buy promissory notes with only one signature unless secured by real or personal security;
- (k) to issue Bank notes for an amount smaller than £1;
- (l) to carry on industrial or commercial business with the exception of dealing in coin and mint material;
- (m) to enter into partnership or association with persons firms or companies who carry on business which the Bank itself is not allowed to carry on.

The Government shall have the right from time to time and whenever in their opinion the interest of the country shall require it to vary the foregoing restrictions and to add thereto.

13. The Bank shall from time to time and whenever the Government require it make temporary advances to it the total amount thereof shall not exceed one-fourth of the actual State income of the South African Republic in the last preceding financial year and in no case to be more than one-fourth of the paid-up capital of the Bank.

For such advances interest shall be reckoned from day to day at six per cent. per annum.

State income derived from loans shall not be included in estimating the public revenue.

14. The operations of the Bank outside the South African Republic through its agencies shall consist of;

- (a) the investment of surplus cash;
- (b) the accepting of deposits at interest repayable at not less than three months' notice or for such less time as the Government shall approve;
- (c) the buying and selling of drafts upon the Bank its branches or agencies in the South African Republic;
- (d) the covering of drafts drawn by the Bank its branches or agencies or places outside the South African Republic;
- (e) carrying out of financial business for the Government or inhabitants of the South African Republic.

16. The total sum of notes in circulation must be covered for at least 33 $\frac{1}{3}$ per cent. (thirty-three and a third per cent.) by legal coin or bullion to be present at the Bank at Pretoria and at the Branch Banks

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17. As soon as possible after the end of each month after the end of each fortnight or after the end of every week (at the option of the Government) the Bank shall hand to the Government a short balance sheet made up in a manner to be approved by the Government. The Government shall publish this balance sheet in the *Staats Courant* at the expense of the Bank.

18. The Government may appoint an Officer who shall have the title of the Syndic of the Bank and shall at all times be empowered to inspect or to have inspected all transactions and affairs of the Bank and to require explanations thereof and specially to investigate or to have investigated whether the reserve prescribed by Art. 16 is in existence always without interfering with the business of the Bank.

A remuneration of such Officer to be agreed between the Government and the Bank shall be paid by the Bank.

19. At the end of each financial year the Bank shall present the Government a balance sheet profit and loss account and report upon the past year. These documents must be supported by proper vouchers and must be attested as correct to the satisfaction of the Government

20. The nett profit of the Bank shall be divided as follows;

- (a) an amount of at least 5 per cent. and not exceeding 10% (ten per cent.) of the same within these limits to be stipulated by the Board of Directors goes to the reserve fund;
- (b) a cumulative Dividend calculated at ten per cent. (10%) a year of the paid-up capital will be paid to the shareholders;
- (c) of the amount remaining twenty per cent. (20%) will be paid to the Government of the South African Republic.
- (d) Of the rest one-half shall be paid as supplementary dividend to the shareholders and the other half goes to the proprietors of the Founders' shares in proportion to the number of Founders' shares each of them possess.

It will however be left to the discretion of the Board of Directors if this body thinks it desirable to transfer an amount not exceeding (10%) ten per cent. to the Reserve Fund of the profit which remains after the payment to the Government.

21. The revenues of the Reserve Fund will be included in the yearly profit.

The investment of the Reserve Fund will be regulated by the Board of Directors.

23. The pattern of the Bank notes shall be approved of by the Government or according to their instructions by a person instructed thereto.

24. The holder of a Bank note is exclusively entitled to demand from the Bank payment of the amount therein named.

31. The Bank shall make use of the Dutch language in its headings forms and publications; it has also the right to make use of other languages besides. Everyone shall have the right to demand that all correspondence all verbal and written contracts accounts etc. shall be kept and delivered in the Dutch language.

34. The Government is authorised to make such alterations in the details of this Concession in agreement with the Concessionaires of the Bank as experience may show desirable but such alterations shall be subject to the approval of the Volksraad thereafter to be obtained at the next ordinary session.

No. 34 of 1903.]

[Assented to 9 June 1903.]

**ORD.
No. 34
of
1903.****ORDINANCE****To define and declare the powers and privileges of
the Legislative Council.**

WHEREAS it is expedient more clearly to define and declare the powers and privileges of the Legislative Council in certain respects;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. In the interpretation of this Ordinance the following words and expressions in inverted commas shall have the meaning respectively set opposite to them unless the context clearly otherwise directs;

Interpre-
tation Clause.

“President” shall mean the officer or member for the time being presiding over the Legislative Council;

“Clerk” shall mean the officer holding the appointment for the time being of Clerk to the Legislative Council under the authority or appointment of the said Council or the President thereof;

“Council” shall mean the Legislative Council of this Colony;

“Chamber” shall mean the place where the Council shall hold its meetings.

2. There shall be freedom of speech and debates or proceedings in the Council and such freedom of speech and debates or proceedings shall not be liable to be impeached or questioned in any Court of Law.

Freedom of
speech.

3. It shall be lawful for any person who may be a defendant in any civil or criminal proceeding in respect of the publication of any report paper votes or proceedings published by such person by or under the authority of the Council to bring before the Court in which such proceeding shall be commenced or prosecuted after giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding a certificate under the

Mode of
proceeding
in cases in
which suits
of law are
instituted in
regard to
papers
published by
authority of
the Council.

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of
1903.**

hand of the Clerk of the Council for the time being stating that the report paper votes or proceedings as the case may be in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted was or were published by such person or by his servants by order or under the authority of the Council together with an affidavit verifying such certificate; and such Court shall thereupon immediately stay any such civil or criminal proceeding and the same and every writ or process issued thereon shall be and the same shall be deemed and taken to be finally put an end to determined and superseded by virtue of this Ordinance.

Power to order the attendance of witnesses.

4. The Council and any committee thereof duly authorised by the Council to send for persons and papers may order any person to attend before the Council or before such committee as the case may be and also to produce to such Council or committee any paper book record or document in the possession or power of such person.

Attendance of witness to be by summons.

5. Any such order to attend or produce documents before Council shall be notified to the person required to attend or produce documents by a summons under the hand of the President; and any such order to attend or produce documents before any such committee shall be notified to the person required to attend or to produce documents by a summons under the hand of the Clerk authorised by the Chairman of the Committee; and in every such summons shall be stated the time when and place where the person summoned is to attend and the particular documents which he is required to produce and such summons shall be served on the person mentioned therein either by delivering to him a copy of such summons or by leaving a copy of the same with some adult person at his usual or last known place of abode in this Colony; and there shall be paid or tendered to the person so summoned if he shall not reside within five miles of the Chamber a reasonable sum for his expenses of attendance according to any standing rule or order in that behalf.

6. If any person ordered to attend before or to produce any paper book record or document to Council or any committee thereof shall refuse to answer any question that may be put to him or to produce any such paper book record or document on the ground that the same is of a private nature and does not affect the subject of enquiry the President or Chairman of such committee as the case may be shall report such refusal with the reason thereof and the Council shall thereupon excuse the answering of such question or the production of such paper book record or document or order the answering or production thereof as the case may require.

Objections to answer questions or to produce papers to be reported to and decided by Council.

**ORD.
No. 34
of
1903.**

7. The Council may summarily punish for contempt to the extent and according to the standing rules or orders thereof by fine; and in case such fine so imposed shall not be immediately paid by imprisonment in the custody of any keeper of a prison or in the custody of its own officer in such place as Council may direct until payment shall be made or for a period not later than until the end of the then existing session for or in respect of any of the offences hereinafter enumerated whether committed by a member of Council or by any other person;

Council empowered to punish for certain contempt.

- (1) disobedience to any order of Council or of any committee duly authorised in that behalf to attend or to produce papers books records or documents before Council or such committee unless excused in manner provided by the last preceding section;
- (2) refusal to be examined before or to answer any lawful and relevant question put by Council or any such committee unless excused in manner provided by the last preceding section;
- (3) creating or joining in any disturbance in the vicinity of the Chamber and during any meeting of Council whereby its proceedings may be interrupted;
- (4) any of the contempts from time to time set forth and declared to be such in any standing order of Council.

**ORD.
No. 34
of
1903.**

President to
issue
warrants.

8. For the purpose of punishing any of the contempts aforesaid the President is hereby empowered upon the resolution in that behalf of Council to issue his warrant under his hand for the apprehension and imprisonment as aforesaid of any person adjudged by Council guilty of any such contempt; if such fine shall not have been paid as aforesaid.

Persons
disturbing
proceedings
of Council
may be
arrested
without
warrant.

9. Any person creating or joining in any disturbances in the Chamber during the actual sitting of Council may be apprehended without warrant on the verbal order of the President and may be kept in custody of any officer of Council until a warrant can be made out for the imprisonment of such person in manner aforesaid.

Form of
warrant.

10. Every such warrant as aforesaid shall contain a statement that the person therein mentioned has been adjudged guilty of contempt by Council specifying the nature of such contempt; and every warrant shall be sufficient from which it can reasonably be collected that the person mentioned therein has been adjudged guilty of any of the contempts aforesaid and no particular form shall be necessary to be observed in such warrants.

Sheriff
Constables
and others
to assist in
execution of
warrant
or verbal
order.

11. The Sheriff and his officers and all constables and other persons are hereby required to assist in the apprehension and detention of any person in pursuance of the verbal order as aforesaid of the President; and also to be aiding and assisting in the execution of any such warrant as aforesaid; and where any such warrant directs that the person mentioned therein shall be imprisoned in any prison the keeper thereof is hereby required to receive such person into his custody in the said prison and there to imprison him according to the tenour of the warrant.

Door may be
broken open
in executing
warrant.

12. It shall be lawful for any person charged with or assisting in the execution of any warrant under the hand of the President issued under the authority of this Ordinance to break open in the day time all doors of places where the person for whose apprehension such warrant was issued is concealed.

13. If any person before Council or before any committee thereof shall after being duly cautioned by the President or by the Chairman of the Committee as the case may be as to his liability to punishment under this section give a wilfully and corruptly false answer to any lawful or relevant question material to the subject of enquiry which shall be put to him during the course of any examination he shall be guilty of an offence and shall be liable on conviction to be punished in the same manner as though he had been convicted of wilful and corrupt perjury.

Punishment
for wilfully
false answers.

**ORD.
No. 34
of
1903.**

14. Nothing in this Ordinance contained shall be deemed or taken to affect the powers duties and privileges of the Legislative Council granted under Letters Patent dated the twenty-third day of September 1902 providing for the government of the Transvaal or under the Royal Instructions issued in pursuance of such Letters Patent or any amendment thereof.

Ordinance
not to affect
powers and
privileges of
Council
under Letters
Patent.

15. This Ordinance may be cited as the Legislative Council Powers and Privileges Ordinance 1903.

Title.

No. 35 of 1903.]

[Assented to 9 June 1903.

ORDINANCE

**ORD.
No. 35
of
1903.**

To Regulate the Retiring Pensions of the Judges of the Supreme Court.

WHEREAS it is desirable to regulate the pensions on which the Judges of the Supreme Court of this Colony may retire;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Any person having served the office of Judge of the Supreme Court shall be entitled to retire from the said office on his attaining the age of sixty years and on so retiring or on his becoming afflicted with

Rate of
pension.

**ORD.
No. 35
of
1903.**

some permanent infirmity disabling him from the due execution of his office shall be entitled to receive a pension to be ascertained as follows: If he shall have served such office for a period of ten years he shall be entitled to a pension equal to one-half of the average annual salary which shall have been paid to him for the three years immediately preceding his retirement and if he shall have served for a period of more than ten years then he shall be entitled to receive such pension as aforesaid with an addition of one-thirtieth of the average salary which shall have been paid to him for the three years immediately preceding his retirement for each year of service after the said ten years: but in no case shall such pension exceed the amount of two-thirds of the average salary as aforesaid; and in case any person serving the office of Judge shall before he shall have served for such full period of ten years retire from office on the ground of permanent infirmity he shall be entitled to receive such pension as the Lieutenant-Governor for the time being shall in the circumstances consider to be reasonable not exceeding one-half of the salary which shall have been payable to him at the date of retirement.

Rate of
pension of
Judges
transferred
from other
Colonies.

2. In the case of any Judge who shall have been transferred from the Supreme Court of any other British Colony to the Supreme Court of this Colony and who shall have served for not less than one year in this Colony the amount of his pension shall be calculated upon the whole combined period during which such Judge shall have served in such other Colony and in this Colony in the same manner as if such service had been entirely rendered in this Colony; provided that in no event shall his pension be less than the pension to which he would have been entitled had he continued to serve as a Judge in such other Colony as aforesaid up to the date of his retirement; provided further that where any Judge transferred from another Colony is under the laws of such Colony entitled on

retirement to be paid any pension by the Government of such Colony the amount of pension which may be expended under this section shall be reduced by the amount so payable by any such Colony or Colonies.

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3. In the case of any Judge who shall be transferred from the Supreme Court of this Colony to the Supreme Court of any other British Colony the Lieutenant-Governor shall cause to be paid to such Judge on his ultimate retirement the amount of pension such Judge would have been entitled to receive had he retired from service in this Colony on the date of his transfer to such other Colony; provided that if such Judge shall have served in the Supreme Court of this Colony for less than ten years such pension shall be at the rate of one-twentieth of his average annual salary during the three years immediately preceding his transfer or during the period of his service if such service is less than three years for each year of service.

Pension to
Judges
transferred
to other
Colonies.

4. The period during which any Judge of the Supreme Court shall have served as a member of the High Court of the Transvaal established by Proclamation Transvaal No. 14 1902 shall be taken to be service in the office of Judge of the Supreme Court.

Service as
Judge of
High Court
to count.

5. There shall be charged on and paid out of the revenues of this Colony all such sums of money as may from time to time be granted by way of pension in accordance with this Ordinance.

Pensions to
be charged
on revenues
of Colony.

6. This Ordinance may be cited for all purposes as The Judges' Pension Ordinance 1903.

Title.

ORD.
No. 36
of
1903.

No. 36 of 1903.]

[Assented to 24 June 1903.

ORDINANCE.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Power of
Magistrates
to enforce
obedience to
their orders
by
proceedings
for contempt
of Court.

1. If any person shall wilfully disobey or neglect to comply with any order of a Magistrate issued under the powers conferred upon him by the Magistrates Court Proclamation 1902 or by any rules and regulations annexed thereto or made thereunder such Magistrate shall be empowered to impose by order upon such person a fine not exceeding fifty pounds or by warrant under his hand to commit such person to prison for any period not exceeding one month or to impose both such fine and imprisonment: provided always that an appeal shall lie to the Supreme Court against such order or warrant of commitment as in the case of an appeal against a conviction under section *forty-two* of the said Proclamation and the provisions of that section shall *mutatis mutandis* apply to any such appeal.

Title.

2. This Ordinance may be cited as the Magistrates Courts (Contempt of Court) Ordinance 1903 and shall be read as one with the Magistrates Court Proclamation 1902 and any Ordinance amending the same.

ORD.
No. 37
of
1903.

No. 37 of 1903.]

[Assented to 3 July 1903.

ORDINANCE

To establish Public Holidays in the Transvaal.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Repeal of
Laws.

1. The laws mentioned in the first schedule to this Ordinance and so much of any other law as may be inconsistent with or repugnant to the provisions of this Ordinance shall be and the same are hereby repealed.

2. The days mentioned in the second schedule to this Ordinance shall be public holidays in this Colony. When any of the said days falls on a Sunday the following day shall be a public holiday and when Christmas day falls on a Sunday the two following days shall be observed as public holidays.

Holidays.

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No. 37
of
1903.**

3. It shall be lawful for the Lieutenant-Governor of this Colony from time to time by notice in the *Gazette* to appoint any day mentioned in such notice to be observed as a public holiday.

Lieutenant-Governor may appoint any day to be observed as a public holiday.

4. Section *one* of Proclamation No. 11 of 1902 is hereby amended by omitting sub-sections (a) and (b) after the words "non-business days include" and substituting the words "Sunday and any day appointed by any law or by the Lieutenant-Governor under the authority of any law as a solemn fast or day of thanksgiving or as a public holiday."

Amendment of section *one* of Proclamation Transvaal No. 11 of 1902.

5. Section *five* of Proclamation No. 15 of 1902 is hereby amended by omitting the words from "Christmas Day" when they first occur in that section to "Birthday" inclusive.

Amendment of section *five* of Proclamation 15 of 1902.

6. This Ordinance may be cited as the Public Holidays Ordinance 1903.

Title.

SCHEDULE I.

Volksraad Resolution 16th September 1864 Article 37.
Volksraad Resolution 3rd June 1865 Article 12.
Proclamation Transvaal No. 30 of 1901.

SCHEDULE II.

New Year's Day.
Good Friday.
Easter Monday.
Whit Monday.
Victoria Day (May 24th).
First Monday in August (Arbor Day).
The King's Birthday (November 9th).
Dingaan's Day (December 16th).
Christmas Day and the Day after Christmas Day.

ORD.
No. 38
of
1903.

No. 38 of 1903.]

[Assented to 6 July 1903.

ORDINANCE

Providing for Elective Municipal Councils.

WHEREAS it is desirable to make provision for the election of members of Councils of Municipalities already established and of the Council of any other Municipality hereafter established to which this Ordinance shall be made to apply;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Ordinance may be applied to election of members of Council of all Municipalities.

1. This Ordinance shall apply to the election of members of the Council of any existing Municipality and of any Municipality hereafter established.

CHAPTER I.

MUNICIPAL COUNCIL.

Qualifications of councillors.

2. Every white male person of full age being a British subject who is qualified to vote at elections of councillors under this Ordinance shall be eligible to be elected a councillor and qualified to hold office as such but so long only as he shall continue to possess such qualification and shall not become disqualified under the terms of this Ordinance or otherwise.

Disqualification.

3. No person whose estate shall be in liquidation under assignment in trust for his creditors no person whose estate shall be sequestrated as insolvent and who shall not have obtained his rehabilitation no person not qualified to vote at elections under this Ordinance no person of unsound mind declared as such by a competent Court and no person who is disqualified by this Ordinance shall be capable of being elected or if elected of continuing a councillor.

Further disqualification.

4. No person holding any office or place of profit under or in the gift of the Council shall be capable of being elected or of continuing a councillor.

5. No person elected a councillor shall have or receive any salary or shall exact take or accept any fee or reward whatsoever for or on account of anything done as such councillor nor shall he act as agent for any ratepayer at any meeting of any Court appointed to assess the value of property within the municipality for rating purposes. Any Councillor contravening the provisions of this section shall *ipso facto* become disqualified from continuing as a councillor.

No councillor to accept salary, &c.

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6. All proceedings of the Council or of any person acting as Mayor Deputy Mayor Councillor or Town Clerk as the case may be shall notwithstanding that it be discovered that there was some defect in the election or appointment of any councillor officer or person as aforesaid or any disqualifications be as valid and effectual as if every such councillor officer or person had been duly elected or appointed and qualified.

Validity of Council's proceedings notwithstanding certain defects in election.

7. Any Councillor who shall cease to possess the qualifications by this Ordinance required or who shall absent himself from the meetings of the Council for four consecutive ordinary meetings without leave from the Council having been had and obtained or who is a paid agent for a candidate at any municipal election under this Ordinance during his term of office or who shall become disqualified under this Ordinance shall *ipso facto* vacate his office and the Mayor shall at any meeting of the Council declare any such vacancy which may have occurred; and in case any person elected a councillor shall die or become disqualified under the terms of this Ordinance or cease to be qualified to be a councillor or shall resign or shall refuse to accept the office of councillor or in case of any vacancy happening in any manner whatever then such vacancy shall forthwith be filled up in manner directed by this Ordinance but subject nevertheless to the provisions hereinafter made as to vacancies occurring within three months of the annual election; provided always that a councillor whose seat shall have been declared vacant by the Mayor may apply by motion to the Supreme Court or the Witwatersrand High Court if

Circumstances in which councillor vacates his office.

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1903.**

the matter be within its jurisdiction and in such Courts be not sitting then to a Judge of the Supreme Court to have such declaration set aside; notice of the intention to make such application and the grounds thereof shall be given to the Town Clerk within two days after such declaration and the application shall be made within fourteen days thereafter.

CHAPTER II.

MAYOR.

Appoint-
ment of
Mayor.

†8. At the first meeting of the Council held after the first election of councillors referred to in Section *twenty-four* of this Ordinance and thereafter at the first meeting of the Council held after every annual election of councillors the councillors present shall elect one councillor to be Mayor who shall be styled Mayor of the town for which he is so elected and who shall forthwith enter upon his office and continue therein until his successor be appointed after the next ensuing annual election of councillors unless his office be sooner vacated; and in case of such vacancy then a successor shall at the meeting next but one of the Council after such vacancy be chosen by the councillors from amongst themselves who shall forthwith enter upon his office and serve as Mayor for the remainder of the period for which the vacating Mayor was elected; provided always that should a Mayor for any reason not be elected at a meeting as herein prescribed he may be elected at the first ordinary meeting of the Council held thereafter or at a special meeting called for the purpose.

Duties
privileges
and
jurisdiction
of Mayor.

9. All duties imposed on and all privileges and jurisdiction conferred upon the Chairman of any Municipality by any law constituting such Municipality or by any law amending the same or by any other law shall after the first election of Mayor under this Ordinance be imposed and conferred on the said Mayor; and wherever in the said laws reference is made to the Chairman of the Municipality the Mayor shall after the first election of Mayor be taken to be meant thereby.

† The words "Section *twenty-four* of" are to be omitted. See "Correction of Errors in Laws Ordinance 1904."

10. It shall be lawful for the Council to vote out of the moneys of the Municipality to the Mayor such sum as the Council shall consider sufficient as an allowance for expenditure by the said Mayor consequent on his position. The amount of such allowance granted to any Mayor shall be fixed at the commencement of his term of office and such allowance shall not be deemed to fall within the provisions of section *five* of this Ordinance. The expenditure of such allowance shall be accounted for to the Finance Committee but shall not be subject to any other audit.

Council may vote allowance to Mayor for expenditure during his term of office consequent on his position.

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1903.**

CHAPTER III.

VOTERS.

11. Every white person male or female being a British subject of the age of twenty-one years and upwards who is the owner of rateable property within the Municipality of the assessed value of one hundred pounds or the occupier of rateable property within the Municipality of the assessed value of three hundred pounds or of premises of the gross annual value of twenty-four pounds shall be entitled to be enrolled on the Voters' Roll for the Municipality provided that;

Qualifications of voters.

- (1) Such person shall have been the owner or occupier of property of the value aforesaid and shall have resided within the Municipality for a period of three months prior to the publication of the notice mentioned in section *eighteen* of this Ordinance;
- (2) A husband and wife shall not both be entitled to be enrolled on the Voters' Roll in respect of the same property;
- (3) No person shall be enrolled on the Voters' Roll in respect of more than one ward.

12. For the purposes of the last preceding section the gross annual value of property shall mean the gross annual rent at which the premises occupied are or might reasonably be expected to be let and the term premises shall include any part of a build-

Annual value defined.

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Provisions in case of joint owners or occupiers of property.

ing separately let or occupied from the rest of the building and under the exclusive control of the lessees or occupiers

13. When more persons than one are otherwise than as members of an association society or company the owners or occupiers of any rateable property or the occupiers of premises as defined in the last preceding section of the assessed value respectively stated in section *eleven* of this Ordinance they shall if not otherwise disqualified be entitled to be enrolled on the Voters' Roll; provided that if in the case of joint owners the assessed value of the property when divided by the number of owners is less than one hundred pounds and if in the case of joint occupiers the assessed value of the property occupied when divided by the number of such occupiers is less than three hundred pounds or the gross annual value of such premises when similarly divided is less than twenty-four pounds only one of such owners or occupiers as the case may be to be named in writing by them all shall be entitled to be enrolled on the Voters' Roll.

Companies as voters.

14. Every society association or company owning or occupying property within the Municipality of the assessed value mentioned respectively in section *eleven* shall be entitled to be enrolled on the Voters' Roll with the same rights and subject to the same restrictions as are hereinbefore given to or imposed upon persons of full age and shall be entitled to vote by a director manager secretary or other official of the society association or company duly authorised thereto whose name shall have been duly placed upon the Voters' Roll as representative of the society association or company.

Disqualifications.

15. The following persons shall not be qualified to vote at any election held under this Ordinance;

- (1) Persons at any time convicted of treason against the Crown or murder or until the lapse of five years from the date of the expiration of the sentence of any crime for which the punish-

ment is imprisonment with hard labour without the option of a fine unless a free pardon shall have been granted.

- (2) Persons whose names do not appear upon the Voters' Roll for the time being.

16. The Municipality shall be divided into so many separate districts or wards as shall be proclaimed by the Lieutenant-Governor by Proclamation in the *Gazette* and it shall be lawful for the Lieutenant-Governor to make any re-adjustment of or alteration in any of the said districts or wards or to increase the number of them by Proclamation in the *Gazette*; provided that no such re-adjustment alteration or increase shall be made unless and until a resolution to that effect has been passed by a majority of not less than two-thirds of the councillors present at a meeting specially called for the purpose; and provided further that the Council shall after passing any such resolution notify in the *Gazette* and in some paper published or generally circulated in the Municipality its intention to apply to the Lieutenant-Governor to make such re-adjustment alteration or increase as aforesaid and of the particular re-adjustment alteration or increase to be made; which notice shall be published for not less than thirty-one days before application for any such re-adjustment alteration or increase shall be made and a copy of the said notice shall be also posted in some conspicuous place at the offices of the Council.

Division of
Municipality
into wards.

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CHAPTER IV.

MAKING OF VOTERS' ROLL.

17. (1) The Council or some person appointed thereto by the Lieutenant-Governor shall forthwith after the passing of this Ordinance and thereafter annually in the month of July cause a list to be made of all persons qualified to be enrolled on the Voters' Roll under the provisions of this Ordinance; the said list shall be sub-divided into as many parts as there are districts or wards of the said Municipality and each

List of voters
to be made
annually.

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part shall show in alphabetical order the full name address and qualification of every voter qualified to vote in respect of property within the district or ward to which such part refers.

(2) Every person entitled to be registered as a voter and who shall be the owner or occupier of rateable property in more than one of the wards of the Municipality shall be entitled to elect the ward in which he will vote and should he decline or fail to make such election he shall be registered as a voter in such of the said wards as the person framing the Voters' Roll shall decide.

Notices of
objection to
list.

18. The Town Clerk or person appointed by the Lieutenant-Governor under the last preceding section after the making of such list shall cause it to be deposited in the Municipal offices for inspection by the public and shall cause to be published in one or more local newspapers a notice that all objections and claims to be enrolled will be heard and determined at some time and place to be therein stated; such time shall be not less than fourteen days after the publication of the said notice.

Council to
appoint
Court to
determine
objections.

19. The Resident Magistrate or some Advocate of the Supreme Court to be appointed by the Lieutenant-Governor shall hear and determine all claims and objections and may enrol the names of any voters which have been omitted from the Voters' Roll and strike out the names of all persons not entitled to be enrolled: provided that no person's name shall be struck out until such person shall have had two clear days' notice of the investigation of his qualification and shall be heard in regard thereto should he so desire either personally or by an advocate solicitor or duly admitted law agent. The hearing and determining such claims and objections may be adjourned from time to time and the decision on any such claim or objection may be brought on appeal by motion to the Supreme Court or any Judge thereof if notice thereof be given by any interested person within two clear days after the declaration of such decision. The Court or Judge hearing such application may uphold

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or reverse the said decision and may make such order as to costs as to such Court or Judge may seem right. The remuneration of the advocate appointed by the Lieutenant-Governor as aforesaid shall be fixed by the Lieutenant-Governor and shall be a charge on the funds of the Municipality.

20. The list when so settled and amended shall be the Voters' Roll for the Municipality until the next roll shall in like manner be completed and such roll shall be deemed and taken to be conclusive and the only proof of the right of every person enrolled therein to vote for the election of councillors.

Roll to be enforced until new one framed.

CHAPTER V.

ELECTION OF COUNCILLORS.

21. Save as otherwise provided in Chapter VII. the Council shall consist of three councillors for each ward elected in the manner hereinafter prescribed.

Election of councillors.

22. Should at any time the number of wards be increased under the provisions of this Ordinance then upon such increase the number of councillors shall be increased by three for each ward by which the number of wards is increased and the election of councillors for the new wards shall take place as soon as possible after such wards have been created and on a date to be fixed by the Lieutenant-Governor by Proclamation in the *Gazette* in manner hereinafter provided for the election of councillors at an annual election.

Provision for increase in number of councillors in event of increase of number of wards.

23. The councillors appointed for any Municipality by the Governor and holding office at the date of the taking effect of this Ordinance in such Municipality shall continue to hold office until the first election of councillors under this Ordinance.

Duration of term of office of councillors appointed by Governor.

24. The first election of councillors under this Ordinance shall take place in manner hereinafter prescribed on such date as may be notified by the Lieutenant-Governor by Proclamation in the *Gazette* when in case the election of councillors is by wards three councillors shall be elected for each ward one of whom being the one who stands

First election of councillors.

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Annual
election of
councillors.

Duration of
councillors'
term of
office.

first on the poll shall remain in office for a period of three years and no more and the one who stands second on the poll shall remain in office for a period of two years and no more and the one who stands third on the poll shall remain in office for a period of one year and no more; and in case there are two or more candidates who have received an equal number of votes or in case there is no poll the returning officer shall determine by lot which of such candidates shall be elected for a period of three years which for a period of two years and which for a period of one year.

25. After the first election of councillors as aforesaid there shall be an annual election of councillors which shall take place in the month of October of each and every year commencing with the year 1904 for the purpose of electing councillors to replace an equal number of councillors retiring from office on account of the expiration of their period of office and also for the purpose of filling up such casual vacancies as may be required to be filled up under the provisions of section *twenty-eight* of this Ordinance.

26. (1) The councillors elected at every annual election to fill the vacancies caused by the retirement of councillors due to the expiration of the period for which they were elected shall hold office for a period of three years and the councillors elected to fill a casual vacancy requiring to be filled up under section *twenty-eight* of this Ordinance whether such election shall take place at the annual election or not shall hold office for the remainder of the term for which the councillor who has vacated office and whom he shall succeed would have otherwise remained in office.

(2) In any annual election at which councillors are to be elected to fill casual vacancies the vacancies caused by the retirement of councillors due to the expiration of the period for which they were elected shall be deemed to be filled by the candidates who receive the largest number of votes at the election. The other elected candidates shall be deemed to fill

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casual vacancies in order according to the number of votes cast for each so that the councillor elected by the greatest number of votes shall be deemed to succeed the councillor who had he not vacated office would have remained longest in office. In case the matter cannot be determined as aforesaid owing to the equality in the votes of two or more candidates or owing to there being no poll it shall be determined by lot by the returning officer.

27. Whenever a vacancy is caused by a councillor retiring or in any other way vacating his seat the ward represented by such councillor in case the election of councillors is by wards shall elect the councillor to fill the seat so vacated.

Vacancy.

28. When and as often as any casual vacancy shall occur in the Council the councillor to be elected to fill such vacancy shall be elected in the manner provided for the election of candidates at the annual election; but if such vacancy shall occur within three months of the ensuing annual election then the vacancy save as otherwise provided in Chapter VII. shall not be filled up at a special election but shall remain until the holding of the annual election of councillors under this Ordinance; provided always that such vacancies do not exceed three in number in which case they shall be filled up at a special election held for the purpose.

Casual vacancies.

29. The Resident Magistrate or such person as the Lieutenant-Governor may appoint shall be the returning officer at all municipal elections and all such elections shall be held before such returning officer; provided always that no candidate for office at such election shall be capable of acting as returning officer thereat.

Returning Officer.

30. The Town Clerk or if there be none such person as the Lieutenant-Governor may appoint shall not less than twenty-one days prior to any election of a councillor or councillors publish a notice of such election in one or more local newspapers and in such notice shall specify a day not being less than ten or more than fourteen days from the date of giving of such notice as

Nominations for councillors.

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Manner of
nomination.

the day of nomination and (where the election is by wards) shall specify the particular ward or wards for which the election is to be held and shall require all candidates at such election to be nominated in manner hereinafter mentioned.

31. No person shall be a candidate at any election or qualified to be elected a councillor for any Municipality or ward of a Municipality unless he shall have received a requisition signed by at least twenty-five enrolled voters for such Municipality or ward respectively and shall have transmitted such requisition with his acceptance thereof given under his own hand or that of his duly qualified agent to the person calling for nominations on or before the day appointed for receiving the same. If the number of candidates for any Municipality or ward who are nominated as aforesaid do not exceed the number of councillors to be elected for such Municipality or ward such candidates shall be deemed and taken to be elected on the day of nomination. If however there shall be less than the required number of candidates nominated then fresh nominations to fill the vacancies shall be called for and may be sent in to the person calling for them to within five days of the time fixed for the election. Should the requisite number of members not be elected it shall be lawful for the Lieutenant-Governor to appoint any duly qualified person to be a member of the Council in order to make up the number of members required.

Notice of
election.

32. In the event of the number of nominations for any Municipality or ward where the election is by wards exceeding the number of councillors to be elected for such Municipality or ward the Town Clerk or other person appointed to receive nominations shall (on the day after the nomination day) inform the returning officer by this Ordinance appointed of the necessity of an election being held and such returning officer shall forthwith cause a notice to be published in one or more local newspapers stating the names of the candidates nominated the day upon which a poll will be taken for the election

of councillors not being less than six days or more than fourteen days from the date of such notice nor less than twenty-one days from the date of the notice calling for nominations the number of vacancies to be filled and the places where the poll will be taken. And the poll shall take place accordingly and shall commence at eight o'clock in the forenoon and close at eight o'clock in the afternoon.

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CHAPTER VI.

THE POLLING.

33. For the purpose of any election for a Municipality there shall be a polling station at some convenient place within each ward and for the purposes of an election for a ward there shall be one polling station at least in such ward. Notice shall be given by the returning officer in some paper circulating in the district and also by affixing it to the public door of the Town Office of the places where the polling stations shall be.

Election
arrange-
ments.

For all elections the returning officer shall provide such compartments desks ballot boxes ballot papers stamping instruments copies of register of voters and other things; appoint presiding officers and polling officers and do such other acts and things and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectually conducting the election; and everything done by the returning officer shall be at the expense of the Council and shall be paid out of the funds of the Municipality.

34. The presiding officer and other officers at the polling station shall keep order thereat shall regulate the number of voters to be admitted at a time and shall exclude all other persons except the returning officer the clerks the candidates the agents of the candidates and the constables on duty.

Presiding
Officer.

35. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from the candidature he may not later than three days before the day of polling sign

In case
candidate
desires to
retire from
contest.

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and deliver a notice of his retirement to the returning officer who on receipt of such notice shall if the number of candidates is by such retirement reduced to the number of persons to be elected at such election declare the remaining candidates to be on that day duly elected and if the said number is not so reduced shall omit the name of the person so retiring from the list of candidates and such person shall not be capable of being elected at such election. If the number of candidates is by such retirement reduced below the number of persons to be elected the provisions of section *thirty-one* of this Ordinance relating to the case of the number of persons nominated being less than the number of persons to be elected shall *mutatis mutandis* apply.

Candidate's
agents.

36. Every candidate may if he think fit appoint by writing under his hand a person to represent him at the polling station to see that the votes are fairly taken and may also appoint in writing an agent to represent him at the counting of the votes by the returning officer.

Enquiries as
to right to
vote.

37. No enquiry shall be made at any election as to the right of any person to vote except that the polling officer may himself or at the request of the agent of any candidate put to any voter the following questions or any of them and no other;

(1) Are you the person whose name appears as A.B. on the Voters' Roll of voters in this ward?

(2) Have you already voted at this election in the capacity in which you now claim to vote?

And no person who shall refuse to answer any such questions or who shall not answer the first of such questions in the affirmative and the second of such questions absolutely in the negative shall be permitted to vote.

Penalty for
false
answers.

38. Any person who shall wilfully make a false answer to any of these questions shall be liable to a penalty not exceeding fifty pounds to be recovered in the Court of

the Resident Magistrate or in default of payment to imprisonment for a term not exceeding three months.

39. Every voter coming to record his vote shall vote without undue delay and any voter who delays unduly in recording his vote may unless he shall forthwith proceed to vote upon being thereunto required by the presiding officer be removed from the polling station upon the instruction of the presiding officer and shall not be entitled to vote at the election.

Voter required to vote without delay at polling station.

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40. Every voter shall have as many votes as there are candidates to be elected for the Municipality or ward in which he is enrolled as a voter but not more than one vote shall be given to any one candidate; provided that in the case of the Municipality of Johannesburg so long only as the provisions of Chapter VII. of this Ordinance apply thereto he shall vote for a number of candidates equal to at least two-thirds of the number of councillors to be elected.

Number of votes to be given by voter.

41. The voting at all elections held under the provisions of this Ordinance shall be by ballot which shall be conducted in substance and as nearly as is material as follows;

Manner of voting.

(a) The presiding officer at the polling station in each ward hereinafter referred to as the presiding officer shall ascertain that the person coming to vote is a voter enrolled upon the Voters' Roll for that ward and having ascertained that such person is so enrolled and his number on such roll shall enter his number upon the counterfoil in the ballot paper book and shall then tear out the ballot paper corresponding to such counterfoil and having stamped the same with a perforated stamp provided for that purpose shall hand it to the voter. And every ballot paper shall be in the form set forth in the Schedule *one* hereto annexed with such printed instructions as the Council may approve;

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(b) When the voter has received such ballot paper on which shall be printed in alphabetical order the names of all the duly nominated candidates at such election he shall take the same to the compartment and desk provided for that purpose and signify for whom he desires to vote by secretly placing a cross opposite the name of every candidate whom he wishes elected not exceeding the number to be elected at such election. He shall then fold the ballot paper so that the perforated stamp may be visible and having held up the ballot paper so that the polling officer can recognise the perforated mark shall drop the ballot paper in the ballot box placed in front of the polling officer;

(c) Should the voter either sign his name on the ballot paper or any mark or word by which his ballot paper would become recognisable then such voting paper shall be considered blank and not taken into account.

Spoiled
ballot papers.

42. If a voter inadvertently spoils a ballot paper he may return it to the presiding officer who shall if satisfied of such inadvertence give him another paper and retain the spoiled paper and the spoiled paper shall be immediately cancelled and the fact of such cancellation shall be noted upon the counterfoil.

Voters in-
capacitated
by blindness
or other
physical
cause.

43. Any presiding officer on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Ordinance shall before such agents of the candidates as may be present cause the vote or votes of such voter to be marked on a ballot paper or papers in manner directed by such voter and the ballot paper or papers to be placed in the ballot box and the name and number on the Voters' Roll of every voter whose vote is marked in pursuance of the terms of this section and the reason why it is so marked shall be entered on a list in this Ordinance called the "List of votes marked by the presiding officer."

44. If a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such voter the applicant shall upon duly answering the questions permitted by this Ordinance to be asked of voters at the time of polling be entitled to mark a ballot paper in the same manner as any other voter but the ballot paper (hereinafter called a tendered ballot paper) shall not be put in the ballot box but shall be given to the presiding officer appointed for that purpose by the Council and endorsed by him with the name of the voter and his number on the Voters' Roll and set aside in a separate packet and shall not be counted by the returning officer and the name of the voter and his number on the roll shall be entered in a list in this Ordinance called the "Tendered votes' list."

Tendered
ballot papers.

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45. Every presiding officer as soon as practicable after the close of the poll shall before such agents of the candidates as shall be present make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals;

Sealing up
of ballot
boxes &c.

- (1) each ballot box entrusted to him unopened but with the key attached;
- (2) the unused and spoiled ballot papers placed together;
- (3) the tendered ballot papers;
- (4) the marked copies of the Voters' Roll and the counterfoils of the ballot papers;
- (5) the tendered votes' list and the list of votes marked by him as presiding officer and a statement of the number of voters whose votes are so marked by the presiding officer under the head "physical incapacity";

and shall deliver such packets to the returning officer.

The packets shall be accompanied by a statement made by each presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box unused spoiled and tendered ballot papers.

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Declaration
of poll.

46. Upon receipt of the aforesaid packets from such presiding officer by the returning officer the latter shall take charge of the same and shall in the presence of such agents if any of the candidates as may be in attendance open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate and shall forthwith declare the candidate or candidates who are elected under the provisions of this Ordinance according to the vacancies to be filled up. In the event of the number of votes being found to be equal for any two or more candidates all of whom cannot be declared elected to fill an ordinary or casual vacancy in the Council as the case may be the returning officer shall by lot immediately determine the election. The decision of the returning officer shall be final subject to reversal on petition to or action in the Supreme Court praying that the election be set aside.

What ballot
papers shall
be rejected.

47. The returning officer shall reject and not count any ballot papers which;

- (a) do not bear the official mark;
- (b) give votes to more or fewer candidates than the voter is entitled or obliged to vote for;
- (c) bear any writing or mark by which a voter can be identified otherwise than is in this Ordinance prescribed;
- (d) are unmarked or void for uncertainty.

Marking of
rejected
ballot papers.

48. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid and shall add to the endorsement "rejection objected to" if an objection be in fact made by or on behalf of any candidate to his decision.

Sealing up of
papers by
returning
officer.

49. The returning officer shall immediately after the declaration of the poll enclose in separate packets the counted and rejected ballot papers. He shall not open any sealed packet of tendered ballot papers or marked copy of the Voters' Roll and counterfoils but shall proceed before such agents of the candidates as are present to re-seal after examination each of the sealed packets received by him from the presiding officers. All the packets aforesaid together with a certificate stating the names of the coun-

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cillors declared to be elected shall be enclosed together in one sealed packet and delivered to the Town Clerk who shall safely keep such sealed packet for six months after the expiration whereof the said packet and all papers contained therein may be destroyed in the presence of two councillors.

50. No such sealed packet as aforesaid shall be opened during the said period of six months unless by order of the Resident Magistrate the Supreme Court or any Judge thereof; and if any person shall contrary to the provisions hereof wilfully break the seal or open any such packet he shall upon conviction be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Sealed papers to remain unopened.

51. The Lieutenant-Governor shall have power from time to time to issue instructions and make regulations for the purpose of more effectually carrying out the provisions of this Ordinance as to the proceedings for election by ballot provided that such instructions and regulations are not inconsistent with its terms.

Council may make regulations.

52. No election shall be declared invalid by reason of any mistake or non-compliance with the terms of this Ordinance if it appears to the Court having cognisance of the question that the election was conducted in accordance with the principles laid down in this Ordinance and that such mistake or non-compliance did not affect the result of the election.

Immaterial mistakes not to affect validity of election.

CHAPTER VII.

PROVISIONS SPECIALLY APPLICABLE TO THE MUNICIPALITY OF JOHANNESBURG.

53. The provisions of sections *twenty-one* *twenty-two* *twenty-four* *twenty-seven* and *twenty-eight* of Chapter V. shall not apply to the Municipality of Johannesburg or to any Municipality to which the provisions of this Chapter shall be applied by Proclamation by the Lieutenant-Governor published in the *Gazette* but the following provisions contained in this Chapter shall apply to the Municipality of Johannesburg and to any

Certain sections of Ordinance not to apply to Municipality of Johannesburg or certain other Municipalities.

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such Municipalities as aforesaid; provided always that the Lieutenant-Governor shall not apply the provisions of this Chapter to any Municipality until a resolution has been passed by a majority of two-thirds of the voters present at a meeting called for that purpose and published once a week for a period of four weeks in a newspaper circulating in the Municipality; and provided further that it shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to exclude any Municipality to which the provisions of this Chapter apply from the operation thereof after a resolution has been passed and notified in a similar manner to that prescribed in the first proviso; and provided further that no such Proclamation as is mentioned in this section shall affect in any way the election of councillors elected before such Proclamation.

Consti-
tution of
Council.

†54. The Council shall consist of so many members being a multiple of three as the Lieutenant-Governor shall notify by Proclamation in the *Gazette*; it shall be lawful for the Lieutenant-Governor on a resolution to that effect of two-thirds of the members of the Council present at a meeting specially called for the purpose to increase the number of members of the Council by three or any multiple of three.

Such increase shall be made by Proclamation by the Lieutenant-Governor in the *Gazette*.

First election
of
councillors.

55. The first election of councillors under this Ordinance shall take place on such date as may be notified by the Lieutenant-Governor by Proclamation in the *Gazette* when the number of councillors specified in the first-mentioned Proclamation referred to in the last preceding section shall be elected for the whole of the Municipality.

Periods of
office of
councillors.

56. At such first election as aforesaid one-third of the councillors elected being those who stand highest on the poll shall continue in office for a period of three years and one-third of the councillors elected who stand next highest on the poll shall continue in office for a period of two years and the remaining third of the councillors elected shall hold office for a period of one year;

† By Proc. No. 42 Admn. 1903 *Gazette* (25 Sept. 1903) p. 922 the Town Council is to consist of thirty members.

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provided always that in any case in which any candidates who have received an equal number of votes cannot on that account be placed in the first second or third divisions of councillors as aforesaid or in case there be no poll it shall be determined by lot which candidates are elected for three two or one year respectively.

57. The provisions of section *twenty-eight* of this Ordinance for the filling of casual vacancies shall apply *mutatis mutandis* to casual vacancies occurring in Municipalities to which this Chapter applies save and except that no special election for the filling up of such vacancies shall be held unless the number of vacancies exceed one-fifth of the number of the whole Council.

58. At the first meeting of the Council after the first election of councillors under this Ordinance and thereafter at the first meeting of Council held after every annual election the councillors present shall elect one councillor to be Deputy Mayor who shall whenever it shall be necessary owing to the absence or illness of the Mayor do all acts which the Mayor as such may do. The fact of the absence or illness of the Mayor shall be notified by the Town Clerk or his deputy to the first meeting of the Council held after such absence or illness has happened and be recorded in the Council's minutes. Such record shall be sufficient authority for all acts done within the scope of this Ordinance by the Deputy Mayor in lieu of the Mayor.

All duties imposed and all privileges conferred on the Deputy Chairman of any Municipality by any law constituting such Municipality or by any law amending the same or by any other law shall be imposed and conferred on the Deputy Mayor elected under this Ordinance; and wherever in the said laws reference is made to the Deputy Chairman of the Municipality the Deputy Mayor shall after the first election of Deputy Mayor under this Ordinance be meant thereby; provided that notwithstanding anything contained in section *four* of Proclamation No. 16 of 1901 the Deputy-Mayor shall not be entitled to receive any salary.

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Electoral
expense.

Expense
allowed.

Amount of
expenditure
allowed.

CHAPTER VIII.

ELECTORAL EXPENDITURE.

59. Electoral expense in this and the next succeeding Chapter includes all moneys expended or expenses incurred by or on behalf or in the interests of any candidate at or in connection with any election.

60. No electoral expense shall be allowed except in respect of the following matters;

- (1) purchasing electoral rolls;
- (2) printing advertising publishing issuing and distributing addresses by the candidate and notices of meeting;
- (3) stationery messages postages and telegrams;
- (4) one committee room for each polling station;
- (5) public meetings and halls therefor;
- (6) scrutineers;
- (7) one election agent for each candidate or for any number of joint candidates;
- (8) one polling agent at each polling station and no more;
- (9) one clerk and one messenger for conducting business in each committee room;
- (10) the reasonable and actual personal expenses of the candidate which shall not exceed fifty pounds.

61. No electoral expenses shall be allowed in respect of any election in excess of the following rates;

- (1) for each candidate one hundred pounds and a further two pounds for every one hundred enrolled voters over and above five hundred;
- (2) where there are two or more joint candidates at an election;
 - (a) for any one of such candidates the full amount mentioned in sub-section (1);
 - (b) for each of the remaining joint candidates one-fourth of the amount mentioned in sub-section (1).

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Where the same election agent is appointed by or on behalf of two or more candidates at an election or where two or more candidates by themselves or any agent or agents hire or use the same committee room for such election or employ or use the services of the same clerks messengers or polling agents at such election or publish a joint address or joint circular or notice at such election those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election; provided that;

- (a) the employment and use of the same committee room clerk messenger or polling agent if accidental or casual or of a trivial and unimportant character shall not be deemed of itself to constitute persons joint candidates;
- (b) nothing in this enactment shall prevent candidates from ceasing to be joint candidates;
- (c) where any excess of expense above the maximum allowed for one or two or more joint candidates has arisen owing to his having ceased to be a joint candidate or to his having become a joint candidate after having begun to conduct his election as a separate candidate and such ceasing or beginning was in good faith and such excess is not more than under the circumstances is reasonable and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate such excess shall be deemed to have arisen from a reasonable cause within the meaning of the provisions respecting the allowance by the Court of an exception from the provisions of this Ordinance which would otherwise make an act an illegal practice and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

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Payments to candidates.

Sending in and payment of claims for election expenses.

62. All moneys provided by any person other than the candidate for any electoral expense shall be paid directly to the candidate personally.

63. (1) Every payment made by an election agent whether by himself or a sub-agent in respect of any expenses incurred on account of or in respect of the conduct or management of an election shall except where less than forty shillings in all in any one account be vouched for by a bill stating the particulars and by a receipt.

(2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election which is not sent in to the election agent within the time limited by this Ordinance shall be barred and shall not be paid.

(3) Except as by this Ordinance permitted the time limited by this Ordinance for sending in claims shall be twenty-one days after the day on which the candidates returned are declared elected.

(4) All expenses incurred by or on behalf of a candidate at an election which are incurred on account of or in respect of the conduct or management of such election shall be paid within the time limited by this Ordinance and not otherwise.

(5) Except as by this Ordinance permitted the time limited by this Ordinance for the payment of such expenses as aforesaid shall be forty-two days after the day on which the candidates returned are declared elected.

(6) If the election agent in the case of any claim sent into him within the time limited by this Ordinance disputes it or refuses or fails to pay it within the said period of forty-two days such claim shall be deemed to be a disputed claim.

(7) The claimant may if he thinks fit bring an action for a disputed claim in any competent court and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Ordinance and to be an exception

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from the provisions from this Ordinance requiring claims to be paid by the election agent; provided that for the purposes of this sub-section "competent Court" shall include "Magistrates' Court."

(8) On cause shown to the satisfaction of the court such court on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid although sent in after the time in this section mentioned for sending in claims or although the same was sent in to the candidate and not to the election agent.

(9) Any sum specified in the order of leave may be paid by the candidate or his election agent and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Ordinance.

64. Within thirty days after the result of any election has been declared every candidate at such election and in the case of joint candidates such candidates jointly shall sign before a Justice of the Peace and file with the returning officer at the election all vouchers for and a true return of his electoral expenses showing;

- (a) all electoral expenses;
- (b) all disputed and unpaid claims;
- (c) all receipts for electoral expenses under section *sixty-three* in the form in Schedule *two* hereto annexed.

65. The returning officer at an election shall as regards all returns and vouchers filed pursuant to this Chapter;

- (1) forthwith publish in the *Gazette* particulars of the total amount of the electoral expenses of the candidate arranged under the headings of the paragraphs in section *sixty*;
- (2) keep the returns and vouchers open for public inspection without fee at reasonable hours for three months after filing;
- (3) during the same period supply copies of or extracts from the return and vouchers at sixpence per folio of seventy-two words.

Returns.

Publication and inspection of returns.

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Candidate
to prove that
he has not
incurred
illegal
expense.

66. If on petition to the Supreme Court against the return of a candidate it shall be proved that the return required in section *sixty-four* has not been duly rendered or if there shall be proved any electoral expense on any matter other than the matters allowed by section *sixty* or in excess of the rates allowed by section *sixty-one* the election shall be declared void unless the candidate shall satisfy the Court that such expense was neither directly nor indirectly incurred by him or on his behalf or that he had neither directly nor indirectly sanctioned countenanced nor approved of the same in any way.

Failure to
file return.

67. Notwithstanding anything contained in the last preceding section if any candidate prove to the Supreme Court that his failure to file a return or voucher as required by section *sixty-four* has arisen from illness or inadvertence or any reasonable cause of a like nature and not from any want of good faith; or that any error omission or false statement in the return or voucher filed has similarly arisen the Court may permit the filing of the return or vouchers or of a new return or fresh vouchers or the amendment of the return or vouchers filed and may exonerate the candidate from all liability in the matter.

Election
Agent.

68. (1) On or before the day of nomination at an election a person shall be named by or on behalf of each candidate as his agent for such election in this Ordinance referred to as the election agent.

(2) A candidate may name himself as election agent and thereupon shall so far as circumstances admit be subject to the provisions of this Ordinance both as a candidate and an election agent and any reference in this Ordinance to an election agent shall be construed to refer likewise to the candidate acting in his capacity of election agent.

(3) On or before the day of nomination the full name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer

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and the returning officer shall forthwith give public notice of the name and address of every election agent so declared and if no such declaration in writing shall be so made on or before the day of nomination the candidate shall be deemed and taken to be his own election agent and may make no other appointment of an election agent for the purposes of this Ordinance.

(4) One election agent only shall be appointed for each candidate or any number of joint candidates but the appointment may be revoked and in the event of such revocation the candidate shall be deemed and taken to be his own election agent unless such revocation takes place on or before the day of nomination or not less than three clear days before the day appointed for the taking of the poll in which case the candidate may forthwith upon such revocation declare in writing to be delivered in no case less than three clear days before the day of polling to the returning officer that he appoints another election agent whose name and address shall forthwith be notified by the returning officer by public notice.

(5) The election agent of a candidate shall appoint every polling agent scrutineer clerk and messenger employed for payment on behalf of the candidate at an election and hire every committee room hired on behalf of such candidate.

CHAPTER IX.

CORRUPT AND ILLEGAL PRACTICES.

69. "Corrupt practice" means any of the following offences treating undue influence bribery and personation and aiding abetting counselling and procuring the commission of any of such offences.

Definition of corrupt practices.

70. (1) Every person who corruptly by himself or by any other person either before during or after an election directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any meat drink entertainment lodging or provision to or for any person for the purpose of corruptly influencing that

Treating defined.

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person or any other person to give or refrain from giving his vote at the election or on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election; and

- (2) Every voter who corruptly accepts or takes any such meat drink entertainment lodging or provision;

shall be deemed guilty of treating.

Undue
influence
defined.

71. (1) Every person who directly or indirectly by himself or by any other person on his behalf makes use of or threatens to make use of any force violence or restraint or inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury damage harm or loss upon or against or does or threatens to do any detriment to any person in order to induce or compel such person to vote or refrain from voting or on account of such person having voted or refrained from voting at any election; and

- (2) Every person who by abduction duress or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise by any voter or thereby compels induces or prevails upon any voter either to give or to refrain from giving his vote at any election;

shall be deemed guilty of undue influence.

Bribery
defined.

72. (1) Every person who directly or indirectly himself or by his agent gives lends or agrees to give or lend or offers promises or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

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- (2) Every person who directly or indirectly himself or by his agent gives lends or agrees to give or lend or offers promises or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person for acting or joining in any procession before or during any election;
- (3) Every person who directly or indirectly himself or by his agent gives or procures or agrees to give or procure or offers promises or promises to procure or to endeavour to procure any office place or employment or any profit advancement or enrichment to or for any voter or to or for any person on behalf of any voter or to or for any other person in order to induce such voter to vote or refrain from voting or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;
- (4) Every person who directly or indirectly himself or by his agent makes any such gift loan offer promise procurement or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person to serve as a councillor or the vote of any voter at any election;
- (5) Every person who upon or in consequence of any such gift loan offer promises procurement or agreement procures or engages promises or endeavours to procure the return of any person to serve as a councillor or the vote of any voter at any election;
- (6) Every person who advances or pays or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid

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any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; provided always that this enactment shall not extend or be construed to any money paid or agreed to be paid for or on account of any lawful expenses *bonâ fide* incurred at or concerning any election;

(7) Every voter who before or during any election directly or indirectly himself or by his agent receives agrees or contracts for any money gift loan or valuable consideration office place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

(8) Every person who after any election directly or indirectly himself or by his agent receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election;

(9) Every person who either directly or indirectly himself or by his agent corruptly conveys or transfers any property or pays any money to any person for the purpose of enabling him to be registered as a voter thereby to influence his vote at any future election and every candidate or other person who either directly or indirectly pays any money on behalf of any voter for the purpose of inducing him to vote or refrain from voting and every person on whose behalf and with whose privity any such conveyance transfer or payment as in this section is mentioned is made; and

(10) Every candidate who himself or by his agent convenes or holds any meeting of voters in any house licensed for the sale of liquors under the Liquor Licensing Ordinance 1902 or any amendment thereof;

shall be deemed guilty of bribery.

73. Every person who at any election applies for a ballot-paper in the name of some other person whether that name is that of a person living or dead or of a fictitious person or who having voted once at any such election applies at the same election for a ballot-paper in his own name shall be guilty of personation.

Personation defined.

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74. If upon the trial of an election petition the Court finds that any corrupt practice has been committed in reference to such election by or with the knowledge and consent of any agent of a candidate at such election the election of such candidate shall if he has been elected be null and void; and if such offence has been committed by or with the knowledge and consent of the candidate or his election agent then in addition to such election being declared null and void such candidate shall not be capable for a period of five years of being elected as a councillor for any municipality or of holding any judicial appointment or appointment as Justice of the Peace.

Punishment of candidate personally or by his election agent guilty of a corrupt practice.

75. (1) A person who commits any corrupt practice other than personation or aiding abetting counselling or procuring the offence of personation shall on conviction be liable to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding five hundred pounds.

Punishment of a person guilty of corrupt practices.

(2) A person who commits the offence of personation or of aiding abetting counselling or procuring the commission of that offence shall on conviction be liable to imprisonment with or without hard labour for a period not exceeding two years.

(3) A person who is convicted of any corrupt practice shall in addition to any punishment hereinbefore provided be incapable during the period of five years from the date of his conviction of being enrolled as a voter or elected as a councillor for any municipality or of holding any judicial appointment or appointment as Justice of the Peace and if elected a councillor his seat shall be vacated from the time of such conviction.

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Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

Illegal Practices.

76. (1) If any person votes or induces or procures any person to vote at any election knowing that he or such person is prohibited by this or any other Ordinance from voting or is not qualified or has ceased to be qualified to vote at such election he shall be guilty of an illegal practice.

(2) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3) Provided that a candidate shall not be liable nor shall his election be avoided for any illegal practice under this section committed by his agent not being his election agent without his knowledge or consent.

Punishment on conviction of illegal practice.

77. A person guilty of an illegal practice whether under the last preceding section or under the provisions hereinafter contained shall on summary conviction be liable to a fine not exceeding seventy-five pounds or to be imprisoned for any period not exceeding six months with or without hard labour and shall in addition be incapable during a period of two years from the date of his conviction of being registered as a voter or voting at any election held for the electorate in which the illegal practice has been committed.

No expenses allowed in excess of maximum fixed in this Ordinance.

78. (1) Subject to such exception as may be allowed in pursuance of this Ordinance no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent or by any other person whether before during or after an election on account of or in respect of the conduct or management of such election in excess of any maximum amount in that behalf specified in this Ordinance.

(2) Subject to such exception as may have been allowed in pursuance of this Ordinance no claim in respect of any expenses incurred on account of or in respect of the conduct or management of

an election shall be paid in contravention of the provisions of section *sixty-three* of this Ordinance.

Any candidate or election agent or any other person who knowingly acts in contravention of this section shall be guilty of an illegal practice; provided always that anything to the contrary notwithstanding in section *eighty* of this Ordinance when on an election petition the Court finds that it has been proved by a candidate that any payment made by an election agent in contravention of sub-section (2) of this section was made without the sanction or connivance of such candidate the election of such candidate shall not be void nor shall he be subject to any incapacity under this Ordinance by reason only of such payment being made in contravention of sub-section (2) of this section.

79. (1) No person shall for the purpose of promoting or procuring the election of a candidate at any election be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever except for any purposes or capacities mentioned in this Ordinance or except so far as payment is authorised by this Ordinance.

No person shall be employed for payment save as authorised in this Ordinance.

(2) Subject to such exception as may be allowed in pursuance of this Ordinance if any person is engaged or employed in contravention of this section either before during or after an election the person engaging or employing him shall be guilty of an illegal practice and the person so engaged or employed shall also be guilty of an illegal practice if he knew that he was engaged or employed contrary to law.

80. If upon the trial of an election petition the Court finds that any illegal practice is proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election or his election agent the election of such candidate shall if he has been elected be null and void and he shall not be capable of being elected a councillor for any municipality for a period of three years from the date of such finding or of holding any

Penalty for connivance of candidate at illegal practices.

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judicial appointment or the appointment of Justice of the Peace and he shall further be subject to the same incapacities if he has been convicted by any competent Court of an illegal practice.

Illegal Payment and Hiring.

Persons providing money contrary to this Ordinance guilty of illegal practice.

81. Every person who knowingly provides money for any payment which is contrary to the provisions of this Ordinance or for replacing any money expended in any such payment except where the same is allowed in pursuance of this Ordinance to be an exception shall be guilty of illegal payment.

Corrupt withdrawal from a candidature.

82. Every person who corruptly induces or procures any other person to withdraw from being a candidate at an election in consideration of any payment or promise of payment and every person who withdraws in pursuance of such inducement or procurement shall be guilty of illegal payment.

Name and address of printer on placards.

83. Every bill placard poster pamphlet or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof and every person who prints publishes or posts or causes to be printed published or posted any such printed matter as aforesaid which fails to bear upon the face thereof the name and address of the printer and publisher shall if he is the candidate or the agent of the candidate be guilty of an illegal practice and if he is not the candidate or the agent of a candidate shall be guilty of illegal payment.

Use of committee room in house for sale of intoxicating liquor or refreshment to be illegal hiring.

84. It shall not be lawful to use;

(a) any premises on which the sale by retail of any intoxicating liquor is authorised by a license;

(b) any premises where any intoxicating liquor is sold or is supplied to members of a club society or association other than a permanent political club;

or any part of any such premises as a committee room for the purpose of promoting or procuring the election of a candidate at an election.

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Every person who

hires or uses any such premises or any part thereof for a committee room; or lets such premises or part knowing that it was intended to use the same as a committee room;

shall be guilty of illegal hiring.

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

85. It shall not be lawful for any person to hire any conveyance for conveying voters to the poll nor shall it be lawful for any person to let for hire a conveyance for such purposes; provided that this section shall not prevent any voter making use of his own conveyance or hiring a conveyance for the purpose of conveying himself or any of the members of his household to and from the polling station. Any person knowingly contravening the provisions of this section shall be guilty of an illegal hiring.

Illegal hiring for conveyance of voters to poll.

86. Without prejudice to the provisions hereinbefore contained as to the offence of bribery;

Punishment of illegal payment or hiring.

- (1) a person guilty of the offence of illegal payment or hiring shall on summary conviction be liable to a fine not exceeding fifty pounds; and in default of payment to imprisonment with or without hard labour for a period not exceeding three months;
- (2) a candidate or an agent of a candidate who is personally guilty of an offence of illegal payment or hiring shall be guilty of an illegal practice.

87. No action or suit shall be maintainable by any licensed publican or any owner or keeper of any shop booth tent or other place of entertainment against any candidate or any agent of any such candidate for any liquor food or refreshment of any kind whether for man or beast supplied upon

Actions for liquor or refreshment supplied at elections not to be maintainable.

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Report
exonerating
candidate in
certain cases
of corrupt
and illegal
practice by
agents.

the credit of any such candidate or agent during the progress of any election under this Ordinance.

Excuses and Exceptions for Corrupt or Illegal Practices or Illegal Payment and Hiring.

88. When upon the trial of an election petition the Court finds that a candidate at such election has been guilty by his agents of the offence of treating and undue influence and illegal practice or of any of such offences in reference to such election and further that the candidate has proved;

- (a) that no corrupt or illegal practice was committed at such election by the candidate himself and the offences mentioned in the said finding were committed contrary to his orders and without his sanction or connivance;
- (b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the finding were of a trivial unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate;

then the election of such candidate shall not by reason of the offences mentioned in the report be void nor shall the candidate be subject to any incapacity under this Ordinance.

Power of
Court to
except
innocent act
from being
illegal
practice etc.

89. When it appears to the Court that any act or omission of a candidate at any election or of his agent or of any other person which would by reason of being a payment engagement or contract in contravention of this Ordinance or of otherwise being in contravention of any of the provisions of this Ordinance be but for this section an illegal practice payment or hiring arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith and under the circumstances it seems to the Court to be just that the candidate and the agent and other person or any of them

should not be subject to any of the consequences under this Ordinance of such act or omission the Court may make an order allowing such act or omission to be an exception from the provisions of this Ordinance which would otherwise make the same an illegal practice payment or hiring and thereupon such candidate agent or person shall not be subject to any of the consequences under this Ordinance of the said act or omission.

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Disqualification of Electors.

90. Every person guilty of a corrupt or illegal practice or of illegal payment or hiring at an election is prohibited from voting at such election and if any such person votes his vote shall be void.

Prohibition of persons guilty of corrupt or illegal practices etc. from voting.

91. Every person who in consequence of conviction or of the report of the Court has become under this Ordinance or any other Ordinance for the time being in force relating to corrupt or illegal practices incapable of voting at any election is prohibited from voting at such election and his vote shall be void if any such person vote.

Prohibition of disqualified persons from voting.

Limitation of Time for Prosecutions.

92. (1) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence against this part of this Ordinance shall be commenced within six months after the offence was committed or if it was committed in reference to an election with respect to which a petition is tried by the Court shall be commenced within six months after the offence was committed or within three months after the report of the Court hearing an election petition is made whichever period last expires so that it be commenced within two years after the offence was committed.

Limitation of time for prosecution of offence.

(2) For the purpose of this section the issue of a summons warrant writ or other process shall where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender

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Persons charged with corrupt practice may be found guilty of illegal practice etc.

be deemed to be the commencement of a proceeding but save as aforesaid the service or execution of the same on or against the alleged offender and not the issue thereof shall be deemed to be the commencement of the proceeding.

93. Any person charged with a corrupt practice may if the circumstances warrant such finding be found guilty of an illegal practice and any person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice and a person charged with illegal payment or hiring may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

CHAPTER X.

OTHER OFFENCES.

Persons ordered by presiding officer to leave polling station.

94. Every person who shall be ordered by the presiding officer to leave the polling station under the provisions of section *thirty-four* and shall refuse to do so shall be guilty of an offence and liable to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Obstructing elections.

95. Every person who interrupts obstructs or disturbs the proceedings at an election shall be guilty of an offence and liable to the penalties in the last preceding section mentioned.

Penalty for neglect by returning officer etc.

96. (1) Every returning officer who after having accepted office as such wilfully neglects or refuses to perform any of the duties which by the provisions of this Ordinance he is required to perform shall for every such offence be liable to a penalty not exceeding two hundred pounds.

(2) Every Justice of the Peace presiding officer or other officer or person who wilfully neglects or refuses to perform any of the duties which by the provisions of this Ordinance he is required to perform shall for every such offence be liable to a penalty not exceeding fifty pounds.

97. Every presiding officer or other person who places or is privy to placing in a ballot-box a ballot-paper which has not been lawfully handed to and marked by a voter or forges or counterfeits or fraudulently defaces or destroys any ballot paper or the official mark thereon shall be guilty of an offence and shall be liable on conviction to be imprisoned for any period not exceeding two years with or without hard labour. Proof that a greater number of ballot-papers is found in a ballot-box or is returned by a presiding officer as having been received at a polling place than the number of voters who voted at such polling place shall be *prima facie* evidence that the presiding officer at such polling place was guilty of an offence against this section.

Tampering
with ballot-
papers and
ballot-boxes.

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98. Every person shall be liable to a penalty not exceeding one hundred pounds or to be imprisoned for any period not exceeding twelve months with or without hard labour who ;

Wilfully
making or
procuring a
false claim.

(1) wilfully makes delivers or sends to any officer appointed to revise the roll of voters any claim which is false in any material particular ; or

(2) wilfully causes or procures or is in anywise concerned in the making delivering or sending of any such claim.

99. (1) Every returning officer presiding officer polling clerk scrutineer or other person who knowingly and wilfully unfastens the fold upon a ballot-paper within which the number of a voter is written unless he is by the lawful command of some competent court or other tribunal required so to do ; and

Penalty for
unfastening
fold of
ballot-paper.

(2) every returning officer presiding officer polling clerk or scrutineer who attempts to ascertain or discover or directly or indirectly aids in ascertaining or discovering the person for whom any vote is given except in the case of a person voting openly or who having in the exercise of his office obtained knowledge of the person for whom any voter has voted

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discloses such knowledge unless in answer to some question put in the course of proceedings before some competent court or other tribunal; and

- (3) every returning officer presiding officer polling clerk or scrutineer who places upon any ballot-paper any mark or writing not authorised by this Ordinance;

shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for any period not exceeding twelve months with or without hard labour.

Penalty for breaking seal of or opening parcel.

100. Except as authorised by this Ordinance every person who knowingly and wilfully breaks the seal of or opens any such sealed parcel as is hereinbefore mentioned unless he is by the lawful command of some competent Court or other tribunal required so to do or to produce some portion of the contents of such parcel shall be deemed guilty of an offence and on conviction shall be liable to imprisonment for any period not exceeding twelve months with or without hard labour.

Voter employed at election not capable of voting.

101. No voter who within three months before or during any election shall have been retained hired or employed for all or any of the purposes of election for reward by or on behalf of any candidate at such election as agent clerk messenger or in other like employment shall be entitled to vote at such election and if he shall so vote he shall be liable upon conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment for any period not exceeding three months

CHAPTER XI.

HEARING OF ELECTION PETITIONS.

Election petitions may be presented to Supreme Court.

102 A petition complaining of an undue election of a councillor for any municipality or ward of a municipality by reason of want of qualification disqualification corrupt or illegal practice irregularity or otherwise may be presented to the Supreme Court by;

- (1) an enrolled voter in such municipality;

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- (2) some person claiming to have had a right to be elected at such election ;
or
(3) some person alleging himself to have been a candidate at such election.
Such petition is hereinafter referred to as an election petition.

103. With respect to the presentation of an election petition under this Ordinance the following provisions shall apply ;

Provisions as to such petitions.

- (1) the petition shall be signed by the petitioner or all the petitioners if more than one ;
(2) the petition shall be presented within thirty days after the result of the election has been declared by the returning officer ;
(3) presentation of a petition shall be made by filing it with the Registrar of the Supreme Court ;
(4) at the time of the presentation of the petition or within seven days afterwards security for the payment of all costs charges and expenses that may become payable by the petitioner ;

(a) to any person summoned as a witness on his behalf ; or

(b) to the member whose election or qualification is complained of (who is hereinafter referred to as the respondent) ;

shall be given by or on behalf of the petitioner ;

- (5) the security shall be to the amount of three hundred pounds ; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four or by a deposit of money with the Registrar of the Supreme Court or partly in one way and partly in the other.

104. Notice in writing of the presentation of a petition under this Ordinance and of the nature of the proposed security accompanied with a copy of the petition shall within ten days after the presentation of the petition be served by the petitioner on the respondent either personally or by leaving the same at his usual or last known dwelling-

Service of petition on respondent.

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house or place of business and it shall be lawful for the respondent where the security is given wholly or partially by recognizance by notice in writing to be served upon the petitioner in manner aforesaid within twenty-one days from the date of the service on him of such notice to object to such recognizance on the ground that the sureties or any of them are insufficient or that a surety is dead or that he cannot be found or that a person named in the recognizance has not duly acknowledged the same.

How objections to security to be dealt with.

105. Any objection made to security given shall be heard and decided by the Supreme Court or by a judge thereof. If any objection to the security is allowed it shall be lawful for the petitioner within a further time to be fixed by the Court or Judge not exceeding ten days to remove such objection by a deposit of such sum of money as may be deemed proper by the said Court or Judge to make the security sufficient.

If on objection made the security is decided to be insufficient and such objection is not removed in manner hereinbefore mentioned no further proceedings shall be had on the petition; otherwise on the expiration of the time limited for making objections or on the sufficiency of the security being established after objection made the petition shall be deemed to be at issue.

Registrar of Court to make list of petitions.

106. The Registrar of the Supreme Court shall as soon as may be make out a list of petitions under this Ordinance presented to the Court and which are at issue placing them in the order in which they were presented and shall keep at his office a copy of such list hereinafter referred to as the election list open to the inspection of any person making application for inspection thereof. Such petitions shall be tried in the order in which they stand in such list unless the Court shall otherwise order.

Trial of a Petition.

Provisions for the trial of election petitions.

107. With respect to the trial of election petitions under this Ordinance the following provisions shall apply;

- (1) every election petition shall be tried with open doors;

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- (2) the trial of election petitions may take place in any civil term upon any day prescribed by any rule or order of Court; provided that the Court to which it has been presented may upon the application of any of the petitioners or respondents fix any day in or out of term for such trial;
- (3) notice of the time and place at which an election petition will be tried shall be given by the Registrar of the Supreme Court to the parties concerned not less than fourteen days before the day on which the trial is to be held;
- (4) the Court may adjourn the trial from time to time and from place to place;
- (5) where on the trial of an election petition praying the Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by any one on behalf of the respondent or that such person was guilty of personation or of an illegal practice payment or hiring every vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election;
- (6) at the conclusion of the trial of any election petition the Court shall determine whether the respondent was duly elected or whether any and if so what person other than the respondent was or is entitled to be declared duly elected; if the Court shall determine that the respondent was duly elected such election shall be and remain as valid as if no petition had been presented against the same. If the Court shall determine that the respondent was not duly elected but that some other person was or is entitled to be declared duly elected the respondent shall forthwith be deemed to have

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vacated his seat; and the Court shall forthwith certify such determination to the Lieutenant-Governor who shall thereupon by proclamation in the *Gazette* declare such other person duly elected. If the Court shall determine that the respondent was not duly elected and that no other person was or is entitled to be declared duly elected the seat of the respondent shall forthwith be deemed to be vacant and the Court shall forthwith certify such determination to the Lieutenant-Governor who shall thereupon command that a new election shall take place for the purpose of filling up such vacancy and like proceedings shall take place in regard to such new election as are provided in regard to annual elections under this Ordinance.

When seat claimed for another person than the respondent.

108. On the trial of a petition under this Ordinance complaining of an undue election or return and claiming the seat for some person the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

Proceedings.

Form of petition.

109. An election petition under this Ordinance shall be in such form and state such matters as may be prescribed.

Conditions when two or more joint candidates are respondents.

110. Two or more joint candidates may be made respondents to the same petition and such petition shall be filed as one petition and be tried at the same time but for all the purposes of this Ordinance such petition shall be deemed to be a separate petition against each respondent.

Petitions relating to same election to be heard together.

111. When under this Ordinance more petitions than one are presented relating to the same election or return all such petitions shall in the list of petitions be bracketed together and shall be dealt with as one petition but such petition shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented unless the Court or a Judge thereof shall otherwise direct.

Witnesses.

112. Witnesses shall be summoned and sworn in the same manner as in a trial before the Supreme Court and shall be subject to the same penalties for perjury.

Summoning witnesses.

113. On the trial of an election petition under this Ordinance the Court may examine any witness or any person in Court although such witness or person is not called or examined by any party to the petition. After the examination of a witness as aforesaid by the Court such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

Witness not summoned may be examined.

114. No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt or illegal practice at or connected with any election then forming the subject of inquiry on the ground that the answer thereto may criminate or tend to criminate himself: provided that where any witness shall answer every question relating to any matters aforesaid which he shall be required by the Court to answer and the answer to which may criminate or tend to criminate him he shall be entitled to receive from the Court under the hand of the Registrar a certificate stating that such witness was upon his examination required by the said Court to answer questions or a question relating to the matters aforesaid the answer or answers to which criminated or tended to criminate him and had answered all such questions or question; and if any indictment or action be at any time thereafter pending in any Court against such witness for any offence under this Ordinance committed by him previous to the time of his giving his evidence and at or in relation to the election concerning or in relation to which the witness may have been so examined the Court shall on production and proof of such certificate stay the proceedings in such indictment or action; provided that no statement made by any person in answer to any question put to him by or before such Court shall except in cases of indictment for perjury be admissible in evidence against him in any proceeding civil or criminal.

Witness not entitled to refuse to answer because he may criminate himself but protected from consequences of such answer.

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Witnesses'
expenses.

115. The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition under this Ordinance according to the scale usually allowed to witnesses on the trial of civil actions in the superior Courts of Law in this Colony may be allowed to such person and such expenses shall be deemed to be costs of the petition.

*Withdrawal and Abatement of Election
Petitions.*

Petition not
to be
withdrawn
without
leave.

116. An election petition under this Ordinance shall not be withdrawn without the leave of the Court and after such notice has been given as such Court may direct.

Substitution
of petitioner
may be asked
for.

117. On the hearing of the application for withdrawal any person who might have been a petitioner in respect of such election to which the petition relates may apply to the Court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

Court may
order
substitution.

118. The Court may if it think fit substitute as a petitioner any such applicant as aforesaid and may further if the proposed withdrawal is in the opinion of the Court induced by any corrupt bargain or consideration by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

When fresh
security
required.

119. If no such order is made with respect to the security given on behalf of the original petitioner security to the same amount as would be required in the case of a new petition and subject to the like conditions shall be given on behalf of the substituted petitioner before he proceeds with his petition and within fourteen days after the order of substitution.

Substituted
petitioners.

120. Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be and be subject to the same liabilities as the original petitioner.

121. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Costs of withdrawn petitions.

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122. When there are more petitioners than one no application to withdraw a petition shall be made without the consent of all the petitioners.

Consent of co-petitioners required for withdrawal.

123. An election petition under this Ordinance shall be abated by the death of the sole petitioner or petitioners but such abatement shall not affect the liability of the petitioner or petitioners to the payment of costs previously incurred.

Abatement by death.

124. On the abatement of a petition any person who might have been a petitioner in respect of the election to which the petition relates may within twenty-one days after such abatement apply to the Supreme Court or any Judge thereof to be substituted as a petitioner and such Court or Judge may thereupon if it or he thinks fit substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

Consequence of abatement.

125. A respondent who has given notice that he does not intend to oppose the petition shall not be allowed to appear or to act as a party against such petition in any proceedings thereon and shall not sit or vote in the Council to which he had been elected pending the result of the trial of the petition and the Court shall in all cases in which such notice has been given report the same to the Mayor.

Respondent who has given notice that he will not oppose cannot appear.

Costs.

126. All costs charges and expenses of and incidental to the presentation of a petition under this Ordinance and to the proceedings consequent thereon shall be defrayed by the parties to the petition in such manner and in such proportions as the Court before which the same is tried or to be tried may determine regard being had to the disallowance of any costs charges or expenses which may in the opinion of the Court have been caused by vexatious conduct unfounded allegations or unfounded objections

Court to decide as to costs.

**ORD.
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of
1903.**

on the part either of the petitioner or the respondent and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused whether such parties are or are not on the whole successful.

Taxation of costs.

127. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the Superior Courts of this Colony.

Neglect to pay witnesses.

128 If any petitioner in an election petition presented under this Ordinance shall neglect or refuse for the space of one month after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs charges or expenses and if such neglect or refusal be proved to the satisfaction of the Court to which such petition was presented every person who has entered into a recognizance relating to such petition under the provisions of this Ordinance shall be held to have made default in his said recognizance and the Registrar of the said Court shall thereupon certify such recognizance to be forfeited and execution may thereupon be leave of the said Court be sued out thereon at the suit of any such witness or respondent from time to time as occasion may require.

CHAPTER XII.

MISCELLANEOUS.

Liabilities and rights of existing Council of the Municipality of Pretoria.

129. The Town Council of Pretoria elected under the provisions of this Ordinance shall be subject and liable to every contract engagement debt and demand to which the Commission appointed under Ordinance No. 26 of 1903 to supervise the government of the Municipality of Pretoria is subject and liable to at the date of the taking effect of this Ordinance and in like manner shall be vested with and entitled to all rates assets and claims which at the date of the taking effect of this Ordinance the said was vested with and entitled to; and all privileges jurisdiction and duties conferred or imposed on the said Commission by any law constituting it or by any other law or bye-law of

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the Municipality shall unless inconsistent with the provisions of this Ordinance be conferred and imposed on the Town Council of Pretoria elected under this Ordinance.

130. The provisions of the last preceding section shall *mutatis mutandis* apply to the Town Council of Johannesburg elected under this Ordinance in respect of the privileges jurisdiction rights and liabilities of the existing Council of the Municipality of Johannesburg.

Liability and rights of existing Council of Johannesburg.

131. If through any accident or omission anything required by law to be done in the preparation of any voters' roll is omitted to be done or is not done in the manner or within the time fixed by law the Lieutenant-Governor may order all such steps to be taken as may be necessary to rectify any such error or omission.

Lieutenant-Governor may rectify errors or omissions in preparation of voters' roll.

132. This Ordinance may be cited for all purposes as the Municipalities Elections Ordinance 1903.

Title.

SCHEDULE No. 1.

FORM OF FRONT OF BALLOT PAPER.

COUNTERFOIL
No.....

NOTE.—The Counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	BROWN (John Brown, of.....Street, *.....(merchant.)	
2	JONES (Henry Jones, of.....Street, *.....(attorney.)	
3	ROBINSON (George Robinson, of.....Street, *.....(grocer.)	
4	SMITH (Frederick Smith, of.....Street, *.....(broker.)	

No..... FORM OF BACK OF BALLOT PAPER.

Election for Town Council of*.....

NOTE.—The number on the back of the ballot paper is to correspond with that in the counterfoil.

* Here insert name of Town.

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of
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SCHEDULE No. 2.

FORM OF RETURN OF ELECTORAL EXPENSES.

I, A.B., candidate at the election for the Council of the Municipality of.....on the.....day of.....make the following return respecting my electoral expenses at the election:—

£ s. d.

RECEIPTS.

Received of J. K.

(Here set out the name and description of every person club society or association from whom any money was received in respect of expenses.)

EXPENDITURE.

Paid G. H., my election agent.....
Paid to I. J., clerk, for.....
days' services.....
Paid to K. L., scrutineer, at.....

(The names and descriptions of the agent and every clerk and scrutineer and the sum paid to each must be set out separately.)

Paid to the following persons in respect of goods supplied or work and labour done.....

(The name and description and the nature of the goods supplied or the work and labour done by each must be set out separately.)

Paid hire of rooms for holding public meetings.....
Paid hire of rooms for holding committee meetings.....
Paid for miscellaneous matters.....

(The name and description of each person to whom any sum is paid and the reason for which it was paid to him must be set out separately.)

In addition to the above, I am aware of the following disputed and unpaid claims, viz.:—

By T. U., for.....

(Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods work or other matter on the ground of which the claim is based.)

Except as appears from the above I have not and to the best of my knowledge and belief no person has made on my behalf any payment or given promised or offered any reward office employment or valuable consideration or incurred any liability on account of or in respect of the conduct or management of said election.

I have paid the sum of pounds all together and no more for the purpose of the election and except as specified above no money security or equivalent for money has to my knowledge or belief been paid advanced given or deposited by anyone or any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

(Signature of candidate, C.D.)

Signed this day of in the presence of

E. F., Justice of the Peace.

No. 39 of 1903.]

[Assented to 3 July 1903.

**ORD.
No. 39
of
1903.**

ORDINANCE

To further amend the Juries Ordinance 1902.

† **W**HEREAS it is desirable to further amend the Jury Ordinance 1902;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Jury Ordinance 1902 shall be and is hereby amended by adding after sub-section (9) of section *six* the following new sub-section (10) "Members of the Council of any Municipality or Urban District Board." Amendment of Jury Ordinance 1902.

2. This Ordinance may be cited as the Jury Ordinance 1902 Further Amendment Ordinance 1903 and shall be read as one with the Jury Ordinance 1902 and the Jury Ordinance 1902 Amendment Ordinance 1903. Title.

No. 40 of 1903.]

[Assented to 6 July 1903.

**ORD.
No. 40
of
1903.**

ORDINANCE

Declaring certain Laws, Volksraad Resolutions, &c., to be no longer of any force or effect.

WHEREAS it is desirable that certain Laws Volksraad Resolutions and Proclamations in addition to those mentioned in Proclamation Transvaal No. 34 of 1901 published in the Statute Books of the late South African Republic which have been impliedly repealed or become obsolete or are unsuitable to the change in Government in the Transvaal consequent upon the annexation thereof to His Majesty's Dominions shall be declared to be of no force or effect;

Be it enacted by His Excellency the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

† The Jury Ordinance 1902 was again amended by Ordinance No. 69 of 1903.

**ORD
No. 40
of
1903.**

Laws
declared no
longer of
any force.

1. The Laws Volksraad Resolutions and Proclamations mentioned in the First Schedule to this Ordinance and published in the Statute Books of the late South African Republic are hereby to the extent mentioned in the third column of the said Schedule declared to be of no force or effect in this Colony.

Repeal of
certain
Revenue
Laws.

2. The Revenue laws mentioned in the Second Schedule hereto shall be and are hereby repealed.

Title.

3. This Ordinance may be cited as The Revision of Laws Ordinance 1903.

SCHEDULE I.

Laws, Volksraad Resolutions, &c.	Date.	Extent of Law, Resolution, &c., declared to be of no force.†	Page in Statute Book.
Proclamation	24 3 1858	The whole	72
" " " " " "	24 3 1858	The whole	74
Law on Slave Trade published under Government Notice No. 77 of 1866 ...		The whole	229
Volksraad Resolution ...	8 10 1866	341	253
" " " " " "	20 3 1868	449	308
" " " " " "	21 10 1868	196	310
" " " " " "	23 11 1868	304	310
" " " " " "	10 6 1869	195	318
Law No. 3 of 1870 ...		The whole	367
Volksraad Resolution ...	9 6 1870	172	386
" " " " " "	21 6 1870	211	411
" " " " " "	21 12 1870	16	414
" " " " " "	6 9 1871	26	417
Law No. 3 of 1871 ...		Last paragraph of Article 4	442
Volksraad Resolution ...	12 9 1871	42	421
" " " " " "	6 9 1871	279	426
" " " " " "	29 11 1871	401	452
" " " " " "	11 3 1873	36	475
" " " " " "	22 & 23 9 1874	2	594
" " " " " "	28 9 1874	26	594
" " " " " "	24 5 1875	116	610
" " " " " "	8 6 1876	125	662
" " " " " "	15 6 1876	230	669
Law No. 9 of 1881 ...		The whole	990
Volksraad Resolution ...	6 10 1881	72	1015
" " " " " "	24 6 1882	570	1109
" " " " " "	5 7 1882	709, 710	1123
" " " " " "	6 7 1882	733	1124
" " " " " "	7 7 1-82	741	1125
" " " " " "	18 6 1883	363, 364, 365, 366	1156
Law No. 4 of 1883 ...		The whole	1184

† The figures refer to the articles of the Law or Resolution.

Laws, Volksraad Resolutions, &c.	Date.	Extent of Law, Resolution, &c., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution ...	19 9 1884	515	1266
Supplement to Law No. 4 of 1882, published under Government Notice No. 324 of 1884 ...		The whole	1302
Volksraad Resolution ...	12 5 1885	91	1321
" " ...	23 5 1885	204	1330
Regulations for the transit of goods through the S.A. Republic, published under Government Notice No 137 of 1885 ...		The whole	1347
Volksraad Resolution ...	7 5 1887	51	190
" " ...	9 5 1888	41	37
" " ...	29 5 1888	279	48
" " ...	8 5 1889	34	140
" " ...	15 5 1889	104	146
" " ...	17 5 1889	176	146
" " ...	18 5 1889	185	149
" " ...	20 5 1889	189	150
" " ...	28 5 1889	284	151
" " ...	28 5 1889	286	152
" " ...	18 6 1889	448	155
" " ...	21 6 1889	481	157
" " ...	27 6 1889	560	158
" " ...	17 7 1889	1038	160
Law No. 14 of 1891 ...		The whole	247
Executive Council Resolutions, Art. 582 of 9-9-1890, and Art. 662 of 9-10-1890, as confirmed by First Volksraad Resolution, Art. 96 ...	21 5 1891	582, 662	256
Regulations for transit of goods through S.A. Republic, published under Government Notice No. 108 of 1891 ...		The whole	372
Law No. 8 of 1892 ...		The whole	422
First Volksraad Resolution ...	1 6 1892	343, 346	603 & 605
" " ...	13 6 1892	430	610
" " ...	21 6 1892	502	637
" " ...	27 6 1892	568	613
" " ...	28 6 1892	573	613
" " ...	11 8 1892	1116	625
Law No. 8 of 1893 ...		The whole	791
First Volksraad Resolution ...	24 5 1893	175	814
" " ...	8 6 1893	279	816
" " ...	26 6 1893	467	822
" " ...	8 7 1893	589	827
" " ...	29 8 1893	1213	844
" " ...	30 8 1893	1241	859
" " ...	31 8 1893	1250	863
" " ...	8 9 1893	1349	871
Law No. 8 of 1894 ...		The whole	65
Law No. 13 of 1894 ...		5	111

†The figures refer to the articles of the Law or Resolution.

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Laws, Volksraad Resolutions, &c.	Date.	Extent of Law, Resolution, &c., declared to be of no force.†	Page in Statute Book.
Law No. 22 of 1894	...	{ 1, 2, 5, 6, 7, 8, 9, 11, 14, 16, 17, 18, 20, 22 }	241
First Volksraad Resolution	9 7 1894	746	267
" "	20 7 1894	925	292
" "	6 9 1894	1603, 1605	324
" "	7 9 1894	1618	324
" "	8 9 1894	1625	325
" "	10 & 129 1894	{ 1630 to 1634 and 1665 }	325
" "	13 9 1894	1636 and 1689	329
Law No. 3 of 1895	...	The whole	8
Law No. 4 of 1895	...	The whole	10
Law No. 6 of 1895 and Regulations framed thereunder	...	The whole	19
First Volksraad Resolution	16 5 1895	105	259
" "	11 6 1895	328	266
" "	14 6 1895	368	266
" "	17 6 1895	388	266
" "	22 6 1895	442	268
" "	18 7 1895	640	279
" "	16 8 1895	934	288
" "	29 8 1895	1035	292
" "	29 8 1895	1041	293
" "	3 9 1895	1095	296
" "	17 9 1895	1230	296
" "	2 10 1895	1427	298
" "	4 10 1895	1484	300
" "	5 10 1895	{ 1513, 1514 1515 }	300
" "	7 10 1895	1551	303
Law No. 14 of 1896	...	The whole	149
Law No. 15 of 1896	...	The whole	154
Law No. 16 of 1896	...	The whole	156
First Volksraad Resolution	8 5 1896	64	325
" "	8 5 1896	66	327
" "	15 5 1896	160	327
" "	16 6 1896	598	328
" "	18 6 1896	615	328
" "	8 7 1896	859	331
" "	12 8 1896	1195	336
" "	13 8 1896	1200	336
" "	26 8 1896	1265	340
" "	12 11 1896	2050	353
" "	26 11 1896	2114	354
" "	26 11 1896	2118	355
" "	27 11 1896	2130	355
" "	3 6 1897	234	167
" "	21 6 1897	309	168
" "	24 6 1897	376	169
" "	15 7 1897	578	169
" "	15 7 1897	585	169
" "	19 8 1897	883	171
" "	23 8 1897	906	172
" "	24 8 1897	924	172
" "	26 8 1897	969	173
" "	1 9 1897	1012	174

† The figures refer to the articles of the Law or Resolution.

REVISION OF LAWS.
CUSTOMS UNION AND TARIFF AMENDMENT.

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Laws, Volksraad Resolutions, &c.	Date.	Extent of Law, Resolution, &c., declared to be of no force.†	Page in Statute Book.
First Volksraad Resolution	6 9 1897	1041	176
" " ...	21 9 1897	1283	179
" " ...	22 9 1897	1288	181
" " ...	29 9 1897	1343	185
" " ...	30 9 1897	1350	185
" " ...	4 10 1897	1385	187
" " ...	8 10 1897	1464	187
Law No. 1 of 1898	...	The whole	5
Law No. 7 of 1898	...	The whole	15
First Volksraad Resolution	22 8 1898	1009	308
" " ...	25 11 1898	1830	312
Law No. 1 of 1899	...	The whole	1

SCHEDULE II.

Laws, Volksraad Resolutions, &c.	Date.	Extent of Law, Resolution, &c., Repealed.†	Page in Statute Book.
Volksraad Resolution ...	20 5 1875	96	609
" " ...	4 & 5 6 1876	102	658
" " ...	7 6 1876	118	661
" " ...	30 10 1884	1109, 1110	1290
" " ...	7 5 1887	49	190
" " ...	27 7 1887	1311	204
" " ...	24 5 1890	174	55

No. 41 of 1903.]

[Assented to 30 June 1903.

ORDINANCE

**ORD.
No. 41
of
1903.**

To provide for the Entry of the Transvaal into a South African Customs Union and to Amend the Customs Laws and Customs Tariff in certain respects.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Customs Union Convention together with the Protocols thereto set forth in Schedule A hereunto annexed is hereby ratified and confirmed. Ratification of Customs Union Convention.

† The figures refer to the articles of the Law or Resolution.

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Amendment
of existing
tariff.

2. On and after the date of the taking effect of this Ordinance except as is herein-after provided there shall be raised levied and collected and paid upon the goods wares and merchandise imported and brought into this Colony described and set forth in Schedule B hereunto annexed the duties therein set forth.

Free list.

3. The goods wares and merchandise described and set forth in Schedule C hereunto annexed shall be admitted into this Colony free of duty.

Rebate of
portion of
the duties on
British
goods.

4. A rebate of Customs duties shall be granted on any goods and articles the growth produce or manufacture of the United Kingdom imported therefrom into this Colony for consumption therein to the extent following;

- (a) in the case of goods and articles liable to Customs Duty under Class I. II. or V. of Schedule B a rebate of twenty-five per cent. of any duty chargeable thereon at an *ad valorem* rate but of no other duty; and
- (b) in the case of goods and articles liable under Class III. of Schedule B to duty at an *ad valorem* rate of two-and-a-half per cent. a rebate of the whole of such duty;

provided that the manufactured goods and articles in respect of which such rebate as aforesaid shall be granted shall be *bona fide* the manufactures of the United Kingdom and that in the event of any question arising as to whether any goods or articles are entitled to any such rebate as aforesaid the decision of the Colonial Treasurer shall be final.

Similar
rebate in
respect of
goods from
British
Colonies
granting
reciprocal
treatment.

5. A rebate similar to that for which provision is made in the last preceding section shall be granted in like manner and under like provisions to goods and articles the growth produce or manufacture of any British Colony Protectorate or Possession granting equivalent reciprocal privileges to the Colonies and Territories parties to the Customs Union Convention provided that no such rebate shall be granted in the case of any particular Colony

Protectorate or Possession until on and after a date to be mutually agreed upon and publicly notified by the parties to the Convention.

† 6. On and after the coming into operation of the Convention signed at Brussels on the 5th day of March 1902 between the United Kingdom and other powers relating to the abolition of the bounties on sugar a special additional duty equivalent to any bounty which may be granted on sugar (not being the produce of the Union) from any country which is not a party to the said Convention shall be levied and imposed on importation into this Colony of such sugar. For the purposes of this section the term sugar shall include sugar products such as preserves chocolates biscuits condensed milk and all other analogous products containing in a notable proportion sugar artificially incorporated.

Additional duty to be levied on bounty sugar.

7. Under such regulations as he may prescribe on that behalf the Lieutenant-Governor may in accordance with the provisions of the Customs Union Convention by Proclamation in the *Gazette*;

Power of Lieutenant-Governor to suspend certain duties &c. by Proclamation.

- (a) suspend the duty imposed upon fresh chilled and frozen meat and on animals for slaughter;
- (b) suspend in whole or in part the duty imposed on corn and grain as described in item 15 (a) (b) and (c) Class I. Schedule B of the tariff and grant a bounty equivalent to the duties suspended on such corn and grain produced in the Union or manufactured therein solely from Union products;
- (c) grant a rebate of the whole or part of the duty on methylated spirits or alcohol imported solely for manufacturing or scientific purposes and on soap or other substances imported for and exclusively used in connection with the industry of woolwashing;
- § (d) allow either by free importation or rebate an abatement of the duties on articles imported by and for the use of members of His Majesty's regular

† The Brussels Convention came into operation on 1st September 1903. See Government Notice 1386 of 1903 *Gazette* (4th December 1903) page 1412.

‡ See Proclamation No. 63 Admn. 1903 *Gazette* (13th November 1903) page 1197.

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forces and on wines and spirits for the use of the Governor or the Lieutenant-Governor ;

(e) allow the importation free of duty into this Colony of any goods and articles excepting spirits the growth produce or manufacture of the Portuguese Province of Mozambique or of British Central Africa.

Definition of value on which *ad valorem* duties are to be paid.

8. For the purposes of estimating the amount of Customs duty whenever levied on goods *ad valorem* and of the declaration and oaths which may be at any time required by any law or regulations in relation to the question of such duty the current value of such goods shall be taken to be the true current value in the open market for such goods at the place of purchase by the importer or his agent including the cost of packing and packages but not including agent's commission if it does not exceed five per cent.; provided that in no case shall the true current value as above defined be less than the cost of the goods to the importer at the place of purchase.

Payment of share of duties to other consuming Colonies in the Union.

9. Whenever any goods upon which the duties have been paid in this Colony shall be removed to and for consumption in any other Colony or Territory within the Customs Union there shall be payable to the Government of such Colony or Territory in the Union ninety-five per cent. of the Customs Union duties collected under this Ordinance on the said goods.

Power of Lieutenant-Governor to make regulations.

10. The Lieutenant-Governor may make and alter by notice published in the *Gazette* regulations for the removal and conveyance to and across the borders of this Colony of the goods referred to in this Ordinance for the rebate or suspension of the duties referred to and for the payment to any other Colony or Territory of its share of the Customs Duties collected by the Officers of this Colony.

Penalties.

11. Any person who shall produce any false invoice or make any false representation in regard to the country in which any goods were grown produced or manufactured or shall contravene any regulation made and published as in the last preceding section mentioned shall be liable to a fine not ex-

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ceeding three hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months or to both such fine and such imprisonment and all goods in respect of which such false invoice shall be produced or false representation made and all goods removed in contravention of any such regulation and all vehicles and animals made use of in the removal of such goods shall be liable to be forfeited to the Government.

12. As soon as this Ordinance shall take effect with regard to the duties on the goods wares and merchandise mentioned in the Schedule thereto the provisions of Law No. 4 of 1894 of Ordinance No. 22 of 1902 and of any other Law repugnant to or inconsistent with the provisions of this Ordinance shall be repealed.

Repeal of repugnant laws.

† 13. This Ordinance may be cited for all purposes as the Customs Union and Tariff Amendment Ordinance 1903 and shall come into operation upon a date to be § fixed by the Lieutenant-Governor by Proclamation in the *Gazette* except in respect to the duties imposed on those articles enumerated in Schedule D hereunto annexed on which increased duties are imposed under the provisions of this Ordinance. Such duties shall come into operation on and after the sixth day of June 1903 and shall be subject to the provisions of sections *four five* and *eight* of this Ordinance.

Title and date of taking effect.

**SCHEDULE A.
Customs Union Convention.**

His Excellency the Governor of the Colony of the Cape of Good Hope, His Excellency the Governor of the Colony of Natal, His Excellency the Governor of the Orange River Colony and the Transvaal, and His Honour the Administrator of Southern Rhodesia, mutually on behalf of their respective Governments, admitting that each Colony and Territory is entitled to the Customs Duties collected on goods imported for consumption therein through any of the said Colonies or Territory and that it is desirable that there should be a general Customs Union between all the Colonies and Territories of South Africa, have agreed on behalf of their respective Governments upon the following Articles.

ARTICLE I.

The Customs Union Convention between the Cape Colony, the Republic of the Orange Free State and the Colony of Natal entered into in the year 1898 shall be superseded by this present Convention; provided however;

† For Regulations as to removal etc. see Government Notice No. 825 of 1903 *Gazette* (21 Aug. 1903) p. 711 and as to rebate or suspension Government Notice No. 824 of 1903 *Gazette* (21 Aug. 1903) p. 711 Government Notice 995 of 1903 *Gazette* (18 Sept. 1903) p. 861 and Government Notice No. 1306 of 1903 *Gazette* (13 Nov. 1903) p. 1215.

‡ By Proc. No. 35 Admn. 1903 *Gazette* (21 Aug. 1903) p. 705 the 15th August 1903 was fixed as the date of the coming into operation of this Ordinance.

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- (a) That the supersession of the said Convention shall not affect the validity of the Schedules thereto whereby Basutoland and the Bechuanaland Protectorate were admitted to the Customs Union, which Schedules are for reference and certainty set forth as Schedules A and B hereto and with the exception of the fourth article of each Schedule, which is obsolete, are to be regarded as embodied herein, this Convention and its corresponding Articles being deemed to be in the said Schedules referred to in place of the superseded Convention and its Articles of similar import;
- (b) That whenever in either of the said Schedules mutual agreement or joint assent is required, the agreement or assent of the Governments of the Cape Colony, Natal, the Orange River Colony, the Transvaal, and Southern Rhodesia shall be deemed to be necessary;
- (c) That the Convention of 1898 entered into as aforesaid, together with the said Schedules thereto, shall, as between all the parties thereto, continue to be of binding force and effect, until a date to be fixed by agreement among the parties to this present Convention after the same shall have been signed by the parties thereto, and shall have been assented to by His Excellency the High Commissioner for and on behalf of Basutoland and the Bechuanaland Protectorate aforesaid, and after the same shall have been ratified and approved of by the Legislature of each of the said Colonies and the territory of Southern Rhodesia; and
- (d) That all the accounts or other matters outstanding between any parties to the said Convention shall, notwithstanding its supersession by this present Convention, be settled and determined under the aforesaid Convention, together with the Schedules thereto.

ARTICLE II.

The following and none other shall, subject to the provisions of any subsequent Article of this Convention, be the Customs Duties upon goods imported into any place within the Union, and the Government of each Colony or Territory within the Union shall levy and collect within its jurisdiction the said duties upon all goods so imported from outside the limits of the Union.

Customs Union Tariff.

CLASS I.

SPECIAL RATES.

	£	s.	d.
1 Ale, beer and cider: all kinds of strength exceeding 3 per cent. of proof spirit per Imperial gallon ...	0	1	6
(and in addition 10 per cent. <i>ad valorem</i>)			
(Note.— <i>Vide</i> Article XVII. of Convention.)			
2 Acetic Acid per Imperial gallon ...	0	3	0
3 Animals, viz.:—			
(a) Cattle for slaughter each ...	1	10	0
(b) Sheep for slaughter each ...	0	5	0
(Note.— <i>Vide</i> Article XIII. of Convention.)			
4 Beads, known as "Kaffir beads" per lb. ...	0	0	6
5 Blasting compounds, including all kinds of explosives suitable and intended for blasting and not suitable for use in firearms; and collodion cotton not intended for manufacturing purposes per lb. ...	0	0	1½
(Note.— <i>Vide</i> Article XVII. of Convention.)			

	£	s.	d.
6 Butter, butterine, margarine, ghee and other substitutes for butter per lb....	0	0	2
7 Chicory and substitutes for coffee or chicory per lb....	0	0	2
8 Coffee:—			
(a) Raw per lb. ...	0	0	0 $\frac{3}{4}$
(b) Roasted, ground or mixed per lb. ...	0	0	2 $\frac{1}{2}$
9 Cocoa and chocolate unsweetened per lb. ...	0	0	1
10 Cocoa and milk, chocolate and milk, coffee and milk per lb. ...	0	0	1
11 Condensed, desiccated or preserved milk or cream per lb. ...	0	0	0 $\frac{1}{2}$
12 Coals per ton of 2,000 lbs. ...	0	3	0
13 Coke and patent fuel per ton of 2,000 lbs. ...	0	2	0
14 Confectionery, including sweetened cocoa or chocolate, honey, jams, jellies, preserves, sweetmeats, candied or preserved ginger or chow-chow; and all other kinds compounded, made or preserved with sugar, but not including purely medicinal preparations properly classed as apothecaryware per lb....	0	0	2
15 Corn and grain, viz.:—Barley, maize, millet, oats, rye, wheat, beans and peas:			
(a) In the grain, or (b) crushed, flaked, ground, hulled, malted, pearled, split or otherwise prepared, except oats not in the grain and bran per 100 lbs. ...	0	1	0
(c) Flour, wheaten, or wheaten meal, including pollard per 100 lbs. ...	0	2	0
(Note.— <i>Vide</i> Free List and Article XV. of Convention.)			
16 Dates per lb. ...	0	0	0 $\frac{1}{2}$
17 Fish:—Cured, dried, pickled, preserved, pressed or smoked, not being of South African taking per lb....	0	0	1
18 Fodder, viz.:—Chaff, hay, lucerne, oathay and other fodder, not otherwise described but not including bran per 100 lbs. ...	0	1	0
19 Fruits:—Preserved, of all kinds, bottled, tinned or otherwise preserved, including pulp and candied peel per lb. ...	0	0	2
20 Fruits:—Dried of all kinds, including almonds and nuts per lb. ...	0	0	2
21 Gunpowder and other explosives suitable for use in firearms (and in addition 10 per cent. <i>ad valorem</i>) per lb. ...	0	0	6
22 Guns and gun barrels, firearms:—			
(a) Single, per barrel ...	1	0	0
(b) Double and other, per barrel ...	0	15	0
(and in either case in addition 10 per cent. <i>ad valorem</i>)			
23 Meats, including lard, fats, soups, and other similar substances used as food, but not including extracts and essences or tallow per lb. ...	0	0	1
(<i>Vide</i> Article XIII. of Convention.)			
24 Matches: (a) Wooden: In boxes or packages of not more than 100 matches per gross of boxes or packages	0	2	0
In boxes containing more than 100 but not more than 200 matches per gross of boxes or packages ...	0	4	0
And for every 100 additional matches in boxes or packages per gross of 100 matches ...	0	2	0
(b) Fusees, vestas or wax matches, or other patent lights used as such: in boxes or packages containing not more than 50 per gross of boxes or packages ...	0	2	0
In boxes or packages of more than 50 but not more than 100 per gross of boxes or packages ...	0	4	0
And for every 50 additional in boxes or packages per gross of 50 matches ...	0	2	0
25 Onions, not preserved per lb. ...	0	0	0 $\frac{1}{2}$

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	£	s.	d.
26 Pickles, Sauces, Chutneys, Chillies and other condiments per lb.	0	0	2
27 Pistols and Revolvers each	0	5	0
(And in addition 10 per cent. <i>ad valorem</i>)			
28 Soap, not including toilet soaps and soap powders and extracts per lb.	0	0	0½
(Note.— <i>Vide</i> Article XVIII. of Convention.)			
29 Spices and Turmeric per lb.	0	0	2
30 Spirits:			
(a) Perfumed per Imperial gallon	1	0	0
(b) Liqueurs and Cordials exceeding three per cent. of proof spirit per Imperial gallon	0	15	0
(c) Other sorts, exceeding three per cent. but not exceeding the strength of proof by Sykes' Hydrometer and so on in proportion for any greater strength per Imperial gallon	0	15	0
(And in addition ten per cent. <i>ad valorem</i> on all the above classes of Spirits.)			
(Note.— <i>Vide</i> Article XVII. of Convention.)			
31 Sugar:			
(a) Not refined, Golden Syrup, Molasses, Saccharum and Treacle per 100 lbs.	0	3	6
(b) Refined per 100 lbs.	0	5	0
(Note.— <i>Vide</i> Article V. of Convention.)			
32 Tea per lb.	0	0	4
33 Tobacco:			
(a) Cigars and Cigarillos per lb.	0	6	0
(And in addition ten per cent. <i>ad valorem</i> .)			
(b) Goorak or Goorakco, and Hookah mixture, and all imitations or substitutes per lb.	0	6	0
(c) Snuff per lb.	0	4	0
(d) Cigarettes per lb.	0	4	0
(And in addition 10 per cent. <i>ad valorem</i> .)			
(e) Manufactured and cut per lb.	0	3	6
(f) Manufactured but uncut per lb.	0	3	0
(g) Not manufactured but stemmed per lb.	0	2	6
(h) Not manufactured and unstemmed per lb.	0	2	0
34 Vinegar:			
(a) Of standard strength, fit for immediate use as such (<i>i.e.</i> requiring no more than 40 grains of bicarbonate of potash to neutralise one ounce Troy)			
(1) In bottles or other vessels of the capacity of not more than one Imperial quart per Imperial gallon	0	1	0
(2) In larger vessels or in bulk per Imperial gallon	0	0	6
(b) Concentrated extract or essence, of greater strength than above per Imperial gallon	0	3	0
35 Wine:			
(a) Still wines not exceeding 20 per cent. of proof spirit per Imperial gallon	0	4	0
(b) Still wines exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit per Imperial gallon	0	8	0
(c) Sparkling wines per Imperial gallon	0	12	6
(And in addition ten per cent. <i>ad valorem</i> on all the above classes of wine.)			
Note.—Wines containing less than three per cent. of proof spirit are not included in the above and wines containing more than 50 per cent. of proof spirit are classed as spirits.			
(Note.— <i>Vide</i> Articles III. (a) and XX. of Convention.)			

CLASS II.

MIXED *ad valorem* RATES.

	£	s.	d.
36 Bicycles, tricycles, and velocipedes and parts thereof per £100	12	10	0
37 Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool, commonly used as cotton or woollen blankets or rugs, the single article, in pairs or in the piece; and coats, jackets, or other apparel made of blanketing or baize per £100 ...	25	0	0
38 Bon-bons, surprise packets and crackers, and other similar fancy confectionery per £100	25	0	0
39 Cards, playing per £100	25	0	0
40 Carriages, carts, coaches, wagons and all other wheeled vehicles, not elsewhere described, intended for the conveyance of persons or goods including finished parts thereof, not being metal parts not usually made in the Union, but required in the manufacture of wheeled vehicles therein; but not including bath chairs, perambulators, toy carts, store trucks or barrows per £100	12	10	0
41 Extracts and essences of all kinds for flavouring or perfumery, including saccharine, per £100	25	0	0
42 Fireworks of all descriptions per £100	25	0	0
43 Medicines, patent or proprietary per £100	25	0	0
44 Motor vehicles, including their parts, and motor cycles but not including traction engines and power lorries per £100	5	0	0
45 Oils, essential or perfumed per £100	25	0	0
46 Perfumery, cosmetics, dyes, powders and soap, and other preparations for toilet use, and soap powders and extracts per £100	25	0	0
47 Shawls per £100	25	0	0

(Note.—*Vide* Articles III. (a) and XX. of Convention.)

CLASS III.

Ad valorem 2½ PER CENT.

- 48 Acids: nitric and sulphuric.
- 49 Asbestos packing and boiler composition.
- 50 Assay apparatus.
- 51 Bands and belting of all kinds for driving machinery, boiler tubes, bolting cloth and mill silk.
- 52 Battery cloth and baize, gauze, matting, sieving and screening, for use in connection with machinery and apparatus.
- 53 Bolts, nuts and rivets.
- 54 Bottles and jars of common glass or earthenware, and bottles ordinarily used for aerated waters: empty.
- 55 Chain for hauling
- 56 Chimneys: metal (smokestacks).
- 57 Corks and bungs, and corkwood unmanufactured.
- 58 Cranes, elevators and shears
- 59 Crucibles, cupels, cupelling furnaces, ingot moulds, retorts and furnaces for roasting minerals.
- 60 Cyanide of potassium.
- 61 Fire escapes and fire hose and hose reels.
- 62 Hose: stean, suction and armoured (not including garden), for use in connection with machinery and apparatus.
- 63 Machinery, not elsewhere described, to be driven by cattle, electric, gas, heat, hydraulic, pneumatic, steam, water or wind power, including spare parts; and apparatus and appliances used in connection with the generating and storing of electric power or gas; electric cable or wire and the posts for carrying the same; lamp posts and their fittings.

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- 64 Mining buckets, skips, trucks and tubs, wheeled or otherwise, for hauling on rails or wires.
- 65 Packing and lagging for engines, machinery and piping.
- 66 Pipes, piping and tubes of all kinds for gas, steam, drainage, sewerage, irrigation, water supply or pumping, not including down-piping and guttering or cocks and taps.
- 67 Railway construction or equipment requisites, as follows:—rails, sleepers, fastenings for rails or sleepers, girders, iron bridge work, culvert tops, locomotives, tenders, ballast trucks, goods wagons, carriages, trollies, engine water tanks, turn-tables, permanent or fixed signals and weigh-bridges.
- 68 Rubber for use in connection with machinery and apparatus.
- 69 Tanks and vats suitable and intended for mining purposes.
- 70 Telegraphs and telephones:—materials and instruments for use in construction and working of telegraph and telephone lines.
- 71 Traction engines and power lorries.
- 72 Tramway construction and equipment requisites, as follows:—rails, sleepers, fastening for rails or sleepers, iron gates, girders, iron bridge work, culvert tops, cars, trollies, water-tanks and turn-tables.
- 73 Wire and wire netting for fencing; droppers, gates, hurdles, posts, standards, strainers, staples, stiles, winders, and other materials or fastenings of metal ordinarily used for agricultural or railway fencing; and baling wire.
- 74 Wire rope.

(Note.—*Vide* Articles III. (b) and XX. of Convention.)

CLASS IV.

FREE.

- 75 Agricultural implements and machinery, and all apparatus and plant usually and principally employed in farming operations; binding twine and harvest yarn.
- 76 All raw produce of South Africa, and animals bred in South Africa imported into the Union overland.
- 77 All animals bred and articles grown, produced or manufactured within the Union, except:
- (a) Flour, wheaten, or wheaten meal, including pollard, manufactured from other than South African wheat.
 - (b) Spirits, beer, or blasting compounds, distilled or manufactured in the Union, should a duty be imposed under Article XVII. of the Convention.
- 78 Ambulance materials imported by recognised associations, corps or hospitals lawfully established for instruction or drill in first aid to the wounded.
- 79 Anchors and chain cables for the use of ships, tugs or lighters.
- 80 Animals living, except cattle and sheep for slaughter. (*Vide* Article XIII. of Convention.)
- 81 Arms, ammunition, appointments and uniforms for the Regular Military, Naval or Volunteer Imperial or Colonial Forces of His Majesty.
- 82 Atlases, charts, globes and maps.
- 83 Bags for flour, grain, manure, produce, sugar, wool, coal and minerals not including paper bags; and bagging and sacking in the piece.
- 84 Band instruments and stands, the *bona fide* property of any Government belonging to the Union or of a Regular Military or Volunteer Corps, and not the property of individuals.
- 85 Bones, feathers, ivory, hair, hoofs, horns, shells, skins, teeth, wool and other parts of animals, birds, fishes or reptiles, not being manufactured, polished, or further prepared than dried and cleaned, but in their raw and unmanufactured state.
- 86 Book-binders' requisites, consisting of boards, cloth, leather, marble-paper, skin, thread, tape, vellum, webbing and wire.

- 87 Books and music, printed, including newspapers and periodicals, not being foreign unauthorised prints of any British or South African copyright work.
- 88 Borax, bromine, litharge, manganese di-oxide and quicksilver.
- 89 Bottles and jars of common glass or earthenware imported full of any article liable to a rated duty.
- 90 Boxes empty, cardboard and wooden, put together or in pieces or shooks for packing; and staves.
- 91 Brass and copper, and composition metal: in bars, ingots, plates and sheets: plain, including perforated, but otherwise unmanufactured.
- 92 Bullion, coin, specie, bank notes, and other paper currency.
- 93 Carriages, carts, wagons and other wheeled vehicles the manufacture of South Africa, imported into the Union overland.
- 94 Church decorations, altars, bells, fonts, lecterns, pulpits, organs, plate or vestments, and illuminated windows, imported by or for presentation to any religious body.
- 95 Coir, candlewick, cotton, flax, fibre, flock, hemp and jute; raw, waste or unmanufactured.
- 96 Collodion cotton, glycerine and nitrates for manufacturing purposes.
- 97 Cups, medals, and other trophies imported for presentation, or presented as prizes at examinations, exhibitions, shows, or other public competitions, for excellence in art, bravery, good conduct, humanity, industry, invention, manufactures, learning, science, skill, or sport, or for honourable or meritorious public services; provided that such articles shall on importation or delivery free from the Customs bear engraved or otherwise indelibly marked on them the name of the presenter or presentee and the occasion or purpose for which presented.
- 98 Consular uniforms and appointments and printed official consular stationery.
- 99 Cork dust, paper shavings, sawdust, husks and other waste substances intended and suitable for use only as packing material.
- 100 Diagrams, designs, drawings, models and plans.
- 101 Diamonds and other gems or precious stones in their rough state.
- 102 Dye-nuts, gambier, myrobalans, sumach, valonia and other dye stuffs: for leather.
- 103 Engravings, lithographs and photographs, and enlargements or reproductions of the same.
- 104 Fire clay, terra alba and fire bricks.
- 105 Fish, fresh and fish ova; also dried, cured or salted fish and raw fish oil of South African taking.
- 106 Fruit; fresh or green, including cocoa-nuts.
- 107 Fruit and other produce: driers or evaporators of.
- 108 Glue.
- 109 Guano and other substances animal, mineral or vegetable, artificial or natural, suitable for use as fertilizers or manures.
- 110 Hair cloth and springs for furniture.
- 111 Ice.
- 112 Iron and steel: angle, bar, channel, hoop, rod, plate, sheet or T; plain, including perforated and galvanised; rough and unmanufactured, not including corrugated sheets.
- 113 Launches, tugs and lighters; provided that when condemned or landed to be broken up, duty shall be paid at the Customs on the hull and all fittings according to the tariff that may then be in force.
- 114 Lead: bar, pipe, sheet, foil, and acetate of.
- 115 Leather: patent, enamelled, roan and morocco, and pigskin in the piece and valve hide.
- 116 Lifeboats, belts and buoys, and other life saving apparatus imported by any recognised society.
- 117 Metal of all sorts in bars, blocks, ingots, and pigs for founding, not elsewhere described.

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- 118 Paintings, pictures, picture books and etchings.
- 119 Paper ordinarily used for printing books, pamphlets, newspapers and posters, or for lithographic purposes.
- 120 Potash and soda, carbonate, bi-carbonate, caustic, crystals and silicate.
- 121 Printing and lithographic inks.
- 122 Printing, lithographing, paper-cutting, folding, numbering and perforating machines or presses, blocks, formes, fontes, plates, rollers, stones and type, and other apparatus suitable only for use in the book-binding or printing industries.
- 123 Public stores, imported or taken out of bond by, and *bonâ fide* for the sole and exclusive use of, the Government of His Britannic Majesty, and of any Government belonging to the Union, provided that a certificate be delivered to the Customs Authorities given under the hand of an Officer approved of by the Principal Officer of Customs, setting forth that any duty levied on such public stores would be borne directly by the Government; and provided further that no portions of such stores used or unused shall be sold or otherwise disposed of so as to come into the possession of or into consumption by any persons not legally entitled to import the same free of duty, without the consent of the Principal Officer of Customs and the payment of the duties to him by the Officer so selling or disposing of such public stores.
- 124 Rattans, cane and bamboo: unmanufactured.
- 125 Resin and carbonate of ammonia.
- 126 Saddle-trees.
- 127 School furniture and requisites: being all articles certified by the Superintendent-General of Education, or any official appointed for that purpose in any Colony or Territory in the Union, to be for use in any school.
- 128 Sculpture, including casts or models of sculpture.
- 129 Seeds, bulbs, plants and tubers for planting or sowing only, under such regulations as regards edible kinds as the Customs authorities may impose to safeguard the revenue against diversion into ordinary consumption.
- 130 Sheep-dip, sheep-dipping powders, materials suitable only for dip, and dipping tanks.
- 131 Specimens illustrative of natural history, and exhibits for public museums.
- 132 Sprayers and sprinklers and other apparatus for destroying pests or diseases in stock, plants, or trees.
- 133 Sulphur and other substances for destroying pests or diseases in stock, plants, or trees; and disinfectants.
- 134 Thread: boot and shoemakers', saddlers' and sailmakers', and seaming twine.
- 135 Tin and Zinc: Bar, plate or sheet; plain or perforated, but otherwise unmanufactured.
- 136 Tobacco, the produce of South Africa, imported into the Union overland.
- 137 Vaccine virus, toxin and serum.
- 138 Vegetables: Fresh or green, but not including potatoes or onions.
- 39 Water-boring and pumping apparatus.
- 140 Wax, viz.:—Paraffin and stearine and stearine grease ordinarily used in the manufacture of candles.
- 141 Wine presses and wine pumps.
- 142 Wood meal.
- 43 Wool, straw, hay and forage presses.

CLASS V.

GENERAL *ad valorem* RATE, TEN PER CENT.

- 144 All goods, wares, or merchandise not elsewhere charged with duty, and not enumerated in the Free List, and not prohibited to be imported therefrom into the Union, shall be charged with a duty of ten per cent. *ad valorem*.

(NOTE.—*Vide* Articles III. (a) and XX. of Convention.)

ARTICLE III.

A rebate of Customs Duties shall be granted on any goods and articles the growth, produce or manufacture of the United Kingdom imported therefrom into the Union for consumption therein to the extent following:—

- (a) In the case of goods and articles liable to Customs Duty under Class I., II. or V., a rebate of 25 per cent. of any duty chargeable thereon at an *ad valorem* rate but of no other duty, and
- (b) In the case of goods and articles liable under Class III. to duty at an *ad valorem* rate of $2\frac{1}{2}$ per cent. a rebate of the whole of such duty:

Provided, that the manufactured goods and articles in respect of which such rebate as aforesaid shall be granted shall be *bona fide* the manufactures of the United Kingdom, and that in the event of any question arising as to whether any goods or articles are entitled to any such rebate as aforesaid, the decision of the Minister or other Executive Officer in whom the control of the Customs Department immediately concerned is vested, shall be final.

ARTICLE IV.

A rebate similar to that for which provision is made in the last preceding Article shall be granted in like manner and under like provisions to goods and articles the growth, produce or manufacture of any British Colony, Protectorate, or Possession granting equivalent reciprocal privileges to the Colonies and Territories belonging to the Union, provided that no such rebate shall be granted in the case of any particular Colony, Protectorate or Possession until on and after a date to be mutually agreed upon and publicly notified by the parties to this Convention.

ARTICLE V.

On and after the coming into operation of the Convention signed at Brussels on the 5th day of March, 1902, between the United Kingdom and other Powers relating to the abolition of the bounties on sugar, a special additional duty equivalent to any bounty which may be granted on sugar from any country which is not a party to the said Convention shall be levied and imposed on importation into the Union of such sugar. For the purposes of this Article the term sugar shall include sugar products such as preserves, chocolates, biscuits, condensed milk and all other analogous products containing in a notable proportion sugar artificially incorporated.

ARTICLE VI.

Every contracting party to the Convention shall, subject to the provisions of the Articles of this Convention, collect the Customs duties payable upon all goods imported within its borders from outside the limits of the Union for removal from the collecting Colony or Territory into any other part of the Union, and recover for and pay over to the Government of the Colony or Territory, into which the goods are so removed for consumption, the duties so collected by it on such goods subject to a deduction of 5 per cent. of the duty collected.

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ARTICLE VII.

The importation of all goods upon which the Customs duties must be paid over by any one party to any other party to the Union, shall be subject to such regulations as may be mutually agreed upon.

ARTICLE VIII.

Every Colony and Territory belonging to the Union shall be at liberty to pass through any part thereof, under such regulations as may be agreed upon, goods intended for consumption outside the Union duty free, or at such rate as the interests of the forwarding Colony or Territory may demand.

ARTICLE IX.

All accounts as between the parties to the Union shall be made up to the end of each month and all such accounts shall be settled within one month thereafter, subject to any subsequent adjustment which may be found necessary.

ARTICLE X.

The importation of any article may be by law prohibited in any of the said Colonies or Territory.

Articles the importation whereof is prohibited in any of the said Colonies or in the said Territory shall be allowed to pass through the prohibiting Colony or Territory to any other Colony or Territory within the Union not so prohibiting, subject to payment of the Customs Duties (if any) imposed under this Convention.

ARTICLE XI.

Notwithstanding anything to the contrary contained in this Convention, but subject to the provisions of Article X., every Colony or Territory belonging to the Union shall permit goods imported thereinto from any place beyond the limits of the Union, and duly warehoused in such Colony or Territory in accordance with the Customs Laws and Regulations in force therein, to be removed under bond without payment of duty and to be re-warehoused in duly appointed bonded warehouses, subject however to the Customs Laws in force in such first mentioned Colony or Territory with regard to the removal of goods in bond, and subject to such regulations with regard thereto as may be mutually agreed upon.

ARTICLE XII.

Except in cases of duty paid in excess or in error no rebate or refund of any sum in respect of duty paid or bounty or gratuity in respect of any dutiable article shall be allowed or granted by any of the contracting parties to the Convention except upon grounds contained in the Articles of this Convention, or by mutual agreement.

ARTICLE XIII.

The collection of the Customs Duty imposed under Class I. of the foregoing Tariff upon fresh, chilled and frozen meat and on animals for slaughter shall be suspended until such time as a majority of the contracting parties to the Convention agree that such suspension shall be removed.

ARTICLE XIV.

It shall be permitted to the Territory of Southern Rhodesia to grant, upon all goods and articles, the growth, produce and manufacture of any part of His Majesty's Dominions or of any British Protectorate a rebate of the Customs Duties payable under the foregoing tariff, equal in amount to the difference between the said duties payable, as aforesaid, and the highest duties which it is permissible to the said Territory to impose under clause 47 of the Southern Rhodesia Order in Council, 1898.

ARTICLE XV.

Any Colony or Territory within the Union may provide for the suspension of the whole or part of the Customs Duties imposed by the foregoing Tariff on the importation for consumption in such Colony or Territory of any goods or articles comprised in the first part of Schedule "C" annexed hereto; and the Territory of Southern Rhodesia may, in addition, provide for the suspension in whole or part of the duties on any goods and articles comprised in the second part of such Schedule; provided

- (a) That legislative provision be made for the payment during the period of such suspension by the Government of the said Colony or Territory of a bounty on similar goods and articles imported upon a due declaration for consumption within the said Colony or Territory from any other part of the Union and produced or manufactured therein solely from Union products such bounty to be equivalent to the duties suspended and to be received and paid in accordance with regulations mutually approved by the parties immediately concerned.
- (b) That in the case of the Territory of Southern Rhodesia no bounties shall be payable until the expiration of two years from the coming into force of this Convention.

ARTICLE XVI.

Any Colony or Territory granting a rebate or making provision for the suspension of duty on any articles under this Convention shall levy and recover and be responsible for the levying and recovering of the amount of the duty rebated or suspended on the removal of such articles for consumption into any other part of the Union.

ARTICLE XVII.

Any Colony or Territory belonging to the Union may at any time levy a Customs Duty upon ale or beer, spirits and blasting compounds, the produce or manufacture of any other such Colony or Territory, not exceeding any duty of excise which may be levied by the importing Colony or Territory on the produce or manufacture of articles of the like description within its own borders, provided that such articles from whatsoever part of the Union they may be imported shall be liable to uniform duties.

Where a duty of Excise is levied on any article in any Colony or Territory belonging to the Union, such article may be removed under bond under terms of Article XI. to any other Colony or Territory in the Union.

Where a prohibition exists in any Colony or Territory of the Union against the manufacture of spirits for sale it shall be lawful for such Colony or Territory to levy on spirits produced within the Union a Customs duty not exceeding that levied on similar spirits produced outside the Union.

ARTICLE XVIII.

Any Colony or Territory belonging to the Union may under suitable regulations, rebate the whole or the part of the duty on methylated spirits or alcohol imported solely for manufacturing or scientific purposes within its borders, and on soap and other substances imported for and exclusively used in connection with the industry of woolwashing.

ARTICLE XIX.

Any Colony or Territory belonging to the Union may allow either by free importation or rebate an abatement of the duties on articles imported by and for the use of members of His Majesty's Regular Forces, and also in respect of Wines and Spirits for the use of the Governor, Lieutenant-Governor, Administrator or Resident Commissioner of any such Colony or Territory.

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ARTICLE XX.

For the purposes of estimating the amount of Customs duty whenever levied on goods *ad valorem*, and of the declaration and oaths which may be at any time required by any law or regulations in relation to the question of such duty, the current value of such goods shall be taken to be the true current value in the open market for such goods at the place of purchase by the importer or his agent, including the cost of packing and packages, but not including agent's commission if it does not exceed 5 per cent.; provided that in no case shall the true current value as above defined be less than the cost of the goods to the importer at the place of purchase.

ARTICLE XXI.

Wherever in any of the Articles of this Convention mutual agreement or assent is referred to, the agreement or assent of the Governments of the Cape Colony, Natal, the Orange River Colony, the Transvaal and Southern Rhodesia shall alone be deemed and taken to be intended; and wherever the decision of a majority is referred to it shall be deemed to mean a majority of the Governments of such Colonies and Territory.

ARTICLE XXII.

Nothing herein contained shall be deemed or taken to prohibit the Transvaal from allowing the importation free of duty into that Colony of any goods and articles, excepting spirits, the growth, produce or manufacture of the Portuguese Province of Mozambique or of British Central Africa.

ARTICLE XXIII.

The provisions of this Convention shall continue in force for a period of two years from the date of the coming into operation of this Convention and thereafter until the expiration of not less than twelve months from the date of notice given by the Government of any of the said Colonies or the said Territory of its intention to retire from the Union, which notice shall be given to all the other parties to this Convention; provided, however, that save by common consent the date at which such retirement shall take effect shall be the 30th day of June next after the expiration of the period of twelve months aforesaid and that within one month after receiving such notice any other Government may give like notice of intention to retire from the Union, in which event such retirement shall take effect concurrently with the retirement of the Colony or Territory first giving notice.

ARTICLE XXIV.

It shall be competent at any time during the existence of the Union for any other Colony, Territory or State of South or Central Africa having a civilised Government to apply to be included as a party thereto and upon all the parties to this Convention signifying their joint assent to such admission and mutually agreeing to the terms and date of such admission, such Colony, Territory or State shall be admitted, provided that it pass the requisite legislation to give effect to the terms of such admission.

ARTICLE XXV.

No amendment or addition to this Convention shall be made without the unanimous consent of the contracting parties hereto, but any difference of opinion with reference only to the true construction of any item of the foregoing Tariff shall be determined by the decision of the majority of the Governments of such contracting parties, provided that no Government shall be deemed to be hereby bound to accept a construction of any item of the said Tariff which is in conflict with any judicial decision binding upon such Government.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, at Douglas, this twenty-fourth day of May, One thousand Nine hundred and Three.

WALTER HELY HUTCHINSON,
Governor.

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Given under my hand and the Public Seal of the Colony of Natal, at Pietermaritzburg, this twelfth day of May, One thousand Nine hundred and Three.

HENRY McCALLUM,
Governor.

Given under my hand and the Public Seal of the Orange River Colony, at Johannesburg, this sixth day of May, One thousand Nine hundred and Three.

MILNER,
Governor.

Given under my hand and the Public Seal of the Colony of the Transvaal, at Johannesburg, this sixth day of May, One thousand Nine hundred and Three.

MILNER,
Governor.

Given under my hand and the Public Seal of the Territory of Southern Rhodesia, at Salisbury, this third day of June, One thousand Nine hundred and Three.

W. H. MILTON,
Administrator.

On behalf of His Majesty's Government of Basutoland, I hereby signify my assent to the above Convention and Schedules A, B, and C thereto.

Given under my hand and the Public Seal of Basutoland, at Johannesburg, the sixth day of May, One thousand Nine hundred and Three.

MILNER,
High Commissioner.

On behalf of His Majesty's Government of the Bechuanaland Protectorate, I hereby signify my assent to the above Convention and Schedules A, B, and C thereto.

Given under my hand and the Public Seal of the Bechuanaland Protectorate, at Johannesburg, this sixth day of May, One thousand Nine hundred and Three.

MILNER,
High Commissioner.

Schedule A.

ADMISSION OF BASUTOLAND INTO THE UNION.

PROTOCOL to the Customs Union Convention entered into between His Excellency the Governor of the Colony of the Cape of Good Hope and His Honour the President of the Orange Free State, on behalf of their respective Governments, and given under their hands and the Public Seals of the said Colony and State on the 5th day of April, 1889, and the 28th day of March, 1889, respectively, and to the Further Protocol and Supplement thereto, the said Protocol being signed and sealed as aforesaid by His Excellency the Governor of the said Colony, and His Honour the President of the said State, on the 4th day of June, 1890, and the 19th day of June, 1890, and assented to by His Excellency the Governor of British Bechuanaland on the 4th day of June, 1890, and the said Supplement being signed by His Excellency the Governor of the said Colony and His Excellency the Governor of British Bechuanaland on the 22nd day of September, 1890, and by His Honour the President of the Orange Free State, on the 11th day of September, 1890.

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His Excellency the Governor of the Colony of the Cape of Good Hope, and His Honour the President of the Orange Free State mutually on behalf of their respective Governments, having regard to the application made by or on behalf of the Government of Basutoland to be included as a party to the subsisting Customs Union between the said Colony and State, and having regard to the articles of the subsisting Customs Union Convention entered into in the year 1889, between His Excellency the Governor of the Colony of the Cape of Good Hope and His Honour the President of the Orange Free State, on behalf of their respective Governments, do hereby signify their joint assent, in terms of Article X. of the said Convention, to the admission of Basutoland as a party to the said Customs Union, subject to the terms and conditions following, that is to say:—

1. The admission of Basutoland to the said Customs Union shall take effect and operate on and after the 1st July, 1891, provided that the Government of Basutoland shall before that date have passed the legislation requisite to give effect to the terms and conditions of this Protocol, relative to its admission as a party to the said Customs Union.

2. His Excellency the High Commissioner shall, at the foot or end of this Protocol signify on behalf of Her Majesty's Government his assent to this Protocol and to the terms and conditions herein contained relative to the admission of Basutoland as a party to the said Customs Union.

3. So soon as Basutoland shall be admitted as a party to the said Customs Union, the Government thereof shall become, be, and continue bound by the provisions of the aforesaid Customs Union Convention and of this Protocol thereto, and the terms of the said Convention shall, *mutatis mutandis*, be read and construed as though Basutoland were a fourth party thereto, the Government thereof having all the rights and being bound by all the obligations with regard to the respective Governments of the Colony of the Cape of Good Hope, the Orange Free State, and the Territory of British Bechuanaland, to which the said Governments are mutually entitled, and by which they are mutually bound under the said Convention with regard to each other: Provided always that

- (a) With regard to Articles III., IV., VII., X. and XI. of the said Convention, the mutual agreement or joint assent of the two Governments of the Colony of the Cape of Good Hope and of the Orange Free State, shall be required and shall be sufficient to carry out the several purposes of the said Articles from time to time.
- (b) The Government of Basutoland shall be deemed to have agreed and consented to any proposal, matter or thing approved or resolved on in terms of any of the said Articles by the mutual agreement or joint assent of the aforesaid two Governments.
- (c) No amendment of the provisions of the said Convention shall be made under Article XI. thereof, before consultation with the Government of Basutoland.
- (d) No agreement rule or regulation made by the mutual agreement or joint assent in terms of paragraph (a) of this proviso of the two Governments therein referred to, shall at any time be deemed or taken to be applicable to and binding upon Basutoland or the Government thereof, unless such agreement, rule, or regulation shall be also applicable to and binding upon the Orange Free State, and the Government thereof or unless the Government of Basutoland shall directly express to the said two Governments its assent to such agreement, rule, or regulation.

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4. The Protocol to the said Customs Union Convention, entered into between the Governor of the Colony of the Cape of Good Hope and the President of the Orange Free State on behalf of their respective Governments, and given under their hands and the Public Seals of the said Colony and State, on the 30th day of April, 1889, and the 24th day of April, 1889, respectively, shall be deemed for the purposes of this Protocol to form portion of the said Customs Union Convention.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, at Cape Town, this tenth day of January, One thousand Eight hundred and Ninety-one.

HENRY B. LOCH,
Governor.

Given under my hand and the Public Seal of the Orange Free State, at Bloemfontein, this twenty-eighth day of February, One thousand Eight hundred and Ninety-one.

F. W. REITZ,
State President.

On behalf of Her Majesty's Government of Basutoland, I hereby signify my assent to the above Protocol and to the terms and conditions therein contained, relative to the admission of Basutoland as a party to the Customs Union, subsisting between the Colony of the Cape of Good Hope and the Orange Free State.

Given under my hand and the Public Seal of Basutoland at Cape Town, this tenth day of January, One thousand Eight hundred and Ninety-one.

HENRY B. LOCH,
High Commissioner.

Schedule B.

ADMISSION TO THE CUSTOMS UNION OF THE BECHUANALAND PROTECTORATE, WHICH IS UNDER THE DIRECT ADMINISTRATIVE CONTROL OF THE HIGH COMMISSIONER.

PROTOCOL to the Customs Union Convention entered into between His Excellency the Governor of the Colony of the Cape of Good Hope and His Honour the President of the Orange Free State, on behalf of their respective Governments, and given under their hands and the Public Seals of the said Colony and State, on the 5th day of April, 1883, and the 28th day of March, 1889, respectively, and to the Further Protocols and Supplement thereto, being the Protocol signed and sealed as aforesaid by His Excellency the Governor of the said Colony and His Honour the President of the said State on the 4th day of June, 1890, and the 19th day of June, 1890, and assented to by His Excellency the Governor of British Bechuanaland on the 4th day of June, 1890, the Supplement signed by His Excellency the Governor of the said Colony and His Excellency the Governor of British Bechuanaland on the 22nd day of September, 1890, and by His Honour the President of the Orange Free State, on the 11th day of September, 1890, and the Protocol signed and sealed as aforesaid by His Excellency the Governor of the said Colony on the 10th day of January, 1891, and by His Honour the President of the said State on the 28th day of February, 1891, and assented to by His Excellency the Governor of Basutoland on the 10th day of January, 1891.

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His Excellency the Governor of the Colony of the Cape of Good Hope and His Honour the President of the Orange Free State mutually, on behalf of their respective Governments, having regard to the application made by, or on behalf of the Government of the Bechuanaland Protectorate for the inclusion of such portion of the British Protectorate as is under the direct administrative control of the High Commissioner, as a party to the subsisting Customs Union between the said Colony and State, and having regard to the Articles of the subsisting Customs Union Convention entered into in the year 1889 between His Excellency the Governor of the Colony of the Cape of Good Hope and His Honour the President of the Orange Free State, on behalf of their respective Governments, do hereby signify their joint assent in terms of Article X. of the said Convention, to the admission of such portion of the said Protectorate as is under the direct Administrative control of the High Commissioner as a party to the said Customs Union, subject to the terms and conditions following, that is to say:—

1. The admission of the said portion of the Bechuanaland Protectorate to the said Customs Union shall take effect and operate on and after the 1st July, 1892, provided that the Government of the said Protectorate shall, before that date, have passed the legislation requisite to give effect to the terms and conditions of this Protocol, relative to the admission of the said portion thereof as a party to the said Customs Union.

2. His Excellency the High Commissioner shall at the foot or end of this Protocol signify on behalf of Her Majesty's Government his assent to this Protocol and to the terms and conditions herein contained relative to the admission of the said portion of the Bechuanaland Protectorate as a party of the said Customs Union.

3. So soon as the said portion of the Bechuanaland Protectorate shall be admitted as a party to the said Customs Union, the Government thereof shall become, be, and continue bound by the provisions of the aforesaid Customs Union Convention, and of this Protocol thereto, and the terms of the said Convention shall, *mutatis mutandis*, be read and construed as though the said portion of the said Protectorate were a fifth party thereto, the Government thereof having all the rights and being bound by all the obligations with regard to the respective Governments of the Colony of the Cape of Good Hope, the Orange Free State, the territory of British Bechuanaland and the Territory of Basutoland, to which the said Governments are mutually entitled and by which they are mutually bound under the said Convention with regard to each other:—

Provided always that—

- (a) With regard to Articles III., IV., VII., X. and XI. of the said Convention the mutual agreement or joint assent of the two Governments of the Colony of the Cape of Good Hope, and of the Orange Free State, shall be required and shall be sufficient to carry out the several purposes of the said Articles from time to time.
- (b) The Government of the said portion of the said Protectorate shall be deemed to have agreed and consented to any proposal, matter or thing approved or resolved on in terms of any of the said Articles by the mutual agreement or joint assent of the aforesaid two Governments.
- (c) No amendment of the provisions of the said Convention shall be made under Article XI. thereof, before consultation with the Government of the said portion of the said Protectorate.
- (d) No agreement, rule, or regulation made by the mutual agreement or joint assent in terms of paragraph (a) of this proviso of the two Governments therein referred to, shall at any time be deemed or taken to be applicable to and binding upon the said portion of the said Protectorate or the Government thereof, unless such agreement, rule or regula-

tion shall be also applicable to and binding upon the Orange Free State and the Government thereof, or unless the Government of the said portion of the said Protectorate shall directly express to the said two Governments its assent to such agreement, rule or regulation.

4. The Protocol to the said Customs Union Convention, entered into between the Governor of the Colony of the Cape of Good Hope and the President of the Orange Free State, on behalf of their respective Governments, and given under their hands and the Public Seals of the said Colony and State, on the 30th day of April, 1889, and the 24th day of April, 1889, respectively shall be deemed for the purposes of this Protocol to form portion of the said Customs Union Convention.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, at Cape Town, this 30th day of December, 1891.

HENRY B. LOCH,
Governor.

Given under my hand and the Public Seal of the Orange Free State, at Bloemfontein, this 1st day of February, 1892.

F. W. REITZ,
State President.

On behalf of Her Majesty's Government of the Bechuanaland Protectorate, I hereby signify my assent to the above Protocol and to the terms and conditions therein contained, relative to the admission of the said portion of the said Protectorate as a party to the Customs Union subsisting between the Colony of the Cape of Good Hope and the Orange Free State.

Given under my hand and the Public Seal of the Bechuanaland Protectorate, at Cape Town, this 30th day of December, 1891.

HENRY B. LOCH,
High Commissioner.

Schedule C.

PART I.

Corn and grain as described in parts (a) (b) and (c) of item 15 of the Tariff.

PART II.

Blasting compounds.
Butter, butterine, margarine, ghee and other substitutes for butter.
Candles.
Cheese.
Chicory and substitutes for coffee or chicory.
Coffee.
Condensed, desiccated or preserved milk or cream.
Fish.
Fruits: dried.
Iron: galvanised corrugated.
Meats.
Oils: not essential or perfumed.
Onions.
Pickles.
Rice.
Sugar.
Tea.
Vegetables, pressed or otherwise preserved.
Wood unmanufactured, including planed, tongued or grooved, plain boards unshaped.

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SCHEDULE B.

CLASS I.

SPECIAL RATES.

	£	s.	d.
1 Ale, beer and cider; all kinds of strength exceeding 3 per cent. of proof spirit per Imperial gallon ... (and in addition 10 per cent. <i>ad valorem</i>) (Note.— <i>Vide</i> Article XVII. of Convention.)	0	1	6
2 Acetic acid per Imperial gallon ...	0	3	0
3 Animals, viz.:— (a) Cattle for slaughter each ... (b) Sheep for slaughter each ... (Note.— <i>Vide</i> Article XIII. of Convention.)	1	10	0
4 Beads, known as “Kaffir beads” per lb. ...	0	0	6
5 Blasting compounds, including all kinds of explosives suitable and intended for blasting, and not suitable for use in firearms; and collodion cotton not intended for manufacturing purposes per lb. ... (Note.— <i>Vide</i> Article XVII. of Convention.)	0	0	1½
6 Butter, butterine, margarine, ghee and other substitutes for butter per lb....	0	0	2
7 Chicory and substitutes for coffee or chicory per lb....	0	0	2
8 Coffee:— (a) Raw per lb. ... (b) Roasted, ground or mixed per lb. ...	0	0	0¾
9 Cocoa and chocolate unsweetened per lb. ...	0	0	1
10 Cocoa and milk, chocolate and milk, and coffee and milk per lb. ...	0	0	1
11 Condensed, desiccated or preserved milk or cream per lb. ...	0	0	0½
12 Coals per ton of 2,000 lbs. ...	0	3	0
13 Coke and patent fuel per ton of 2,000 lbs. ...	0	2	0
14 Confectionery, including sweetened cocoa or chocolate, honey, jams jellies, preserves, sweetmeats, candied or preserved ginger or chow-chow; and all other kinds compounded, made or preserved with sugar, but not including purely medicinal preparations properly classed as apothecaryware per lb. ...	0	0	2
15 Corn and grain, viz.:—Parley, maize, millet, oats, rye, wheat, beans, and peas:— (a) In the grain, or (b) crushed, flaked, ground, hulled, malted, pearled, split or otherwise prepared, except oats not in the grain and bran per 100 lbs. ... (c) Flour, wheaten, or wheaten meal, including pollard per 100 lbs. ... (Note.— <i>Vide</i> Free List and Article XV. of Convention.)	0	2	0
16 Dates per lb. ...	0	0	0½
17 Fish:—Cured, dried, pickled, preserved, pressed or smoked, not being of South African taking per lb....	0	0	1
18 Fodder, viz.:—Chaff, hay, lucerne, oathay and other fodder, not otherwise described but not including bran per 100 lbs....	0	1	0
19 Fruits:—Preserved, of all kinds, bottled, tinned or otherwise preserved, including pulp and candied peel per lb. ...	0	0	2
20 Fruits:—Dried, of all kinds, including almonds and nuts per lb. ...	0	0	2
21 Gunpowder and other explosives suitable for use in firearms per lb. ... (and in addition 10 per cent. <i>ad valorem</i>)	0	0	6

	£	s.	d.
22 Guns and gun barrels, firearms:—			
(a) Single, per barrel	1	0	0
(b) Double and other, per barrel	0	15	0
(and in either case in addition 10 per cent. <i>ad valorem</i>)			
23 Meats, including lard, fats, soups and other similar substances used as food, but not including extracts and essences or tallow per lb.	0	0	1
(<i>Vide Article XIII. of Convention</i>)			
24 Matches:—(a) wooden: In boxes or packages of not more than 100 matches per gross of boxes or packages	0	2	0
In boxes containing more than 100 but not more than 200 matches per gross of boxes or packages	0	4	0
And for every 100 additional matches, in boxes or packages, per gross of 100 matches	0	2	0
(b) Fusees, vestas or wax matches, or other patent lights used as such; in boxes or packages containing not more than 50 per gross of boxes or packages	0	2	0
In boxes or packages of more than 50 but not more than 100 per gross of boxes or packages	0	4	0
And for every 50 additional in boxes or packages per gross of 50 matches	0	2	0
25 Onions, not preserved per lb.	0	6	0½
26 Pickles, sauces, chutneys, chillies and other condiments per lb.	0	0	2
27 Pistols and revolvers each	0	5	0
(<i>and in addition ten per cent. ad valorem</i>)			
28 Soap, not including toilet soaps and soap powders and extracts per lb.	0	0	0½
(<i>Note.—Vide Article XVIII. of Convention.</i>)			
29 Spices and turmeric per lb.	0	0	2
30 Spirits (including Spirits distilled or manufactured in the Union)			
(a) Perfumed per Imperial gallon	1	0	0
(b) Liqueurs and cordials exceeding 3 per cent. of proof spirit per Imperial gallon	0	15	0
(c) Other sorts, exceeding 3 per cent. but not exceeding the strength of proof by Sykes' Hydrometer, and so on in proportion for any greater strength per Imperial gallon	0	15	0
(<i>and in addition 10 per cent. ad valorem on all the above classes of spirits</i>)			
(<i>Note.—Vide Article XVII. of Convention.</i>)			
31 Sugar:—			
(a) Not refined, golden syrup, molasses, saccharum and treacle per 100 lbs.	0	3	6
(b) Refined per 100 lbs.	0	5	0
(<i>Note.—Vide Article V. of Convention.</i>)			
32 Tea per lb.... ..	0	0	4
33 Tobacco:—			
(a) Cigars and cigarillos per lb.	0	6	0
(<i>and in addition 10 per cent. ad valorem</i>)			
(b) Goorak or Goorakco and Hookah mixture, and all imitations or substitutes per lb.	0	6	0
(c) Snuff per lb.	0	4	0
(d) Cigarettes per lb.	0	4	0
(<i>and in addition 10 per cent. ad valorem</i>)			
(e) Manufactured and cut per lb.	0	3	6
(f) Manufactured but uncut per lb.	0	3	0
(g) Not manufactured but stemmed per lb.	0	2	6
(h) Not manufactured and unstemmed per lb.	0	2	0

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	£	s.	d.
34 Vinegar:—			
(a) Of standard strength, fit for immediate use as such (<i>i.e.</i> , requiring no more than 40 grains of bi-carbonate of potash to neutralize one ounce Troy)			
(1) In bottles or other vessels of the capacity of not more than one Imperial quart per Imperial gallon	0	1	0
(2) In larger vessels or in bulk per Imperial gallon	0	0	6
(b) Concentrated extract or essence, of greater strength than above per Imperial gallon	0	3	0
35 Wine:—			
(a) Still wines not exceeding 20 per cent. of proof spirit per Imperial gallon	0	4	0
(b) Still wines exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit per Imperial gallon	0	8	0
(c) Sparkling wines per Imperial gallon (and in addition 10 per cent. <i>ad valorem</i> on all the above classes of wine)	0	12	6
Note.—Wines containing less than 3 per cent. of proof spirit are not included in the above, and wines containing more than 50 per cent. of proof spirit are classed as spirits.			
(Note.— <i>Vide</i> Articles III. (a) and XX. of Convention.)			

CLASS II.

MIXED *ad valorem* RATES.

	£	s.	d.
36 Bicycles, tricycles, and velocipedes and parts thereof per £100... ..	12	10	0
37 Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool, commonly used as cotton or woollen blankets or rugs, the single article in pairs or in the piece; and coats, jackets, or other apparel made of blanketing or baize per £100	25	0	0
38 Bon-bons, surprise packets and crackers, and other similar fancy confectionery per £100	25	0	0
39 Cards, playing per £100	25	0	0
40 Carriages, carts, coaches, wagons and all other wheeled vehicles, not elsewhere described, intended for the conveyance of persons or goods, including finished parts thereof, not being metal parts not usually made in the Union, but required in the manufacture of wheeled vehicles therein; but not including bath chairs, perambulators, toy carts, store trucks or barrows per £100... ..	12	10	0
41 Extracts and essences of all kinds for flavouring or perfumery, including saccharine per £100... ..	25	0	0
42 Fireworks of all descriptions per £100	25	0	0
43 Medicines, patent or proprietary per £100	25	0	0
44 Motor vehicles, including their parts, and motor cycles but not including traction engines and power lorries per £100	5	0	0
45 Oils, essential or perfumed per £100	25	0	0
46 Perfumery, cosmetics, dyes, powders and soap, and other preparations for toilet use, and soap powders and extracts per £100	25	0	0
47 Shawls per £100	25	0	0

(Note.—*Vide* Articles III. (a) and XX. of Convention.)

CLASS III.

Ad valorem 2½ PER CENT.

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- 48 Acids: nitric and sulphuric.
 49 Asbestos packing and boiler composition.
 50 Assay apparatus.
 51 Bands and belting of all kinds for driving machinery, boiler tubes, bolting cloth and mill silk.
 52 Battery cloth and baize, gauze, matting, sieving and screening, for use in connection with machinery and apparatus.
 53 Bolts, nuts and rivets.
 54 Bottles and jars of common glass or earthenware, and bottles ordinarily used for aerated waters: empty.
 55 Chain for hauling.
 56 Chimneys: metal (smokestacks).
 57 Corks and bungs, and corkwood unmanufactured.
 58 Cranes, elevators and shears.
 59 Crucibles, cupels, cupelling furnaces, ingot moulds, retorts, and furnaces for roasting minerals.
 60 Cyanide of potassium.
 61 Fire escapes and fire hose and hose reels.
 62 Hose: steam, suction and armoured (not including garden), for use in connection with machinery and apparatus.
 63 Machinery, not elsewhere described, to be driven by cattle, electric, gas, heat, hydraulic, pneumatic, steam, water or wind power, including spare parts; and apparatus and appliances used in connection with the generating and storing of electric power or gas; electric cable or wire and the posts for carrying the same; lamp posts and their fittings.
 64 Mining buckets, skips, trucks and tubs, wheeled or otherwise, for hauling on rails or wires.
 65 Packing and lagging for engines, machinery and piping.
 66 Pipes, piping and tubes of all kinds for gas, steam, drainage, sewerage, irrigation, water supply or pumping, not including downpiping and guttering or cocks and taps.
 67 Railway construction or equipment requisites, as follows:—Rails, sleepers, fastenings for rails or sleepers, girders, iron bridge-work, culvert tops, locomotives, tenders, ballast trucks, goods wagons, carriages, trolleys, engine water-tanks, turn-tables, permanent or fixed signals and weigh-bridges.
 68 Rubber for use in connection with machinery and apparatus.
 69 Tanks and vats suitable and intended for mining purposes.
 70 Telegraphs and telephones:—Materials and instruments for use in construction and working of telegraph and telephone lines.
 71 Traction engines and power lorries.
 72 Tramway construction and equipment requisites, as follows:—Rails, sleepers, fastenings for rails or sleepers, iron gates, girders, iron bridge-work, culvert tops, cars, trolleys, water-tanks and turn-tables.
 73 Wire and wire netting for fencing; droppers, gates, hurdles, posts, standards, strainers, staples, stiles, winders, and other materials or fastenings of metal ordinarily used for agriculture or railway fencing; and baling wire.
 74 Wire rope.

(Note.—*Vide* Articles III. (b) and XX. of Convention.)

CLASS V.

GENERAL *ad valorem* RATE, TEN PER CENT.

- 144 All goods, wares, or merchandise not elsewhere charged with duty, and not enumerated in the Free List, and not prohibited to be imported into the Union, shall be charged with a duty of 10 per cent. *ad valorem*.

(Note.—*Vide* Articles III. (a) and XX. of Convention.)

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SCHEDULE C

CLASS IV.

FREE.

- 75 Agricultural implements and machinery, and all apparatus and plant usually and principally employed in farming operations; binding twine and harvest yarn.
- 76 All raw produce of South Africa, and animals bred in South Africa imported into the Union overland.
- 77 All animals bred and articles grown, produced or manufactured within the Union; except:
 - (a) Flour, wheaten, or wheaten meal, including pollard, manufactured from other than South African wheat.
 - (b) Spirits, beer, or blasting compounds, distilled or manufactured in the Union, should a duty be imposed under Article XVII. of the Convention.
- 78 Ambulance materials, imported by recognised associations, corps or hospitals lawfully established for instruction or drill in first aid to the wounded.
- 79 Anchors and chain cables for the use of ships, tugs or lighters.
- 80 Animals living, except cattle and sheep for slaughter. (*V. de* Article XIII. of Convention.)
- 81 Arms, ammunition, appointments and uniforms for the Regular Military, Naval or Volunteer Imperial or Colonial Forces of His Majesty.
- 82 Atlases, charts, globes and maps.
- 83 Bags for flour, grain, manure, produce, sugar, wool, coal and minerals, not including paper bags; and bagging and sacking in the piece.
- 84 Band instruments and stands, the *bonâ fide* property of any Government belonging to the Union or of a Regular Military or Volunteer Corps, and not the property of individuals.
- 85 Bones, feathers, ivory, hair, hoofs, horns, shells, skins, teeth, wool and other parts of animals, birds, fishes, or reptiles, not being manufactured, polished, or further prepared than dried and cleaned, but in their raw and unmanufactured state.
- 86 Book-binders' requisites, consisting of boards, cloth, leather, marble paper, skin, thread, tape, vellum, webbing and wire.
- 87 Books and music, printed, including newspapers and periodicals, not being foreign unauthorised prints of any British or South African copyright work.
- 88 Borax, bromine, litharge, manganese di-oxide and quicksilver.
- 89 Bottles and jars of common glass or earthenware imported full of any article liable to a rated duty.
- 90 Boxes, empty, cardboard and wooden, put together or in pieces or shooks for packing; and staves.
- 91 Brass and copper, and composition metal: in bars, ingots, plates and sheets: plain, including perforated, but otherwise unmanufactured.
- 92 Bullion, coin, specie, bank notes and other paper currency.
- 93 Carriages, carts, wagons and other wheeled vehicles the manufacture of South Africa, imported into the Union overland.
- 94 Church decorations, altars, bells, fonts, lecterns, pulpits, organs, plate or vestments, and illuminated windows, imported by or for presentation to any religious body.
- 95 Coir, candlewick, cotton, flax, fibre, flock, hemp, and jute: raw, waste or unmanufactured.
- 96 Collodion cotton, glycerine and nitrates for manufacturing purposes.

- 97 Cups, medals, and other trophies imported for presentation, or presented as prizes at examinations, exhibitions, shows, or other public competitions, for excellence in art, bravery, good conduct, humanity, industry, invention, manufactures, learning, science, skill, or sport, or for honourable or meritorious public services; provided that such articles shall on importation or delivery free from the Customs bear engraved or otherwise indelibly marked on them the name of the presenter or presentee and the occasion or purpose for which presented.
- 98 Consular uniforms and appointments and printed official consular stationery.
- 99 Cork dust, paper shavings, sawdust, husks and other waste substances intended and suitable for use only as packing material.
- 100 Diagrams, drawings, designs, models and plans.
- 101 Diamonds and other gems or precious stones in their rough state.
- 102 Dye nuts, gambia, myrobalans, sumach, valonia and other dye stuffs: for leather.
- 103 Engravings, lithographs, and photographs, and enlargements or reproductions of the same.
- 104 Fire clay, terra alba and fire bricks.
- 105 Fish, fresh and fish ova; also dried, cured or salted fish and raw fish oil of South African taking.
- 106 Fruit: fresh or green, including cocoa-nuts.
- 107 Fruit and other produce: driers or evaporators of.
- 108 Glue.
- 109 Guano and other substances, animal, mineral or vegetable, artificial or natural, suitable for use as fertilizers, or manures.
- 110 Hair cloth and springs for furniture.
- 111 Ice.
- 112 Iron and steel: angle, bar, channel, hoop, rod, plate, sheet or T; plain, including perforated and galvanised; rough and unmanufactured, not including corrugated sheets.
- 113 Launches, tugs and lighters; provided that when condemned or landed to be broken up, duty shall be paid at the Customs on the hull and all fittings according to the tariff that may be then in force.
- 114 Lead: bar, pipe, sheet, foil and acetate of.
- 115 Leather: patent, enamelled, roan and morocco, and pigskin, in the piece and valve hide.
- 116 Lifeboats, belts and buoys, and other life-saving apparatus imported by any recognised society.
- 117 Metal of all sorts in bars, blocks, ingots, and pigs for founding, not elsewhere described.
- 118 Paintings, pictures, picture books and etchings.
- 119 Paper ordinarily used for printing books, pamphlets, newspapers and posters, or for lithographic purposes.
- 120 Potash and soda, carbonate, bi-carbonate, caustic crystals and silicate.
- 121 Printing and lithographic inks.
- 122 Printing, lithographing, paper-cutting, folding, numbering and perforating machines, or presses, blocks, formes, fontes, plate-, rollers, stones and type, and other apparatus suitable only for use in the book-binding or printing industries.
- 123 Public stores, imported or taken out of bond by, and *bonâ fide* for the sole and exclusive use of, the Government of His Britannic Majesty, and of any Government belonging to the Union, provided that a certificate be delivered to the Customs Authorities given under the hand of an Officer approved of by the Principal Officer of Customs, setting forth that any duty levied on such public stores would be borne directly by the

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- Government; and provided further that no portions of such stores used or unused shall be sold or otherwise disposed of so as to come into the possession of or into consumption by any persons not legally entitled to import the same free of duty, without the consent of the Principal Officer of Customs and the payment of the duties to him by the Officer so selling or disposing of such public stores.
- 124 Rattans, cane and bamboo: unmanufactured.
- 125 Resin and carbonate of ammonia.
- 126 Saddle-trees.
- 127 School furniture and requisites: being all articles certified by the Superintendent-General of Education, or any official appointed for that purpose in any Colony or Territory in the Union, to be for use in any school.
- 128 Sculpture, including casts or models of sculpture.
- 129 Seeds, bulbs, plants and tubers for planting or sowing only, under such regulations as regards edible kinds as the Customs authorities may impose to safeguard the revenue against diversion into ordinary consumption.
- 130 Sheep dip, sheep dipping powders, materials suitable only for dip, and dipping tanks.
- 131 Specimens, illustrative of natural history, and exhibits for public museums.
- 132 Sprayers and sprinklers and other apparatus for destroying pests or diseases in stock, plants or trees.
- 133 Sulphur and other substances for destroying pests or diseases in stock, plants or trees; and disinfectants.
- 134 Thread: boot and shoemakers', saddlers' and sailmakers' and seaming twine.
- 135 Tin and zinc: bar, plate or sheet; plain or perforated, but otherwise unmanufactured.
- 136 Tobacco, the produce of South Africa, imported into the Union overland.
- 137 Vaccine virus, toxin and serum.
- 138 Vegetables: fresh or green, but not including potatoes or onions.
- 139 Water-boring and pumping apparatus.
- 140 Wax, viz.:—Paraffin and stearine and stearine grease ordinarily used in the manufacture of candles.
- 141 Wine presses and wine pumps.
- 142 Wood meal.
- 143 Wool, straw, hay and forage presses.

SCHEDULE D.

- Butter, butterine, margarine, ghee and other substitutes for butter
- Chicory and substitutes for coffee or chicory
- Coffee:
- (a) Raw
- (b) Roasted, ground or mixed
- Corn and grain, viz.:—Barley, maize, millet, oats, rye, wheat, beans and peas.
- (a) In the grain, or (b) crushed, flaked, ground, hulled, malted, pearled, split or otherwise prepared, except oats not in the grain and bran
- (c) Flour, wheaten, or wheaten meal, including pollard
- Fish:—Cured, dried, pickled, preserved, pressed or smoked, not being of South African taking
- Fodder, viz.:—Chaff, hay, lucerne, oat-hay and other fodder, not otherwise described, but not including bran
-

Guns and gun-barrels, firearms:	
(a) Single
(b) Double and other
(and in either case in addition 10 per cent. <i>ad valorem</i>)	
Meats, including lard, fats, soups, and other similar substances used as food, but not including extracts and essences or tallow, with the exception of fresh, chilled and frozen meat
Spirits:	
(a) Perfumed
(b) Liqueurs and cordials exceeding 3 per cent. of proof spirit
(c) Other sorts, exceeding 3 per cent. but not exceeding the strength of proof by Sykes' Hydrometer and so on in proportion for any greater strength; with the exception of methylated spirits
(And in addition 10 per cent. <i>ad valorem</i> on all the above classes of spirits.)	
Sugar, refined
Tea
Tobacco:	
Manufactured and cut
Not manufactured but stemmed
Wine, still, exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit
(And in addition 10 per cent. <i>ad valorem</i> .)	
Bicycles, tricycles and velocipedes and parts thereof
Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool, commonly used as cotton or woollen blankets or rugs, the single article, in pairs or in the piece; and coats, jackets, or other apparel made of blanketing or baize
Bon-bons, surprise packets and crackers, and other similar fancy confectionery
Carriages, carts, coaches, wagons and all other wheeled vehicles, not elsewhere described, intended for the conveyance of persons or goods, including finished parts thereof, not being metal parts not usually made in South Africa, but required in the manufacture of wheeled vehicles therein; but not including bath chairs, perambulators, toy carts, store trucks or barrows
Extracts and essences of all kinds for flavouring or perfumery, including saccharine
Fireworks of all descriptions
Medicines, patent or proprietary
Oils, essential or perfumed
Perfumery, cosmetics, dyes, powders and soap, and other preparations for toilet use, and soap powders and extracts
Shawls

The articles set forth in this Schedule shall not include goods (a) being the growth, produce or manufacture of the Cape Colony, Natal, the Orange River Colony, Basutoland, the Bechuanaland Protectorate, or Southern Rhodesia, with the exception of flour, wheaten, and wheaten meal, including pollard, manufactured from other than South African wheat and spirits; (b) being the growth, produce or manufacture of the Portuguese Province of Mozambique, with the exception of spirits.

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No. 42 of 1903. |

[Assented to 6 July 1903.]

ORDINANCE

To amend Law No. 14 of 1897.

WHEREAS it is desirable to amend in certain respects Law No. 14 of 1897 known as the Base Metal Law;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Pegging of claims under Law No. 14 of 1897 prohibited except with consent of holder of a license or mining title issued under Law No. 15 of 1898.

1. Anything to the contrary notwithstanding in Law No. 14 of 1897 it shall not be lawful for any person to peg out a claim under the said law on any ground held under a license or other mining title issued under Law No. 15 of 1898 or any amendment thereof or under Law No. 22 of 1898 or any amendment thereof; provided always that nothing in this section contained shall apply to private proclaimed land.

Holder of license or mining title under Law No. 15 of 1898 or Law No 22 of 1898 empowered to prospect and mine for base metals.

2. The holder of a license or mining title on proclaimed or unproclaimed Crown Lands issued under Law No. 15 of 1898 or any amendment thereof or Law No. 22 of 1898 or any amendment thereof shall be entitled to prospect and mine for any base metals or other mineral substances within the ground held under such license or title as aforesaid without taking out any other license.

Lieutenant-Governor may lease right of working base metals to person holding certificate as discoverer.

3. It shall be lawful for the Commissioner of Mines to issue to any person who claims to have discovered base metals upon Crown Lands whether proclaimed or unproclaimed and who in the opinion of the Commissioner is entitled thereto a certificate that he is the recognised discoverer of such base metals and it shall be lawful for the Lieutenant-Governor to lease to the holder of any such certificate the sole right of working such base metals subject to the payment of such royalty and under such other conditions as may be agreed upon and subject to such regulations as may be

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framed from time to time by the Lieutenant-Governor; provided that the area of Crown Lands included in any such lease shall not be greater than in the opinion of the Lieutenant-Governor is necessary in order to work such discovery efficiently.

4. This Ordinance shall be cited for all Title. purposes as the Base Metal Law Amendment Ordinance 1903.

No. 43 of 1903.]

[Assented to 6 July 1903.

ORDINANCE

**ORD.
No. 43
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1903.**

To provide for the Levying of Rates by Local Authorities.

WHEREAS it is desirable to have as far as possible uniformity throughout this Colony in the mode of making valuations of rateable property and imposing rates in Municipalities and Districts under the jurisdiction of Urban District Boards;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. From and after the taking effect of this Ordinance sections *thirty-eight to fifty-six* inclusive of the Pretoria Municipal Proclamation 1902 the Johannesburg Rating Proclamation 1902 and any other law repugnant to or inconsistent with the provisions of this Ordinance shall be and are hereby repealed but no such repeal shall affect anything done or any right acquired under the said laws. Repeal of Laws.

2. The provisions of this Ordinance shall apply to all Municipalities already established and to all Municipalities hereafter established and to all districts under the jurisdiction of Urban District Boards; provided always that the valuation rolls already made and in use for the Municipalities of Pretoria and Johannesburg shall continue to be used until new rolls shall be made under the provisions of this Ordinance. Application of Ordinance.

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Definition
of terms.

3. In this Ordinance the following expressions in inverted commas shall have the meaning placed opposite to them unless the context clearly requires a different meaning;

“Local Authority” shall mean the Council of any Municipality or Urban District Board as the case may be;

“Chairman” shall mean the Mayor of the Council of a Municipality or the Chairman of an Urban District Board as the case may be or the person acting as such;

“Town Clerk” shall mean the person acting in the capacity of Town Clerk in any Municipality or the person performing similar duties in the District under the jurisdiction of an Urban District Board as the case may be;

“District” shall mean the area within the limits of a Municipality or under the jurisdiction of an Urban District Board as the case may be;

“Land” shall include any buildings thereon;

“Rateable property” shall mean and include;

(A).—(In every District not included in B.)

All land within the District save and except;

(1) land the property and in the occupation of the Crown;

(2) land used exclusively for public worship or for schools registered in the Office of the Department of Public Education or for both public worship and education or for charitable institutions supported entirely by voluntary contributions;

(3) land held under a license or any other mining title to dig or prospect for precious metals and precious stones or base metals and any land held or occupied exclusively for the exercise of the rights under such license or title; provided that no land or buildings used for residential purposes or for purposes not incidental to

mining operations whether by persons engaged in mining operations or otherwise shall be deemed to come within this exception.

(B)—(In every district within the Witwatersrand Magisterial District and in every district to which the Lieutenant-Governor may by Proclamation in the *Gazette* apply the definition of rateable property hereunder.)

Every interest in land as hereinafter defined;

with the following exceptions;

(1) any interest in land held by the Crown;

(2) any interest in land used exclusively for public worship or for schools registered in the Office of the Department of Public Education or for both public worship and education or for charitable institutions supported entirely by voluntary contributions in so far as such interest is held for such purposes as aforesaid;

(3) any license or right to dig for or prospect for precious stones, or metals on any portion of land assigned for that purpose; and any portion of land held or occupied exclusively for the exercise of such rights; provided that no land or buildings used for residential purposes or for purposes not incidental to mining operations whether by persons engaged in mining operations or otherwise shall be deemed to come within the exception.

“Interest in land” for the purposes of the definition of “rateable property” under (B) shall mean and include;

(1) land or the usufruct thereof;

(2) the right in and over land under a stand license;

(3) any lease of land for a period of not less than ten years or for the natural life of any person mentioned therein or which is renewable from time to time at the

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will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than ten years;

(4) any servitude over land;

(5) any user of land held under a claim license or other mining title for residential purposes or for purposes not incidental to mining operations.

“Owner” shall mean and include;

(1) the person or persons in whose name shall be registered the legal title to any rateable property as above defined;

(2) in cases where the person in whom the legal estate is vested is insolvent or dead the person in whom the administration of such property is vested as trustee executor administrator or otherwise;

(3) in the case of any land held under a stand or claim license or any other mining title issued under any law relating to mining for precious stones or for metals the registered holder of such license or title;

(4) in any case where property situated in a district in which the definition of rateable property under (A) is applicable is held under lease from the Crown or under any lease for not less than fifty years or for a period renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than fifty years the lessee thereof.

“Occupier” shall mean and include any person in actual occupation of rateable property without regard to the title under which he occupies.

It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to apply the definition of rateable property under the heading

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(B) in this section to any district on a resolution to that effect by two-thirds of the members present at a meeting of the Local Authority called for that purpose.

4. The local authority shall from time to time but not less than once in every three years cause a valuation of all rateable property within the District to be made by one or more competent persons who shall be appointed by resolution of the said authority before he or they shall enter upon his or their duty.

General valuation.

5. Every valuer shall before entering upon the valuation entrusted to him make before some Justice of the Peace a solemn declaration in the terms following;—

Declaration of valuer.

“I.....do solemnly and sincerely declare that I will to the best of my skill and knowledge and without favour and prejudice truly and impartially appraise and value all such rateable property as I shall be required to value for the purpose of assessment and that I will conscientiously value the same at and for the full and fair value thereof. And I make this solemn declaration conscientiously intending to fulfil the same.

Declared at.....this.....day of

.....
Before me.....”

And every such declaration shall be lodged with and preserved by the Local Authority.

6. The valuer or valuers shall prepare the said valuation (herein referred to as the Valuation Roll) in writing in such manner as to show to the best of his or their knowledge and opinion;

Provisional Valuation Roll.

- (1) the name and address of the owner;
- (2) the name of the occupier (or if the properties are unoccupied that fact shall be stated);
- (3) description and situation of the property valued;
- (4) nature of the interest of the owner;
- (5) rateable value of the property (showing the value of the land and buildings thereon separately).

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Basis of
valuation.

7. The amount or sum at which the valuer or valuers shall value for the purposes of the Valuation Roll any rateable property shall be the full and fair price or sum which the same would in his or their judgment be likely to realise if brought at the time of valuation to voluntary sale and offered for sale upon the usual terms and conditions applicable to property of such kind.

Valuer to
have power
of entry and
inspection.

8. (1) Every valuer provided with written authority signed by the Chairman or Town Clerk shall for the purpose of making any valuation as aforesaid have power to enter at all reasonable hours in the daytime into and upon any land or buildings within the District and shall also have power to inspect and make extracts from all registers or other records or any deeds or instruments belonging to or in the custody or possession of any Government official or any person in which are contained particulars of any rateable property whether such person is or is not interested in such rateable property. Any person who shall wilfully obstruct the valuer from exercising the powers conferred on him under this section shall be liable to the penalties in the next succeeding subsection provided.

(2) Every such valuer shall be entitled to call upon the owner or occupier of rateable property for such written particulars in regard to such rateable property as may be necessary for enabling such valuer to make a correct valuation thereof; and any owner or occupier who shall neglect within fourteen days after being called upon as aforesaid to supply such written particulars when called upon to do so shall be liable to a penalty not exceeding twenty pounds in respect of each offence and any person who shall furnish to any valuer a false statement of value or any other particulars as aforesaid shall be liable on conviction to a penalty not exceeding fifty pounds in respect of each offence.

Inspection of
Provisional
Roll.

9. When the Valuation Roll has been completed it shall be laid before the Local Authority and shall lie at its office for public inspection and any person may at all

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reasonable times inspect the same and take copies or extracts therefrom. The Local Authority shall by notice published in one or more local newspapers call upon all persons interested to lodge in writing with the Town Clerk within a specified time not less than fourteen days from the first publication of such notice in the form set forth in the Schedule hereto notice of any objections that they may have in respect of the valuation of any rateable property valued as aforesaid or in respect of the omission therefrom of property alleged to be rateable property and whether held by the person objecting or by others or in respect of any other error omission or misdescription. No person shall be entitled to urge any objections before the Valuation Court hereinafter referred to unless he shall have first lodged such notice of objection as aforesaid.

10. (1) After the expiration of the time specified in such notice the Local Authority shall appoint a Valuation Court consisting of not less than three persons who may or may not be members of the Local Authority. Such persons shall before the first sitting of the Court appoint a President from among themselves. The Town Clerk or some other person appointed by the Local Authority shall act as clerk to the said Court.

Valuation
Court—
duties and
proceedings.

(2) Such Court shall thereafter at meetings duly called by the President or Clerk proceed to consider the Valuation Roll and the objections made as aforesaid and shall be entitled to make such alterations or amendments in the Valuation Roll either by way of reduction or increase addition or omission as to it may seem expedient; provided that no alteration or amendment by way of increase or addition shall be made unless and until the person appearing to be directly affected thereby shall have had at least three days' previous notice from the Clerk of the date of sitting of the Court at which any proposal for such increase or addition will be considered and such person so affected may either forward any objections to such increase or addition in writing to the President or Clerk before such date or

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present the same for consideration at such sitting and the Valuation Court shall duly hear and consider all such objections.

(3) At every sitting of such Court three members personally present shall constitute a quorum and the President thereof if present shall preside and if absent the members of the Court present shall elect a person from among themselves to act as President during such absence as aforesaid. All decisions of such Court shall be arrived at by the vote of a majority of the members personally present and in case of an equality of votes the President or the member acting as such shall also have a casting vote.

(4) No person shall sit on the hearing of any matter in which he shall be directly interested or concerned as being primarily liable to pay the rates in question or any part thereof.

(5) In case for any reason there shall be vacancies in the said Court or incapacity to act so that a quorum cannot be formed the Local Authority may at once and without any notice appoint other persons temporarily or otherwise to fill up such vacancies or the places of the members incapable of sitting.

(6) The Town Clerk by publication in one or more newspapers circulating in the district shall give not less than seven days' previous notice of the date fixed for the first sitting of such Court.

(7) At every sitting of such Court the Local Authority and any person who has lodged any objection to any valuation and any person the valuation of whose property is objected to or proposed to be increased or whose property it is proposed to add to the roll may appear either in person or by Counsel Solicitor or admitted and licensed Law Agent.

(8) At every sitting of such Court it shall be competent for the Court to call and examine any witnesses on oath and call for the production of all such papers or documents as it may deem necessary and every valuer by whom any valuations under consideration shall have been made shall attend

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such Court and answer on oath all questions which may be put to him by or through the Court in regard thereto.

(9) The said Court shall keep a record of its proceedings and a note of the assessment objection and finding in regard to each objection and such Court shall cause any deposition taken before it to be taken down in writing and signed by the deponent and shall authenticate it by the signature of the chairman as having been taken before such Court and every such deposition so taken down and authenticated shall be deemed and taken to be good evidence in a prosecution for perjury.

11. When the Valuation Court has completed its examination of the Valuation Roll and has made such alterations and amendments therein as it may deem necessary the President of the Court shall sign and certify the same. He shall further cause an advertisement to be inserted in one or more local newspapers not less than three times within a period of one week informing all persons interested of the completion thereof and that the same will become fixed and binding upon all parties concerned who shall not before a date fixed in such notice not being less than one month from the date of the first publication of the aforesaid advertisement appeal from the decision of the Valuation Court in manner provided in the next succeeding section.

Valuation
Roll.

12. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him to appeal within one month against such valuation from the decision of the Court in the last preceding section mentioned to the Court of the Resident Magistrate of the District and such last-mentioned Court shall enquire into such valuation and its decision shall be final and conclusive; provided however that if any question of law shall arise as to the principle upon which any valuation has been or should be made it shall be lawful for such Resident Magistrate instead of himself deciding such question at the request of the Local Authority or party objecting to reserve such question of

Right of
appeal from
decision of
Valuation
Court.

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Special
Valuation.

law for decision by the Supreme Court and such question shall be stated in the form of a special case and may be argued before and determined by the Supreme Court and such Court may make such order as to costs as to the Court shall seem fit.

13. Notwithstanding anything to the contrary in this Ordinance provided the local authority may at any time direct that a valuation be made of any rateable property omitted from the Valuation Roll or of any new or sub-divided rateable property or of any rateable property which from any cause particular to such property arising since the last valuation thereof has materially increased or decreased in value and upon the making of any such interim valuation the same forms shall be observed and the same proceedings may take place as, nearly as can be *mutatis mutandis* as are hereinbefore set forth with regard to general valuations and appeals in respect thereof excepting that in the discretion of the Local Authority the prescribed notices may be served in writing upon the person interested instead of being published as aforesaid.

Valuation
Roll not to be
challenged
or set aside.

14. No valuation contained in any Valuation Roll framed under this Ordinance and no rate based thereon shall be rendered void or be affected by reason of any mistake or variance in the description of any rateable property or in the name of any owner thereof; and no Valuation Roll made up and authenticated in terms of this Ordinance shall be capable of being challenged or set aside by reason of any informality.

Power of
Local
Authority to
impose rates.

15. It shall be lawful and competent for the Local Authority to impose a rate or rates in or for each and every year of such amount or amounts in the pound as it shall think fit but not except with the sanction of the Lieutenant-Governor exceeding three-pence in the pound on the value arrived at as aforesaid and as appears in the Valuation Roll of all rateable property within the District.

Special
rates.

16. Notwithstanding anything herein contained in case any abnormal or extraordinary expenditure shall be incurred by the Local Authority in respect of some particular area

of rateable property over and above expenditure common to the whole District the Local Authority may by resolution determine that such abnormal or extraordinary expenditure (and whether the outlay in respect thereof has or has not actually been made) shall be in whole or part a special charge upon the rateable property or some portion thereof within such particular area to the exclusion of the rest of the municipal area and fix the amount of the special rates thereon (not however in any case except with the sanction of the Lieutenant-Governor to exceed threepence in the pound) and the persons and times by whom and when the same is payable.

17. Every rate imposed by the Local Authority shall become due and payable upon a day to be fixed by it of which day and of the amount of which rate the Local Authority shall give at least thirty days' notice by advertisement in a newspaper circulating in the District and in such other mode as it may by resolution direct.

Notice of rates.

18. Whenever the Local Authority shall have given such notice as aforesaid of the day upon which such rate will become due and payable it shall be the duty of all persons liable for such rate to pay the amount thereof at the offices of the Local Authority failing which defaulters will be liable to legal proceedings for the recovery of the amounts due by them respectively.

Payment of rates.

19. If after the time fixed for the payment of any such rate as aforesaid any person fail to pay any rate due by him it shall be competent for the Local Authority to cause a printed or written demand to be made upon such person to pay the amount stated in such demand within fourteen days after service thereof. And in case any person who shall have had such demand delivered to him personally or left at his ordinary place of residence or place of business or office shall make default it shall be competent for the Local Authority to apply to the Magistrate for a summary warrant to recover such rates together with interest as hereinafter provided from the persons liable to pay the same; which warrant the said

Enforcement of payment of rates.

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Magistrate shall grant on production of a list of the names and addresses of the persons so in default and the amount together with interest as by this Ordinance provided respectively due by them with a certificate by the Town Clerk or Town Treasurer that they have been severally required to make payment of the said rates by notice as aforesaid and that such rates are due by them and do not exceed the maximum rates fixed by or under this Ordinance; and every such warrant shall contain every authority and be executed in all respects as though it were a Writ of Execution issued out of the Court of the Resident Magistrate and the Messenger of the Court in executing the same shall conform to such rules and make such charges as are for the time being applicable to writs of execution of such Court as aforesaid.

Recovery of rates.

20. Notwithstanding the provisions of the last preceding section the Local Authority may at its discretion after the time fixed for the payment of any such rates as aforesaid recover from the person in default (without further notice or demand) the amount of the rates and interest thereon due by such person irrespective of the amount thereof by action in the Court of the Resident Magistrate of the Magisterial District whether the person liable for the same shall be resident within the jurisdiction of such Court or not. In case it shall not be possible to effect service of summons within the limits of the jurisdiction of such Court as aforesaid then such service shall be effected in such manner as the said Court shall direct.

Recovery of interest on unpaid rates.

21. In case any rates imposed under the provisions of this Ordinance shall remain unpaid after the date fixed by the Local Authority for payment thereof interest upon such rates shall be chargeable and recoverable by the Local Authority at the rate of one per cent. for every month or portion of a month for which the rate remains unpaid reckoned from the date upon which the rates shall have been fixed to become due and payable.

22. In case any person liable to pay any rate and who shall be in default as regards payment thereof shall not be resident within the jurisdiction of the Court of the Resident Magistrate of the District it shall be lawful for the Local Authority at its option to make the demand referred to in section *nineteen* hereof upon or to take proceedings under section *twenty* hereof against any person receiving any rents or profits of the rateable property in respect of which such rate is unpaid or who would receive the same if such rateable property were let or occupied.

Proceedings
against
persons
liable for
rates.

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23. When any rate imposed upon any owners of rateable property shall remain unpaid for a period of three months after the date on which such rate shall have been fixed to become due and payable the Local Authority may at any time within twelve months after the imposing of the rate demand the amount of such rate or any part thereof from any tenant or occupier for the time being of such rateable property and on non-payment thereof may after one month from the date of such demand recover the same from such tenant or occupier in the same manner as though he were the owner. And every such tenant or occupier shall be entitled to deduct from any rent or other amount payable by him to such owner or his successors in title so much as was so paid by or recovered from him and the production of the receipts for such rates so paid by or recovered from such tenant or occupier shall be a good and sufficient discharge for the amount so paid or recovered as payment of rent or other amount.

Proceedings
for recovery
of rates
unpaid for
three
months.

24. In any proceedings to impose or recover rates or consequent on the imposing or recovering of any rate as well as in all other proceedings under the provisions of this Ordinance the valuation rolls rate-books and records of the Local Authority and all entries made therein and extracts or certified copies thereof signed by the Chairman or Town Clerk and also all copies of any newspaper containing any notice necessary to be proved shall upon production thereof alone be *prima facie*

Evidence.

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evidence of the imposing of such rate and of the contents thereof without any evidence that the notices required by or other requirements of this Ordinance have been complied with. Provided that it shall be competent for any party to any such proceedings to offer evidence to prove the contrary.

Owner liable for rates.

25. The person who is the owner of any rateable property shall be liable for payment of the amount of the rate due on such property and in the case of joint owners of rateable property they shall be jointly and severally liable for the rate due thereon; provided that in the case of the owner being absent from the Colony the agent or person receiving the rent of such property shall be liable.

No transfer of property to be passed on which rates are due.

26. No transfer or cession of any rateable property shall be passed before any Registrar of Deeds or Registrar of Mining Rights or other Government official until a receipt or certificate signed by the Town Clerk or other person authorised by the Council shall be produced to such official for payment of the rates imposed on such property.

Application of rates.

27. The proceeds of the rate or rates levied under this Ordinance shall be applied for and towards such purposes of the District as the Local Authority shall from time to time think fit.

Title.

28. This Ordinance shall be cited as the Local Authorities Rating Ordinance 1903.

SCHEDULE.

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OBJECTIONS

Against an entry in the Valuation Roll made up under the provisions of the Local Authorities Rating Ordinance 1903.

.....
Year 190.....

To the Valuation Court
of the Municipality (or District) of
The following entry has been made in the Valuation Roll of the
Municipality (or District) of.....

Here insert the name of the }
objector and copy of the entry }
complained of. }

I do hereby object to the said entry and ask that:—

The objector will here state what }
entry he considers should be sub- }
stituted for the above. }

on the following grounds:

The objector will here state the }
reason why he considers the entry }
should be altered. }

.....
Signature of Objector.

..... day of 190.....

VALUATION COURT.

Objection by:

.....
.....
.....

Sec.

No.

Decision of Court.

.....
..... day of 190.....

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1903.

No. 44 of 1903.]

[Assented to 6 July 1903.]

ORDINANCE

For the prevention of Destitution and to make provision for the relief of wives and families Deserted and left Destitute.

Preamble.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

PART I.

Penalty for neglecting to provide for family.

1. Every person being able wholly or in part to maintain himself or herself or his or her family by work or by other lawful means and wilfully refusing or neglecting so to do by which refusal or neglect he or she or any of his or her family whom he or she may be legally bound to maintain shall have become destitute shall be guilty of an offence and upon conviction thereof before any Resident Magistrate shall be liable to a fine not exceeding twenty-five pounds or in default of payment thereof to imprisonment with or without hard labour for any period not exceeding three months.

If husband desert wife Magistrate may in certain cases issue summons.

2. When any husband unlawfully deserts his wife or leaves her without means of support or when a father deserts any child being under fifteen years of age or leaves it without any adequate means of support if complaint thereof be made on oath to the Resident Magistrate of the district in which such wife or such child shall respectively reside by the wife or by any reputable person on her behalf or in case of the child by the mother or any reputable person such Resident Magistrate may issue his summons to such husband or father to show cause why he should not support his wife or child; and in cases of desertion where such husband or father is absent from this Colony the Resident Magistrate may direct service of the summons to be made by publication thereof in the *Gazette* or in some newspaper circulating at any place where such Magistrate shall have reason to believe that such husband or father resides or is.

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A married woman or child shall be deemed to have been deserted within the meaning of this Ordinance when such wife or child is living apart from her husband or father because of repeated assaults or other acts of cruelty or because he is an habitual drunkard or because of his refusal or neglect without sufficient cause to supply such wife or child with food and other necessaries of life when able so to do.

3. (1) Upon the day appointed for the hearing and upon proof of the service of the summons whether the defendant be then present or not such Resident Magistrate shall enquire into the matter of the complaint; and if he be satisfied that the wife or child as the case may be is in fact without means of support and that the husband or the father is able to maintain her or it or to contribute to her or its maintenance such Resident Magistrate shall make an order in writing directing him to pay either weekly or monthly at the Magistrate's discretion and to such person or in such manner for her or its use as such Magistrate may think fit such reasonable sum or allowance as he shall consider proper; and such an order shall have the effect of an ordinary judgment of the said Court.

Magistrate
may make
order for
maintenance.

(2) The Magistrate by whom an order for payment was made or any other Magistrate sitting in his stead shall have power from time to time to vary the order on the application either of the person against whom or in whose favour it was made upon proof that the means of the party against whom it was made have altered in amount since the making of the original order or any subsequent order varying it.

(3) The Magistrate may discharge any such order as aforesaid on its being proved to his satisfaction that there are no longer any reasons for the order remaining in force.

4. (1) No order for the payment of any sum by the husband shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned. Any order for payment may be discharged by the Magistrate by whom the

Order not to
be made
when wife
guilty of
adultery.

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order was made or by the Magistrate sitting in his stead upon proof that the wife has since the making thereof been guilty of adultery.

(2) In case it is held by the Magistrate that adultery has been proved the judgment or finding shall not be evidence of the adultery except for the purpose of proceedings under this Ordinance.

When case may be re-heard if husband or father return to Colony.

5. It shall be competent for any husband or father as the case may be against whom judgment shall have been given during his absence from this Colony within two months after his return to this Colony and having notice of such judgment to take out the summons of the Court calling upon the complainant in the original suit or the person for whose benefit the order was made to show cause why the order or authority as aforesaid shall not be cancelled and if upon such re-hearing he shall prove to the satisfaction of the Court that he did not absent himself from this Colony for the purpose of avoiding the service of the summons the case shall be re-opened and proceed as if he had appeared upon the original summons.

Trial may be private.

6. All cases tried under this Ordinance may at the discretion of the Magistrate be heard in private.

Order may be certified and transmitted to other Resident Magistrate.

7. Any order made by any Resident Magistrate under this Ordinance may be duly certified without fee by such Magistrate under his hand and transmitted to any other Resident Magistrate in whose district the defendant may at any time or from time to time reside or be and shall on receipt be endorsed by such last-mentioned Resident Magistrate and shall thereupon be put into force and have such effect as though it had originally been pronounced by him subject always to the provisions of section *five*.

Appeal.

8. Any sentence passed or order made by any Resident Magistrate in terms of this Ordinance shall be subject to appeal to the Supreme Court.

Sale in execution.

9. The rules of the Resident Magistrates' Courts in regard to any sale in execution of the ordinary process of such Courts or in regard to appeals from such Courts shall

apply *mutatis mutandis* to any sale directed or appeal prosecuted in pursuance of this Ordinance.

10. Whenever the Lieutenant-Governor shall be advised that in any other part of His Majesty's Dominions there is a law in force recognising the orders of a Resident Magistrate under this Ordinance duly certified under his hand and providing for their enforcement against the defendant in the jurisdiction of such other part of His Majesty's Dominions it shall be lawful for the Lieutenant-Governor to proclaim corresponding and reciprocal regulations providing for the recognition and enforcement in this Colony of orders made in such other part of His Majesty's Dominions under any law similar to this Ordinance.†

Reciprocity with other parts of His Majesty's Dominions.

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PART II.

11. When any person in the service of the Government of this Colony the Central South African Railways or the South African Constabulary has deserted or otherwise left his wife or any of his children in destitute circumstances the following provisions shall apply;

Special provision as to employees of Government.

- (1) in any case in which an order enforceable under any of the foregoing provisions of this Ordinance has been made the chief officer of the Department in which such person is serving shall on being served with a copy of such order deduct the amount mentioned therein from such person's pay or salary as it becomes due;
- (2) in cases not falling within clause (1) the chief officer of the Department in which the person is serving shall on the receipt by him of a duly certified copy of any order decree or judgment made by any Court in any part of His Majesty's Dominions against such person for the payment by such person of the costs of the maintenance of the wife or of any of the children of such person whether legitimate or illegitimate or the cost of any relief given to such wife or to

† By Proclamation No. 78 Admn. 1903 *Gazette* (11 Dec. 1903) p. 1481 reciprocal regulations for the recognition and enforcement of orders of Natal Courts were published and Proclamation No. 82 Admn. 1903 *Gazette* (31 Dec. 1903) p. 1573 of orders of Cape Colony Courts also.

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any of the said children by way of loan deduct from the pay or salary of such person such amount as in the opinion of the said chief officer shall seem reasonable;

(3) if it appears to the satisfaction of the chief officer of the Department in which any person is serving that such person has without lawful excuse left in destitute circumstances his wife or any of his legitimate children under the age of fifteen years the said chief officer may order in any case not falling under either of the foregoing clauses of this section that such amount as in the opinion of the said chief officer is reasonable may be deducted from the pay or salary of such person and applied to the maintenance of such wife or of any such children in such manner as the said chief officer thinks fit.

Meaning of
chief officer.

12. Chief officer of a Department in the last preceding section shall mean the Executive Head of the Department in which the person is serving and shall in the case of the Central South African Railways and South African Constabulary mean the Commissioner of Railways and Inspector-General of the said Constabulary respectively.

Title.

13. This Ordinance may be cited as the Deserted Wives and Children Protection Ordinance 1903.

**ORD.
No. 45
of
1903.**

No. 45 of 1903.]

[Assented to 23 July 1903.]

ORDINANCE

To provide for the removal to Reformatories outside the Colony of Juvenile Offenders and for other purposes.

WHEREAS it is expedient to provide for the removal to the Cape Colony of juvenile offenders sentenced by competent Courts in this Colony to imprisonment or to detention in a reformatory in order that such juvenile offenders may be detained in reformatory institutions in the Cape Colony established

under the Reformatory Institutions Acts 1879 and 1892 of such last-mentioned Colony until the expiration of sentence or removal back to this Colony and for the apprenticeship of such offenders in this Colony on their return and prior to the expiration of the sentence;

And whereas the provisions of the Prisoners Detention Act 1884 of the Cape Colony have under the powers therein contained been extended and applied to the territory within the boundaries of this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. It shall be lawful for the Lieutenant-Governor by warrant under the hand of the Attorney-General to remove any male offender under the age of sixteen years who has been or may hereafter be sentenced by any competent Court to imprisonment or to detention in a reformatory to the Cape Colony in order that such offender may be detained in a reformatory institution therein established under the Reformatory Institutions Acts aforesaid until the expiration of his sentence or removal back to this Colony; provided always that no such warrant shall authorise the removal of such offender for purposes of apprenticeship in Cape Colony.

Power of Lieutenant-Governor to remove to Cape Colony juvenile offenders under sentence in this Colony.

2. Any such offender removed as aforesaid shall be deemed to be in lawful custody during the course of such removal to and from Cape Colony.

Custody during course of removal.

3. The Lieutenant-Governor may from time to time make revoke alter or amend regulations providing for the removal from Cape Colony of offenders mentioned in section *one* of this Ordinance.

Power to make regulations as to removal.

4. At any time before the expiration of the sentence in the *first* section mentioned the Lieutenant-Governor may if he is satisfied that it is for the benefit of any offender undergoing such sentence direct that he shall be apprenticed in this Colony to any useful calling or occupation and on such direction the Attorney-General may nominate a Resident Magistrate before whom a contract for that purpose shall be executed.

Power to apprentice juvenile offenders before expiration of sentence.

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Period of
apprentice-
ship
contract.

5. Any contract of apprenticeship mentioned in the last preceding section shall be for the following periods;

(a) until the expiration of the sentence mentioned in the *first* section;

(b) with the consent of any parent or guardian of the offender until he shall have attained the age of twenty-one years: provided that such consent shall be given in writing before a Resident Magistrate before the expiration of the sentence mentioned in the *first* section.

Power to
apprentice
male
offenders
over sixteen.

6. If any male offender under the age of twenty-one and of the age of sixteen years shall be or shall have been convicted of any offence and sentenced to a term of imprisonment exceeding three months it shall be lawful for the Lieutenant-Governor with the approval of the Chief Justice to direct that such offender shall be apprenticed in this Colony to any useful calling or occupation until he shall have attained the age of twenty-one years or for some shorter period; provided that such direction shall be given within six weeks after the date of such sentence; and provided further that no period of apprenticeship under this section shall exceed four years unless the sentence shall be for a longer period. The Attorney-General may on such direction nominate a Resident Magistrate before whom a contract of apprenticeship under this section shall be executed.

Duty of
Magistrate to
inquire into
fitness of
master.

7. It shall be the duty of the Resident Magistrate before whom any contract of apprenticeship under this Ordinance may be executed to inquire as to the fitness of any proposed master and the said Magistrate may notify by advertisement in the *Gazette* and in a newspaper circulating in the district that applications for the said contract may be made to him. Such notification shall state the name and age of the offender the offence for which he is undergoing sentence and the date on which applications will be heard.

Provisions of
contract of
apprentice-
ship.

8. Such Resident Magistrate as aforesaid may in any contract of apprenticeship under this Ordinance provide that such portion of

the wages to become due to such apprentice as he shall think fit shall be deposited at such times and in such manner as he shall determine in any Post Office Savings Bank of this Colony on account of such apprentice and every such deposit shall be deemed and allowed as a payment to such apprentice but no portion thereof shall be withdrawn by such apprentice without the consent in writing of such Resident Magistrate until the expiration of the apprenticeship.

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9. In every contract of apprenticeship under section *six* of this Ordinance it shall be a condition that in case any competent Court shall declare the said contract to be cancelled on the ground of the disobedience or other misconduct of the apprentice he shall be liable to be forthwith condemned and ordered by such Court to be taken into custody to serve and undergo so much of the original sentence as he shall not at the date of such contract have served or undergone less only as to any period of imprisonment the time during which such contract shall have subsisted.

Cancellation
of contract.

10. The records of any acts done or of proceedings before a Resident Magistrate under the provisions of this Ordinance shall be by him preserved together with a duplicate of any such contract as is herein mentioned and shall be forwarded when and if required to the Attorney-General.

Resident
Magistrate
shall
preserve
records.

11. This Ordinance may be cited as the Juvenile Offenders' Removal and Apprenticeship Ordinance 1903.

Title.

No. 46 of 1903.]

[Assented to 23 July 1903.]

ORDINANCE.

**ORD.
No. 46
of
1903.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Law No. 11 of 1899 is hereby repealed.

Repeal.

2. In this Ordinance unless there is something repugnant in the subject or context:

Interpreta-
tion of terms.

“house” includes a dwelling-house building room out-house shed or tent;

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“place” includes any field enclosure space vehicle or boat;

“brothel” includes any house or place kept or used for purposes of prostitution or for persons to visit for unlawful carnal connection or for any other lewd obscene or indecent purpose;

“police officer” means any member whatever may be his rank of the Town Police South African Constabulary or any other police force established under the authority of any law in this Colony;

“owner” includes any person who lets or permits the occupation of any house or place whether in his own right or that of another;

“unlawful carnal connection” means carnal connection otherwise than between husband and wife.

Keeping a brothel.

3. Any person who keeps a brothel is liable to imprisonment with hard labour for three years.

Who are deemed keepers of a brothel.

4. The following persons are deemed to keep a brothel;

(a) any person who appears acts or behaves as the master or mistress or as the person having the care or management thereof whether he or she is or is not the real keeper;

(b) any woman found therein who refuses to disclose the owner or manager thereof;

(c) any male person resident therein (unless he proves that he was ignorant of the character of the house);

(d) any person whose wife resides in or manages or assists in the management thereof unless he is judicially separated and *bonâ fide* lives apart from her;

(e) any person who being the owner of a house or place knowingly lets or after receiving such notice as is mentioned in the next succeeding section permits such house or place to be kept or used as a brothel;

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(f) any person who knowingly receives the whole or any share of any money taken therein.

5. When any house or place is used as a brothel written notice thereof given by a police officer not below the rank of sergeant or by any two householders living in the vicinity of the house or place complained of to the owner thereof shall be conclusive proof of knowledge on the part of the person to whom such notice is given.

Effect of notice to the owner.

6. In prosecutions under this Ordinance the onus of proving that a house or place is being kept or used as a brothel to the knowledge of the owner shall be on the prosecution; provided that if it be established to the satisfaction of the Court that having regard to the locality and accommodation the rent paid for the house or place is excessive or exorbitant the onus shall be on the accused to prove that he was ignorant that such house or place was kept or used as a brothel.

Onus of proof.

7. Any contract to let any house or place to be kept or used as a brothel shall be null and void and no action or other legal proceedings for or in respect of rent shall be maintained in respect of such contract.

Contract to let house for a brothel void.

8. Any contract to let any house or place which subsequently to the making of such contract becomes a brothel shall upon the date of such event be determined and become null and void; provided that upon proof by the owner of his ignorance that the house or place was so kept or used he shall be entitled to recover the rent up to the date upon which he became aware that the house or place was being kept or used as a brothel.

Contract to let house void if used as a brothel.

9. The owner of any house or place used wholly or in part as a brothel shall be entitled to apply to the Magistrate of the district in which such house or place is situate for the summary ejection of any person who may be keeping or using such house or place or any part thereof as a brothel and such Magistrate shall be entitled after enquiry to order the summary ejection of such person.

Summary ejection when the house is kept as a brothel.

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Proceedings when householders complain that a house is used as a brothel.

Magistrate may authorise search of house suspected of being a brothel.

10. On the receipt of complaints from not less than two householders of good repute that any house or place in the vicinity of the dwellings of such householders is being kept or used as a brothel the Magistrate may require them to attend before him in his office and there declare on oath that the contents of their respective complaints are true and to enter into recognizances in such sum as the Magistrate shall deem reasonable having regard to their pecuniary circumstances to produce material evidence in support of such complaints or upon a similar complaint upon oath being laid before him by any police officer not below the rank of sergeant the Magistrate may issue his warrant for the arrest of the person appearing to be the keeper of such brothel to be dealt with according to law.

11. A Magistrate who has;

- (a) received the complaints administered the oaths and taken the recognizances in accordance with the provisions of the last preceding section; or
- (b) has had laid before him satisfactory information on oath by any police officer not below the rank of sergeant that any house or place is being kept or used as a brothel;

may instead of issuing his warrant for arrest as in the last preceding section provided issue a warrant authorising any police officer not below the rank of sergeant to enter at any time and within such period as shall be limited in such warrant such house or place for the purpose of ascertaining the name and identity of the keeper thereof and for such purpose to demand search for and seize any account book receipt paper document or thing found in such house or place likely to afford the information sought for. Such officer may also demand the name and address of any person found therein and any person refusing or failing to give his name or address or giving a name or address false in any material particular or refusing to disclose the name or identity of the keeper of such house or place or to produce any such book receipt paper

document or thing may be arrested without warrant and shall be liable to a fine of seventy-five pounds and in default of payment to imprisonment with hard labour for six months.

No prosecution or conviction under this section shall be a bar to any criminal proceedings under any other section of this Ordinance.

The issue of a warrant under this section shall not in any way affect the power of the Magistrate to issue at any time a warrant under the last preceding section or under any other Law.

12. Any person who being the parent or guardian of any girl or woman ;

Parent or guardian procuring defilement of ward.

(a) procures such girl or woman to have unlawful carnal connection with any man other than the procurer ; or

(b) orders is party to permits or receives any consideration for the defilement seduction or prostitution of such girl or woman ;

is liable to imprisonment with hard labour for five years and if such girl is under the age of twelve years he is liable to imprisonment with hard labour for life and to be whipped.

The term "guardian" in this section includes any person who has in law or in fact the custody or control of the girl or woman.

13. Any person who ;

Unlawfully defiling women—procuration.

(a) procures or attempts to procure any girl or woman not being a common prostitute or of known immoral character to have unlawful carnal connection either within or without this Colony with any other person or persons ; or

(b) inveigles or entices any such woman or girl to a brothel for the purpose of unlawful carnal connection or prostitution or knowingly conceals in any such house any such woman or girl so inveigled or enticed ; or

(c) procures or attempts to procure any woman or girl to become either within or without this Colony a common prostitute ; or

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- (d) procures or attempts to procure any woman or girl to become an inmate of a brothel in this Colony or elsewhere; or
- (e) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection either within or without this Colony; or
- (f) by false pretences or false representations procures or attempts to procure any woman or girl not being a common prostitute or of known immoral character to have any unlawful carnal connection either within or without this Colony; or
- (g) applies administers to or causes to be taken by any woman or girl any drug intoxicating liquor matter or thing with intent to stupefy or overpower her so as thereby to enable any person to have unlawful carnal connection with such woman or girl;

is when the offence does not amount to rape or attempt to commit rape liable to imprisonment with hard labour for five years.

Conspiracy to defile.

14. Any person who conspires with any other person to induce any woman or girl by any false pretence or other fraudulent means to allow any man to have unlawful carnal connection with her is where the offence does not amount to rape liable to imprisonment with hard labour for two years.

Householder permitting defilement of girl on his premises.

15. Any person who being the owner or occupier of any house or place or having or acting or assisting in the management or control thereof induces or knowingly permits any girl of such age as is in this section mentioned to resort to or be in or upon such house or place for the purpose of being unlawfully and carnally known by any man whether a particular man or not shall;

- (1) if such girl is below the age of twelve years be liable to imprisonment with hard labour for life and whipping; and

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(2) if such girl is of or above the age of twelve years and below the age of sixteen years be liable to imprisonment with hard labour for five years.

16. (1) Any person who takes or detains any woman or girl against her will; Detention in a brothel.

(a) to or in or upon any premises with intent that she may be unlawfully carnally known by any man whether a particular man or not; or

(b) to or in a brothel;

is liable to imprisonment with hard labour for seven years.

(2) Any person shall be deemed to detain a woman or girl under this section who with intent to compel or induce her to remain in or upon any premises or any brothel withholds from her any wearing apparel or other property to the possession of which she is entitled or which has been lent or supplied to her by such person or for the purposes of prostitution; and the woman or girl is justified in taking away such wearing apparel as is necessary to enable her to leave such premises or brothel.

17. Any person who takes or detains or causes to be taken or detained an unmarried girl under the age of eighteen years out of the custody and against the will of her father or mother or other person having the custody of her with intent that she may be unlawfully carnally known by any man whether a particular man or not is liable to imprisonment with hard labour for five years. Abduction of girl under eighteen.

18. (1) If it appears to a Magistrate on complaint made on oath by a parent husband relative or guardian of a woman or girl or any other person who in the opinion of the Magistrate is acting in good faith in the interest of a woman or girl that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any house or place within his jurisdiction he may issue a warrant directed to a police officer and authorise him to search for such woman or girl and when found to take her to and detain her in a place of safety until she can be brought before a Magis- Women detained for immoral purposes.

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trate; and the Magistrate before whom she is brought may cause her to be delivered up to her parents husband relatives or guardians or otherwise dealt with as the circumstances may permit and require.

(2) The Magistrate issuing the warrant may by warrant direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other Magistrate having jurisdiction and may direct proceedings to be taken for punishing him according to law.

(3) A woman or girl is deemed to be unlawfully detained for immoral purposes if she;

(a) being under the age of sixteen years is so detained; or

(b) being of or over the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or husband or of any other person who has the lawful care or charge of her; or

(c) being of or above the age of eighteen years is so detained against her will; and in any such case is detained by any person in order to her being unlawfully carnally known by any man whether a particular man or not.

(4) A person authorised by warrant under this section to search for a woman or girl may enter by force if necessary any house or place specified in the warrant and may remove the woman or girl therefrom.

(5) The warrant must be executed by the police officer mentioned in it who must unless the Magistrate otherwise directs be accompanied by the parent husband relative guardian or other person by whom the complaint is made if such person so desired.

White
woman
having
connection
with natives.

19. (1) Any white woman who voluntarily permits any native to have unlawful carnal connection with her is liable to imprisonment with hard labour for five years.

(2) Any native having or attempting to have unlawful carnal connection with a white woman in circumstances which do not amount to rape is liable to imprison-

ment with hard labour for six years and to whipping not exceeding twenty-four strokes in addition to such imprisonment.

(3) Any person who procures or attempts to procure any white woman for the purpose of having unlawful carnal connection with any native shall be liable to imprisonment with hard labour for ten years and when the offender is a male to whipping not exceeding twenty-four strokes in addition to such imprisonment.

(4) The owner or occupier of any house or place who knowingly permits unlawful carnal connection in contravention of the provisions of this section to take place therein shall in addition to any other penalties imposed by this Ordinance be liable to imprisonment with hard labour for five years.

(5) For the purposes of this section the expression "native" means a person manifestly belonging to any of the native or coloured races of Africa Asia America or St. Helena.

20. Any person who;

(a) entices or solicits by words signs cards or in any other way whatsoever to or who knowingly aids or facilitates the commission of immoral acts;

(b) being a person of notoriously immoral character exhibits himself or herself in an indecent dress or manner at any door or window or within view of any public street or place or any place to which the public have access;

shall be liable to imprisonment with hard labour for two years.

Enticing to commission of immoral acts.

21. (1) Every male person who;

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place solicits or importunes for immoral purposes;

shall be liable to imprisonment with hard labour for three years and to whipping not exceeding twenty-four strokes in addition to such imprisonment.

Male person living on earnings of prostitution.

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(2) If it is made to appear to a Magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute the Magistrate may issue a warrant authorising any constable to enter and search the house and to arrest that male person.

(3) When a male person is proved to reside in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence he shall unless he can satisfy the Magistrate to the contrary be deemed to be knowingly living on the earnings of prostitution.

Rule of
evidence.

22. Upon a charge of any of the offences defined in this Ordinance the husband or wife of an accused person is a competent but not a compellable witness.

Determina-
tion of age.

23. Whenever the age of any child is in question if the Court or jury on their own view and judgment shall be satisfied that a child is under a certain age such child shall be deemed to be under that age unless the contrary be proved.

Title.

24 This Ordinance may be cited as The Immorality Ordinance 1903 and shall take effect on and after the first day of August 1903.

**ORD.
No. 47
of
1903.**

No. 47 of 1903.]

[Assented to 23 July 1903.]

ORDINANCE

**To make Provision against Fraudulent Marks on
Merchandise.**

WHEREAS it is expedient to make provision against fraudulent marks on merchandise;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

1. (1) Every person who ;
 - (a) forges any trade mark ; or
 - (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive ; or
 - (c) makes any die block machine or other instrument for the purpose of forging or of being used for forging a trade mark ; or
 - (d) applies any false trade description to goods ; or
 - (e) disposes of or has in his possession any die block machine or other instrument for the purpose of forging a trade mark ; or
 - (f) manufactures imports or has in his possession any labels for the purpose of applying them contrary to the provisions of this Ordinance ; or
 - (g) causes any of the things above in this section mentioned to be done ;

Offences as to trade marks and trade descriptions.

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of
1903.**

shall subject to the provisions of this Ordinance and unless he proves that he acted without intent to defraud be guilty of an offence against this Ordinance

(2) Every person who sells or exposes for or has in his possession for sale or any purpose of trade or manufacture any goods or things to which any forged trade mark or false trade description is applied or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied as the case may be shall unless he proves ;

- (a) that having taken all reasonable precautions against committing an offence against this Ordinance he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description ; and
- (b) that on demand made by or on behalf of the complainant he gave all the information in his power with respect to persons from whom he obtained such goods or things ; or
- (c) that otherwise he had acted innocently ;

be guilty of an offence against this Ordinance.

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(3) Every person guilty of an offence against this Ordinance shall be liable on conviction;

(a) to a fine not exceeding two hundred pounds or to imprisonment with or without hard labour for any period not exceeding two years or to both such fine and such imprisonment; and

(b) to forfeiture at the discretion of the Court of every article instrument or thing by means of or in relation to which the offence has been committed.

Definitions.

2. (1) For the purposes of this Ordinance; The expression "trade mark" means a trade mark registered in the register of trade marks kept under Law No. 6 of 1892 or the Trade Marks Registration Proclamation 1902 and includes any trade mark which either with or without registration is protected by law in the United Kingdom or in any British Colony or Possession or Foreign State to which the provisions of the one hundred and third section of the Patents Designs and Trade Marks Act 1883 enacted by the Imperial Parliament are under Order in Council for the time being applicable. The said section is set forth in a schedule to this Ordinance.

The expression "trade description" means any description statement or other indication direct or indirect;

(a) as to the number quantity measure gauge or weight of any goods; or

(b) as to the place or country in which any goods were made or produced; or

(c) as to the mode of manufacturing or producing any goods; or

(d) as to the material of which any goods are composed; or

(e) as to any goods being the subject of an existing patent privilege or copyright;

and the use of any figure word or mark which according to the custom

of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Ordinance.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied and includes every alteration of a trade description whether by way of addition effacement or otherwise where that alteration makes the description false in a material respect and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Ordinance.

The expression "goods" means anything which is the subject of trade manufacture or merchandise.

The expressions "person" "manufacturer dealer or trader" and "proprietor" include any body of persons corporate or incorporate.

The expression "name" includes any abbreviation of a name.

(2) The provisions of this Ordinance respecting the application of a false trade description to goods shall extend to the application to goods of any such figures words or marks or arrangement or combination thereof whether including a trade mark or not as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Ordinance respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied shall extend to the application to goods of any false name or initials of a person and to goods with the false name or initials of a person applied in like manner as if such name or initials were a trade description and for the purpose of this enactment

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the expression false name or initials means as applied to any goods any name or initials of a person which;

- (a) are not a trade mark or part of a trade mark; and
- (b) are identical with or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials; and
- (c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

Forging
trade mark.

3. A person shall be deemed to forge a trade mark who either;

- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark whether by alteration addition effacement or otherwise;

and any trade mark or mark so made or falsified is in this Ordinance referred to as a forged trade mark; provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the accused.

Applying
marks and
descriptions.

4. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who;

- (a) applies it to goods themselves; or
- (b) applies it to any covering label reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale trade or manufacture; or
- (c) places encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale trade or manufacture in with or to any covering label reel or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper cask bottle vessel box cover capsule case frame or wrapper; and the expression "label" includes any band or ticket. A trade mark or mark or trade description shall be deemed to be applied whether it is woven impressed or otherwise worked into or annexed or affixed to the goods or to any covering label reel or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark who without the assent of the proprietor of a trade mark applies such trade mark or a mark so nearly resembling it as to be calculated to deceive but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the accused.

5. Where a person is charged with making any die block machine or other instrument for the purpose of forging or being used for forging a trade mark or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive or with applying to goods any false trade description or causing any of the things in this section mentioned to be done and proves;

Exemption
of certain
persons
employed in
ordinary
course of
business.

(a) that in the ordinary course of his business he is employed on behalf of other persons to make dies blocks machines or other instruments for making or being used in making trade marks or as the case may be to apply marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in this Colony and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

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(b) that he took reasonable precautions against committing the offence charged; and

(c) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark mark or trade description; and

(d) that he gave to the complainant all the information in his power with respect to the persons on whose behalf the die block machine or other instrument was made or the trade mark mark or description was applied;

shall be discharged from the prosecution but shall be liable to pay the costs incurred by the complainant unless he has given due notice to him that he will rely on the above defence.

Application
of Ordinance
to watches.

6. Where a watch case has thereon any words or marks which constitute or are by common repute considered as constituting a description of the country in which the watch was made and the watch bears no description of the country where it was made those words or marks shall *primâ facie* be deemed to be a description of that country within the meaning of this Ordinance and the provisions of this Ordinance with respect to goods to which a false trade description has been applied and with respect to selling or exposing for or having in possession for sale or any purpose of trade or manufacture goods with a false trade description shall apply accordingly and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Trade mark
how
described in
pleading.

7. In any indictment charge pleading proceeding or document in which any trade mark or forged trade mark is intended to be mentioned it shall be sufficient without further description and without any copy or facsimile to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to
evidence.

8. In any prosecution for an offence against this Ordinance evidence of the port of shipment of imported goods shall be *primâ facie* evidence of the place or country in which the goods were made or produced.

9. Any person who being within this Colony procures counsels aids abets or is accessory to the commission without this Colony of any act which if committed in this Colony would under this Ordinance be an offence shall be guilty of that offence as a principal and be liable to be indicted proceeded against tried and convicted in any place in this Colony in which he may be as if the offence had been there committed.

Punishment
of
accessories.

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10. (1) Where upon information of an offence against this Ordinance there has been issued in due form of law either a summons requiring the person charged by such information to appear to answer to the same or a warrant for the arrest of such person and either the person issuing such summons or warrant or any other officer of the law empowered to issue criminal process is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the person charged or arrested or otherwise in his possession or under his control in any place the person issuing such summons or warrant or other such officer as aforesaid as the case may be may issue a warrant under his hand by virtue of which it shall be lawful for any police officer named or referred to in the warrant to enter such house premises or place at any reasonable time by day and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before the Court of the Resident Magistrate having jurisdiction in respect of such offence for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

Search
warrant.

(2) If the owner of any goods or things which if the owner thereof had been convicted would be liable to forfeiture under this Ordinance is unknown or cannot be found an information or complaint may be laid for the purpose only of enforcing such forfeiture and the Resident Magistrate of

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the district in which such goods or things shall be found may cause notice to be advertised in the *Gazette* stating that unless cause is shown to the contrary at the time and place named in the notice such goods or things will be forfeited and at such time and place the Resident Magistrate unless the owner or any person on his behalf or other person interested in the goods or things show cause to the contrary may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section or any other provision of this Ordinance may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct and the Court may out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated) award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs of
defence or
prosecution.

11. On any prosecution under this Ordinance the Court may order costs to be paid to the accused by the complainant or to the complainant by the accused having regard to the information given by and the conduct of the accused and complainant respectively.

Limitation of
prosecution.

12. No prosecution for an offence against this Ordinance shall be commenced after the expiration of three years next after the commission of the offence or one year next after the first discovery thereof by the complainant whichever expiration first happens.

Prohibition
on
importation.

13. (1) All goods liable to forfeiture under this Ordinance and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer dealer or trader in this Colony unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced are hereby prohibited to be imported into this Colony and if any such goods as aforesaid shall be imported into this Colony contrary to the provisions hereof the same shall be forfeited.

(2) The words "goods of foreign manufacture" in the last preceding sub-section shall be taken to mean all goods manufactured made or produced at any place outside the limits of this Colony.

(3) Before detaining any such goods or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs the officers of Customs may require the regulations under this section whether as to information security conditions or other matters to be complied with and may satisfy themselves in accordance with these regulations that the goods are such as are prohibited by this section to be imported.

†(4) The Lieutenant-Governor may by notice in the *Gazette* from time to time make revoke and vary regulations either general or special respecting the detention and forfeiture of goods the importation of which is prohibited by this section and the conditions if any to be fulfilled before such detention and forfeiture and may by such regulations determine the information notices and security to be given and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(5) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in this Colony that name unless accompanied by the name of the country in which such place is situate shall be treated for the purposes of this section as if it were the name of a place in this Colony.

(6) Such regulations may apply to all goods the importation of which is prohibited by this section or different regulations may be made respecting different classes of such goods or offences in relation to such goods.

(7) The regulations may provide for the informant re-imbursing the Director of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

† For regulations see Government Notice No. 993 of 1903 *Gazette* (18 Sept. 1903) p. 859.

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Implied warranty on sale of marked goods.

14. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied or that the trade description is not a false trade description within the meaning of this Ordinance unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Ordinance as to false description not to apply in certain cases.

15. Where at the promulgation of this Ordinance a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method to indicate the particular class or method of manufacture of such goods the provisions of this Ordinance with respect to false trade descriptions shall not apply to such trade description when so applied; provided that where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced and the goods are not actually made or produced in that place or country this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country in an equally conspicuous manner with that name the name of the place or country in which the goods were actually made or produced with a statement that they were made or produced there

Goods exempted from provisions of Ordinance.

16. (1) The provisions of this Ordinance shall not extend or apply to the following goods;

(a) goods imported into this Colony within three months after the taking effect of this Ordinance where the offending trade mark or trade description shall have been applied to such goods or things prior to such importation;

(b) goods or things manufactured prepared or manipulated in this Colony before the promulgation of this

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Ordinance where the offending trade mark or trade description shall have been applied prior to such promulgation; provided always that the onus of proof as to the time of importation manufacture preparation or manipulation and as to the date of application of the offending trade mark or trade description shall lie on the importer or owner of the goods or things.

(2) It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* at the request of the Government of any other Colony or Territory to exempt under such regulations as he may approve of any goods or things imported directly into such Colony or Territory while in transit through this Colony; provided that goods or things so exempted shall in case of reimportation into this Colony become subject to the provisions of this Ordinance.

17. (1) This Ordinance shall not exempt any person from any action suit or other proceeding which might but for the provisions of this Ordinance be brought against him. Savings.

(2) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

(3) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in this Colony who *bonâ fide* acts in obedience to instructions of such master and on demand made by or on behalf of the prosecutor has given full information as to his master.

18. Any person who falsely represents that any goods are made by a person holding a Royal Warrant or for the service of His Majesty or any of the Royal Family or of the Governor Lieutenant-Governor or any Government Department shall be liable on summary conviction to a penalty not exceeding twenty pounds. Penalty for falsely representing that goods are made under Royal Warrant.

19. This Ordinance may be cited as the Title.
Merchandise Marks Ordinance 1903.

MERCHANDISE MARKS.
APPROPRIATION (No. 2).

**ORD
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SCHEDULE

TO THE MERCHANDISE MARKS ORDINANCE 1903.

Being the One Hundred and Third Section of Patents Designs and Trade Marks Act 1883 (Imperial Parliament).

If His Majesty is pleased to make any arrangement with the Government or Governments of any foreign state or states for mutual protection of inventions designs and trade marks or any of them then any person who has applied for protection for any invention design or trade mark in any such state shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state; provided that his application is made in the case of a patent within seven months and in the case of a design or trade mark within four months from his applying for protection in the foreign state with which the arrangement is in force; provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification or the actual registration of his design or trade mark in this country as the case may be.

The publication in the United Kingdom or the Isle of Man during the respective periods aforesaid of any description of the invention or the use therein during such periods of the invention or the exhibition or use therein during such periods of the design or the publication therein during such periods of a description or representation of the design or the use therein during such periods of the trade mark shall not invalidate the patent which may be granted for the invention or the registration of the design or trade mark.

The application for the grant of a patent or the registration of a design or the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act; provided that in the case of trade marks any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

The provisions of this section shall apply only in the case of those foreign states in respect to which His Majesty shall from time to time by Order in Council declare them to be applicable and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

**ORD.
No. 48
of
1903.**

No. 48 of 1903.]

[Assented to 23 July 1903.]

† **ORDINANCE**

**To apply a sum of money for the service of the
year ended the 30th day of June, 1903.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1903 with a sum of five hundred and seventy-nine thousand two hundred and ten pounds sterling in addition to the sum mentioned in the Appropriation Ordinance 1903.

Public
revenue to be
charged
with
£579,210.

† Cf. Ordinances Nos. 13 and 61 of 1903.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto. How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance. Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorised thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes here-inbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given. The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 2) 1903. Title.

SCHEDULE.

HEAD OF SERVICE.	AMOUNT.
Interest on Public Debt	£15,000
Pensions and Gratuities	500
Adjustment of deficiency on Orphan Chamber Account of late Government	216,500
Restoration of Places of Religious Worship destroyed during late war... ..	20,000
Public Works	273,790
Government Printing Works	9,118
Grants in aid	10,000
Commissions	4,531
Irrigation and Water Supply	6,900
Special payments in respect of liabilities of late Government	22,871
Total	£579,210

ORD.
No. 49
of
1903.

No. 49 of 1903.]

[Assented to 16 July 1903.

† **ORDINANCE**

**To amend the Customs Laws and Customs Tariff
in certain respects.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

*Amendment
of existing
tariff.*

1. On and after the date of the taking effect of this Ordinance except as is hereinafter provided there shall be raised levied and collected and paid upon the goods wares and merchandise imported and brought into this Colony described and set forth in Schedule A hereunto annexed the duties therein set forth.

Free list.

2. The goods wares and merchandise described and set forth in Schedule B hereunto annexed shall be admitted into this Colony free of duty.

*Rebate of
portion of
the duties
on British
goods.*

3. A rebate of Customs duties shall be granted on any goods and articles the growth produce or manufacture of the United Kingdom imported therefrom into this Colony for consumption therein to the extent following ;

(a) in the case of goods and articles liable to Customs duty under Class I. II. or V. of Schedule A a rebate of twenty-five per cent. of any duty chargeable thereon at an " ad valorem " rate but of no other duty ; and

(b) in the case of goods and articles liable under Class III. of Schedule A to duty at an " ad valorem " rate of two-and-a-half per cent. a rebate of the whole of such duty ;

provided that the manufactured goods and articles in respect of which such rebate as aforesaid shall be granted shall be " bona fide " the manufacture of the United Kingdom and that in the event of any question arising as to whether any goods or articles are entitled to any such rebate as aforesaid the decision of the Colonial Treasurer shall be final.

† This Ordinance continued in force till 15th August 1903. See Note to Section 12.

4. *A rebate similar to that for which provision is made in the last preceding section shall be granted in like manner and under like provisions to goods and articles the growth produce or manufacture of any British Colony Protectorate or Possession granting equivalent reciprocal privileges to this Colony.*

Similar rebate in respect of goods from British Colonies granting reciprocal treatment.

5. *On and after the coming into operation of the Convention signed at Brussels on the 5th day of March 1902 between the United Kingdom and other powers relating to the abolition of the bounties on sugar a special additional duty equivalent to any bounty which may be granted on sugar from any country which is not a party to the said Convention shall be levied and imposed on importation into this Colony of such sugar. For the purposes of this section the term sugar shall include sugar products such as preserves chocolates biscuits condensed milk and all other analogous products containing in a notable proportion sugar artificially incorporated.*

Additional duty to be levied on bounty sugar.

6. *Under such regulations as he may prescribe on that behalf the Lieutenant-Governor may by Proclamation in the "Gazette" ;*

Power of Lieutenant-Governor to suspend certain duties by Proclamation.

(a) *suspend the duty imposed upon fresh chilled and frozen meat and on animals for slaughter ;*

(b) *suspend in whole or in part the duty imposed on corn and grain as described in item 15 (a) (b) and (c) Class I. Schedule A of the tariff ;*

(c) *grant a rebate of the whole or part of the duty on methylated spirits or alcohol imported solely for manufacturing or scientific purposes and on soap or other substances imported for and exclusively used in connection with the industry of woolwashing ;*

(d) *allow either by free importation or rebate an abatement of the duties on articles imported by and for the use of members of His Majesty's regular forces and on wines and spirits for the use of the Governor or the Lieutenant-Governor ;*

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Definition of value on which "ad valorem" duties are to be paid.

(e) allow the importation free of duty into this Colony of any goods and articles excepting spirits the growth produce or manufacture of the Portuguese Province of Mozambique or of British Central Africa.

7. For the purposes of estimating the amount of Customs duty whenever levied on goods "ad valorem" and of the declaration and oaths which may be at any time required by any law or regulations in relation to the question of such duty the current value of such goods shall be taken to be the true current value in the open market for such goods at the place of purchase by the importer or his agent including the cost of packing and packages but not including agent's commission if it does not exceed five per cent. ; provided that in no case shall the true current value as above defined be less than the cost of the goods to the importer at the place of purchase.

Power of Lieutenant-Governor to make regulations.

8. The Lieutenant-Governor may make and alter by notice published in the "Gazette" regulations for the removal and conveyance to and across the borders of this Colony of the goods referred to in this Ordinance and for the rebate or suspension of the duties referred to in sections three and six hereof.

Penalties.

9. Any person who shall produce any false invoice or make any false representation in regard to the country in which any goods were grown produced or manufactured or shall contravene any regulation made and published as in the last preceding section mentioned shall be liable to a fine not exceeding three hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months or to both such fine and such imprisonment and all goods in respect of which such false invoice shall be produced or false representation made and all goods removed in contravention of any such regulation and all vehicles and animals made use of in the removal of such goods shall be liable to be forfeited to the Government.

Repeal of repugnant laws.

10. As soon as this Ordinance shall take effect with regard to the duties on the goods wares and merchandise mentioned in the Schedule thereto the provisions of Law No. 4 of 1894 of Ordinance

No. 22 of 1902 and of any other Law repugnant to or inconsistent with the provisions of this Ordinance shall be repealed.

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II. This Ordinance may be cited for all purposes as the Customs Provisional Tariff Ordinance 1903 and shall come into operation upon a date to be fixed by the Lieutenant-Governor by Proclamation in the "Gazette" except in respect to the duties imposed on those articles enumerated in Schedule C hereunto annexed on which increased duties are imposed under the provisions of this Ordinance. Such duties shall come into operation on and after the sixth day of June 1903 and shall be subject to the provisions of sections three four and seven of this Ordinance.

Title and date of taking effect.

†12. This Ordinance shall continue in force until the date fixed by the Lieutenant-Governor for the coming into operation of the Customs Union and Tariff Amendment Ordinance 1903 which said Ordinance shall not after the date of its so coming into operation be affected by anything herein contained.

Continuation of this Ordinance.

SCHEDULE A.

CLASS I.—SPECIAL RATES.

	£	s.	d.
1 Ale, beer and cider : all kinds of strength exceeding 3 per cent. of proof spirit per Imperial gallon	0	1	6
(and in addition ten per cent. ad valorem)			
2 Acetic acid per Imperial gallon	0	3	0
3 Animals, viz. :—			
(a) Cattle for slaughter each	1	10	0
(b) Sheep for slaughter each	0	5	0
4 Beads, known as "Kaffir beads" per lb.	0	0	6
5 Blasting compounds, including all kinds of explosives suitable and intended for blasting, and not suitable for use in fire-arms ; and collodion cotton not intended for manufacturing purposes per lb.	0	0	1½
6 Butter, butterine, margarine, ghee and other substitutes for butter per lb.	0	0	2
7 Chicory and substitutes for coffee or chicory per lb.	0	0	2
8 Coffee :			
(a) Raw per lb.	0	0	0¾
(b) Roasted, ground or mixed per lb.	0	0	2
9 Cocoa and chocolate unsweetened per lb.	0	0	1
10 Cocoa and milk, chocolate and milk, and coffee and milk per lb.	0	0	1
11 Condensed, desiccated or preserved milk or cream per lb.	0	0	0½
12 Coals per ton of 2,000 lbs.	0	3	0
13 Coke and patent fuel per ton of 2,000 lbs.	0	2	0
14 Confectionery, including sweetened cocoa or chocolate, honey, jams, jellies, preserves, sweetmeats, candied or preserved ginger or chow-chow ; and all other kinds compounded, made or preserved with sugar, but not including purely medicinal preparations properly classed as apothecaryware per lb.	0	0	2

† The date fixed for the coming into operation of the Customs Union and Tariff Amendment, 1903, was 15th August, 1903. (See Proclamation No. 35, Admn. 1903 ; "Gazette," 21st August, 1903, p. 705.)

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	£	s.	d.
15 <i>Corn and grain, viz. :—Barley, maize, millet, oats, rye, wheat, beans and peas :</i>			
(a) <i>In the grain, or (b) crushed, flaked, ground, hulled, malted, pearled, split or otherwise prepared, except oats not in the grain and bran per 100 lbs.</i>	0	1	0
(c) <i>Flour, wheaten, or wheaten meal, including pollard per 100 lbs.</i>	0	2	0
16 <i>Dates per lb.</i>	0	0	0½
17 <i>Fish :—Cured, dried, pickled, preserved, pressed or smoked, not being of South African taking per lb.</i>	0	0	1
18 <i>Fodder, viz. :—Chaff, hay, lucerne, oat-hay and other fodder, not otherwise described but not including bran per 100 lbs.</i>	0	1	0
19 <i>Fruits :—Preserved, of all kinds, bottled, tinned or otherwise preserved, including pulp and candied peel per lb.</i>	0	0	2
20 <i>Fruits :—Dried of all kinds, including almonds and nuts per lb.</i>	0	0	2
21 <i>Gunpowder and other explosives suitable for use in firearms per lb.</i>	0	0	6
<i>(and in addition ten per cent. ad valorem)</i>			
22 <i>Guns and gunbarrels, firearms :—</i>			
(a) <i>Single, per barrel</i>	1	0	0
(b) <i>Double and other, per barrel</i>	0	15	0
<i>(and in either case in addition ten per cent. ad valorem)</i>			
23 <i>Meats, including lard, fats, soups and other similar substances used as food, but not including extracts and essences or tallow per lb.</i>	0	0	1
24 <i>Matches : (a) Wooden : In boxes or packages of not more than 100 matches per gross of boxes or packages</i>	0	2	0
<i>In boxes containing more than 100 but not more than 200 matches per gross of boxes or packages</i>	0	4	0
<i>And for every 100 additional matches, in boxes or packages per gross of 100 matches</i>	0	2	0
(b) <i>Fuses, vestas or wax matches, or other patent lights used as such : in boxes or packages containing not more than 50 per gross of boxes or packages</i>	0	2	0
<i>In boxes or packages of more than 50 but not more than 100 per gross of boxes or packages</i>	0	4	0
<i>And for every 50 additional in boxes or packages per gross of 50 matches</i>	0	2	0
25 <i>Onions, not preserved, per lb.</i>	0	0	0½
26 <i>Pickles, sauces, chutneys, chillies and other condiments per lb.</i>	0	0	2
27 <i>Pistols and revolvers each</i>	0	5	0
<i>(and in addition ten per cent. ad valorem)</i>			
28 <i>Soap, not including toilet soaps and soap powders and extracts per lb.</i>	0	0	0½
29 <i>Spices and turmeric per lb.</i>	0	0	2
30 <i>Spirits :—</i>			
(a) <i>Perfumed per Imperial gallon</i>	1	0	0
(b) <i>Liqueurs and cordials exceeding 3 per cent. of proof spirit per Imperial gallon</i>	0	15	0
(c) <i>Other sorts, exceeding three per cent. but not exceeding the strength of proof by Sykes' Hydrometer and so on in proportion for any greater strength per Imperial gallon</i>	0	15	0
<i>(and in addition ten per cent. ad valorem on all the above classes of spirit.)</i>			
31 <i>Sugar :—</i>			
(a) <i>Not refined, golden syrup, molasses, saccharum and treacle per 100 lbs.</i>	0	3	6
(b) <i>Refined per 100 lbs.</i>	0	5	0
32 <i>Tea per lb.</i>	0	0	4
33 <i>Tobacco :—</i>			
(a) <i>Cigars and cigarillos per lb.</i>	0	6	0
<i>(and in addition ten per cent. ad valorem)</i>			

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	£	s.	d.
(b) <i>Goorak or Goorakco, and Hookah mixture, and all imitations or substitutes per lb.</i>	0	6	0
(c) <i>Snuff per lb.</i>	0	4	0
(d) <i>Cigarettes per lb.</i>	0	4	0
(and in addition ten per cent. ad valorem)			
(e) <i>Manufactured and cut per lb.</i>	0	3	6
(f) <i>Manufactured but uncut per lb.</i>	0	3	0
(g) <i>Not manufactured but stemmed per lb.</i>	0	2	6
(h) <i>Not manufactured and unstemmed per lb.</i>	0	2	0
34 <i>Vinegar :—</i>			
(a) <i>Of standard strength, fit for immediate use as such (i.e., requiring no more than 40 grains of bi-carbonate of potash to neutralise one ounce Troy)</i>			
(1) <i>In bottles or other vessels of the capacity of not more than one Imperial quart per Imperial gallon</i>	0	1	0
(2) <i>In larger vessels or in bulk per Imperial gallon</i>	0	0	6
(b) <i>Concentrated extract or essence, of greater strength than above per Imperial gallon</i>	0	3	0
35 <i>Wine :—</i>			
(a) <i>Still wines not exceeding 20 per cent. of proof spirit per Imperial gallon</i>	0	4	0
(b) <i>Still wines exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit per Imperial gallon</i>	0	8	0
(c) <i>Sparkling wines per Imperial gallon</i>	0	12	6
(and in addition ten per cent. ad valorem on all the above classes of wine.)			
<i>Note.—Wines containing less than three per cent. of proof spirit are not included in the above and wines containing more than 50 per cent. of proof spirit are classed as spirits.</i>			

CLASS II.

Mixed ad valorem Rates.

36 <i>Bicycles, tricycles, and velocipedes and parts thereof per £100</i>	12	10	0
37 <i>Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool, commonly used as cotton or woollen blankets or rugs, the single article, in pairs or in the piece; and coats, jackets or other apparel made of blanketing or baize per £100</i>	25	0	0
38 <i>Bon-bons, surprise packets and crackers, and other similar fancy confectionery per £100</i>	25	0	0
39 <i>Cards, playing per £100</i>	25	0	0
40. <i>Carriages, carts, coaches, wagons and all other wheeled vehicles, not elsewhere described, intended for the conveyance of persons or goods, including finished parts thereof, not being metal parts not usually made in South Africa, but required in the manufacture of wheeled vehicles therein; but not including bath chairs, perambulators, toy carts, store trucks or barrows per £100</i>	12	10	0
41 <i>Extracts and essences of all kinds for flavouring or perfumery, including saccharine per £100</i>	25	0	0
42 <i>Fireworks of all descriptions per £100</i>	25	0	0
43 <i>Medicines, patent or proprietary per £100</i>	25	0	0
44 <i>Motor vehicles, including their parts, and motor cycles but not including traction engines and power lorries per £100</i>	5	0	0
45 <i>Oils, essential or perfumed per £100</i>	25	0	0
46 <i>Perfumery, cosmetics, dyes, powders and soap, and other preparations for toilet use, and soap powders and extracts per £100</i>	25	0	0
47 <i>Shawls per £100</i>	25	0	0

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CLASS III.

Ad valorem $2\frac{1}{2}$ per cent.

- 48 Acids : nitric and sulphuric.
- 49 Asbestos packing and boiler composition.
- 50 Assay apparatus.
- 51 Bands and belting of all kinds for driving machinery, boiler tubes, bolting cloth and mill silk.
- 52 Battery cloth and baize, gauze, matting, sieving and screening, for use in connection with machinery and apparatus.
- 53 Bolts, nuts and rivets.
- 54 Bottles and jars of common glass or earthenware, and bottles ordinarily used for aerated waters : empty.
- 55 Chain for hauling.
- 56 Chimneys : metal (smokestacks).
- 57 Corks and bungs, and corkwood unmanufactured.
- 58 Cranes, elevators and shears.
- 59 Crucibles, cupels, cupelling furnaces, ingot moulds, retorts and furnaces for roasting minerals.
- 60 Cyanide of potassium.
- 61 Fire escapes and fire hose and hose reels.
- 62 Hose : steam, suction and armoured (not including garden), for use in connection with machinery and apparatus.
- 63 Machinery, not elsewhere described, to be driven by cattle, electric, gas, heat, hydraulic, pneumatic, steam, water or wind power, including spare parts ; and apparatus and appliances used in connection with the generating and storing of electric power or gas ; electric cable or wire and the posts for carrying the same ; lamp posts and their fittings.
- 64 Mining buckets, skips, trucks and tubs, wheeled or otherwise, for hauling on rails or wires.
- 65 Packing and lagging for engines, machinery and piping.
- 66 Pipes, piping and tubes of all kinds for gas, steam, drainage, sewerage, irrigation, water supply or pumping, not including downpiping and guttering or cocks and taps.
- 67 Railway construction or equipment requisites, as follows :—Rails, sleepers, fastenings for rails or sleepers, girders, iron-bridge work, culvert tops, locomotives, tenders, ballast trucks, goods wagons, carriages, trollies, engine water-tanks, turn-tables, permanent or fixed signals and weigh-bridges.
- 68 Rubber for use in connection with machinery and apparatus.
- 69 Tanks and vats suitable and intended for mining purposes.
- 70 Telegraphs and telephones :—Materials and instruments for use in construction and working of telegraph and telephone lines.
- 71 Traction engines and power lorries.
- 72 Tramway construction and equipment requisites, as follows :—Rails, sleepers, fastenings for rails or sleepers, iron gates, girders, iron bridge-work, culvert tops, cars, trollies, water-tanks and turn-tables.
- 73 Wire and wire netting for fencing ; droppers, gates, hurdles, posts, standards, strainers, staples, stiles, winders, and other materials or fastenings of metal ordinarily used for agriculture or railway fencing ; and baling wire.
- 74 Wire rope.

CLASS V.

General ad valorem Rate, ten per cent.

- 144 All goods, wares, or merchandise not elsewhere charged with duty, and not enumerated in the Free List, and not prohibited to be imported into this Colony, shall be charged with a duty of ten per cent. ad valorem.

SCHEDULE B.

CLASS IV.

FREE.

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- 75 *Agricultural implements and machinery, and all apparatus and plant usually and principally employed in farming operations; binding twine and harvest yarn.*
- 76 *All raw produce of South Africa, and animals bred in South Africa imported into this Colony overland.*
- 77 *All animals bred and articles grown, produced or manufactured in British South Africa, except:*
 (a) *Flour, wheaten, or wheaten meal, including pollard, manufactured from other than South African wheat.*
 (b) *Spirits.*
- 78 *Ambulance materials imported by recognised associations, corps or hospitals lawfully established for instruction or drill in first aid to the wounded.*
- 79 *Anchors and chain cables for the use of ships, tugs or lighters.*
- 80 *Animals living, except cattle and sheep for slaughter.*
- 81 *Arms, ammunition, appointments and uniforms for the Regular Military, Naval or Volunteer Imperial or Colonial Forces of His Majesty.*
- 82 *Atlases, charts, globes and maps.*
- 83 *Bags for flour, grain, manure, produce, sugar, wool, coal and minerals, not including paper bags; and bagging and sacking in the piece.*
- 84 *Band instruments and stands, the bonâ fide property of the Government of this Colony or of a Regular Military or Volunteer Corps, and not the property of individuals.*
- 85 *Bones, feathers, ivory, hair, hoofs, horns, shells, skins, teeth, wool and other parts of animals, birds, fishes or reptiles, not being manufactured, polished, or further prepared than dried and cleaned, but in their raw and unmanufactured state.*
- 86 *Book-binders' requisites, consisting of boards, cloth, leather, marble paper, skin, thread, tape, vellum, webbing and wire.*
- 87 *Books and music, printed, including newspapers and periodicals, not being foreign unauthorised prints of any British or South African copyright work.*
- 88 *Borax, bromine, litharge, manganese di-oxide and quicksilver.*
- 89 *Bottles and jars of common glass or earthenware imported full of any article liable to a rated duty.*
- 90 *Boxes, empty, cardboard and wooden, put together or in pieces or shooks for packing; and staves.*
- 91 *Brass and copper, and composition metal: in bars, ingots, plates and sheets: plain, including perforated, but otherwise unmanufactured.*
- 92 *Bullion, coin, specie, bank notes and other paper currency.*
- 93 *Carriages, carts, wagons and other wheeled vehicles the manufacture of South Africa, imported into this Colony overland.*
- 94 *Church decorations, altars, bells, fonts, lecterns, pulpits, organs, plate or vestments, and illuminated windows, imported by or for presentation to any religious body.*
- 95 *Coir, candlewick, cotton, flax, fibre, flock, hemp and jute: raw, waste or unmanufactured.*
- 96 *Collodion cotton, glycerine and nitrates for manufacturing purposes.*
- 97 *Cups, medals and other trophies imported for presentation, or presented as prizes at examinations, exhibitions, shows, or other public competitions, for excellence in art, bravery, good conduct, humanity, industry, invention, manufactures, learning, science, skill or sport, or for honourable or meritorious public services; provided that such articles shall on importation or delivery free from the Customs bear engraved or otherwise indelibly marked on them the name of the presenter or presentee and the occasion or purpose for which presented.*
- 98 *Consular uniforms and appointments and printed official consular stationery.*
- 99 *Cork dust, paper shavings, sawdust, husks and other waste substances intended and suitable for use only as packing material.*
- 100 *Diagrams, designs, drawings, models and plans.*
- 101 *Diamonds and other gems or precious stones in their rough state.*

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- 102 *Dye nuts, gambia, myrobalans, sumach, valonia and other dye stuffs : for leather.*
- 103 *Engravings, lithographs and photographs, and enlargements or reproductions of the same.*
- 104 *Fire clay, terra alba and fire bricks.*
- 105 *Fish, fresh and fish ova ; also dried, cured or salted fish and raw fish oil of South African taking.*
- 106 *Fruit : fresh or green, including cocoa-nuts.*
- 107 *Fruit and other produce : driers or evaporators of.*
- 108 *Glue.*
- 109 *Guano and other substances, animal, mineral or vegetable, artificial or natural, suitable for use as fertilisers or manures.*
- 110 *Hair cloth and springs for furniture.*
- 111 *Ice.*
- 112 *Iron and steel : angle, bar, channel, hoop, rod, plate, sheet or T ; plain, including perforated and galvanised ; rough and unmanufactured, not including corrugated sheets.*
- 113 *Launches, tugs and lighters ; provided that when condemned or landed to be broken up, duty shall be paid at the Customs on the hull and all fittings according to the tariff that may then be in force.*
- 114 *Lead : bar, pipe, sheet, foil and acetate of.*
- 115 *Leather : patent, enamelled, roan and morocco, and pig-skin in the piece and valve hide.*
- 116 *Lifeboats, belts and buoys, and other life-saving apparatus imported by any recognised society.*
- 117 *Metal of all sorts in bars, blocks, ingots, and pigs for founding, not elsewhere described.*
- 118 *Paintings, pictures, picture books and etchings.*
- 119 *Paper ordinarily used for printing books, pamphlets, newspapers and posters, or for lithographic purposes.*
- 120 *Potash and soda, carbonate, bi-carbonate, caustic, crystals and silicate.*
- 121 *Printing and lithographic inks.*
- 122 *Printing, lithographing, paper-cutting, folding, numbering and perforating machines or presses, blocks, formes, fontes, plates, rollers, stones and type, and other apparatus suitable only for use in the bookbinding or printing industries.*
- 123 *Public stores, imported or taken out of bond by, and "bond fide" for the sole and exclusive use of the Government of His Britannic Majesty, and of the Government of this Colony, provided that a certificate be delivered to the Customs authorities given under the hand of an officer approved of by the Principal Officer of Customs, setting forth that any duty levied on such public stores would be borne directly by the Government ; and provided further that no portions of such stores used or unused shall be sold or otherwise disposed of so as to come into the possession of or into consumption by any persons not legally entitled to import the same free of duty, without the consent of the Principal Officer of Customs and the payment of the duties to him by the Officer so selling or disposing of such public stores.*
- 124 *Rattans, cane and bamboo : unmanufactured.*
- 125 *Resin and carbonate of ammonia.*
- 126 *Saddle-trees.*
- 127 *School furniture and requisites ; being all articles certified by the Director of Education or his duly authorised deputy, to be for use in any school.*
- 128 *Sculpture, including casts or models of sculpture.*
- 129 *Seeds, bulbs, plants and tubers for planting or sowing only, under such regulations as regards edible kinds as the Customs authorities may impose to safeguard the revenue against diversion into ordinary consumption.*
- 130 *Sheep-dip, sheep-dipping powders, materials suitable only for dip, and dipping tanks.*
- 131 *Specimens illustrative of natural history, and exhibits for public museums.*
- 132 *Sprayers and sprinklers and other apparatus for destroying pests or diseases in stock plants or trees.*
- 133 *Sulphur and other substances for destroying pests or diseases in stock, plants or trees ; and disinfectants.*

- 134 Thread : boot and shoemakers', saddlers' and sailmakers', and seaming twine.
- 135 Tin and zinc : bar, plate or sheet ; plain or perforated, but otherwise unmanufactured.
- 136 Tobacco, the produce of South Africa, imported into this Colony overland.
- 137 Vaccine virus, toxin and serum.
- 138 Vegetables : fresh or green, but not including potatoes or onions.
- 139 Water-boring and pumping apparatus.
- 140 Wax, viz. :—paraffin and stearine and stearine grease ordinarily used in the manufacture of candles.
- 141 Wine presses and wine pumps.
- 142 Wood meal.
- 143 Wool, straw, hay and forage presses.

SCHEDULE C.

Butter, butterine, margarine, ghee and other substitutes for butter.
Chicory and substitutes for coffee or chicory.

Coffee :

- (a) Raw
- (b) Roasted, ground or mixed

Corn and grain, viz. :—barley, maize, millet, oats, rye, wheat, beans and peas

- (a) In the grain, or (b) crushed, flaked, ground, hulled, malted, pearled, split or otherwise prepared, except oats not in the grain and bran.
- (c) Flour, wheaten, or wheaten meal, including pollard

Fish :—Cured, dried, pickled, preserved, pressed or smoked, not being of South African taking

Fodder, viz. :—Chaff, hay, lucerne, oat-hay and other fodder, not otherwise described, but not including bran

Guns and gunbarrels, firearms :—

- (a) Single
 - (b) Double and other
- (and in either case in addition 10 per cent. "ad valorem")

Meats, including lard, fats, soups, and other similar substances used as food, but not including extracts and essences or tallow with the exception of fresh chilled and frozen meat

Spirits :—

- (a) Perfumed
 - (b) Liqueurs and cordials exceeding 3 per cent. of proof spirit
 - (c) Other sorts, exceeding 3 per cent. but not exceeding the strength of proof by Sykes' hydrometer and so on in proportion for any greater strength ; with the exception of methylated spirits
- (and in addition 10 per cent. "ad valorem" on all the above classes of spirits).⁴

Sugar, refined

Tea

Tobacco

Manufactured and cut.

Not manufactured but stemmed

Wine, still, exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit

(And in addition 10 per cent. "ad valorem").

Bicycles, tricycles and velocipedes and parts thereof

Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool, commonly used as cotton or woollen blankets or rugs, the single article, in pairs or in the piece ; and coats, jackets, or other apparel made of blanketing or baize

Bon-bons, surprise packets and crackers, and other similar fancy confectionery

CUSTOMS PROVISIONAL TARIFF.
MINING CERTIFICATES.

**ORD.
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Carriages, carts, coaches, wagons and all other wheeled vehicles, not elsewhere described, intended for the conveyance of persons or goods, including finished parts thereof, not being metal parts not usually made in South Africa, but required in the manufacture of wheeled vehicles therein; but not including bath chairs, perambulators, toy carts, store trucks or barrows.

Extracts and essences of all kinds for flavouring or perfumery, including saccharine

Fireworks of all descriptions

Medicines, patent and proprietary

Oils, essential or perfumed

Perfumery, cosmetics, dyes, powders and soap, and other preparations for toilet use, and soap powders and extracts

Shawls

The articles set forth in this Schedule shall not include goods (a) being the growth, produce or manufacture of the Cape Colony, Natal, the Orange River Colony, Basutoland, the Bechuanaland Protectorate, or Southern Rhodesia, with the exception of flour, wheaten, and wheaten meal, including pollard manufactured from other than South African wheat and spirits; (b) being the growth, produce or manufacture of the Portuguese Province of Mozambique, with the exception of spirits.

**ORD.
No. 50
of
1903.**

No. 50 of 1903. |

[Assented to 27 July 1903.]

ORDINANCE

To provide for the issuing of Certificates of Competency to persons engaged in Mining.

WHEREAS it is desirable to make better provision for the issuing of Certificates of Competency to Mine Managers Mine Overseers Mine Surveyors Engine Drivers and for Miners entitled to blast;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Power to Lieutenant-Governor to make regulations as to grant of Certificate of Competency.

†1. It shall be lawful for the Lieutenant-Governor to frame rules and regulations for granting Certificates of Competency with or without examination to;

- (a) mine managers;
- (b) mine overseers;
- (c) mine surveyors;
- (d) engine drivers;
- (e) miners entitled to blast.

Penalty for obtaining Certificate of Competency by fraud.

2. Any person who obtains or attempts to obtain a Certificate of Competency under this Ordinance by means of fraud or false pretences or any false document shall be liable to a fine not exceeding seventy-five

†For Rules and Regulations see Government Notice No. 872 of 1903 *Gazette* (21 Aug. 1903) p. 719 and Government Notices Nos. 1207, 1208, 1209 *Gazette* (23 Oct. 1903) p. 1069.

pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months and any certificate obtained by any such means shall become thereupon cancelled.

3. Persons applying for any of the certificates mentioned in section *one* or to be admitted to any examination for such certificate shall pay such fees as may be prescribed by any Regulations framed by the Lieutenant-Governor under this Ordinance.

Fees payable for Certificates of Competency.

4. Law No. 14 of 1899 is hereby repealed.

Repeal.

5. This Ordinance may be cited as The Mining Certificates Ordinance 1903.

Title.

**ORD.
No. 50
of
1903.**

No. 51 of 1903.]

[Assented to 27 July 1903.

**ORD.
No. 51
of
1903.**

ORDINANCE

To Impose Liabilities upon the Crown in regard to the acts of its Servants.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Any claim against His Majesty in His Colonial Government which would if such claim had arisen against a subject be the ground of an action in any competent Court shall be cognizable by the said Court whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Crown or out of any wrong committed by any servant of the Crown acting in his capacity and within the scope of his authority as such servant; provided that nothing herein contained shall be taken to impose any liability upon the Crown for any acts or omissions of its servants in the Postal or Telegraph Services of this Colony other than is imposed by any law specially relating to such services; and provided further that nothing herein contained shall impose any liability upon the Crown in respect of railways under the control of the High Commissioner.

Claims against the Crown cognizable in any competent Court.

CROWN LIABILITIES.
MALMANI GOLD FIELDS COMMISSION.

**ORD.
No. 51
of
1903.**

Action to be laid against Attorney-General.

2. In any action or other proceedings which shall be instituted by virtue of the last preceding section it shall be competent for the plaintiff applicant or petitioner as the case may be to make the Attorney-General nominal defendant or respondent.

No execution or attachment to be issued but Colonial Treasurer authorised to pay the sum awarded.

3. No execution or attachment or process in the nature thereof shall be issued against the defendant or respondent in such suit as aforesaid or against any property of His Majesty but it shall be lawful for the Colonial Treasurer to pay out of the Colonial funds such sum of money as shall by the judgment of the Court be awarded to the plaintiff applicant or petitioner.

Title.

4. This Ordinance may be cited as the Crown Liabilities Ordinance 1903.

**ORD.
No. 52
of
1903.**

No. 52 of 1903.]

[Assented to 27 July 1903.

ORDINANCE

Empowering the Lieutenant-Governor to appoint a Commission to report as to the ownership of Mining Rights and Stands in the District formerly known as the Malmani Gold Fields.

WHEREAS many books and documents relating to mining rights and stands in the former Malmani Gold Fields have been lost or destroyed during the recent hostilities ;

And whereas it is necessary that provision should be made for ascertaining who are the holders of such mining rights and stands and the liabilities of the holders in respect of such mining rights and stands ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

Lieutenant-Governor may appoint a Commission.

1. It shall be lawful for the Lieutenant-Governor to appoint a Commission of three members who shall enquire into all matters relating to the ownership of all mining rights and stands in the district formerly known as the Malmani Gold Fields and shall frame a report shewing the names of all holders of

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of
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such mining rights and stands and the amount of license moneys due to the Government or to any person or persons in respect of such mining rights and stands and the amount of any bond or other security registered against any such mining rights or stands.

2. The Report shall be signed by the members of the Commission or any two of them and shall be forwarded to the Lieutenant-Governor who shall cause a copy of the Report to be published in the *Gazette* together with a notice that if no objections to such Report are lodged with the Registrar of Mining Rights within one month after the date of the first publication in the *Gazette* the report shall be confirmed by the Lieutenant-Governor.†

Report to be forwarded to Lieutenant-Governor.

3. Any person who objects to the Report or to any portion thereof may within one month after the first publication thereof in the *Gazette* lodge with the Registrar of Mining Rights at Johannesburg a notice of such objection specifying that portion of the Report to which such objection refers and shall within fourteen days after lodging such notice proceed with such objection by applying on motion to the Supreme Court or if the said Court be not sitting to any Judge thereof for an order to amend the Report in terms of the said objection; the Court may before hearing such application cause such notice thereof to be given by the applicant as the said Court may deem advisable.

Hearing of objections.

4. If no objection to the Report be lodged as provided by the last preceding section or if any objection be lodged but not proceeded with as provided by the said section the Report shall be confirmed by the Lieutenant-Governor at the expiration of two months from the first publication thereof in the *Gazette*; if any objection be lodged and proceeded with as provided by the said section only such part of the Report as is not affected by such objection shall then be confirmed by the Lieutenant-Governor and the remainder of the Report either as originally published or amended as the case may be shall be confirmed after any objections thereto have been heard and

Confirmation of Report.

† For report of Commission see Govt. Notice No. 85 of 1904, *Gazette* 22 Jan. 1904. p. 109.

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determined; the Report or amended Report or any portion thereof after confirmation by the Lieutenant-Governor shall be taken as being in all respects correct and as containing a true statement of the ownership of such mining rights and stands in the district formerly known as the Malmani Gold Fields and of the amount of license money due to the Government or to any person or persons in respect of such mining rights and stands and the amount of any bond or other security registered against such mining rights or stands and the Registrar of Mining Rights shall cause registers of mining rights and stands to be drawn up in accordance with the said Report as confirmed as aforesaid.

Lieutenant-Governor may make rules for procedure.

5. The Lieutenant-Governor may from time to time make rules regulating the procedure of the said Commission.

Title.

6. This Ordinance may be cited for all purposes as The Malmani Gold Fields Commission Ordinance 1903.

**ORD.
No. 53
of
1903.**

No. 53 of 1903.]

[Assented to 27 July 1903.]

ORDINANCE

To provide for the cancellation of the Concession for the Manufacture of Spirituous Liquors vested in the Eerste Fabrieken Hatherley Distillery Company Limited.

Preamble.

WHEREAS a Concession was granted on the twenty-second day of June One thousand Eight hundred and Eighty-five to one Alois Hugo Nellmapius conferring upon him the exclusive right to distil or manufacture within the South African Republic spirituous liquors;

And whereas the rights and privileges under the said Concession became vested by cession in the Eerste Fabrieken Hatherley Distillery Company Limited;

And whereas it is expedient that the said Concession and all rights and privileges thereunder should be cancelled;

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of
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And whereas an agreement was entered into on the first day of July One thousand Nine hundred and Three between the Government of this Colony and the said Company for the cancellation of the said Concession in consideration of the payment by the said Government to the said Company of the sum of Two hundred and Ninety-six thousand Eight hundred and Seventy-five Pounds;

And whereas it is expedient to ratify the said Contract and cancel the said Concession;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Agreement entered into on the first day of July One thousand Nine hundred and Three between the Government of this Colony and the Eerste Fabrieken Hatherley Distillery Company Limited and set out in the schedule to this Ordinance is hereby ratified confirmed and declared to be binding on the parties thereto and it shall be lawful for the Lieutenant-Governor to pay to the said Company the sum mentioned in the said Agreement to wit Two hundred and Ninety-six thousand Eight hundred and Seventy-five Pounds out of balances in the hands of the Colonial Treasurer.

Ratification
of Contract.

2. The Concession granted to Alois Hugo Nellmapius numbered 83 and dated the twenty-second day of June One thousand Eight hundred and Eighty-five and all the rights and privileges thereunder are hereby cancelled.

Cancellation
of Conces-
sion.

3. This Ordinance may be cited as The Hatherley Distillery (Cancellation of Concession) Ordinance 1903.

Title.

SCHEDULE.

**ORD.
No. 53
of
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Memorandum of Agreement made and entered into by and between the Government of the Transvaal Colony (hereinafter called "the Government") of the one part and the Eerste Fabriek Hatherley Distillery Limited (hereinafter called "the Company") of the other part;

Witnesseth;

1. The Company is a Company with limited liability duly registered as such in the late South African Republic now the Transvaal Colony.

2. The Company has an issued share capital of £475,000 (say four hundred and seventy-five thousand pounds sterling) consisting of 475,000 (say four hundred and seventy-five thousand) shares of the nominal or face value of £1 sterling (say one pound sterling) each.

3. The Company is the holder of certain Deed of Concession for the distillation manufacture and sale of spirituous and other liquors and of the rights thereunder originally granted by the Government of the South African Republic to one Alois Hugo Nellmapius now deceased and subsequently ceded and transferred to the Company for good and valuable consideration.

4. The said deed of concession is numbered No. 83 is dated the twenty-second day of June 1885 is duly registered in the Deeds Register in the Office of the Registrar of Deeds at Pretoria Folio 91 and was granted in virtue of a Resolution of the Volksraad of the said late South African Republic No. 464 dated the seventeenth day of June 1885.

5. The rights and privileges held and enjoyed by the Company under and by virtue of the said deed of concession are in the same more fully set forth.

6. That certain legislation has recently been promulgated by the Government whereby the distillation within the Transvaal Colony of spirits or spirituous liquors for sale has been prohibited and it is claimed by the Government that thus the rights of the Company held under the aforesaid concession have been abrogated and destroyed but the Government has admitted that the Company is entitled to compensation.

7. That certain negotiations have taken place between the Company and the Government in regard to the measure of such compensation and the rights and privileges attaching thereto and to be held and enjoyed by the Company and upon which the Company would acquiesce in such abrogation and destruction of its rights and privileges and would not question or challenge the same.

8. A provisional agreement setting forth the measure of such compensation and the further rights and privileges to be enjoyed by the Company has been arrived at between the Company and the Government. The terms of the said agreement are more fully set forth in certain letters which have been exchanged between the Company and the Government. The shareholders of the Company have in Special General Meeting called for that purpose in terms of the Company's Trust Deed and Articles of Association and held at Pretoria on Friday the 1st day of May 1903 duly accepted the said terms and it is now desirable that the same shall be duly embodied and set forth in an agreement between the Company and the Government.

9. The said terms are as follows;

- (a) As compensation the Government shall pay to the Company for the benefit of its shareholders a sum of 12s. 6d. sterling (say twelve shillings and sixpence sterling) on each of the 475,000 (say four hundred and seventy-five thousand) issued shares of the Company making a sum of £296,875 sterling (say two hundred and ninety-six thousand eight hundred and seventy-five pounds sterling) in cash.

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of
1903.**

- (b) The said sum shall on the signing hereof be paid to the Company as follows:—£76,875 (say seventy-six thousand eight hundred and seventy-five pounds sterling) at its office at Pretoria and £220,000 sterling (say two hundred and twenty thousand pounds sterling) at its office in London in gold at par and free from any deduction.
- (c) In consideration of the said payment and of the granting to and enjoyment by the Company of the rights and privileges hereinafter set forth the Company agrees to acquiesce in the cancellation of the said deed of concession and of the rights and privileges held and enjoyed thereunder.
- (d) That all and singular the other properties and assets of the Company of whatsoever nature shall be held and retained by the Company for the benefit of the Shareholders thereof.
- (e) That for a full term or period of three years from the day of signing of this agreement the Company shall have the right to sell and dispose of its stock of spirits and other liquors under the special privileges in this deed more fully set forth and that the Company shall not during the said period and in respect of such sale and disposal be subject to the payment of any tax excise license or any other charge whatsoever in respect of its said stock.
- (f) That the Company shall have the right to import to the Transvaal from the Ressano-Garcia Distillery in the Province of Mozambique and free from the payment of any tax excise license or other charge so far as the Government is concerned the stock of spirits distilled and now actually stored there such spirits not to exceed a total quantity of 20,000 (say twenty thousand) imperial gallons in bulk.

For the due performance whereof the parties to this agreement bind themselves according to law.

Thus done and signed at Pretoria in the Transvaal Colony in duplicate original on this the first day of July 1903 in the presence of the undersigned witnesses.

(Sgd.) W. E. DAVIDSON,
Colonial Secretary.

As Witnesses:

(Sgd.) E. H. L. GORGES.
" H. J. BARKER.

For the Government of the Transvaal Colony.

(Sgd.) H. CRAWFORD,
" FRANCIS DRAKE,
Liquidators.

As Witnesses:

(Sgd.) C. ALTMAN.
" JOHN SMITH.

For the Eerste Fabrieken Hatherley Distillery Limited (now in Liquidation).

ORD.
No. 54
of
1903.

No. 54 of 1903.]

[Assented to 27 July 1903.]

ORDINANCE

**To amend the Law relating to the working of Mines,
Works and Machinery.**

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Interpre-
tation of
terms.

1. In this Ordinance and in any Regulations made thereunder unless there is something repugnant in the subject or context;

“Mine” shall mean all workings of mineral deposits on the surface from the surface downwards and underground together with all erections and appliances belonging or appertaining thereto above and below ground for the purpose of prospecting for or winning metals minerals or precious stones;

“Mineral” shall include all substances which can be obtained from the earth by mining digging or quarrying operations for purposes of profit including mineral oils;

“Works” shall include chemical works metallurgical works reduction works ore-dressing works petroleum works salt works brickmaking works pottery works lime works and any places where machinery is erected and all dams reservoirs and other appliances for conserving water for the same and all areas held under license or other title under the Mining Laws of the Transvaal which are not included under the term mine;

“Machinery” shall include stationary and portable boilers steam apparatus steam and other engines including locomotives and all appliances or combination of appliances which can be used for developing receiving transmitting or converting power either mechanical or natural;

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Owner of a mine shall be taken to be any person or body of persons who is the immediate holder or lessee of any mine or part thereof and shall not be taken to include a person who merely receives a royalty or rent from a mine or who is merely the owner of any mine subject to any contract for the working thereof or who is merely the owner of the soil. A tributor for the working of a mine or any part thereof shall be deemed to be an owner but so as not to exempt the person to whom he pays tribute from any liability as owner under this Ordinance. Where a mine is owned by a company or syndicate the Chairman of such company or syndicate shall be considered to be the owner or failing him the directors or members of such company or syndicate shall jointly and severally be deemed to be the owner.

2. The supervision of all mines and works and machinery shall be exercised by the Government Mining Engineer the Inspectors of Mines the Inspectors of Machinery and other officers duly appointed by the Government in that behalf. The Inspectors of Mines and Inspectors of Machinery shall act under the Government Mining Engineer who shall assign them their duties and districts.

Official supervision of mines works and machinery.

† 3. It shall be lawful for the Lieutenant-Governor to make regulations in respect of mines works or machinery for any of the following purposes;

Power to make regulations as to mines works and machinery.

- (a) for the protection and preservation of the surface of mines or works;
- (b) for the making and keeping of mine plans and for depositing copies of the same with the Mines Department;
- (c) providing for making statistical and other reports relating to mines works and machinery;
- (d) defining the duties and responsibility of mine owners managers overseers and other persons engaged in or about mines works and machinery;

† For Regulations see Government Notice No. 826 of 1903
Gazette (14 Aug. 1903) p. 613.

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of
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- (e) for appeals from any decision of or instruction given by an inspector of mines or machinery;
- (f) for the storage receipt distribution transport and use of explosives;
- (g) for the holding of enquiries in cases of accident and for authorising the summoning of witnesses and their examination on oath at such enquiries;
- (h) providing for ambulances and medical aid in case of accident;
- (i) for prescribing the conditions upon which machinery may be erected or used;
- (j) for prescribing the fees payable for licenses and inspections under this Ordinance;
- (k) providing penalties for the breach of such regulations;
- (l) generally for the proper working and management of all mines and works and of machinery.

Special rules for order and discipline in mines; by mine managers.

4. In addition to the regulations referred to in the last preceding section the manager of a mine or works may make special rules not inconsistent with this Ordinance or any regulation made under the last preceding section for the maintenance of order and discipline and the prevention of accidents in such mine or works. Such rules shall be submitted through the Inspectors of Mines to the Government Mining Engineer for approval after they have been posted up at the mine or works for fourteen days.

The Government Mining Engineer if he considers such rules unreasonable or otherwise objectionable may require them to be altered.

Such rules when so approved shall have the same force and effect as regulations made under the last preceding section and any person contravening any such rules shall be liable to a penalty not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding fourteen days.

5. It shall not be lawful to perform any work in or about a mine after twelve midnight on Saturdays up to twelve midnight on Sundays or after twelve midnight on the day before Christmas Day or Good Friday up to twelve midnight on such day except such work as is necessary and unavoidable in order to maintain the mine and machinery in proper working condition.

Sunday work unlawful excepting unavoidable necessary work.

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Such necessary and unavoidable work is;

- (a) attending to and working pumping machinery and steam boilers appertaining to the same;
- (b) such repairs either above or below the ground as cannot be delayed without causing damage and cannot be done on working days without unduly interfering with the work of the mine. The necessary labour in the workshops required for such repairs shall also be permitted;
- (c) the chemical treatment of ore;
- (d) keeping on blast or smelting furnaces;
- (e) running stamp mills or other machinery used for crushing ore;

Should it be necessary to carry on temporarily any other work in or about a mine on Sunday Christmas Day or Good Friday permission to do so may be granted by the Government Mining Engineer on application made to the Inspector of Mines.

Any person contravening the provisions of this section shall be liable to a fine not exceeding seventy-five pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

6. The Lieutenant-Governor may permit the construction of a railway-siding or tramway by any person working a mine over ground held under any mining title by another person provided that;

Lieutenant-Governor may permit construction of railway-siding or tramway.

- (a) such siding or tramway is reasonably required for the proper working of the mine;
- (b) the construction of such siding or tramway shall not in the opinion of the Government Mining Engineer interfere with the working of any mine on such ground;

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- (c) the person constructing such siding or railway shall pay compensation for all damage to existing works or buildings arising from such construction; which compensation if not agreed upon between the parties shall be settled by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902;
- (d) any person applying for permission under this section shall forward to the Government Mining Engineer with his application a diagram of the proposed works which diagram if and when approved shall be filed in the Office of the Registrar of Mining Rights;
- (e) any such applicant as aforesaid shall give one month's notice in writing of his intention to make such application to the person holding the ground on which he proposes to construct a siding or tramway who may within fourteen days of the service of such notice lodge with the Government Mining Engineer notice in writing of any objection he may have to the granting of such application; and the Government Mining Engineer may thereupon hear the applicant and the objector and forward any recommendation thereon to the Lieutenant-Governor.

Permission
of Govern-
ment Mining
Engineer to
drive con-
necting
tunnels.

7. The Government Mining Engineer shall have the right at his discretion to permit the driving of a connecting tunnel by any person working a mine through ground held under a mining title by another person provided that;

- (a) such tunnel is necessary for the improved working of the mine;
- (b) that the making of such tunnel shall not hinder the working of such ground;
- (c) that the person making the tunnel shall make good all damage arising from the making thereof;

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(d) that the minerals extracted in such tunnel shall be handed over to the person entitled to the minerals in such ground free of cost.

8. No boy whether white or coloured under the age of fourteen years and no female person shall be employed below ground in any mine.

Employment of juveniles, underground prohibited.

Any person contravening this section shall be liable to a fine of five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

9. Any person obstructing or hindering any official of the Mines Department in the discharge of his duty or disobeying any lawful order given by any such official or refusing or neglecting to furnish such officer with the means and assistance necessary for making an entry inspection examination or enquiry under this Ordinance or any regulation made thereunder shall be liable to a fine not exceeding one hundred and fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months.

Obstruction of or disobedience to orders of officials.

10. Any person contravening any regulation framed under section *three* of this Ordinance shall be liable to the penalty provided by such regulation and in the absence of such provision to a fine not exceeding one hundred and fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months.

Penalty for contravening regulations.

11. Where an owner or his representative a manager or any person employed in or about a mine or works does any act or makes any omission likely to endanger the safety or cause serious personal injury to any person and which act or omission was committed or made wilfully by the personal default or negligence of the person accused such person shall be liable to imprisonment with or without hard labour for a period not exceeding six months. If any such person does any act or makes any omission which has actually resulted in serious personal

Penalty on owner or manager for acts or omissions endangering safety or causing injury.

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of
1903.**

Repeal of
laws.

Title.

injury to any person he shall be liable to imprisonment with or without hard labour for a period not exceeding one year.

12. Article 2 of Law No. 28 of 1896 in so far as it applies to the working of a mine and Laws No. 11 of 1898 and No. 12 of 1898 and any other law repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed.

13. This Ordinance may be cited as the Mines Works and Machinery Regulations Ordinance 1903.

**ORD.
No. 55
of
1903.**

No. 55 of 1903.]

[Assented to 27 July, 1903.]

ORDINANCE

To provide for the Admission of Land Surveyors.

WHEREAS it is desirable to make provisions for the admission of persons desiring to practise as Land Surveyors in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Repeal.

1. Proclamation Transvaal No. 4 of 1902 and so much of any other Law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed.

Examina-
tions
required to
be passed by
candidate for
admission as
Land
Surveyor.

2. No person shall be admitted to practise as a Land Surveyor in this Colony until he has attained the age of twenty-one years and has worked in the field for a period of not less than two years with a qualified Government Surveyor and has passed;

†(a) in this Colony such examination or examinations as may be prescribed by the Board of Examiners of this Colony and approved by the Lieutenant-Governor in Council; or

(b) in some other part of His Majesty's Dominion such examination or examinations as the Board of Examiners of this Colony with the approval of the Lieutenant-Governor in Council may deem to be equivalent to the examination or examinations prescribed

†See Examining Board (Survey Examinations) Ordinance 1904.

under sub-section (a) of this section. If the examination or examinations passed elsewhere shall be deemed to be equivalent in part only to the examination or examinations prescribed under sub-section (a) of this section the applicant shall be required to pass such supplementary examination or examinations as the Board of Examiners may prescribe; provided however that after a date to be fixed by the Lieutenant-Governor no person shall be entitled to the benefit of this sub-section unless by the laws of the place where he passed his examination or examinations a similar privilege is conferred upon persons who have passed the examination or examinations for the time being prescribed for Land Surveyors in this Colony; and

(c) in addition to such examination or examinations prescribed in sub-sections (a) or (b) such practical examination in the methods and procedure of surveying and in the Land Laws of this Colony as the Surveyor-General shall prescribe.

**ORD.
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of
1903.**

3. It shall be lawful for the Lieutenant-Governor to make such regulations as he may deem necessary for the better carrying out of the provisions of this Ordinance. Regulations.

4. This Ordinance may be cited as the Land Surveyors Admission Ordinance 1903. Title.

No. 56 of 1903.]

[Assented to 27 July 1903.]

ORDINANCE

**ORD.
No. 56
of
1903.**

To provide for the Incorporation of Societies.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. It shall be lawful for any unincorporated society or association already formed and established or which may at any time hereafter be formed and established in this Colony for any lawful object approved by Societies
may be
registered in
Registrar of
Companies'
Office.

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No. 56
of
1903.**

the Lieutenant-Governor and to which society or association it shall be in the opinion of the said Lieutenant-Governor expedient to extend the privileges of this Ordinance (certificates whereof signed by the Attorney-General shall be produced before registration) to register such society or association in the office of the Registrar of Companies of this Colony and to deposit in such last-mentioned office a copy of the rules or bye-laws of such society or association under the hand of the secretary thereof for the time being; certificate of which registration and deposit shall thereupon be issued by the said Registrar of Companies to the said secretary; provided always that no society or association formed or established for purposes of gain shall be entitled to be registered under this Ordinance.

Registered societies may hold property and borrow money.

2. Every such society or association registered under this Ordinance shall be competent to acquire and hold in its own name and to sell transfer lease or otherwise dispose of movable and immovable property in manner hereinafter mentioned and to borrow and take up money from time to time upon mortgage or debenture for the purposes of such society or association according to any rules or bye-laws which may be lawfully made in that behalf in manner hereinafter mentioned.

Registered societies may make rules.

3. It shall be lawful for every society or association registered under this Ordinance from time to time at some meeting of its members and by a resolution of a majority of the members then present to make rules and bye-laws for the regulation government and management of such society or association and for the protection recovery and custody and for the sale transfer mortgage lease or disposal of the property thereof and for the appropriation of the funds thereof and for the audit of the accounts thereof and the fines and forfeitures to be imposed on any member thereof and the settlements of disputes between the society or association and any of its members or any persons claiming by or through any member or under the rules also for the signature of contracts and of powers of

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No. 56
of
1903.**

attorney to sue or defend or to pass transfer or bonds and generally for carrying out the objects and purposes of such society or association; and to alter amend vary or annul as occasion may require any such rules or bye-laws previously theretofore made and registered or deposited as afore-said; provided that a copy of every bye-law and rule under the hand of the secretary shall be deposited in the office of the Registrar of Companies.

4. The members of every such society or association established or registered under this Ordinance shall have the power of electing such of its members as they shall deem fit to act as a committee or council of officers under such terms and conditions as the rules or bye-laws may provide.

Committee or council appointed by members.

5. Every such society or association established or registered under this Ordinance may in all actions suits and legal proceedings sue and be sued in the name in which it is registered.

Society to sue or to be sued in the name in which it is registered.

6. Nothing in this Ordinance contained shall prevent any such society or association so registered from altering its name provided that every such alteration shall be registered in the Registrar of Companies' Office and publicly notified in the *Gazette*; and provided further that no such alteration shall prejudice or affect any right which previously to such alteration has accrued to anyone against such society or association or by such society or association against anyone and that no such alteration shall abate or render defective any legal proceedings pending at the time when such alteration is made.

Society may alter its name and such alteration shall be registered and publicly notified.

7. The fees mentioned in the Schedule hereto shall be paid to the Registrar of Companies in respect of the several acts to be performed by him in pursuance of the provisions of this Ordinance.

Fees.

8. This Ordinance may be cited as the Societies and Associations Incorporation Ordinance 1903.

Title.

SCHEDULE OF FEES.

Certificate of deposit and registration of original rules and bye-laws	£1	0	0
Registration of original rules and bye-laws	0	5	0
Registration of change of name	0	5	0

**ORD.
No. 57
of
1903.**

No. 57 of 1903.]

[Assented to 27 July 1903.

ORDINANCE.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Repeal.

1. The laws mentioned in the Schedule annexed hereto and so much of any other law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed.

Interpreta-
tion.

2. In this Ordinance if not inconsistent with the context the following terms shall have the meanings assigned to them respectively;

“Commissioner” when used alone means the Commissioner of Lands appointed under this Ordinance;

“Crown Land” means and includes;

(a) all unalienated Crown Lands;

(b) all land the property of the Government however acquired;

“Land Board” or “Board” means when used alone the Board appointed by the Lieutenant-Governor to advise the Commissioner of Lands.

Commis-
sioner of
Lands and
Department
of Lands and
Surveys.

3. There shall be a Commissioner of Lands charged with the administration of this Ordinance and with the management and control of the Department of Lands and Surveys and the Commissioner of Lands in office at the commencement of this Ordinance shall be the first Commissioner under this Ordinance. The work of the Department shall be performed by such staff of officers surveyors inspectors rangers clerks and servants as may be necessary who shall be appointed by the Lieutenant-Governor and shall receive such remuneration as the Lieutenant-Governor may think fit and the members of the present staff of the said Department shall be deemed to be appointed under this Ordinance.

Land Board.

4. It shall be lawful for the Lieutenant-Governor to appoint a Land Board to advise the Commissioner and perform such other duties as he may by regulation prescribe.

5. It shall be lawful for the Lieutenant-Governor to dispose of Crown Lands within this Colony by grant sale lease or otherwise in such manner and on such conditions as he may deem advisable not repugnant to the provisions of this Ordinance; provided that particulars of every such grant sale or lease shall immediately after it is effected be published in the *Gazette*.

Crown Lands may be disposed of according to provisions of this Ordinance.

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6. The Lieutenant-Governor may grant any Crown Land in exchange for any other land if it shall appear to him advisable to do so in the public interests.

Land may be exchanged.

7. (1) All rights to minerals mineral products and precious stones on or under any Crown Lands granted sold leased or otherwise disposed of under this Ordinance shall be reserved to the Crown.

Reservations.

(2) Where the minerals and precious stones are so reserved the Lieutenant-Governor shall have the right;

(a) to dispose of all minerals and precious stones on or under the land so alienated as if the grant or lease had not been made; provided that any person who causes any damage to a grantee or lessee by the exercise of rights granted to him under any law relating to minerals and precious stones shall be liable for such damage to the grantee or lessee; and provided further that no license granted under any law relating to minerals and precious stones shall entitle the holder thereof to prospect or mine upon any cultivated land plantation or homestead or within two hundred yards of any building;

(b) to resume for mining purposes the whole or any portion of land so alienated.

(3) The Lieutenant-Governor shall have the right to resume for public purposes the whole or any portion of any land alienated under this Ordinance.

(4) On the proclamation as public diggings under Law No. 15 of 18⁰⁸ or any amendment thereof or as a mine alluvial diggings or mining area under the Precious Stones Ordinance 1903 or any amendment thereof

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of
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Signature
and date of
Crown
Grants.

Registrar of
Deeds to
keep special
registers.

of any land alienated under this Ordinance or on the resumption of such land for mining or public purposes under this section such compensation shall be paid by the Government to the grantee or lessee as may be agreed upon or in default of agreement as may be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

8. Ail grants and leases of Crown Lands shall be signed by the Lieutenant-Governor as well as by the Commissioner of Lands and the Surveyor-General or other officer authorised in that behalf by the Lieutenant-Governor and shall be dated and sealed with the seal of this Colony and such date shall be deemed the date of issue and every grant shall be entered on record in the Department of Lands and Surveys; provided always that nothing in this or any other section of this Ordinance contained shall in any way repeal or modify the provisions of any existing law in respect of the registration of such grants and leases in the office of the Registrar of Deeds or in any other registration office proper for the registration of such grants and leases; save in so far as set forth in section *ten* of this Ordinance.†

9. The Registrar of Deeds shall open and keep special registers wherein all leases and licenses issued under the Settlers' Ordinance 1902 or under this Ordinance shall be registered and notwithstanding anything contained in the Transfer Duty Proclamation 1902 The Stamp Duties Amendment Proclamation of 1902 The Deeds Proclamation of 1902 Deeds Office Regulations or any amendments of the aforementioned enactments such leases and licenses need not be drawn before a Notary Public nor shall they be subject to transfer duty or stamp duty except in case of subsequent transfer or cession when such transfer or cession shall be in the ordinary form and subject to the duties prescribed by law.

In cases where the Crown is not in possession of written title to any land leased the entry in the special register kept in the Deeds Office shall be regarded as effective registration.

† For the words "section *ten*" read "section *nine*." See "Correction of Errors in Laws Ordinance 1904."

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of
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On the termination or cancellation of any such lease or license as above referred to the Commissioner of Lands shall forward to the Registrar of Deeds a notification to that effect duly signed by him and by the lessee or licensee together with the copies of the deeds held by them and the Registrar shall thereupon cancel the registration of such lease or license without payment of any fee for such cancellation; provided that in cases where the consent of the lessee or licensee to cancellation cannot be obtained a certificate to that effect by the Commissioner and his consent shall be deemed sufficient authority to the Registrar of Deeds to cancel the registration of such lease or license.

Where one or more lots of land subdivided according to a general plan filed in the Deeds Office is or are leased by the Commissioner it shall not be necessary to annex a diagram to such lease.

10. If it is found that the description of the boundaries or diagram of the land contained in any grant or lease under this Ordinance does not properly describe the land intended by the grantee or lessee to be therein comprised or to which such grantee or lessee is entitled either by reason of an error in the description or survey or from any other cause the Commissioner may recall such grant or lease and an amended grant or lease may be issued in lieu thereof; provided that the cancellation of the original grant lease or diagram shall take place in accordance with the existing Laws relative thereto; provided further that if the grantee or lessee fails to forward on demand to the Commissioner any grant lease diagram or other document for amendment the Commissioner may cause the description and the diagram of the Department to be amended if necessary and shall in such case give notice of the amendment to the grantee or lessee and such amended description and diagram or copy thereof if certified by the Surveyor-General or other officer duly authorised in that behalf as correct shall be accepted in every court of law as *prima facie* evidence of the boundaries of the land included under such grant or lease.

On improper description of boundaries or diagram of land granted or leased Commissioner may recall grant or lease and issue amended grant or lease in lieu thereof.

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Commissioner may insert special clauses and grant limited right to timber.

11. The Commissioner is authorised at his discretion to insert in any grant or lease all such conditions as he may deem necessary to secure the beneficial occupation of the land granted or leased and also to insert a clause permitting the lessee to cut such timber on Crown Lands as may be required for domestic uses for the construction of buildings fences stock-yards or other improvements on the lands so occupied but not for any other purpose.

RESERVES.

Lieutenant-Governor may make reserves.

12. The Lieutenant-Governor is hereby authorised subject to such conditions and limitations as he may think fit to except from sale and either to reserve to His Majesty His Heirs and Successors or to dispose of in such other manner as for the public interest may seem best any Crown Lands that may be required for the following objects and purposes;

- (1) for the use or benefit of aboriginal natives and Asiatics;
- (2) for the use or requirements of the Government of this Colony or for purposes of military defence or for purposes of the South African Constabulary;
- (3) for railways railway stations roads tramways or canals or other internal communications or for drainage or irrigation works or for the approaches or other purposes necessarily appertaining to any such works;
- (4) for landing places on rivers ferries and bridges;
- (5) for sites for churches and chapels;
- (6) for sites for schools and other buildings for the purposes of education and land for the endowment of schools and other educational institutions of a public character;
- (7) for state forests areas for the conservation of timber and indigenous flora and fauna and for reservoirs aqueducts or water-courses sewers or drains;
- (8) for saltpans;

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- (9) for sites for cities towns villages residence and business areas town halls mechanics' and miners' institutes tramways railways and railway stations telegraph stations telegraph lines post offices abattoirs public baths schools of art libraries museums public gardens experimental farms agricultural colleges agricultural and horticultural societies temperance institutions recreation grounds race-courses hospitals magazines for explosives sanitary dépôts camping-grounds and institutions for charitable purposes markets court-houses police stations paddocks prisons or other edifices for public use or purposes;
- (10) for cemeteries;
- (11) for places necessary for the embellishment of towns or for health recreation or amusement of the inhabitants;
- (12) for the endowment of municipal corporations within this Colony;
- (13) for resting places watering places stock routes or outspans for travellers and stock;
- (14) for commonages for use of the inhabitants of any town or settlement;
- (15) for any other purposes of public health safety utility convenience or enjoyment for otherwise facilitating the improvement and settlement of this Colony.

13. A full and complete description of every such reserve and for the purposes for which it is made shall as soon as possible be published in the *Gazette*.

Reserves to be notified in the *Gazette*.

14. The Lieutenant-Governor may cancel or amend or change the specified purposes for which any reserve is made and notice of such cancellation amendment or change shall be published in the *Gazette*.

Lieutenant-Governor may change purpose of any reserve.

† 15. The Lieutenant-Governor by proclamation in the *Gazette* may place any reserve under the control of any municipality urban district board or other person or persons as a board of management for any of the purposes mentioned in section *fourteen* and may empower such municipality board or

Reserves may be placed under Board of Management. Board may make bye-laws.

† For the words "section *fourteen*" in this section read "section *twelve*": See "Correction of Errors in Laws Ordinance 1904."

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other person to make repeal and alter bye-laws for the control and management of such reserve or prescribing fees for depasturing thereon for directing the manner in which such fees shall be imposed paid collected and disposed of and to impose penalties not exceeding in any case five pounds for any breach thereof and two pounds a day for a continuing breach but not more than twenty pounds in the aggregate.

Such bye-laws if approved by the Lieutenant-Governor shall be published in the *Gazette* and shall be laid before the Legislative Council within fourteen days of such publication if the Legislative Council be then sitting; and if the Legislative Council be not then sitting within fourteen days after its next meeting; and all such bye-laws when so published shall have the force of law and shall continue in force unless repealed or altered as aforesaid or disallowed by the Legislative Council.

Reserves to be marked on the maps of this Colony.

16. All reserves made for any purpose under this Ordinance shall be set forth on the authenticated maps in the Department of Lands and Surveys. A duly approved diagram shall be annexed to each such deed of reserve and such deed shall be registered in the office of the Registrar of Deeds.

Lieutenant-Governor may suspend condition of residence on any holding.

17. Notwithstanding anything contained in section *twenty-four* of the Settlers' Ordinance 1902 it shall be lawful for the Lieutenant-Governor in Council in cases where it may appear expedient to suspend the condition of residence on a holding either wholly or for a period on such conditions as he may think fit.

Regulations.

18. It shall be lawful for the Lieutenant-Governor from time to time to make regulations for all or any of the following purposes;

- (1) for the conduct of the business of the Land Department and the duties of the officers;
- (2) for prescribing the functions and duties of the Board;

(3) for prescribing the duties of valuers surveyors and inspectors, employed under the Land Department;

(4) for the establishment and proclamation of towns and the proper laying out and survey of erven therein for any object or purpose that may be deemed necessary for the efficient administration of this Ordinance.

All such regulations shall be of force and effect on publication in the *Gazette*.

19. This Ordinance may be cited as the Title.
Crown Land Disposal Ordinance 1903.

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SCHEDULE.

Law 4 of 1883.

Law 10 of 1892.

Law 15 of 1895.

Crown Land Disposal Ordinance 1902.

No. 58 OF 1903.]

[Assented to 27 July 1903.

**ORD.
No. 58
of
1903.**

ORDINANCE

Establishing Municipalities.

WHEREAS it is expedient to provide for establishing Municipalities and Urban District Boards in certain towns in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

CHAPTER I.

PRELIMINARY.

1. This Ordinance shall apply to every Municipality hereafter constituted and to every existing Municipality which shall in the manner in this Ordinance prescribed be brought under its operation.

Application
of Ordinance.

2. In this Ordinance the following expressions in inverted commas shall have the meanings placed opposite to them;

Definition of
terms.

“native” shall mean any person both of whose parents belong to any aboriginal race or tribe of Africa.

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“owner” shall include any person receiving the rent or profits of any lands or premises from any tenant or occupier thereof or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person entitled thereto or interested therein.

“occupier” shall include any person in actual occupation of land or premises without regard to the title under which he occupies and in case of premises sub-divided and let to lodgers or various tenants the person receiving the rent payable by the lodgers or tenants whether on his own account or as an agent for any person entitled thereto or interested therein.

Lieutenant-Governor may repeal laws relating to existing Municipalities coming under provisions of this Ordinance.

3. In case any Municipality established by any law shall in pursuance of the provisions of this Ordinance come under its operation it shall be lawful for the Lieutenant-Governor by proclamation in the *Gazette* to repeal any such law.

Existing Municipal Laws to continue until Municipality comes under this Ordinance.

4. Whenever any existing Municipality shall come under the operation of this Ordinance the following provisions shall apply;

- (1) all creditors of such Municipality shall have the same rights and remedies as if the law under which such rights and remedies were conferred had not been repealed;
- (2) all municipal bye-laws and regulations then in force in such Municipality shall (unless repugnant to the provisions of this Ordinance) continue in force until altered or amended under this Ordinance;
- (3) the Councillors then in office shall continue in office under the provisions of the Municipalities Elections Ordinance 1903;
- (4) all rates and charges due or payable to or recoverable by such Municipality shall be vested in and recoverable by the Municipality con-

stituted under this Ordinance and the valuation or assessment roll in use at such time shall continue to be used until a new one shall be made;

- (5) all works and undertakings authorised to be executed all rights liabilities and engagements existing and all actions suits and proceedings pending by or against or in respect of such Municipality shall be vested in attached to and be enforced carried on and prosecuted by or against the Municipality constituted under this Ordinance and no such action suit or proceeding shall abate or be discontinued or prejudicially affected by such constitution;
- (6) all property movable and immovable vested in any such Municipality shall be vested in and belong to the Municipality newly constituted.

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CHAPTER II.

CONSTITUTION OF MUNICIPALITIES.

5. There shall be within every Municipality established under this Ordinance or under any law a Council thereof constituted and elected in manner provided in the Municipalities Elections Ordinance 1903 and the said Council shall under such name or designation as the Lieutenant-Governor may by Proclamation declare be a body corporate with perpetual succession and a Common Seal with power to alter and change the same from time to time and shall by such name be capable in law of suing and being sued of purchasing holding and alienating land and of doing and performing such acts and things as bodies corporate may by law do and perform subject to the provisions of this Ordinance.

Incorporation of Municipalities.

6. Subject to the provisions of this Ordinance the Lieutenant-Governor may from time to time exercise all or any of the powers following;

Power of Lieutenant-Governor in regard to proclaiming Municipalities.

- (1) declare any town or village to be a Municipality constituted under the provisions of this Ordinance;
- (2) assign a name to such Municipality;
- (3) describe the boundaries thereof;

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- (4) unite any two or more villages which form one continuous area so as to form one Municipality;
- (5) alter and adjust the boundaries of adjoining Municipalities and determine any questions arising out of such alteration and adjustment;
- (6) sever any portion of a Municipality from the Municipality of which it forms a part and constitute the same a separate Municipality or annex the same to any other Municipality with which the portion severed forms one continuous area; and from time to time make any appointment of property rights and liabilities and give any directions as to any matters and things that may be necessary to do justice between the Municipalities concerned.

How such powers to be exercised after petition presented.

7. The Lieutenant-Governor may exercise any of the powers by this Ordinance conferred after the presentation of a petition in pursuance of the provisions of this Ordinance for the exercise thereof and after the publication of the substance and prayer of such petition in the *Gazette* and in some newspaper circulating in the neighbourhood referred to at least once a week during three weeks; and it shall be in the discretion of the Lieutenant-Governor to refuse the prayer of any such petition or to grant the whole or any part thereof; provided always that the Lieutenant-Governor shall not exercise in respect to any existing Municipality constituted by special laws any of the said powers (anything in the next succeeding section to the contrary notwithstanding) if there shall be presented to him within three weeks after the said publication in the *Gazette* another petition signed by not less than one-half of the ratepayers registered within such Municipality praying him not to exercise such powers.

How petitions to be signed.

8. Every petition for the constitution of a Municipality under this Ordinance shall;

- (1) in the case of an existing Municipality be signed by not less than three-fourths of the Councillors of such Municipality;

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(2) in case no Municipality exists be signed by not less than twenty-five persons being registered as voters for the election of members of the Health Board or Urban District Board for the area for which a Municipality is desired.

9. Every petition shall state precisely to what extent the exercise of the powers by this Ordinance conferred on the Lieutenant-Governor is desired by the petitioners and shall pray for such specific exercise thereof and may also pray for any partial exercise of such powers. And every petition for the constitution of a Municipality shall state the proposed boundaries thereof.

Particulars to be stated in petitions.

10. It shall be competent for any persons interested to present to the Lieutenant-Governor any counter-petition setting forth the grounds of opposition to any petition of which notice shall have been given as aforesaid.

Petitions may be opposed.

†11. It shall be lawful for the Lieutenant-Governor from time to time to exercise any of the powers conferred by this Ordinance without the presentation of any petition provided that before the exercise of any such power notice be given once a week during three consecutive weeks in the *Gazette* and in a newspaper circulating in the neighbourhood stating the intention of the Lieutenant-Governor to exercise such powers. If within one month after the date of the last publication of such notice no sufficient cause shall be shown why the power proposed to be exercised shall not be exercised it shall be lawful for the Lieutenant-Governor to exercise such power; provided however that the powers conferred by this section shall not apply to the case of any town or village having a Municipality constituted by a special law.

Notice to be given of Lieutenant-Governor's intention to exercise powers of his own accord.

12. It shall be lawful for the Lieutenant-Governor to appoint the Resident Magistrate of any district together with two other persons to investigate any matter connected with any petition or counter petition and to report thereon or upon any matter by the Lieutenant-Governor referred to such Resident Magistrate and other persons for

Resident Magistrate and others to investigate matter of petitions.

† Under the provisions of this section, Municipalities have been constituted at Boksburg: Heidelberg: Klerksdorp: Krugersdorp: Middelburg: Pietersburg; Potchefstroom: Standerton. (See Proc. No. 43 Adm. 1903 *Gazette* 25 Sept. 1903 p. 922) and at Germiston See Proc. No. 45 Adm. 1903 *Gazette* 10 Oct. 1903 p. 957

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report in relation to such petitions. The Resident Magistrate and other persons aforesaid shall report within such time as may be by the Lieutenant-Governor be named in that behalf.

CHAPTER III.

MEETINGS OF COUNCIL.

Meetings of Council.

13. The Council shall meet for the despatch of business as often as may be necessary but not less than once in every month and the meetings of the Council shall be open to the public and press provided that nothing in this section shall apply to any Committee of the Council or to a Committee of the whole Council.

Quorum.

14. Save when it is otherwise specially provided in this Ordinance all acts matters or things authorised or required to be done by the Council as such and all questions that may come before it shall be done and decided by the majority of Councillors who shall be present at any meeting at which not less than one-half or such larger proportion as the Council may from time to time fix of the members of the Council shall attend.

Proceedings.

15. (1) At every meeting of the Council the Mayor if present shall preside and in the case of his absence the Deputy Mayor and if there be no Deputy Mayor or if he be absent then the Councillors present shall elect a chairman from among themselves to preside at such meeting.

(2) In case the Mayor be absent from duty owing to illness incapacity or any other cause then the Deputy Mayor if there be one shall act as Mayor during such absence as aforesaid; and if there be no Deputy Mayor or if he is also absent the Councillors shall at the first meeting held after such absence elect from among themselves a Councillor to act as Mayor during such absence as aforesaid.

Casting vote of Chairman.

16. In case of equality of votes the Chairman of the meeting shall have a casting vote as well as a deliberative vote.

Minutes of proceedings.

17. Minutes of the proceedings of every meeting of the Council shall be regularly entered in a book to be kept for that purpose and minutes of proceedings at a meet-

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ing of the Council signed at the same or the next ensuing meeting by the Chairman or by a member of the Council describing himself as or appearing to be Chairman of the meeting at which the minutes are signed shall be received in evidence without further proof.

18. (1) The minutes of proceedings of the Council shall at all reasonable times be open to the inspection of any inhabitant of the Municipality who may obtain a copy thereof or an extract therefrom on payment of such fee as may be prescribed by regulation.

Minutes of proceedings and Treasurer's accounts open to inspection.

(2) The Treasurer's accounts shall be open to the inspection of any member of the Council who may make a copy thereof or an extract therefrom.

(3) The abstract of the Treasurer's accounts shall be open to the inspection of any inhabitant of the Municipality and copies thereof shall be delivered to any inhabitant on payment of such fee for each copy as may be prescribed by regulation.

19. The members present at any meeting may from time to time adjourn such meeting and if at any meeting of the Council a sufficient number of members do not present themselves to exercise the powers vested in the Council the member or members present shall adjourn the meeting and if there be no member present then the Clerk shall adjourn the meeting.

Adjournment.

20. The Mayor may at any time and shall at the request in writing of not less than one-third of the members of the Council call a special meeting of the Council; provided that he cause a notice of the time and place of such intended meeting to be served on every member either personally or by leaving the same at his usual place of abode twenty-four hours at least before such meeting. Such notice shall specify the object of the intended meeting and shall be signed by the Mayor or the Clerk. No subject other than that specified shall be dealt with at such meeting.

Special meeting.

21. It shall be lawful for the Council to appoint out of their own body such and so many committees either of a general or special nature and constituted of such num-

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ber of members as to the Council may seem fit for any purpose which in the judgment of the Council would be better managed by means of a committee and to fix the quorum of any such committee; provided always that the proceedings of the committee shall be regularly entered in a minute book to be kept for that purpose and reported to the Council. Each committee shall elect its own chairman and the Mayor of the Council shall be *ex officio* a member of all such committees.

Finance
Committee.

22. The Council shall from time to time appoint a Finance Committee for regulating and controlling the finances of the Council; and an order for the payment of a sum out of the funds of the Council shall not be made by the Treasurer except in pursuance of a resolution of the Council passed on the recommendation of the Finance Committee and no cost debt or liability exceeding fifty pounds shall be incurred except upon a resolution of the Council passed on an estimate submitted by the Finance Committee.

Adjourn-
ment and
quorum of
Committees.

23. Every Committee appointed by the Council may meet from time to time and may adjourn from place to place as it may think proper and no business shall be transacted at any meeting of the Committee unless the quorum of members (if any) fixed by the Council and if no quorum be fixed two members be present; and at all meetings of the Committee if the chairman of the Committee be not present one of the members present shall be appointed chairman and all questions shall be determined by a majority of votes of the members present and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the Committee.

Contracts for
execution of
work.

24. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of one hundred pounds or upwards is entered into by the Council fourteen days' clear notice at the least shall be given in some newspaper circulating in the Municipality expressing the purpose of such contract and inviting any person willing to undertake

the same to make proposals for that purpose to the Council. The Council shall accept the proposal which on a view of all the circumstances appears to them to be most advantageous and may take security for the due and faithful performance of every such contract or the Council may decline to accept any such proposal. Where such contracts are entered into or purchases made amounting to the said sum of one hundred pounds or upwards without being put up to public tender the reasons shall be stated by the Finance Committee in a report to be read out to the Council before the resolution to make such contract or purchase has been passed and such report shall be attached to the resolution and entered in the minutes of the Council.

25. Every order notice or other document requiring authentication by the Council shall be sufficiently authenticated without the common seal of the Municipality if signed by two Councillors and the Town Clerk or by any officer of the Council duly authorised thereto by any resolution by-law or regulation of the Council.

Authentica-
tion of docu-
ments.

26. No Councillor shall be disqualified by his office from contracting with the Council either as vendor purchaser or otherwise nor shall any such contract or any contract or arrangement entered into by or on behalf of the Council in which any Councillor shall be in any way directly or indirectly interested be on account of such cause avoided or set aside nor shall any Councillor so contracting or being so interested be liable to account to the Council for any profit realised by any such contract or arrangement by reason of such Councillor holding that office or of the fiduciary relation thereby established; provided that the nature and extent of his interest must be disclosed by him so that such disclosure is duly minuted prior to or at the meeting of the Council at which the contract or arrangement is determined on if his interest then exists or in any other case at the first meeting of the Council after the acquisition of his interest; and provided further that no Councillor shall

Pecuniary
interest of
Councillors
in matters
coming be-
fore Council.

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speak or vote in respect of any contract or arrangement in which he is so interested as aforesaid. Any Councillor contravening the provisions of this section shall be liable on conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and shall *ipso facto* become disqualified from continuing to be a Councillor and shall account to the Council for any profits which may accrue to him in respect of such contract or arrangement.

CHAPTER IV.

ACCOUNTS AND AUDIT.

Keeping of
accounts.

27. The Council shall cause proper books to be provided and true and regular accounts to be entered therein of all sums of money received and paid on account of and for the Municipality and of the several purposes for which such sums of money have been received and paid.

Audit of
accounts.

28. The Lieutenant-Governor may from time to time appoint one or more persons to examine the accounts of the Municipality and the Council shall by the Town Clerk produce and lay before the person so appointed all books and accounts of the Municipality with all vouchers in support of the same and all books papers and writings in their power relating thereto.

Auditor's
powers.

29. For the purpose of any audit under the provisions of the last preceding section it shall be lawful for the auditor to hear receive and examine evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse refuse to attend in obedience to such summons or who having appeared shall refuse to be examined on oath or affirmation or to take such oath or affirmation or having taken such oath or affirmation to answer such questions as shall be

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put to him shall be liable to a penalty not exceeding twenty pounds for every act or offence and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid; provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act matter or thing required to be done or performed by him or from being successively convicted and punished for every distinct commission of the same act or offence.

30. The auditor shall disallow every item of account contrary to law and surcharge the same on the person or persons making or authorising the illegal payment; and shall charge against any person responsible therefor the amount of any deficiency or loss incurred by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall in every case certify the amount due from such person. Every sum so certified by the auditor shall be paid by such person to the Town Clerk or other official appointed by the Council within fourteen days after the same has been so certified and if not so paid may be recovered from such person as a debt by the auditor who shall be paid by the Council his reasonable costs and expenses incurred in such proceedings. Any sum so recovered shall be paid to the Town Clerk or other official appointed by the Council.

Auditor's power to surcharge.

CHAPTER V.

POWERS AND DUTIES OF COUNCIL.

31. The Council shall from time to time appoint a Town Clerk and a Medical Officer of Health who shall be a legally qualified medical practitioner and such other officials as it may consider necessary and pay such salaries and allowances to such officials as it may determine; and unless it shall be stipulated otherwise in the contract with or in the appointment of an employé the Council may at any time remove such em-

Appointment of Town Clerk and other officials.

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No officer or servant of Council to be interested in any bargain or contract of the Council.

Exemption of servants and members of Council from personal liability.

Public streets squares vest in Council.

ployé upon notice of not less than one month or in case of misconduct immediately without notice.

32. Officers or servants of the Council shall not in any wise be concerned or interested in any bargain contract or arrangement whatsoever made by or with the Council. If any officer or servant is so concerned or interested or under cover of his office or employment exacts or accepts any promise fee or reward whatsoever other than his proper salary wages and allowances he shall be incapable of afterwards holding or continuing in any office or employment under this Ordinance and shall be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months. Any profits fee or reward which may have accrued to such officer or servant or which may accrue to him by reason of such bargain contract or arrangement may be recovered by the Council.

33. No matter or thing done or omitted and no contract entered into by the Council and no matter or thing done or omitted by any member or officer or servant or other person acting under the direction of the Council shall if the matter or thing were done or omitted or the contract was entered into *bonâ fide* for the purpose of executing this Ordinance subject any such person personally to any action liability claim or demand whatsoever; and any expense incurred by the Council or any such person as aforesaid shall be paid by the Council out of the fund applicable to the general purposes of this Ordinance; provided that nothing in this section shall exempt any such member from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of the Council and which such member authorised or joined in authorising.

34. The Council shall have the general control and care of all public roads streets bridges ferries squares and all other open public places and over all gardens parks or other enclosed spaces within the Municipality which

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have been or shall be at any time set apart and appropriated by proper authority for the use of the public or to which the inhabitants of the Municipality shall at any time have or acquire a common right and over all water furrows within the Municipality and not used for conveying water beyond the limits thereof and the same shall be vested in the Council in trust to keep the same open for the use and benefit of the inhabitants and the Council may make construct alter repair and if necessary temporarily close all roads streets open spaces bridges ferries furrows sewers drains and culverts vested in them or under their control and may make new roads streets bridges ferries dams furrows sewers drains or culverts within the Municipality and if it shall be necessary may carry any sewers drains and pipes through and across any private property making compensation for any damage which may be done which compensation shall if not mutually agreed upon be settled in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

35. The Council shall have the power anything to the contrary in this Ordinance notwithstanding to close or divert any street road or thoroughfare vested in the Council under the last preceding section of this Ordinance provided that the Council shall in the exercise of its power to close or divert any street road or thoroughfare be subject to the following conditions and restraints:—

Power of Council to close or divert any street road or thoroughfare vested in the Council.

- (1) Before the Council shall sanction any such closing or diversion not less than fourteen days' notice shall be given at a Council meeting of the intention to move therefor.
- (2) Before any such closing or diversion is carried out the Council shall prepare a plan showing the nature thereof and shall give notice of the proposed work not less than one month before its commencement in the *Gazette* and in one or more newspapers circulating in the Municipality as well as by a sufficient number of conspicuous

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- placards posted on or near the street road or thoroughfare which it is proposed to close or divert setting forth a place where the said plan shall be open for inspection at all reasonable hours and shall also serve a copy of such notice on the owners or reputed owners lessees or reputed lessees and occupiers of all property abutting upon the said street road or thoroughfare whose addresses can after reasonable enquiry be ascertained.
- (3) Where notice in writing of any claim for compensation is served on the Council within the period of one month above-mentioned by any such owner lessee or occupier or any other person aggrieved by such closing or diversion the Council shall make compensation to such person for any damage occasioned to him thereby and such compensation shall in default of agreement be fixed by arbitration; provided that in assessing the amount of compensation payable to any person hereunder the benefit or advantage derived or to be derived by such person by reason of such closing or diversion shall be taken into account.
- (4) If any person interested as owner lessee or occupier in any property abutting on the street road or thoroughfare which it is proposed to close or divert shall at any time within the period of one month above-mentioned serve written notice on the Council of any objection to such closing or diversion then unless such objection shall be withdrawn such closing or diversion shall not be carried out without the sanction of the Lieutenant-Governor.
- (5) After the serving of any such objection the Lieutenant-Governor may on the application of the Council appoint an officer to make an enquiry into the proposed closing or diversion and the objection thereto and to report thereon; and on receiving the report of such officer the Lieutenant-Governor may

make an order disallowing the proposed closing or diversion or allowing it with such modification (if any) as he may deem necessary.

36. The Council may with the consent of the Lieutenant-Governor acquire construct equip and carry on within or beyond the Municipality tramways or works for the supply of light heat power or water within the Municipality and may make such charges and conditions for such services as it may determine.

Power to acquire and construct tramways electric and water works.

37. The Council may with the approval of the Lieutenant-Governor lay out on lands under its control such locations for natives as may be deemed desirable and erect suitable buildings thereon for the occupation of such natives and make charges therefor to be fixed by regulations and may compel all natives residing in the Municipality except such as hold letters of exemption issued under Proclamation Transvaal No. 35 of 1901 or certificates of registration issued under the Native Relief Ordinance No. 28 of 1902 or are employed in service and are lodged on the premises of their employers to reside within such locations. The Lieutenant-Governor may make regulations for the proper carrying out of the provisions of this section and the effectual supervision of such locations. Such regulations when published in the *Gazette* shall be of full force and effect as law within the Municipality.

Council may lay out locations for natives.

38. Any member or officer of the Council duly authorised in writing shall have power to enter any premises within the Municipality for the purposes of exercising any of the powers of inspection or execution of works given to it under its bye-laws or by this or any other Ordinance or necessary for the proper enforcement of such bye-laws.

Council may enter premises for exercise of powers under this Ordinance.

39. The Council may in the name and on behalf of the Municipality enter into any contract with any person firm or body corporate;

Council may make contracts for purposes of Ordinance.

(a) for the purchase or hire of any land way-leave water-right or any other property within or beyond the Municipality for the purposes of this Ordinance; or

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(b) for the performance of any work which the Council is authorised by law to undertake or for any of the purposes of this Ordinance or any amendment thereof and all such contracts lawfully made shall bind the Council and its successors and all other parties thereto. Every contract shall be deemed to be duly executed by or on behalf of the Council if signed by the Mayor or Deputy Mayor of the Municipality or if signed by any one or more councillors thereto authorised by resolution of the Council.

General powers.

40. The Council shall have power to establish maintain and carry on any of the following things and to make such charges in respect thereof as may be fixed by bye-laws;

- (1) cemeteries and mortuaries;
- (2) markets market buildings cold storages and public weighing machines;
- (3) fire brigades;
- (4) parks and recreation grounds;
- (5) libraries and museums;
- (6) public baths and washhouses;
- (7) sanitary services for the removal and destruction of or otherwise dealing with night-soil slops rubbish and all kinds of refuse and effluent;
- (8) sewerage and drainage works within or beyond the municipality;
- (9) pounds.
- (10) slaughter-houses;
- (11) public closets urinals and lavatories;
- (12) such offices and buildings as may be required for Municipal purposes.

Special powers.

41. The Council shall have power to do any of the following things;

- (1) to incur all expenditure necessary for the carrying out of any purpose of this Ordinance or any amendment thereof or of any Municipal purpose (which shall include a reasonable amount for public entertainment and for travelling and personal expenses of members and officers on business of the Council);

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- (2) to make grants of money towards the establishment or maintenance of the institutions hereinafter mentioned not being of a private character that is to say hospitals libraries art galleries museums asylums for the aged destitute or infirm homes for destitute orphans and scientific institutions;
- (3) to charge fees for any license which the Council is empowered to issue and for the maintenance and regulation of water-furrows to persons supplied with water therefrom;
- (4) to promote private legislation in the interest of the Municipality;
- (5) to enumerate the inhabitants of the Municipality;
- (6) to sell all bye-products resulting from the carrying on of any works which may be within the powers of the Council;
- (7) to plant trim or remove trees in streets and open spaces;
- (8) to let sell or otherwise dispose of any movable or immovable property of the Municipality; provided that no sale lease or other alienation of immovable property shall take place without the consent of the Lieutenant-Governor; provided always that previous to such sanction being obtained the resolution of the Council to sell lease or otherwise alienate such property shall be published during three successive weeks in two or more papers circulating in the Municipality;
- (9) to do all things necessary for carrying out all the purposes for and in regard to which the Council is empowered under this Ordinance or any amendment thereof to make alter or revoke bye-laws or regulations and for carrying all such bye-laws and regulations into effect.

CHAPTER VI.

BYE-LAWS.

42. The Council shall have power to make alter and revoke bye-laws or regulations for any of the following purposes;

Power to
make bye-
laws.

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- (1) regulating any of the things which it is empowered under sections *forty* and *forty-one* of this Ordinance to do establish maintain or carry on and the charges to be made in respect thereof;
- (2) regulating the duties and procedure of the Council and any Committees thereof and the powers and duties of its officers and servants;
- (3) preventing and extinguishing fires;
- (4) preserving public decency;
- (5) regulating and licensing theatres music halls public halls concert rooms public billiard-rooms and public bagatelle-rooms and other places of public amusement;
- (6) prohibiting regulating or licensing noxious and offensive trades;
- (7) licensing the keeping of dogs and providing for the seizure sale or destruction of vicious dangerous ownerless and unlicensed dogs;
- (8) regulating or preventing the keeping of bees and of wild or dangerous animals;
- (9) preserving and protecting wild birds and animals;
- (10) preventing or regulating the planting of trees or shrubs in public streets or squares and preventing the removal or injuring thereof;
- (11) regulating and licensing the making of bricks and the digging or quarrying for or removal of clay gravel or stone and the cutting of firewood brushwood and grass on town lands;
- (12) providing for the due and proper care of the common pasture and other Municipal lands and regulating the quantity and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands and the fees to be paid in respect of all live stock kept or depastured in excess of the number so fixed. Regulating the grant of temporary grazing rights over the said lands to carriers and others frequenting or passing through the Municipality or

attending the markets thereof or places of worship therein or to travellers and to charge reasonable fees in consideration of the same;

- (13) regulating and licensing wood-sawyers;
- (14) regulating and licensing pawn-brokers.

PUBLIC HEALTH.

- (15) The prevention and suppression of infectious or contagious diseases and the maintenance of the public health;
- (16) regulating and compelling the provision construction use and repair of drains privies and receptacles for solid or liquid refuse or slops and all other conveniences and the connection of any premises with any sewer or drain established by the Council;
- (17) compelling the use of any sanitary service established by the Council and the method of dealing with all night-soil slops rubbish or refuse whatsoever;
- (18) the prevention and abatement of nuisances including such as though arising beyond the Municipality cause annoyance or danger or injury to health within the Municipality;
- (19) regulating wells tanks and cess-pools and closing the same if expedient;
- (20) regulating and licensing slaughter-houses and meat shops and the killing of cattle or other animals and the sale of meat;
- (21) licensing and controlling hawkers and keepers of dairies cowsheds milk-shops restaurants cafés tea-rooms hotels eating and lodging houses and all places where articles of food or drink or drugs are manufactured or prepared for sale or sold;
- (22) preventing the possession conveyance handling sale or offering for sale and for the destruction when necessary in the Council's opinion of diseased animals and of any article of food or drink which is diseased or unfit for human consumption;

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- (23) preventing the adulteration misdescription or reduction below a proper standard of quality and for ensuring the sale in a pure state of any article of food or drink or any drug;
- (24) regulating purveyors of milk;
- (25) regulating the washing of clothes in public or private places and licensing persons engaged in washing or laundry work.

BUILDING.

- (26) Regulating the construction alignment and elevation of all buildings or other structures and all parts thereof and compelling the demolition removal or rendering safe of any building or structure whatsoever which in the Council's opinion is dangerous or unfit for use either for structural or sanitary reasons;
- (27) preventing the erection alteration or use of any building or structure whatsoever which either in itself or from the circumstances or nature of the locality in which it is placed is a disfigurement to the town or an annoyance to the inhabitants thereof and for securing removal or alteration of projections over streets;
- (28) regulating the erection and use of scaffolding and hoarding during the construction demolition alteration or repair of any building and charging fees in respect thereof;
- (29) regulating the amount of space to be allowed about buildings for securing the proper ventilation thereof and a free circulation of air;
- (30) regulating the closing of buildings or parts of buildings unfit for human habitation;
- (31) regulating the giving of notice and the deposit of plans and sections by persons wishing to construct or alter buildings and the approval or disapproval thereof by the Council and the removal or alteration of any work begun or done in contravention of

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any bye-law or regulation of the Council and preventing the use of any new or altered building until it shall have been certified by the Council to be fit for use ;

- (32) regulating the giving of notice and deposit of plans by persons wishing to lay out building lots or new townships securing the continuity and uniformity of streets on or leading to private property and preventing the laying out of new townships or building lots or the closing up of any streets roads or open spaces shown on any plan approved by the Council ;
- (33) regulating the construction and position of gutterings and down pipes and the discharge of the outflow therefrom.

SALES WEIGHTS AND MEASURES.

- (34) Regulating the holding of sales by auction on land or premises under the control of the Council ;
- (35) regulating the verification stamping sale and use of weights measures and weighing instruments and charging fees in respect thereof ;
- (36) regulating the sale of goods wares or merchandise by weight or measure ;
- (37) regulating the carriage sale or use and licensing and regulating the manufacture and storage of petroleum gas and all other combustibles.

CONTROL OF STREETS AND TRAFFIC.

- (38) Regulating the traffic and preventing and removing obstructions in public roads streets and open spaces and dealing with live stock or dead or injured animals found in any public place ;
- (39) regulating and licensing road-locomotives tramcars omnibuses motor-cars cabs jinrickshas trolleys bicycles and all other vehicles whatsoever whether private or plying or working for hire and the drivers or haulers thereof and porters and fixing the charges to be made for the hire of any such vehicle plying or working for hire ;

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- (40) regulating prohibiting or licensing the erection of wires in along under or over any street or public place and of placards boards or other advertisements or notices in or near or in view of any public street or place ; provided that no such permission or license shall be required for posts or wires erected or laid by the Postmaster-General or the Central South African Railway Administration.
- (41) regulating street decorations and the erection and removal of temporary platforms or other structures for the use of the public at any meeting or entertainment or at any procession ceremony or other spectacular display.

WATER AND LIGHT.

- (42) Regulating the use and preventing the misuse or waste of or any interference with any water gas or electric power or the pollution of any water supplied by or under the control of the Council or which the public have a right to use ;
- (43) preventing the pollution of gathering grounds springs wells reservoirs tanks cisterns filter-beds or other sources of water supply or storage whether within or beyond the Municipality the water wherein or wherefrom is used or is likely to be used by man within the Municipality ;
- (44) ensuring a proper and sufficient supply of water to all dwelling-houses schools stores factories and workshops.

NATIVES.

- (45) Regulating the use of public streets by natives and prohibiting the carrying by them of knobkerries and assegais or other sticks or weapons ;
- (46) regulating the housing of natives by their employers ;
- (47) regulating and licensing wash-boys and native labourers other than those employed in industrial concerns or domestic service ;

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(48) save and except within Municipalities in labour districts regulating the issue of passes to and the carrying of such passes by natives within the Municipality and fixing the charge for each pass which shall not exceed one shilling per month and shall be payable in advance by the employer;

(49) and generally for all such things as are necessary for the maintenance of the health of the inhabitants or for the good rule and government of the Municipality;

provided always that no such bye-law shall be made contrary to the provisions of this Ordinance.

43. No bye-law or regulation shall be made or amended by the Council until a copy of such proposed bye-law or amendment be deposited at the office of the Council for inspection by any person at all reasonable times and a notice be published in some newspaper circulating in the Municipality or affixed to the principal door of the offices of the Council seven days prior to the meeting of the Council held for the purpose of making such bye-law or regulation or amendment setting forth the general purport of the proposed bye-law or regulation or amendment of the same and stating that a copy thereof is open to inspection as aforesaid.

How bye-laws to be made.

44 Where any proposed bye-law affects any mining company in respect of the management of its mining operations or the control of the property on which such operations are carried on the following procedure shall be followed;

Procedure to be followed in case of bye-laws affecting any mining company.

(a) the proposed bye-law as passed shall be forwarded by the Council to the Chamber of Mines or to any association representing for the time being the companies engaged in mining operations within the Municipal area;

(b) if the Chamber of Mines or such association as aforesaid desires to object to such bye-law on the ground that the interests of any mining com-

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pany would be unduly prejudiced thereby it shall transmit to the Council a statement of such objections to the proposed bye-law within a period of fourteen days from the date on which such bye-law was received by it from the Council;

(c) on receipt of such statement within the time specified the Council shall in submitting such bye-law for the approval of the Lieutenant-Governor forward a copy of such statement together with a statement of any observations which they may desire to make thereon for the consideration of the Lieutenant-Governor;

(d) the Lieutenant-Governor shall refer the proposed bye-law together with the statements hereinbefore mentioned to the Commissioner of Mines for report before approving or rejecting such bye-law.

Bye-laws to be published in *Gazette* when approved by Lieutenant-Governor.

45. After any bye-law has been passed by the Council it shall be submitted for the approval of the Lieutenant-Governor and if approved it shall be published in the *Gazette* and thereupon such bye-law shall have the force of law in the Municipality.

Penalties for breach of bye-laws.

46. The Council may by regulation or bye-law impose a penalty for any breach of any bye-law or regulation made under this or any amending Ordinance and may also impose different penalties in case of successive breaches but no such penalty shall be imposed exceeding fifty pounds and any bye-law or regulation may provide that in addition to any such penalty any expense incurred by the Council in consequence of any breach of such bye-law or regulation or in the execution of any work directed by any such bye-law or regulation to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Power of arrest.

47. Any officer of the Council in uniform or bearing a visible badge of office authorised thereto in writing by the Council shall have power to arrest without warrant any person who shall in his presence commit

any offence against this Ordinance or any bye-law in force in the Municipality and detain such person until he can be delivered into the custody of a constable or police officer to be dealt with according to law; provided that no person shall be arrested or detained without warrant unless there shall exist reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay trouble or expense.

48. All offences against any bye-law or regulation in force in the Municipality shall be deemed to be offences against this Ordinance and in any prosecution for contravening the provisions of any such bye-law or regulation it shall be sufficient to allege that the accused is guilty of contravening a bye-law or regulation of the Council and to allege the act constituting such contravention describing the bye-law or regulation by number.

Prosecutions
for contra-
vention of
bye-laws.

49. The Town Clerk or any person authorised thereto by the Mayor may prosecute summarily in the Court of the Resident Magistrate for all breaches of the Council's bye-laws or regulations; and the provisions of any law relating to prosecutions by private persons shall apply to all such prosecutions.

Prosecutions
by Council
for breach of
bye-laws.

50. Every person guilty of an offence against this Ordinance or any bye-law in force in the district shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by the bye-law and if no penalty be imposed then to a penalty not exceeding ten pounds.

Penalties.

51. All penalties or other moneys payable in respect of any offence against this Ordinance or any bye-law in force in the Municipality may be recovered before any Court of competent jurisdiction.

Recovery of
penalties.

52. Save and except where it is otherwise specially provided whenever any penalty shall have been imposed under the provisions of this Ordinance or of any bye-law in force in the Municipality and the person convicted shall not forthwith pay the same the Court may direct that such person be

Default of
payment of
penalties.

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Application
of penalties.

imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds or for a period not exceeding three months if the penalty be above five pounds and such person shall be imprisoned as aforesaid unless he shall sooner pay the penalty.

53. All penalties recovered for offences against the bye-laws of the Council or for offences against this Ordinance or any bail forfeited for the failure of any person charged with any such offence to appear to answer such charge shall be paid into the revenue of the Council.

Actions.

54. All actions against the Council shall be brought within six months of the time when the causes of such actions arose and all such costs charges and expenses as the Council shall be put to or become chargeable with by reason of the prosecution or defence of any such action or under any judgment of the Court shall be paid out of the revenue of the Council.

Obstructing
officers of the
Council.

55. The following persons shall be liable to a penalty not exceeding ten pounds or to imprisonment with or without hard labour for three months;

- (1) any person who wilfully obstructs any member of the Council or any person duly employed by the Council in the execution of his duty as such;
- (2) any occupier of premises who prevents the owner of such premises from complying with any of the requirements of the Council;
- (3) any occupier of premises who on demand refuses or wilfully omits to disclose or wilfully misstates the name of the owner of such premises.

Power of
Lieutenant-
Governor
under certain
circum-
stances to
make regu-
lations.

56. If any Council shall fail to make alter or revoke such regulations as in the opinion of the Colonial Secretary are necessary for the purposes of section *forty-two* sub-sections (15) (16) (17) (18) (19) (20) (22) and (43) so far as it applies to the prevention of the pollution of water which the public have to use for drinking purposes it shall be lawful for the Colonial Secretary to give notice to the Council in default requiring it to make alter or revoke such regulations; if such

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Council shall fail to comply within one month after the receipt of such notice it shall be lawful for the Lieutenant-Governor to proclaim such regulations as may be considered necessary which regulations shall thereupon have the force and effect of law within the Municipality.

57. If any Council fails to enforce or carry out any regulations made under the provisions of the last preceding section it shall be lawful for the Lieutenant-Governor to enforce or carry out such regulations and to authorise any person or persons to take the necessary steps for that purpose; in order to carry out or enforce such regulations it shall be lawful for the Lieutenant-Governor to expend such sum as to him may seem necessary provided that any money expended by the Lieutenant-Governor under this section shall be recoverable by the Colonial Secretary from the Council in any competent Court.

Power of Lieutenant-Governor to enforce such regulations.

58. In cases of urgent necessity arising from the existence or threatened outbreak in any Municipality of small-pox cholera diphtheria typhus yellow fever bubonic plague or any contagious or infectious disease which the Lieutenant-Governor may from time to time proclaim to be a disease within the meaning of this section it shall be lawful for the Colonial Secretary to make and proclaim such regulations to be in force within such Municipality as may be required to prevent the outbreak or check the progress of or eradicate such disease: any regulations so made and proclaimed under the provisions of this section for any such Municipality shall have the force of law therein until repealed or amended by the Lieutenant-Governor.

Colonial Secretary may make regulations for prevention checking or eradication of disease.

CHAPTER VII.

FINANCIAL.

59. The revenue of the Council shall consist of;

Revenue of Council.

- (1) all rates levied by the Council;
- (2) all fines imposed by a competent Court and forfeited bail bonds for the contravention of bye-laws and

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- regulations made by the Council and of the provisions of this Ordinance;
- (3) all license moneys or licenses issued by the Council and all market dues pound fees and taxes on dogs;
 - (4) all charges levied by the Council for the supply of sanitary services;
 - (5) all fees charged by the Council for passes issued to natives;
 - (6) all other fees or charges recoverable by the Council;
 - (7) all taxes payable under any law now in force in respect of erven within the Municipal boundaries * provided that such taxes shall be recoverable by the Council under the provisions of Law No. 11 of 1896.†

All charges due for sanitary or other services shall be recoverable either from the occupier for the time being or failing him from the owner of the premises.

Power of Council to refuse licenses.

60. The Council shall have power to refuse to grant any licenses to carry on any trade or business which it has power to grant in accordance with bye-laws made under section *forty-two* of this Ordinance on any of the following grounds;

- (a) that the applicant has been convicted three times within the three years preceding his application of contravening the Law or the bye-laws of any Municipality or Urban District Board with regard to the conduct of the trade for which the license is applied for in such a manner as to cause danger to the public health;
- (b) that the premises on which the applicant intends to conduct his trade do not conform to the requirements of the Council's bye-laws;

provided however that any applicant for a license whose application has been refused may appeal against the Council's decision to the Court of the Resident Magistrate and on such appeal in the event of the Council failing to satisfy such Court that the license was refused on good and sufficient grounds such Court may make an order requiring the Council to grant such license and such license shall be granted accordingly; and

† See Govt. Notice No. 76 of 1904 (*Gazette* 22 Jan. 1904) p. 107 as to the acceptance of receipts granted by Local Authorities on erf taxes and arrears of the same.

provided further that it shall be within the discretion of the Council to refuse to grant licenses to the hauler of any jinricksha or to the driver of any road locomotive tram-car omnibus motor-car cab trolley or other vehicle plying for hire anything to the contrary in this Ordinance notwithstanding.

61. The Council shall have power to refuse to license any premises as a theatre music-hall public-hall concert-room or other place of amusement or Kaffir eating-house on any of the grounds mentioned in the preceding section and also on any one or more of the following grounds ;

Power of Council to refuse to license certain premises.

- (a) that the applicant has failed to produce satisfactory evidence of good character ;
- (b) that the premises in respect of which a license is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character ;
- (c) that the granting of such a license in respect of the premises for which the same is sought is calculated to cause nuisance or annoyance to persons residing in the neighbourhood ;
- (d) that the granting of such a license would be contrary to the public interest ;

provided however that the refusal of the Council to grant any license on any of the grounds herein stated shall be subject to the same appeal as is provided in the preceding section.

62. On the conviction of any person holding a trade license granted by the Council for any contravention of the Law or the Council's bye-laws with regard to the conduct of such trade it shall be lawful on the application of the Council for the Resident Magistrate before whom such person is convicted to cancel or suspend his license and order that no new license to carry on such trade within the same Municipality shall be granted to such person for a period not exceeding two years from the date of such cancellation and thereupon such person shall become disqualified to hold a license during such period of cancellation or suspension.

Penalty on conviction for contravention of Law or Council's bye-laws.

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Powers to grant licenses applicable to Council of any existing Municipality

63. The powers to grant licenses conferred under section *forty-two* on the Council of any Municipality established under this Ordinance shall be made applicable to the Council of any existing Municipality whether brought under the operation of this Ordinance or not and sections *sixty* to *sixty-two* hereof shall apply with regard to the licenses which may be granted by such Councils.

Advances by the Government.

64. It shall be lawful for the Lieutenant-Governor to advance from time to time to the Council such moneys as he may think fit for the proper carrying out of the provisions of this Ordinance and on such terms and conditions as to re-payment as to the Lieutenant-Governor may seem proper. The moneys so advanced and the interest thereon shall constitute a liability of the Council and shall be a charge on the property and revenues of the Council present and future.

Borrowing powers.

65. (1) It shall be lawful for the Council from time to time to raise loans in such amounts and on such conditions as may be approved by the Lieutenant-Governor subject to the provisions of this Ordinance.

(2) Such loan shall be secured on the property and revenues of the Council including any lands which may be specially placed at the disposal of the Council under the provisions of any Law provided always that this section shall not be deemed to confer any powers of alienating such lands other than are conferred by such Law.

(3) Where any such loan shall be raised by means of stock the provisions of the Johannesburg Municipality Borrowing Powers Ordinance 1903 with regard to the issuing of such stock the provision to be made for repayment of interest thereon and for the redemption thereof at the time fixed for repayment and the proceedings to be taken in case of default shall *mutatis mutandis* apply.

(4) If at any time any interest due on any loan other than stock shall remain unpaid for three months after demand therefor in writing has been lodged with the Town Clerk by the person entitled thereto or his duly authorised representatives application

may be made by such person or his representatives to any competent Court for the appointment of a receiver of the property and revenues on which the loan is secured.

(5) On the hearing of such application the Court may make such order and give such directions as under the circumstances shall seem expedient for raising and payment of the moneys due. In particular the Court may order and declare that a rate or rates of such amount or amounts as it shall fix be levied upon all rateable property within the Municipality. And such rate so ordered shall have the same incidence as any rate imposed by the Council and may be enforced in like manner and the proceeds thereof shall be paid into Court or otherwise as the Court shall direct.

(6) If at any time default shall be made in the repayment of any loan after a period of one month from the date on which such loan shall have become repayable the like proceedings may be instituted on the application of the person to whom such repayment shall be due or his duly authorised representative.

(7) The Court on such application in addition to any order which it is empowered to make under the sub-section (5) may if it shall think fit order the sale of any property on which the loan may be secured subject always to the provisions of any Law as regards the alienation of any lands vested in the Council under such Law.

CHAPTER VIII.

MISCELLANEOUS.

66. When and as soon as a Municipality is established for any place which includes the area under the jurisdiction of a Health Board established under Proclamation Transvaal No. 28 of 1901 or of an Urban District Board established under the Urban District Boards Ordinance 1903; †

Liability of Council for liabilities and engagements of Urban District Board or Health Board.

(1) all works and undertakings authorised to be executed all rights liabilities and engagements existing and all actions suits and proceedings

† For the words "under the Urban District Boards Ordinance 1903" read "under section *seventy-three* of this Ordinance or any Law constituting Urban District Boards" (see "Correction of Errors in Laws Ordinance 1904").

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pending by or against or in respect of such Board shall be vested in attached to and be enforced carried on and prosecuted by or against the Council of the Municipality so established and no such action suit or proceeding shall abate or be discontinued or prejudicially affected by such establishment ;

(2) all property movable and immovable and all moneys of or vested in such Board shall be vested in the Council of the Municipality established as aforesaid ;

(3) all bye-laws made by such Board in force at the date of the establishment of such Municipality shall continue in force throughout the Municipality until repealed altered or amended.

Persons
offending
against
order or
notice under
this Ordinance to be
deemed
guilty of
offence
against
Ordinance.

67. Where any matter or thing is by this Ordinance or by any order or notice made and published under the authority thereof directed or forbidden to be done or where any authority is given by this Ordinance to any person to direct any matter or thing to be done or to forbid any matter or thing to be done and such act so directed to be done remains undone or such act so forbidden to be done is done in every such case every person offending against such direction or prohibition shall be deemed guilty of an offence against this Ordinance.

Arbitration.

68. In case of any dispute or difference arising in regard to any matter necessitating settlement by arbitration or in case of reference either by agreement or by operation of any law under which other provision is not made of any dispute in which the Council shall at any time be concerned to arbitration the provisions of the sections relating to arbitration in the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall except as hereinafter provided apply *mutatis mutandis* to arbitration proceedings by the Council as if the said sections were inserted in this Ordinance.

69. The costs of and incidental to any reference to arbitration shall be in the discretion of and be settled by the Arbitrator or Arbitrators or Umpire as the case may be.

Costs of arbitration.

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70. Upon all proceedings before any Arbitrator or Arbitrators or Umpire as the case may be each party may appear in person or by Counsel or Solicitors or admitted and licensed Law Agents and may produce such witnesses and documentary evidence as the Arbitrator or Arbitrators or Umpire as the case may be shall allow.

Before arbitrators each party may appear by Counsel.

71. In case there shall not be at any time in any Municipality for the space of three months any meeting of a Council it shall be lawful for the Lieutenant-Governor to dissolve the said Council and to nominate and appoint by Proclamation such number of fit and proper persons as he shall select being not less than five nor more than seven to be the Council of such Municipality for the purposes of this Ordinance and every such nominated Council shall be competent to exercise and is hereby required to exercise all and singular the powers and authorities vested under this Ordinance in the said Council; provided

Lieutenant-Governor may in default of meeting of Council for three months dissolve said Council and appoint persons to be Council of Municipality.

- (a) that the person so nominated and appointed may or may not be persons resident within such Municipality as may be found convenient;
- (b) that every nominated Council shall notwithstanding anything to the contrary contained in the Municipalities Elections Ordinance 1903 continue to sit until it shall be dissolved by Proclamation of the Lieutenant-Governor and prior to such dissolution a Council shall be elected for such Municipality as aforesaid at such date as may be notified by the Lieutenant-Governor and in manner provided in the Municipalities Elections Ordinance 1903 for the holding of a first election of Councillors under that Ordinance.

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Certain Laws
not to apply
within the
Municipality.

72. (1) The provisions of Law No. 2 of 1882 Law No. 8 of 1899 Law No. 8 of 1888 or Law No. 3 of 1891 shall not apply to any pound or market established by the Council or to any dogs within the Municipality where and as soon as regulations have been made by the Council respectively relating thereto.

(2) The regulations for towns published in the *Staats Courant* of October 25th 1899 shall not apply within any Municipality in which a Council has been established under this Ordinance.

(3) The provisions of Law No. 17 of 1899 with regard to the following trade licenses namely:— Pedlars and hawkers bakers butchers hotel-keepers keepers of boarding-houses keepers of Kaffir eating-houses keepers of public billiard tables keepers of public bagatelle tables wood-sawyers pawnbrokers keepers of coffee and tea rooms shall not apply to any such trade or business carried on within any Municipality whether established under the provisions of this Ordinance or existing prior to the passing thereof; provided however that the amount to be paid for a license granted by the Council in accordance with bye-laws made under section *forty-two* of this Ordinance for the carrying on of any of the said trades shall be the amounts specified in Law No. 17 of 1899.

CHAPTER IX.

URBAN DISTRICT BOARDS.

The Lieut.-
Governor
may by
Proclama-
tion establish
Urban Dis-
trict Boards.

†73. It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette*;

(a) to establish for any town or area not included within the limits of a Municipality a Board to be called an Urban District Board and to fix the boundaries of its jurisdiction;

†Under this section Urban District Boards have been established at Belfast Carolina Christiana Ermelo Lichtenburg Lydenburg Nylstroom Piet Retief Roodepoort-Maraiburg Rustenburg Springs Ventersdorp Vereeniging Volksrust Wakkerstroom Zeerust Machadodorp Wolmaransstad Amersfoort Bethal Amsterdam and Schweizer Reneke.

See Proclamations 51 61 and 69 Admn. 1903: *Gazette* (16 Oct. 1903 p. 100) (13 Nov. 1903 p. 1196) (and 27 Nov. 1903 p. 1340). For Electoral provisions relating to and powers and duties of such Boards see Proc. 52 Admn. 1903 (*Gazette* 16 Oct. 1903 p. 1010).

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- (b) to declare in regard to each particular district (meaning thereby the area within the jurisdiction of an Urban District Board) such of the provisions of this Ordinance and of the Municipalities Elections Ordinance 1903 as he may deem suitable to be in force *mutatis mutandis* within such districts;
- (c) to fix the number of persons not exceeding twelve who shall constitute such Board;
- (d) to make regulations for the framing of voters' rolls and for prescribing the manner in which the Chairman and members of such Boards shall be nominated and elected.

74. The qualifications of voters and members of such District Boards shall be the same as those prescribed for voters and Councillors of Municipalities under the Municipalities Elections Ordinance 1903.

Qualifications of voters and members.

75. Proclamation Transvaal No. 28 of 1901 is hereby repealed but notwithstanding such repeal every Health Board established under Proclamation Transvaal No. 28 of 1901 shall continue to exist and exercise the powers vested in it under the said Proclamation until the first election of members of the Urban District Boards established under section *seventy-three* of this Ordinance for the district for which such Health Board was established.

Proclamation Transvaal No. 28 of 1901 repealed.

76. This Ordinance may be cited as the Municipal Corporations Ordinance 1903.

Title.

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No. 59 of 1903.]

[Assented to 27 July 1903.

ORDINANCE

To remove Restrictions on the Importation of Explosives into the Transvaal.

WHEREAS it is desirable that the restrictions at present existing on the importation of explosives into the Transvaal be removed;

Be it hereby enacted by the Lieutenant-Governor of this Colony with the advice and consent of the Legislative Council thereof as follows;

Repeal of
laws.

1. The Resolutions passed by the First Volksraad in its sitting of the 1st to the 5th of September 1893 Articles 1266 to 1278 inclusive and Articles 1280 to 1299 inclusive and Articles 1303 1304 are hereby repealed.

The Contract between the Government of the late South African Republic and Lambertus Gerhardus Vorstmann of Pretoria dated 25th October 1893 and registered at Pretoria on the 26th of October 1893 and as modified by the Contract between the same parties dated the 24th day of May 1894 and registered at Pretoria on the 25th day of May 1894 and the Contract between the said Government and the said Lambertus Gerhardus Vorstmann as representing De Zuid Afrikaansche Fabrieken voor Onploffbare Stoffen Beperkt dated the 20th day of December 1899 and registered at Pretoria on the 20th day of December 1899 translation of which forms Schedule "A" annexed hereto are hereby deprived of any legal effect.

Restriction
on importa-
tion and ex-
portation of
explosives.

2. Explosives shall not be imported into or exported out of the Transvaal by any person unless he shall first have obtained a permit for such importation or exportation from the Inspector of Explosives or his deputy.

Penalties

3. Any person who contravenes the preceding section shall be liable to a fine not exceeding one hundred and fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months and all explosives in respect of which such contravention takes place shall be liable to be confiscated.

Title.

4. This Ordinance may be cited as the Explosives' Importation Ordinance 1903.

TRANSLATION.

SCHEDULE A.

(1.)

TRANSLATION OF CONTRACT.

GOVERNMENT S.A.R. AND L. G. VORSTMAN.

Respecting the carrying on of the State Monopoly for the Manufacture of Dynamite, etc.

Dd. 30th Oct., 1893.

*Government Gazette, 1st Nov., 1893.**Supplement to "Staatscourant," Wednesday, 1st November, 1893.*

No. 373.]

[R11216/93.

GOVERNMENT NOTICE.

FOR the information of the public the following contract is published entered into between the Government of the South African Republic and Lambertus Gerhardus Vorstman respecting the carrying on of the State Monopoly for the manufacture and sale of the trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

C. VAN BOESCHOTEN,
Acting State Secretary.

Government Office,
Pretoria, 30th October, 1893.

CONTRACT

Between the Government of the South African Republic and Lambertus Gerhardus Vorstman of Pretoria respecting the carrying on of the State Monopoly for the manufacture and sale of the trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

The Government of the South African Republic acting with the advice and consent of the Executive Council (*vide* art. 573 of Resolution dated 19th October 1893) duly and lawfully represented by the Honourable the Acting State Secretary of the South African Republic Mr. Cornelis van Boeschoten who is authorised to sign and enter into this agreement by Resolution dated 5th September 1893 of the Honourable the First Volksraad hereafter called "the Government" of the one part and Lambertus Gerhardus Vorstman of Pretoria of the other part agree as follows;

Article 1. The Government appoints the second undersigned as its sole agent to the exclusion of all other persons for the carrying on of the Monopoly for the manufacture the import and export of the trade in and sale of gunpowder fireworks ammunition and other explosives of whatever description. The agent shall have the right to form a company for that purpose.

2. The duration of this agency shall be for fifteen years from the date of this Agreement. Anything not mentioned in this Agreement shall be bound by the Regulations fixed by the Resolutions of the Honourable the First Volksraad mentioned hereinbefore dated 1st to 5th September 1893 copy of which is attached hereto.

3. The Government undertakes that in case permits are issued to persons referred to in Article 2 of the Regulations the following conditions shall apply:—

- (a) Permits will only be issued to persons who have declared in writing that they require the explosives for their own use only and the quantity shall in no case be greater than that required for three months' consumption.

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Should the Government or the agent deem it desirable to take up or bring into use a discovery of the kind and should the Government in that case be unable to make an agreement with the patentee owner of or person entitled to that discovery respecting the use of the same then shall both parties (the Government and the patentee) name an arbitrator whilst the third or umpire whose decision shall be final shall if necessary be appointed by the Chief Justice.

8. This agreement shall have effect within the territory of the South African Republic as at present existing or that may at any time become extended.

If in the future the South African Republic should include districts or provinces in which provision has already been made respecting the materials or matters which are the subject of this agreement then it shall depend upon the Government whether these instructions shall be extended to the new districts or provinces.

9. In case the agent of the Government is unable for a limited period to comply with the requirements in this Republic for explosives owing to explosions accidents disaster or other *force majeure* and causes outside the control and responsibility of the agent the Government can import the explosives until the agent is again in a position to supply the explosives required.

In that case the Government will give to the agent the preference in the importing thereof.

The agent shall be bound to put the factories in working order again in the shortest possible time after any accident as mentioned in this article.

10. In case the Government imports any explosives as mentioned in Article 13 of the Regulations the preference will be given to the agent to import same for the Government.

11. All persons in the service of the agent are hereby exempted from personal commando and military service and service in the field in war time provided that their contracts are made under the condition that the Government shall have the right at any time if considered necessary to take over the contracts they binding themselves to work out their period of service with the Government.

12. If the Government avails itself of Article 15a of the Regulations then it will be bound to purchase from the agent the explosives required in the country in terms of this contract. The trading expenses to be deducted.

The period referred to in Article 15f of the Regulations is hereby fixed at 6 months.

In case the agent by his own contributory negligence culpability carelessness or neglect continue to be unable to carry out the conditions of this agreement after being admonished in writing to do so and after the lapse of a period for restarting of six weeks at the utmost the Government shall have the right to cancel this agreement. If the neglect or carelessness is intentional the Government will have grounds for action for cancellation of this contract without any notice.

13. The agent may allow the sale of articles shewn in this agreement by means of one or more persons.

14. The agent of the Government is bound to pay the import duties on the machinery and implements necessary for the carrying out of this agreement.

15. The Government may introduce measures of precaution or safety with reference to the forwarding and the storing of the said explosives.

The Government will not hinder the export of these explosives except for reasons of danger to the State or other weighty reasons.

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16. With reference to Article 17 of the Regulations the Government makes the following arrangement with the agent to the exclusion of everyone else:—

- (a) During the time that the factories to be erected by the agent are incomplete the Government will itself import all material and items necessary for manufacturing dynamite and other explosives in the stores of the agent according to particulars of price, quality and quantity approved by the Government with this understanding that this importation shall only extend for the time that the factory or factories are incomplete and in any case not longer than for two years and a half.
- (b) The Government will place the above-named materials and items at the disposal of the agent for manufacture trade and sale in accordance with the above-mentioned regulations and the agent will manufacture trade and sell on the order and on account of the Government under the above-named regulations in so far as they are applicable hereto. The agent will send statements to the Government each month mentioning particulars of manufacture trading and sales and paying the Government all monies received for sales from which after deduction of five shillings per case and the amounts paid by the Government for the material imported therefor the balance will be paid out to the agent.

17. Within eight days after the signing of this contract the agent will be bound for the due performance of the undertaking to erect the factories herein mentioned and for the carrying out of the contract until the factories are properly erected and in working order to find security for an amount of £30,000 which shall include all his existing assets in this country upon which bonds shall be properly passed.

18. All differences regarding the meaning or interpretation of this agreement which may arise between the parties to same shall not be decided by the ordinary judge but by arbitrators from whose award there shall be no appeal.

In case the parties cannot come to an agreeable understanding with reference to the interpretation of this agreement the one part will give written notice to the other stating the disputed point existing in the agreement and that they will invoke the decision of the arbitrator.

The parties will then each appoint an arbitrator and the two latter will appoint a third.

These decisions shall at the utmost be given within three months.

On the non-appointment of an arbitrator by one of the parties or undue delay in doing so or in case of disagreement of the two appointed over the choice of a third the appointment will be made by the Chief Justice or his substitute in the High Court of this Republic and the parties will be heard or called.

Thus done and contracted this 25th day of the month of October 1893 in the presence of the undersigned witnesses.

(Sgd.) C. VAN BOESCHOTEN,
Acting State Secretary.
L. G. VORSTMAN.

Witnesses:

W. E. HOLLARD.
P. L. A. GOLDMAN.

Registered on the 26th October 1893 in the Register of Deeds Book C.I. folio 348.

(Sgd.) J. C. MINNAAR,
Registrar of Deeds.

A true translation.

P. K. BENNING JAUSSENIUS,
Sworn Translator.

(2.)

Translation from "Staatscourant," dated 30th May, 1894.

NEW CONTRACT

BETWEEN

THE GOVERNMENT OF THE S.A.R. AND L. G. VORSTMAN.

POWDER FACTORY.

ORD.
No. 59
of
1903.

No. 150]

[R5175/94.

GOVERNMENT NOTICE.

FOR the information of the public the undermentioned Contract is hereby published being a Contract entered into between Dr. Willem Johannes Leyds on behalf of the Government of the South African Republic and Lambertus Gerhardus Vorstman as well as Regulations respecting the carrying on of the State Monopoly for the manufacture sale trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

DR. W. J. LEYDS,
State Secretary.

Government Buildings,
Pretoria, 28th May, 1894.

[R5175/94.

NEW CONTRACT

Between the Government of the South African Republic and Lambertus Gerhardus Vorstman of Pretoria respecting the carrying on of the State Monopoly for the manufacture sale trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

The Government of the South African Republic acting with the advice and consent of the Executive Council (*vide* Resolutions dated 19th October 1893 Article 573 and dated 22nd May 1894 Article 282) duly and lawfully represented by the Honourable State Secretary of the South African Republic Dr. Willem Johannes Leyds who is authorised by Resolution dated 5th September 1893 to sign and conclude this Agreement on behalf of the Honourable the First Volksraad hereinafter called "the Government" of the one part and Lambertus Gerhardus Vorstman of Pretoria of the other part agree as follows:—

Art. 1. The Government appoints the second undersigned as its sole agent to the exclusion of all other persons for the carrying on of the monopoly for the manufacture the importation and exportation of the trade in and sale of gunpowder fireworks ammunition dynamite and other explosive materials of whatever description. The agent shall have the right to form a company for that purpose.

The said company shall from the date of its formation replace L. G. Vorstman in this contract and all his obligations to the Government in connection therewith which from the date of the formation of the company will be considered to exist as between the Government and the company instead of as between the Government and L. G. Vorstman and whenever the agent is spoken of in the following Articles "the Company" shall be understood.

The Government shall have the right to name a Member of the Board controlling the Company through whom all communications between the Government and the Company shall be transacted. The first member of the Board to be so named shall be Mr. L. G. Vorstman.

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of
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2. The duration of this agency shall be for 15 years from the date of the agreement of 25th October 1893.

Anything not mentioned in this agreement shall be governed by the Resolutions of the Honourable the First Volksraad hereinbefore mentioned dated 1st to 5th September 1893 copy of which is attached hereto.

3. The Government undertakes that in case permits are issued to persons referred to in Article 2 of the Regulations the following conditions shall apply:—

- (a) Permits will only be issued to persons or companies who have given a declaration in writing that they require the explosives for their own use only and the quantity shall in no case be greater than that required for 3 months' consumption.
- (b) No permits shall be available for longer than four months from the day of issue. No permits will be issued at any time when the supply of explosives in the country being the product of the Company amounts to at least 10,000 cases (the 10,000 cases to consist of the various kinds and quality of explosives in proportion to the requirements applied for in the country).
- (c) All explosive materials obtained on such permits are liable to a special import duty of 8½d. (eight and a half pence) per lb. besides the ordinary *ad valorem* duty.
- (d) The Government will when requested point out to the agent an official who will supply him monthly with information as to how much and to whom permits have been granted for the importation of dynamite etc. and when such dynamite etc. has been imported in order that measures may be taken respecting the quantities required for consumption.

4. The rent of the Powder Factory referred to in Art. 5 of the Regulations is hereby fixed at £3,750 per annum. The Government shall have the right at any time during the continuance of this contract to take over the Powder Factory. In that case and also on the termination of the contract the Government shall pay the agent for any extra improvements made which have been approved by the Government provided they are serviceable and are of the value represented at the time of taking over wear and tear etc. to be taken into consideration. In such a case payment of rent will only be made to the date of taking over. Everything found necessary to bring the Powder Factory in a position to provide for a consumption like it exists at present will not be considered as being extraordinary improvements.

5. The maximum prices referred to in Article 6 of the Regulations which the agent will be allowed to charge shall be reckoned as follows:

For dynamite known as No. 1	£4	15	0
" " " " No. 2	£4	5	0
" " " " No. 3	£3	13	0

The agent shall be bound to charge no higher price for the supply of ammunition to the Government than that at which they can be imported by the latter from outside the country not inclusive of import duty and the Government reserves to itself the right to supply such ammunition to the Burghers of this Republic in the manner followed up to now or as it may deem fit but only for their own use and not for trade or profit.

6. The agent undertakes to erect in the Republic the factories referred to in Article 10 of the Regulations at such places as may be decided by the agent after consultation with the Government and at the outside within two and a half years after the date of signing the contract dated 25th October 1893.

The Government undertakes if requested by the agent to apply to the Honourable the First Volksraad for an extension of time for erecting the factories that is to say as follows:—That within two and a half years after date of signing the contract dated 25th October 1893 the company shall erect a new factory for the production of 40,000 cases of explosives per annum consisting of various kinds and quality in proportion to the requirements applied for in the country; whilst the further extension of factories will if necessary be decided by the Government from time to time at reasonable intervals.

The agent undertakes the payment every three months of the rent stipulated in Article 11 of the Regulations and the sum of 5s. on every case of dynamite sold together with the supply of properly certified statements as well as an amount of 20 per cent. of the surplus profits whilst the Government guarantees the agent exemption from any special taxation.

The profits are understood to be the balance remaining after deduction of all expenses wear and tear the usual "writings off" and an interest of 8 per cent. on the capital.

The agent shall be bound to keep proper books in the commercial style used in businesses of this description and the Government shall have the right at all times to have the books inspected by an official or person appointed for the purpose or by a commission of officials or persons.

A proper balance sheet shall be made up yearly whereby in terms of this article the profit is defined.

A certified copy shall thereafter be sent to the Government and the amount due to the latter shall be paid out.

So long as no importation takes place under permit the agent shall pay to the Government a minimum of 2s. 6d. per case for the 20 per cent. of the surplus profits due to the Government even although 20 per cent. of the surplus profits may amount to less and the agent shall reduce by 5s. per case the maximum prices fixed in Article 5 of this Contract.

In case the 20 per cent. amounts to more than 2s. 6d. per case the Government will naturally have the right to claim the full 20 per cent.

7. With reference to the letters patent described in Article 12 of the Regulations the Government undertakes that the following regulations shall apply:—

In case the Government should grant letters patent for the discovery of any explosive material such patent shall furnish to no one than the agent appointed to carry out these instructions the right to manufacture and to sell the material named therein within the boundaries of the South African Republic. Should the Government or the agent deem it desirable to take up or to bring into use a discovery of the kind and should the Government in that case be unable to make an agreement with the patentee owner of or person entitled to the discovery then shall both parties (the Government and the patentee) name an arbitrator whilst the third arbitrator or umpire whose decision shall be final shall if necessary be appointed by the Chief Justice.

8. This agreement shall have effect within the territory of the South African Republic as at present existing or that may at any time become extended. If the South African Republic should in the future include districts or provinces in which provision has already been made respecting the materials or the matters which are the subject of this agreement then it shall depend upon the Government whether these instructions shall be extended to the new districts or provinces.

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9. In case the agent of the Government is unable for a limited period to comply with the requirements in this Republic for explosives owing to explosions accidents disaster or other *force majeure* or cause outside the control and responsibility of the agent the Government can import the explosives until the agent is again in a position to supply the explosives required.

In that case the Government will give to the agent the preference in the importation of same.

The agent shall be bound to put the factories in working order again in the shortest possible time after any accident occurring as mentioned in this Article

10. In case the Government imports any explosives as mentioned in Article 13 of the Regulations the preference will be given to the agent to import same for the Government.

11. All persons in the service of the agent are hereby exempted from personal commando or military service and service in the field in war time provided that their contracts are made under the condition that the Government shall have the right at any time if considered necessary to take over those contracts they binding themselves to work out their period of service with the Government.

12. During the time that the Government avails itself of Article 15 (a) of the Regulations then it will be bound to purchase from the agent the explosives required in terms of the prices named in this contract; the trade expenses to be deducted.

The Government will in such a case have the right to import such portion of what is required as the agent is unable to supply from his own factory.

A reasonable respite will be allowed to the agent before the Government makes use of Article 15 (f) of the Regulations.

In case the agent by his own contributory negligence culpability carelessness or neglect continues to be unable to carry out the conditions of this agreement after being admonished in writing to do so and after the lapse of a period of six weeks at the utmost the Government shall have the right to cancel this agreement.

If the neglect or carelessness is intentional the Government will have grounds for action for cancellation of this contract without any notice.

13. The agent may allow the sale of the articles shown in this agreement through the medium of one or more persons.

14. The agent of the Government is bound to pay the import duties on the machinery and implements required for the carrying out of this agreement.

15. The Government may introduce measures of precaution or safety with reference to the forwarding and storing of the said explosives.

The Government will not hinder the export of these explosives except for reasons of danger to the State or other weighty reasons.

16. With reference to Article 17 of the Regulations the Government makes the following arrangement with the agent to the exclusion of everyone else:—

- (a) During the time that the factories to be erected by the agent are incomplete the Government will itself import all material and items necessary for the manufacturing of dynamite and other explosives in the stores of the agent according to particulars of prices quality and quantity approved by the Government with this understanding that this importation shall only extend to the period that the factory or factories are incomplete and in any case not longer than two years and a half or such extension of time as the Honourable the First Volksraad may approve according to Article 6 *alinéa* 2 of this contract.

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- (b) The Government will place the above-named materials and items at the disposal of the agent for manufacture trade and sale in accordance with the above-mentioned regulations and the agent will manufacture trade and sell on the order and on account of the Government under the above-named Regulations in so far as they are applicable hereto.
- (c) The agent will send statements to the Government each month giving particulars of manufacture trading and sales and paying the Government all monies received for sales from which after deduction of 5s. per case and the amounts expended by the Government for the materials imported for same the balance will be paid out to the agent.

17. Within eight days after the signing of this contract the agent will be bound for the due performance of the undertaking to erect the factories herein mentioned and for the carrying out of the contract until the factories are properly erected and in working order to find security for an amount of £30,000 which shall include all his existing assets in this country upon which bonds shall be properly passed.

18. Any differences regarding the meaning or interpretation of this agreement which may arise between the parties to same shall be decided by arbitrators and not by an ordinary judge and shall bind the parties definitely as in a superior court from whose award there is no appeal.

In case the parties cannot come to an agreeable understanding with reference to the interpretation of this Agreement the one party will give written notice to the other stating the disputed point existing in the Agreement and that they will invoke the decision of the Arbitrators.

The parties will then each appoint an Arbitrator and the two latter will appoint a third.

These decisions shall at the utmost be given within three months.

On the non-appointment of an arbitrator by one of the parties or undue delay in doing so or in case of disagreement of the two appointed over the choice of a third the appointment will be made by the Chief Justice or his substitute in the High Court of this Republic and the parties will be heard or notified to appear.

Thus done and contracted at Pretoria South African Republic this 24th day of May 1894 in the presence of the subscribed witnesses.

DR. W. J. LEYDS,
State Secretary.

L. G. VORSTMAN.

Witnesses:

C. G. SANDBERG.

P. L. A. GOLDMAN.

Registered in the Register of Deeds at Pretoria in Book C. No. 1 folio 431 on the 25th day of May 1894.

A. D. LORENTZ,
Acting Registrar of Deeds.

A true translation.

P. K. BENNING JAUSSENIUS,
Sworn Translator.

**ORD.
No. 59
of
1903.**

TRANSLATION.]
No. 607.]

(3.)

[R15608/98.]

GOVERNMENT NOTICE.

FOR the information of the public the following Agreement between the Government of the South African Republic and L. G. Vorstman is hereby published.

F. W. REITZ,
State Secretary.

Government Buildings,
Pretoria, 22nd December, 1899.

MEMORANDUM OF AGREEMENT

BETWEEN THE

GOVERNMENT OF THE S.A.R. AND L. G. VORSTMAN.

DATED 20TH DECEMBER, 1899.

From *Government Gazette*, 27th December, 1899.

MEMORANDUM OF AGREEMENT

Containing Amendments of Article 6 of the Agreement, dated 24th May, 1894, between the Honourable Government of the South African Republic and L. G. Vorstman.

THE Honourable Government of the South African Republic, acting with the advice and consent of the Executive Council (*vide* Article 959 of Resolution of the Hon. First Volksraad, dated 25th August, 1899), represented by the Honourable Mr. Francis William Reitz, in his capacity of State Secretary of the said Republic, the said Francis William Reitz being duly authorised by Article 983 of Resolution of the Executive Council, dated 22nd November, 1899, hereinafter called "the Government," of the one part, and the "Zuid Afrikaansche Fabrieken voor Ontploffbare Stoffen," Limited, hereinafter called "de Maatschappij," at present holder of the contract, dated 24th May, 1894, and represented by Lambertus Gerhardus Vorstman, the above-named Lambertus Gerhardus Vorstman being duly authorised by a resolution of the Board of Directors of the Company, dated 26th September, 1899, of the other part;

WHEREAS, seeing that by Article 959 of Resolution dated 25th August, 1899, the Honourable the First Volksraad have authorised the Honourable Government to amend in terms of said resolution a certain Contract, dated 25th May, 1894, of which the Company is the present holder, as shall more fully appear from a copy of the said resolution attached hereto and marked "A," and

Seeing that the said Volksraad Resolution lays down amongst other things that "with prices of 75s. per case of 50 lbs. nett for Dynamite "No. 1, and 97s. 6d. per case of 50 lbs. nett for Spring Gelatine, "these prices to be subject to what is laid down in Article 7 of the "Regulations, and under express reservation of the rights of the "Government as recognised in the Regulations; to amend Article 11 "of these Regulations so that '5s.' shall be replaced by '17s. 6d.," "and the last words in the Article: 'Besides which the Government "shall have the right to 20 per centum of profits' shall be cancelled."

NOW, THEREFORE, the parties hereby agree and contract as follows, to wit:—

Article 6 of the said Contract of the 24th May, 1894, is hereby cancelled and replaced by a new Article reading as follows:—

Article 6.—The agent undertakes to pay to the Honourable Government every three months the rent stipulated in Article 11 of the Regulations (as now amended by the

Honourable Volksraad by Resolution of the 25th August, 1899, Article 959), and the sum of 17s. 6d. on every case of dynamite sold, together with the handing in of duly certified statements, the Government granting the agent exemption from any special taxation.

The Company further undertakes to conform to the further stipulations of the said First Volksraad Resolution and to carry out the same with reference to the prices mentioned in the extract of the said First Volksraad Resolution mentioned in this Contract.

The reduced prices to come into effect from the date of the signing of this contract.

Thus done at Pretoria, on the 20th day of December, 1899, in the presence of the subscribed witnesses.

F. W. REITZ,
State Secretary.

L. G. VORSTMAN.

As Witnesses:

WM. THEO. S. MORTEL.

H. KUIPERS.

Registered on the 20th December, 1899, in the Register of Deeds Book, C. II. fol. 454.

J. C. MINNAAR,
Registrar of Deeds.

A true translation.

P. K. BÈNNINK JANSSONIUS,
Sworn Translator.

**ORD.
No. 59
of
1903.**

No. 60 of 1903.]

[Assented to 27 July 1903.

ORDINANCE

**ORD.
No. 60
of
1903.**

To Regulate Railways.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The provisions of this Ordinance shall apply to all railways situated within this Colony which are vested in the Governor of the Transvaal or are under the control and authority of the High Commissioner and also to any railway to which they may be declared applicable in whole or in part by the Governor.

Application
of Ordinance.

2. The laws specified in the first schedule hereto are repealed.

Laws
repealed.

3. In this Ordinance unless there is something repugnant in the subject or context; "Commissioner" means the Commissioner of Railways appointed by the High Commissioner;

Interpreta-
tion of terms.

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of
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“railway” includes all lines of railway and all lands stations sidings offices warehouses workshops manufactories fixed plant and machinery and other works of whatsoever description or nature appertaining to or used in connection with a railway;

“the Administration” means the Commissioner or other persons appointed by the High Commissioner to work the railways under his control and authority;

“railway servant” means any person employed by the High Commissioner or the Administration in the service of the aforesaid railways;

“goods” includes inanimate things of every kind;

“property” includes goods and animals;

“rolling stock” includes locomotive engines tenders carriages wagons trucks and trollies of all kinds;

“traffic” includes rolling stock of every description as well as passengers animals and goods;

“through traffic” means traffic which is carried over any railways managed by the Administration and the railway of any Government or Company;

“fare” includes any charge or other payment for the carriage of any passenger;

“carriage” includes any charge or other payment for the carriage of animals or goods;

“pass” means an authority given by the Administration or by an officer appointed on this behalf and authorising the person to whom it is given to travel as a passenger on a railway gratuitously;

“ticket” includes a single ticket a return ticket and a season ticket.

Powers to enter into working agreements with other railways.

4. The Administration may from time to time with the sanction of the High Commissioner make with the owner lessee or occupier of any railway whether in this Colony or elsewhere and carry into effect any agreement with respect to any of the following purposes namely;

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of
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- (a) the working use management and maintenance of any railway;
- (b) the supply of rolling stock and the machinery necessary for any of the purposes mentioned in clause (a) and of servants for the conduct of the traffic of the railway;
- (c) the payments to be made and the conditions to be performed with respect to such working use management and maintenance;
- (d) the interchange accommodation and conveyance of traffic being on coming from or intended for the respective railways of the contracting parties and the fixing collecting apportionment and appropriation of the revenues arising from that traffic;
- (e) generally the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on.

5. It shall be lawful for the Administration to use upon the railway locomotive engines or other motive power and rolling stock to be drawn or propelled thereby and to carry and convey upon the railway all such passengers and property as shall be offered to it for that purpose and to make such charges in respect thereof as may from time to time be determined upon by the High Commissioner.

Locomotives
may be used
on the
railways.

6. (1) It shall be lawful for the High Commissioner to make as regards railways under his control and authority bye-laws not inconsistent with this Ordinance with respect to any of the following matters that is to say;

Power to
make
bye-laws.

- (1) regulating the mode by which and the speed at which trains are to be moved or propelled;
- (2) regulating the times of the arrival and departure of any such trains;
- (3) regulating the loading or unloading of carriages and the weights which they are respectively to carry;

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of
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- (4) regulating the receipt and delivery of property to be conveyed upon such trains;
- (5) for declaring what shall be deemed to be for the purposes of this Ordinance dangerous or offensive goods and for regulating the conditions under and the times when such goods shall be carried and regulating or prohibiting the carriage of explosives;
- (6) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage; for fixing the amount of fares for the conveyance of such passengers and the charges for the carriage of property;
- (7) prescribing which fares carriage or other charges shall be prepaid;
- (8) preventing the commission of any nuisance in or upon the rolling-stock or in any of the stations or buildings under the control of the High Commissioner;
- (9) permitting or prohibiting smoking in stations buildings and carriages;
- (10) preventing the emptying of sewage or drainage on to any of the railways or on to any lands stations or buildings under the control of the High Commissioner;
- (11) regulating the conduct of all persons while upon or in any such station or building or while employed at or near the same;
- (12) regulating the duties and conduct of railway servants;
- (13) regulating the duties and conduct of porters cabmen carmen draymen and carriers not in the employment of the Administration employed at or plying for hire to or from any such station or building;
- (14) regulating generally the travelling or traffic upon or using or working of the railways and of the stations or buildings hereinbefore mentioned; and for the good government and maintenance of order thereon;

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- (15) specially regulating the conduct of the traffic during any reconstruction or repair of any railway;
- (16) regulating the terms and conditions upon which special trains will be run;
- (17) regulating the admission of the public to any of the railways and to any of the stations or buildings hereinbefore mentioned and for fixing a charge therefor or for dispensing with the same on certain days or for certain times;
- (18) regulating the use of stamps as payment upon parcels;
- (19) regulating the sale of tickets at railway stations and other places and the conditions under which such tickets shall be sold;
- (20) fixing demurrage charges where property is to be loaded into or discharged from trucks by owners consignors or consignees;
- (21) fixing the charges for warehousing goods and the charges to be paid in respect of parcels and luggage for transit or for care or custody and the terms and conditions upon which they respectively will be received;
- (22) regulating the disposal of unclaimed goods;
- (23) imposing conditions upon which passengers' luggage will be carried not inconsistent with the provisions of this Ordinance;
- (24) regulating the terms and conditions on which the Administration will carry passengers suffering from infectious or contagious diseases and providing for the disinfection of carriages which have been used by such passengers;
- (25) regulating or prohibiting the carriage of corpses and for prohibiting the carriage or conveyance of persons intoxicated or otherwise likely to interfere with the health or comfort of other passengers;

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of
1903.**

- (26) regulating or prohibiting the carriage of diseased animals and preventing them from coming upon any station or premises;
- (27) preventing damage or injury to any railway station or buildings premises carriages gates fences or any property whatever;
- (28) regulating the issue of passes and concession tickets on the railway;
- (29) regulating public or private traffic across any of the said railways on the level thereof and for preventing animals from trespassing on any of the railways;
- (30) altering or repealing any regulations or bye-laws made heretofore with regard to the railways;
- (31) regulating the manner in which public notices shall be advertised and generally with regard to advertising in newspapers and elsewhere;
- (32) facilitating the insurance of persons travelling on the lines of railway by any accident insurance company now or hereafter to be formed.

(2) A bye-law may impose a penalty for any breach thereof and may also impose different penalties in case of successive breaches.

But no such penalty shall exceed seventy-five pounds and in default of payment imprisonment with or without hard labour for a term not exceeding six months.

(3) A bye-law made under clause (12) of sub-section (1) may provide that the railway servant shall forfeit a sum not exceeding one month's pay which sum may be deducted from his pay by the Administration.

(4) A bye-law made under this section shall not take effect until it has been published for at least seven days in the *Gazette*; provided that a bye-law made under clause (12) of sub-section (1) is binding on a railway servant as soon as it is communicated to him by any person having authority to do so and without publication in the *Gazette*.

(5) The Administration shall keep at each station on its railways a copy of the bye-laws for the time being in force under this section on the railways and shall allow any person to inspect it free of charge.

(6) The Administration shall cause to be painted upon or to be printed and affixed to boards in large and legible characters and shall cause such boards to be exhibited in some conspicuous place in or on every station so as to give public notice thereof and shall cause every such board and the characters thereon from time to time to be renewed if destroyed or defaced;

(a) the substance of all bye-laws framed under the provisions of this Ordinance;

(b) short particulars of the several offences for which a punishment is provided in this Ordinance or by any bye-law made thereunder affecting any persons other than railway servants.

(7) A bye-law or part of a bye-law may be repealed or altered by the High Commissioner.

7. Passenger fares and also a copy of the time table for the time being in force on the railways shall be posted up in a conspicuous and accessible place at each station.

Fares to be posted up.

8. All rules regulations or bye-laws in force at the commencement of this Ordinance having reference to the Railways vested in the Governor and not inconsistent with the provisions of or repealed by this Ordinance shall be read and construed as if the same had been made under this Ordinance and shall be deemed to have been made under the authority of this Ordinance and shall be and remain in full force and effect until altered or repealed under the authority of this Ordinance.

Certain rules regulations and bye-laws to remain in force.

9. (1) Subject to the control of the High Commissioner the Administration may impose conditions not inconsistent with this Ordinance or with any bye-law made thereunder with respect to the receiving forwarding or delivering of any property.

Powers of the Administration to impose conditions.

(2) The administration shall keep at each station on its railways a copy of the conditions for the time being in force under

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sub-section (1) at the station and shall allow any person to inspect it free of charge at all reasonable times.

(3) The Administration shall not be bound to carry any animal suffering from any infectious or contagious disease or any wild animal.

Consignor liable for carriage unless there is a contract that consignee will pay.

10. (1) The consignor of property is presumed to be liable for the carriage but if the contract between him and the Administration provides that the consignee shall pay it and the Administration allows the consignee to take the property it cannot afterwards recover the carriage from the consignor.

(2) The consignee of property is liable for the carriage and other charges if he accepts the property with notice that the same are unpaid.

Payment of carriage in certain cases.

11. (1) If a consignee receives property at a place short of that appointed for the delivery the Administration is entitled to a just proportion of the carriage according to distance. If the Administration being ready and willing offers to complete the conveyance of the property it is entitled to full carriage.

(2) If property is carried further or more expeditiously than was agreed upon between the parties the Administration is not entitled to additional compensation and cannot refuse to deliver it on the demand of the consignee at the place and time of its arrival.

Administration must give notice of arrival of property to consignee.

12. When the Administration does not deliver the property to the consignee or his agent personally it must give notice to the consignee of the arrival of the property and keep the same in safety upon its responsibility as a warehouseman. If the place of residence or business of the consignee be unknown to the Administration it may give the notice by posting to the consignee a letter addressed to the consignee at the address given on the property or papers relating thereto.

Time allowed consignee to take delivery from trucks.

13. If property is not removed or instructions for the disposal thereof are not given within fourteen days of the posting of the notice the responsibility of the Administra-

tion in respect thereof shall cease. Any consignee or person entitled to receive the delivery of any property from the Administration shall have twenty-four working hours free of expense after notice of arrival has been posted or forwarded to him by the Administration to remove the same from the trucks or other vehicles of the Administration which twenty-four working hours shall be held to commence from such time as the truck or other vehicle containing such property is placed and kept by the Administration in a convenient and proper place for unloading and it shall not be held to be a proper place for unloading unless it can be reached with suitable means of removing the property from the trucks or other vehicles and reasonably convenient to the station at which it is usual to receive and unload property consigned to that station or place.

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14. (1) If a person fail to pay on demand made by or on behalf of the Administration any carriage or other charge due from him in respect of any property the Administration may detain the whole or any part of the property or if it has been removed from the railway any of the property of such person then being in or thereafter coming into its possession. Lien for carriage.

(2) When any animals or goods have been detained under sub-section (1) the Administration may sell in the case of perishable goods at once and in case of other goods or of animals by public auction on the expiration of at least ten days' notice of the intended auction published in one or more of the local newspapers or when there are no such newspapers in such manner as the High Commissioner may prescribe sufficient of such animals or goods to produce a sum equal to the carriage or other charges and all expenses of such detention notice and sale including in the case of animals the expense of the feeding watering and tending thereof. Every such notice of sale shall state the name of the consignor and consignee if known.

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(3) Out of the proceeds of the sale the Administration may retain a sum equal to the carriage and other charges aforesaid including any balance due in respect of former carriage or charges and the expenses aforesaid rendering the surplus (if any) of any of the proceeds and such of the animals or goods (if any) as remain unsold to the person entitled thereto.

(4) If a person on whom a demand for any carriage or other charge due from him has been made fails to remove from the railway within seven days any animals or goods which have been detained under sub-section (1) or any animals or goods which have remained unsold after a sale under sub-section (2) the Administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections the Administration may recover by action in any competent Court any such carriage or other charge as aforesaid or balance thereof.

Disposal of
unclaimed
property.

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

(2) If such owner or person is not known or the notice cannot be served upon him or he does not comply with the requisition in the notice the Administration may after the expiration of ten days sell the property as nearly as may be under the provisions of the foregoing section rendering the surplus (if any) of the proceeds of the sale to any person entitled thereto.

Unclaimed
goods may be
warehoused.

16. If the consignee does not accept and remove the property within the time specified in any regulations framed under this Ordinance or in the consignment notes after the Administration has fulfilled its obligations to deliver or duly offered to

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fulfil the same the Administration may relieve itself from further liability by placing the property in a suitable warehouse or store when available on account of the consignee and giving notice thereof to him.

17. (1) The Administration is exonerated from liability for property by delivery thereof in good faith to any holder of a receipt or duplicate registered number given by or on behalf of the Administration therefor specially endorsed or given to the party presenting it.

Upon delivery to holder of receipt Administration released from liability.

(2) When the Administration has given a receipt or other document substantially equivalent thereto it may require its surrender or a reasonable indemnity against claims thereon before delivering the property.

(3) When any property or sale proceeds in the possession of the Administration are claimed by two or more persons or the receipt given for the property is not forthcoming the Administration may withhold delivery of the property or sale proceeds until the person entitled in its opinion to receive it has given an indemnity to the satisfaction of the Administration against the claims of any other person with respect to the property or sale proceeds.

18. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon and the consignee of any goods which have been carried on a railway shall on the request of any railway servant appointed on this behalf by the Administration deliver to such servant a declaration in writing signed by such owner or person or by such consignee as the case may be and containing the true weight and such a description of the goods as may be sufficient to determine the rate and amount which the Administration is entitled to charge in respect thereof.

Administration may require written description and weight of goods.

(2) If such owner person or consignee refuses or neglects to deliver such a declaration and refuses to open the parcel or package

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containing the goods in order that their description may be ascertained the Administration may;

(a) in respect of goods which have been brought for the purpose of being carried on the railway refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods and when there are no facilities for weighing upon the weight as estimated by the railway servants aforesaid; or

(b) in respect of goods which have been carried on the railway charge a rate not exceeding such highest rate and when there are no facilities for weighing upon the weight as estimated by the railway servants aforesaid.

(3) If the weight of goods is materially understated the Administration shall be entitled to charge on double the difference between the weight as stated and the actual weight.

(4) If a declaration delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate and which have been carried on the railway the Administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(5) If any difference arises between a railway servant and the owner or person having charge or the consignee of any goods which have been brought to be carried or have been carried on the railway respecting the description or weight of goods of which a declaration has been delivered under this section the railway servant may detain and examine the goods.

(6) If it appears from the examination or weighing that the description or weight of the goods is different from that stated in the declaration delivered under sub-section (1) the person who delivered the declaration or if that person is not the owner of the goods then that person and the owner jointly and severally

shall be liable to pay to the Administration the cost of the detention and examination of the goods and the Administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

19. (1) No person shall be entitled to take with him or to require the Administration to carry loaded firearms or any dangerous or offensive property upon a railway or property so bulky that it would be unsafe for the railway to convey the same.

Dangerous
or offensive
property.

(2) No person shall take any such property with him upon a railway without giving notice of its nature to the station-master or other railway servant in charge of the place where he brings the property upon the railway or shall tender or deliver any such property for carriage upon a railway without distinctly marking its nature on the outside of the package containing it or otherwise giving notice in writing of its nature to the railway servant to whom he tenders or delivers it.

(3) Any railway servant may refuse to receive such property for carriage and when such property has been so received without such notice as is mentioned in sub-section (2) having to his knowledge been given may refuse to carry it or may stop its transit.

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

(5) Nothing in this section shall be construed to derogate from Law No. 27 of 1896 or any law amending the same or any rules made thereunder and nothing in sub-sections (1) (3) and (4) shall be construed to apply to any property tendered or delivered for carriage by order or on behalf of the Government or to any property which an officer soldier or member of a police force or a person enrolled as a volunteer under

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Ordinance No. 33 of 1902 may take with him upon a railway in the course of his employment or duty as such.

LIABILITY OF ADMINISTRATION AS CARRIERS
OF PASSENGERS.

Liability in respect of passengers.

20. The Administration shall only be liable for personal injury to any passenger when such injury is caused by the want of due care diligence or skill on the part of its servants.

Administration to issue tickets.

†21. Subject to the provisions of sections *twenty-two* and *twenty-seven* of this Ordinance and of any bye-laws made thereunder and to the conditions contained in the time-tables the Administration shall on being rendered the fare therefor furnish to any person desiring to travel by its passenger trains a ticket which entitles the purchaser to conveyance and to the accommodation provided on its carriages from the station or siding where the same is purchased to any other station or siding on its railway to which such ticket is available.

Provision for cases in which tickets have been issued for trains in which there is not room.

22. (1) Fares shall be deemed to be accepted and tickets to be issued subject to the condition of there being room available in the train and in a carriage of the class for which the tickets are issued.

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall upon returning the ticket at the earliest opportunity be entitled to have his fare refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who elects to travel in a carriage of a lower class shall on delivering up his ticket and receiving the certificate hereinafter in this section referred to be entitled to a refund of the difference of the fare paid by him and the fare payable for the class of carriage in which he travelled; provided that a refund shall only be made if at the first opportunity the passenger so travelling shall have called the attention of the railway servant in charge of the train to the fact that he is obliged to travel in a

† For the word "rendered" in this section read "tendered." See "Correction of Errors in Laws Ordinance 1904."

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class of carriage inferior to that mentioned on his ticket and received from such servant a certificate shewing that he is entitled to the refund.

(4) The provisions of sub-sections (2) and (3) shall not apply to season tickets.

23. No person shall without the permission of a railway servant enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket.

Travelling without a pass or ticket prohibited.

24. (1) Every passenger by railway shall on the requisition of any railway servant appointed by the Administration in this behalf present his pass or ticket to such servant for examination.

Production and surrender of ticket or pass.

(2) Such passenger shall unless he comes within the provisions of the next succeeding sub-section also deliver up his ticket or pass to such railway servant as is mentioned in the preceding part of this section on demand at any time.

(3) Every holder of season ticket or pass shall at the expiration of the period for which it is available deliver up the same to some railway servant authorised to receive it whether or not such delivery shall have been demanded and any person retaining possession of such ticket or pass with the intention of using it after the period for which the same is available shall be deemed guilty of fraud and liable to be punished accordingly.

25. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued.

Return and season tickets.

Return tickets can only be obtained at the booking offices before the commencement of the outward journey.

26. If any passenger refuse to pay his fare and any additional sum for which he may be liable for entering the train without having previously paid his fare or if he refuse to present or give up his pass or ticket when lawfully requested so to do or to conform to any lawful regulation of the Administration a ticket collector conductor or railway servant may detain such person until he can conveniently be taken before a Magistrate.

Removal of passenger who has no ticket or pass.

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Administration may refuse to carry lunatics or persons suffering from contagious or infectious diseases.

27. (1) The Administration may refuse to carry except in accordance with the conditions prescribed under section *six* a person who is a lunatic or suffering from any contagious or infectious disease.

(2) A lunatic whether in charge of a keeper or not or person suffering from such a disease shall not enter or travel upon a railway without the special permission of the stationmaster or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the lunatic or person suffering from the disease from other persons being or travelling upon the railway.

(4) If any person whilst travelling on the railway is discovered to be a lunatic or to be suffering from any infectious or contagious disease it shall be lawful for a railway servant to remove him from the railway carriage or compartment in which he is travelling to any other carriage or compartment set apart for persons so suffering and if there is no such carriage or compartment on the train he may be removed from the railway premises at the first opportunity.

Railway Servants to wear badges,

28. Every servant of the Administration employed on a passenger train or at stations for passengers shall place on the breast of his coat a badge indicating his office or shall when required produce some other evidence of his authority as such servant and he shall not without such badge or other evidence be entitled to demand or receive from any passenger any fare or ticket or to exercise any of the powers of his office or to meddle or interfere with any passenger or his luggage or property.

Carriage of passengers' luggage.

29. The Administration shall receive and carry a reasonable amount of luggage for each passenger without charge except for an excess of weight over one hundred pounds in the case of a first-class passenger seventy-five pounds in the case of a second-class passenger and fifty pounds in the case of a third-class passenger.

Luggage may consist of whatever the passenger takes with him for his personal use and convenience according to the habits or wants of the particular class to which he belongs either with reference to the immediate necessities or the ultimate purpose of the journey and does not include merchandise.

30. The liability of the Administration for luggage received by it with a passenger is the same as that for goods received for conveyance under sections *thirty-three* and *thirty-six* of this Ordinance.

Liability in respect of passengers' luggage.

31. (1) When passengers' luggage is handed to a railway servant for conveyance in the luggage van he shall affix to every package a registered number and shall give to the passenger a duplicate of such number; provided that the Administration shall not be liable for luggage left with a railway servant or otherwise disposed of at any station unless registered as in this subsection provided or deposited in a cloak-room.

Registration of luggage.

(2) Whenever a passenger neglects or refuses to have his luggage registered and carried in the luggage van it is carried at his own risk.

32. The Administration has a lien upon the luggage of a passenger for the payment of such fare or other charge as it is entitled to from him.

Lien on luggage.

LIABILITY OF ADMINISTRATION AS CARRIERS OF PROPERTY.

33. (1) Unless the consignor accompanies the property and retains control thereof the Administration carrying property is liable therefor from the time it accepts such property until it releases itself from liability by delivery of the property to the consignee or by placing the same in a warehouse pursuant to section *sixteen* for the loss or injury thereof from any cause whatsoever except;

Liability of Administration for property carried.

- (a) an inherent defect vice or weakness or some action of the property itself;
- (b) the act of God;
- (c) accident or inevitable casualty;
- (d) the act of the King's enemies or other inevitable superior force;
- (e) the act of the law.

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Effect of
accepting
receipt.

(2) The Administration is liable even in the cases excepted by sub-section (1) if its negligence exposes the property to the cause of the loss.

(3) The Administration is liable for delay only when it is caused by its want of ordinary care and diligence.

34. (1) A consignor or consignee by accepting a receipt or written contract for carriage assents to the rate of carriage and the time place and manner of conveyance and delivery therein stated.

(2) Subject to sub-section (1) the liabilities and obligations of the Administration cannot be limited by general notice but may be limited by special contract.

Limitation
of liability
in respect of
animals
carried.

35. (1) The liability of the Administration under section *thirty-three* for the loss destruction or deterioration of animals delivered to it to be carried on a railway shall not in any case exceed the amounts mentioned in the second schedule hereto annexed unless the person sending or delivering them to the Administration caused them to be declared or declared them at the time of their delivery for carriage by the railway to be respectively of higher value than the amounts set out in the said schedule.

(2) Where such higher value has been declared the Administration may charge in respect of the increased risk a percentage on the excess of value so declared over the respective sums mentioned in the schedule aforesaid.

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

Limitation
of liability in
respect of
articles of
special value.

36. (1) When any of the articles mentioned in the third schedule hereto annexed are contained in any parcel or package delivered to the Administration for carriage by railway and the value of the articles in the parcel or package is ten pounds or more the Administration shall not be responsible for the loss destruction or deterioration of the parcel or package unless the

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person sending or delivering the parcel or package to the Administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway and if so required by the Administration paid or engaged to pay a percentage upon the excess of the value so declared over the sum aforesaid by way of compensation for the increased risk.

(2) When any package or parcel of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated the compensation recoverable in respect of such loss destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall notwithstanding anything in the declaration lie on the person claiming the compensation.

† (3) The Administration may make it a condition of carrying a parcel declared to contain any article mentioned in the fifth schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

37. In any action against the Administration for compensation for loss destruction or deterioration of property delivered to it for carriage by railway it shall not be necessary for the plaintiff to prove how the loss destruction or deterioration was caused.

Owner of property suing for loss need not prove how loss caused.

38. When property is carried over any line of the Administration as part only of the journey for which it is despatched and is lost destroyed or deteriorated the Administration shall be exonerated from liability for such destruction or deterioration if it gives satisfactory proof that such loss destruction or deterioration did not occur whilst the property was in charge of the Administration.

Administration not responsible for property not lost on its lines.

39. A person shall not be entitled to a refund of an overcharge in respect of property carried by railway or to compensation for the loss destruction or deterioration of property delivered to be so carried unless his claim to the refund or compensation with full detailed information with reference

Claims for refunds and compensation must be made within four months.

† For the word "fifth" in this sub-section read "third." See "Correction of Errors in Laws Ordinance 1904."

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thereto has been preferred in writing by him or on his behalf to the Administration within four months from the date of the delivery of the property for carriage by railway.

Exonerated from liability in case of goods improperly described.

40. Notwithstanding anything in the foregoing provisions of this Ordinance the Administration shall not be responsible for the loss destruction or deterioration of any goods with respect to the description of which a declaration materially false has been delivered under sub-section (1) of section *eighteen* or in respect of which a wrong or improper or insufficient address for delivery has been given if the loss destruction or deterioration is in any way brought about by the false declaration or by giving a wrong or improper or insufficient address nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

OFFENCES BY RAILWAY SERVANTS.

Drunkenness.

41. (1) Any person who is intoxicated while in charge of a locomotive engine or while acting as engine-driver or fireman conductor or guard upon any train on a railway or while acting as train foreman pointsman or signalman or as telegraph operator receiving or transmitting messages in relation to the movement of trains shall be liable to imprisonment with hard labour for a term not exceeding two years.

(2) If a railway servant other than those mentioned in sub-section (1) is in a state of intoxication while on duty he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days or where the improper performance of the duty would be likely to endanger the safety of any person travelling or being on a railway to imprisonment with hard labour for a term not exceeding one year or to a fine not exceeding twenty-five pounds or to both.

42. If a railway servant when on duty endangers the safety of any person ;

Endangering the safety of persons.

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(a) by disobeying any general rule made sanctioned published and notified under this Ordinance or any amendment thereof; or

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

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

he shall be liable to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding fifty pounds or to both.

43. Any railway servant or other person having charge wholly or in part of any locomotive or train who wilfully or negligently suffers or causes the same to collide with another locomotive or train or with any other object or thing whereby the death of a human being is caused shall be liable to imprisonment with hard labour for a term not exceeding ten years.

Punishment for causing a collision.

44. Any railway servant who knowingly asks or receives a greater sum than is allowed by law and is provided by the tariff then in force for the carriage of passengers or property shall be liable to imprisonment with or without hard labour for a term not exceeding two years.

Penalty on railway servant for demanding more than is due.

45. Any railway servant who is guilty of any wilful violation or omission of his duty as such whereby human life or safety is endangered the punishment of which is not otherwise provided for shall be liable to imprisonment with hard labour for a term not exceeding two years.

Penalty in other case.

† 46. If a station-master or railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section *eighty* and the rules for the time being in force under section *eighty-one* he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

Omission to give notice of accident.

† For the words "*eighty*" and "*eighty-one*" in this section read "*seventy-seven*" and "*seventy-eight*" respectively: See "Correction of Errors in Laws Ordinance 1904."

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Obstructing
level cross-
ings.

47. If a railway servant unnecessarily ;
(a) allows any rolling-stock to stand
across a place where the railway
crosses a public road on the level; or
(b) keeps a public level crossing closed
against the public;

he shall be liable to a fine not exceeding
two pounds and in default of payment to
imprisonment with or without hard labour
for a term not exceeding seven days.

False
returns.

48. If a return which is required by this
Ordinance is false in any particular to the
knowledge of any person who signs it that
person shall be liable to a fine not exceed-
ing one hundred pounds and in default of
payment to imprisonment with or without
hard labour for a term not exceeding one
year or to both such fine and imprisonment.

OTHER OFFENCES.

Making false
declaration
of goods.

49. If a person requested under section
eighteen to deliver a declaration with respect to
any goods delivers a declaration which is
materially false he and if he is not the
owner of the goods the owner also shall be
liable to a fine not exceeding seventy-five
pounds and in default of payment to im-
prisonment with or without hard labour for
any term not exceeding six months and the
fine or imprisonment shall be in addition
to any rate or other charges to which the
goods may be liable.

Unlawfully
bringing
dangerous or
offensive
goods upon a
railway.

50. If in contravention of section *nineteen* a
person takes with him loaded firearms or
any dangerous or offensive goods upon a
railway or tenders or delivers any such
firearms or goods for carriage upon a rail-
way he shall be liable to a fine not exceed-
ing two hundred and fifty pounds and in
default of payment to imprisonment with or
without hard labour for a term not exceed-
ing two years and shall also be responsible
for any loss injury or damage which may
be caused by reason of such goods having
been so brought upon the railway.

Needlessly
interfering
with means
of communi-
cation in a
train.

51. If a passenger without reasonable and
sufficient cause makes use of or interferes
with any means provided by the Adminis-
tration for communication between passengers
and any railway servant in charge of or

concerned in the running of a train he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

52. (1) If a passenger having entered a compartment which is reserved by the Administration for the use of another passenger or for any particular class of passengers or which already contains the maximum number of passengers authorised to be carried therein refuses to leave it when required to do so by any railway servant he shall be liable to a fine not exceeding two pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding seven days.

Entering compartment reserved or already full or resisting entry into a compartment not full.

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the Administration for the use of the passenger resisting or not already containing the maximum number of passengers to be carried therein or thereon he shall be liable to a fine not exceeding two pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding seven days.

53. (1) If a passenger without the consent of his fellow passengers if any in the same compartment smokes in any compartment in which smoking is not permitted he shall be liable to a fine not exceeding two pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding seven days.

Smoking.

(2) If any person persists in so smoking after being warned by any railway servant to desist he may in addition to incurring the liability mentioned in sub-section (1) be removed by any railway servant from the carriage and train in which he is travelling at the next station or stopping place.

54. If a person without authority in this behalf pulls down or wilfully injures any board or document set up or posted by order of the Administration on a railway or any rolling stock or obliterates or alters any of the letters or figures upon any such board document or rolling-stock he shall be

Defacing notices.

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Fraudulent-
ly travelling
or attempt-
ing to travel.

liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

55. If a person with intent to defraud the Administration;

(a) enters any carriage or other rolling stock on a railway; or

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

he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month in addition to the amount of the single fare for any distance which he may have travelled.

Travelling
without pass
or ticket or
with insuffi-
cient pass
or ticket or
beyond
authorised
distance.

56. (1) If a passenger travels in a train without having a proper pass or a proper ticket with him or being in or having alighted from a train fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section *twenty-four* he shall be liable to pay on demand of any railway servant appointed by the Administration in this behalf the excess charge hereinafter in this section mentioned in addition to the ordinary single fare for the distance which he has travelled or where there is any doubt as to the station from which he originally started the single fare from the station from which the train originally started or if the tickets of passengers travelling in the train have been examined since the original starting of the train the ordinary single fare from the place where the tickets were examined or in case of their having been examined more than once where last examined.

(2) If a passenger travels or attempts to travel in or on a carriage or by a train of a higher class than that for which he has obtained a pass or purchased a ticket or travels in or on a carriage beyond the place authorised by his pass or ticket he shall be

liable to pay on the demand of any railway servant appointed by the Administration in this behalf the excess charge hereinafter in this section mentioned in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made.

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall;

- (a) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred be one shilling sixpence or threepence; and
- (b) in any other case be ten shillings five shillings or two shillings and sixpence;

according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the first class or in a carriage of the second class or in a carriage or vehicle of any other class or kind; provided that such excess charge shall in no case exceed;

- (a) where the liability to pay it arises under sub-section (1) the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section; or
- (b) where such liability arises under sub-section (2) the amount of the differences between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

57. Any person giving or offering any money or any thing of value to any railway servant for the purpose of escaping payment of any sum due from him under this Ordinance shall be liable to a penalty not exceeding seventy-five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding six months.

Penalty for bribing railway servant.

58. If a person sells or attempts to sell or parts or attempts to part with the possession of any half of a return ticket in order to enable any other person to

Transferring any half of return ticket.

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travel therewith or purchases such half of a return ticket he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days and if the purchaser of such half of a return ticket travels or attempts to travel therewith he shall be liable to an additional fine not exceeding the amount of the single fare for the journey authorised by the ticket and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

Disposal of
fines under
sections
fifty-four and
fifty-eight.

59. That portion of any fine imposed under section *fifty-four* or the last preceding section which represents the single fare therein mentioned shall as the fine is recovered be paid to the Administration before any portion of the fine is credited to the Colonial Treasury.

Altering or
defacing pass
or ticket.

60. (1) If a passenger wilfully alters or defaces his pass or ticket so as to render the date number or any material portion thereof illegible he shall be liable to a fine not exceeding twenty-five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding two months and shall be deemed to be travelling without a ticket and without having paid his fare.

(2) Any person who obtains by false pretences or other fraudulent means or who counterfeits forges or alters any ticket order receipt for fare or pass issued by the Administration designed to entitle the holder to travel in the carriages of such Administration or who utters publishes or puts into circulation any counterfeit or altered ticket order receipt for fare or pass with intent to defraud the Administration or any other person is liable to imprisonment with or without hard labour for a term not exceeding one year.

Being or
suffering per-
son to travel
on railway
with infec-
tious or con-
tagious
diseases.

61. (1) If a person who is suffering from an infectious or contagious disease enters or travels upon a railway in contravention of section *twenty-seven* sub-section (2) he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour

for a term not exceeding one month in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased and may be removed from the railway by any railway servant.

(2) If any such railway servant as referred to in section *twenty-seven* sub-section (2) knowing that a person is a lunatic or suffering from an infectious or contagious disease wilfully permits the person to travel upon a railway without arranging for his separation from other passengers he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

62. (1) If a passenger enters or leaves or attempts to enter or leave any carriage while the train is in motion or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the Administration for passengers to enter or leave the carriage or opens the side door of any carriage while the train is in motion he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

Entering carriage in motion or otherwise improperly travelling on a railway.

(2) If a passenger after being warned by a railway servant to desist persists in travelling on the roof steps or footboard of any carriage or on an engine or in any other part of a train not intended for the use of passengers he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding fourteen days and may be removed from the railway by any railway servant.

63. If a male person knowing a carriage compartment or other place to be reserved by the Administration for the exclusive use of females enters such carriage or place without lawful excuse or having entered it remains therein after having been desired by any railway servant to leave it he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment

Entering carriage or other place reserved for females.

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with or without hard labour for a term not exceeding one month in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased and may be removed from the railway by any railway servant.

Drunkenness
or nuisance
on a railway.

64. If a person in any railway carriage or upon any part of a railway;

- (a) is in a state of intoxication; or
- (b) commits any nuisance or act of indecency or uses profane obscene indecent or abusive language; or
- (c) writes draws or affixes any profane obscene indecent or abusive word matter representation or character; or
- (d) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp or light;

he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased and may be removed from the railway by any railway servant.

Lost
property.

65. Every person finding any property on any railway or in any carriage upon any railway under the management of the Administration shall deliver the same at the earliest opportunity to a railway servant and any person failing so to do or removing any such property from the railway or carriage unless for the purpose of so delivering it shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

Penalty for
stealing from
railway.

66. Any person who steals or attempts to steal or incites any other person to steal any property delivered to the Administration to be carried while it is in the custody of the Administration or who receives any such property knowing it to have been so stolen shall be liable to imprisonment with hard labour for a term not exceeding ten years.

67. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month and may be removed from the railway by any railway servant.

Obstructing railway servant in his duty.

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68. (1) Any person who without lawful excuse trespasses upon the railway after it has been constructed or while it is in course of construction or upon any land occupied or temporarily occupied for the purpose of such construction under lawful authority shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

Trespassing on railway.

(2) Any person who without lawful excuse rides or drives any animal or vehicle upon any such railway or land shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

(3) Any person who refuses to leave such railway or land or to remove such animal or vehicle therefrom when warned so to do by the overseer contractor or any other person in charge of or employed upon the railway may be removed by such overseer or other person from the railway or land together with such animal or vehicle if any.

69. If a driver conductor of a tramcar omnibus carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer he shall be liable to a fine not exceeding two pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding seven days.

Disobedience of omnibus drivers to directions of railway servants.

70. Any person who ;

(a) knowing or having reason to believe that an engine or train is approaching opens any gate set up on either side of the railway across a road or passes or attempts to pass or drives or takes or attempts to drive or take

Opening or not properly shutting gates.

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any animal vehicle or other thing across the railway whether there be gates or not;

- (b) in the absence of a gatekeeper omits to shut and fasten such gate as aforesaid as soon as he and any animal vehicle or other thing under his charge has passed through the gate;

shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding fourteen days.

Cattle
trespass.

71. (1) The owner or person in charge of any cattle or other animal straying on a railway provided with fences suitable for exclusion of cattle or other animal shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

(2) If any cattle or other animals are wilfully driven or knowingly permitted to be on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose the person in charge of the cattle or other animals or at the option of the Administration the owner of the cattle or other animals shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one month.

Penalty for
damage to
person or
property on
railway.

72. (1) Any person whether a railway servant or not who;

- (a) places or causes to be placed anything on or across a railway; or
(b) does or causes to be done any act likely to interfere with endanger or obstruct any rolling-stock on a railway; or
(c) shoots or throws or causes to be shot or thrown anything at into or upon or causes to be shot or thrown anything to come into contact with any person or thing on a railway; or
(d) does or causes to be done anything whatever to any part of a railway or to any of the sleepers points wires

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signals supports or machinery belonging to or near to such railway or any rolling-stock thereon; or

(e) deals or causes to be dealt with in any way any signal or light on or near to a railway or makes or shows any false signal or light or makes any sign whatever on or near to a railway; or

(f) by an omission of any act which it was his duty to do causes the safety of a railway or any person or any rolling stock thereon to be endangered; or

(g) does or causes to be done any other unlawful act;

with intent to injure or endanger the safety of any person on the railway whether a particular person or not or to damage the railway or any rolling stock or any property on the railway or to prevent the lawful use of the railway shall be liable to be imprisoned with hard labour for life and to whipping not exceeding twenty-four strokes in addition to such imprisonment.

(2) Any person who does or causes to be done any of the acts or makes or causes to be made any of the omissions mentioned in sub-section (1) unlawfully and in a manner likely to injure or endanger the safety of any person on the railway or to cause any damage to the railway or to any rolling stock or to any property thereon or to prevent the lawful use thereof or who by doing such acts or making such omissions unlawfully causes such injury or damage or prevents such use of the railway shall be liable to imprisonment with or without hard labour for a term not exceeding two years.

(3) Any person who does or causes to be done any of the acts or makes or causes to be made any of the omissions mentioned in sub-section (1) unlawfully shall be liable to imprisonment with or without hard labour for a term not exceeding six months.

INJURIES TO STOCK.

73. (1) The Administration shall make compensation to the owner of any stock killed or injured by any train running by daylight on any line worked by the Admin- Compensation for injuries to stock.

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istration if the part of the line at which such killing or injury takes place is unfenced and if no compensation shall have at any time been paid to any person in respect of the right to construct such line and provided that no compensation shall be payable in respect of any stock killed or injured when in charge of a herd.

(2) No person shall be entitled to recover any sum of money under this section for the killing or injury of any stock who shall fail to give notice within forty-eight hours after such stock shall have been killed or injured to the nearest stationmaster of the killing or injuring thereof and of the number and kind of the stock so killed or injured in respect of which compensation is claimed.

(3) The carcasses or remains of all stock killed and all injured stock in respect of which any claim is made under this section shall be diligently and to the best of his ability kept and preserved by the owner making such claim for a period of not less than three full days from the time when such killing or injury took place and shall be shown to any person appointed for the purpose of ascertaining the value of the stock so killed or injured.

(4) No person who fails diligently and to the best of his ability to keep and preserve such carcasses or remains of killed stock or such injured stock as aforesaid or who shall make any claim for compensation under this section which any Court of competent jurisdiction shall determine to be fraudulent or grossly excessive shall be entitled to any of the benefits of this section; and any person who shall make any such claim with intent to defraud shall be liable to all the penalties of the crime of fraud.

(5) The amount of compensation payable under the provisions of this section to the owner of any stock killed or injured shall in no case exceed the following rates;

For any horse	£25
For any mule	20
For any donkey	8
For any cattle per head	12
For any ostrich	12
For any sheep or goat ...	1

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(6) "Stock" within the meaning of this section shall include horse gelding mare colt mule ass bull ox cow calf sheep goat and ostrich; and

"Daylight" means the period between sunrise and sunset.

74. The Administration may lease any refreshment room shed office shop stall coal gears sites for storage or for erecting sheds right of advertising or other convenience or appurtenance to any of the railways for such term and on such conditions and at such rent as the Administration may determine.

Power to lease refreshment rooms.

ACTIONS BROUGHT BY OR AGAINST THE ADMINISTRATION.

75. (1) No action shall be brought against the Administration to recover damages or compensation in respect of any claim for damages under this Ordinance or against any railway servant for anything done or purporting to have been done by virtue of his office service or employment unless the same shall be commenced within twelve months after the act complained of was committed.

Limitation of actions.

(2) No such action shall be commenced against the Administration or such person until one month at least after a notice in writing of the intended action shall have been served upon it or him or left at its or his principal office or place of business by the party intending to commence such action or by his attorney or agent in which notice the cause of action and details of claim and the Court in which the same is intended to be brought shall be clearly and explicitly stated and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue and also the name and place of business of the attorney or agent if the notice is served by such attorney or agent.

(3) A notice under this section shall not be deemed invalid by reason of any minor defect or inaccuracy therein unless the judge before whom the action is tried shall be of opinion that the defendant in the action has been prejudiced in his defence on the merits by such defect or inaccuracy.

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Actions to be brought by and against the Commissioner.

76. (1) All actions to which the Administration is a party shall be brought in the name of or against the Commissioner.

(2) No writ of execution or attachment or process in the nature thereof shall be issued against the Commissioner in respect of any action or other proceeding brought or judgment or order given or made against him in his official capacity nor shall any such writ or process be issued against any railway rolling stock or other railway property vested in or under the control and authority of the High Commissioner but it shall be lawful for the Administration to pay out of railway funds such sum of money as shall be awarded to the plaintiff applicant or petitioner by the judgment or order of any competent Court.

ACCIDENTS.

Report of railway accidents.

77. When any of the following accidents occur in the course of working a railway namely;

- (a) any accident attended with loss of human life or with grievous bodily harm or with serious injury to property;
- (b) any collision of trains of which one is a train carrying passengers;
- (c) the derailment of any train carrying passengers or of any part of such train;
- (d) any accident of a description usually attended with loss of human life or with such grievous bodily harm as aforesaid or with serious injury to property;
- (e) any accident of any other description which the Lieutenant-Governor may notify in this behalf in the *Gazette*;

the Administration shall without unnecessary delay send notice of the accident to the Attorney-General and the station-master nearest to the place at which the accident occurred or where there is no station-master the railway servant in charge of the section of the railway on which the accident occurred shall without unnecessary delay give notice of the accident to the Magistrate of the district in which the accident occurred. It shall be lawful for

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the Lieutenant-Governor to appoint an officer to examine into the causes of such accident and report thereon.

78. The Governor may make rules consistent with this Ordinance and any other enactment for the time being in force for all or any of the following purposes;

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

- (a) for prescribing the forms of the notices mentioned in the last foregoing section and the particulars of the accident which those notices are to contain;
- (b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;
- (c) for prescribing the duties of railway servants and Magistrates on the occurrence of an accident.

79. The Administration shall send to the Governor a return of accidents occurring upon its railways whether attended with personal injury or not in such a form and manner and at such intervals of time as the Governor may direct.

Submission of return of accidents.

80. Whenever any person claims damages or compensation from the Administration in respect of any alleged personal injury any Judge of the Supreme Court or any Court having by law or consent of the parties authority to determine the claim may at any time before or after an action or other proceedings have been commenced order that the person injured may be examined on behalf of the Administration by some one or more duly qualified medical practitioners named in the order and may make such order with respect to the manner time and place of conducting the examination and the cost of the application for such order and of such examination as he or it may think fit.

Examination by medical man.

TELEGRAPHS AND POSTAL.

81. The Administration may from time to time construct and maintain lines of telegraphic or telephonic communication along or adjacent to the lines of any of the railways under its control and for such purposes may enter in and upon any lands roads and streets

Power to erect telegraphs.

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and make therein all needful excavations for the erecting of posts and for the laying down of lines of subterranean communication and may erect and set up all necessary posts cords and wires. Every cord or wire of any such line if above the surface crossing any road or street shall be placed at least eighteen feet from the ground and so as not to hinder or obstruct the free use or enjoyment of such road or street further than is absolutely necessary for the proper construction establishment and maintenance of any such line of communication.

Wires to be affixed to existing posts if required.

82. The Administration shall if required by the Postmaster-General affix wires to any of the posts of the Administration (if such posts can bear such wires) and the Postmaster-General shall if required by the Administration affix wires to the posts of the Postmaster-General (if such posts can bear such wires) and the cost of maintenance shall be divided between the Administration and the Postmaster-General in proportion to the number of wires belonging to each on such posts or in such other proportion as may appear equitable.

Working of the telegraphs vested in the Administration.

83. The several lines of telegraphic communication belonging to the Administration or which are worked under the direction or on behalf of the Administration may be used by the Administration for the transmission of messages in relation to the working of the railways and shall so far as is consistent with the due and efficient working of the railways be available for the transmission of messages by the public; and all such messages as last aforesaid shall be transmitted by the officers and employés on behalf of the Administration as agents of the Postmaster-General; and there shall be demanded and received in respect of such last-mentioned messages such fees rates and dues as may for the time being be lawfully demanded or received by the Postmaster-General in respect of lines of telegraphic communication under his control; and save as aforesaid the Administration shall not transmit or permit the transmission of messages on behalf of the public through its wires.

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The remuneration to be paid by the Postmaster-General to the Administration for the transmission of messages aforesaid may be either a lump sum or a percentage on the gross sum received by the Postmaster-General from the Administration in respect of such transmission or may be determined in such other way as may from time to time be agreed upon between the Postmaster-General and the Administration.

84. It shall be lawful for the Administration and the Postmaster-General from time to time to enter into alter and rescind contracts and agreements with respect to the receipt carriage and conveyance of letters newspapers and parcels and for any other matter or thing in relation to the postal service also with respect to the working of any of the lines of telegraphic communication of the Postmaster-General by the Administration and generally with respect to telegraphs and the transmission of telegraphic messages.

Power for the Administration and Postmaster-General to make contracts.

85. In case any difference arise between the Administration and the said Postmaster-General with regard to matters falling under sections *eighty-two eighty-three* and *eighty-four* or with regard to the terms and conditions on which any contract or agreement should be made or otherwise in relation thereto the same shall be determined by the Lieutenant-Governor in Council.

How difference to be determined.

MISCELLANEOUS.

86. Whenever any railway servant is suspended dismissed or resigns his office or dies the servant so suspended removed or resigning and his family and the family of any such deceased servant shall quit the possession of the house or apartments in which he or they have previously resided by virtue of such office when required so to do in writing by any person authorised in that behalf by the Administration and if he or they refuse or neglect giving such possession or delivery within seven days after such notice as aforesaid has been given to him or them the Resident Magistrate of the District upon proof made of the service of such notice and of refusal or

Railway servant on leaving service to quit official dwelling and deliver up articles of official dress.

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neglect to comply therewith may by warrant under his hand direct any police or railway constable or other person named in such warrant to enter by force if necessary into such house or apartments and to remove therefrom any such servant or any other person wrongfully retaining possession together with any goods or articles not belonging to the Administration there found. Any property or equipment belonging to the Administration found therein shall be handed over to the Administration.

When any railway servant has been suspended dismissed from the railway service or has resigned his situation he shall forthwith deliver up every article of dress and of equipment and any book or document which shall have been supplied to him for use in the discharge of his duties or shall have come into his possession by virtue of his office. If any such article be not delivered up or when delivered up shall have been improperly used or damaged the Administration may deduct from any moneys due to such servant a sum sufficient to make good the damage or if necessary to supply a new article.

No goods on which Customs duty payable to be sold without authority of Director of Customs.

87. No goods whatsoever upon which Customs duty is payable shall be sold under the provisions of this Ordinance without the authority of the Director of Customs and nothing in this Ordinance contained shall affect or diminish the rights and powers of the Customs as prescribed by the Customs Management Ordinance 1902 or any other law relating to the Customs.

Title.

88. This Ordinance may be cited as the Railway Regulation Ordinance 1903.

First Schedule.

Law No. 14 of 1892.

Law No. 16 of 1892.

General Regulations for carriage over Railways and Steam Tramways in the South African Republic and Special Regulations for carriage over the Railways and Steam Tramways of the N.Z.A.S.M. published under Government Notice No. 55 of 1893.

Supplement to the General Regulations for carriage over Railways and Steam Tramways in the S.A. Republic published under Government Notice No. 422 of 1893.

Tariff published under Government Notice No. 74 of 1893.

First Volksraad Resolution of 26th May 1894 Article 226.

First Volksraad Resolution of 20th September 1894 Article 1779.

Law No. 6 of 1899.

Ordinance No. 25 of 1902.

Second Schedule.

Horses	£25	per head.
Mules	£20	" "
Cattle	£12	" "
Donkeys	£ 8	" "
Sheep and goats	£ 1	" "
Ostriches... ..	£12	" "
Dogs	£ 2	" "
Other animals	£ 2	" "

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 of
 1903.**

Third Schedule.

Articles to be declared and insured.

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) plated articles;
- (c) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police officer or person enrolled as a volunteer under the Volunteer Corps Ordinance 1903 or of any public officer British or foreign entitled to wear uniform;
- (d) pearls precious stones jewellery;
- (e) watches clocks and timepieces of every description;
- (f) Government securities;
- (g) Government stamps;
- (h) bills of exchange promissory notes and orders or other securities for payment of money;
- (i) maps writings and title deeds;
- (j) paintings engravings lithographs photographs carvings and other works of art;
- (k) art pottery and all articles made of glass china or marble;
- (l) silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials;
- (m) shawls;
- (n) lace furs and feathers;
- (o) ivory ebony and sandalwood;
- (p) musk sandalwood oil and other essential oils used in the preparation of perfumes;
- (q) musical and scientific instruments;
- (r) any article of special value which the High Commissioner may by notification in the *Gazette* add to this schedule.

No. 61 of 1903.]

[Assented to 27 July 1903.]

ORDINANCE

**ORD.
 No. 61
 of
 1903.**

† To apply a sum of money for the service of the year ending the 30th day of June 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The public revenue of this Colony is hereby charged toward the service of the year ending the 30th day of June 1904 with Public revenue to be charged with £3,588,896.

† Cf. Ordinances Nos. 13 and 48 of 1903.

**ORD.
No. 61
of
1903.**

How to be applied.

Not to be applied otherwise than as granted.

The Treasurer to make payments under warrant of the Lieutenant-Governor.

Title.

a sum of three million five hundred and eighty-eight thousand eight hundred and ninety-six pounds.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the schedule annexed hereto.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

4. The Colonial Treasurer being duly authorised thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 3) 1903.

**Schedule of Estimated Expenditure for the
Year 1903-4.**

No. of Vote.	TITLE OF VOTE.	Estimate 1903-4.
I.	Pensions and Gratuities	£4,000
II.	His Excellency the Lieutenant-Governor	12,752
III.	Executive and Legislative Councils ...	16,772
IV.	Colonial Secretary	46,212
V.	Public Works—Establishment and Maintenance	411,243
VI.	Public Works—New Works	433,767
VII.	Education	306,231
VIII.	Public Health	69,489
IX.	District Hospitals and Dispensaries ...	63,283
X.	Pretoria Hospital	16,585
XI.	Government Printing Office	72,171
XII.	Grants in Aid	98,396
XIII.	Attorney-General	41,236
	Carried Forward	£1,592,137

APPROPRIATION (No. 3).
JOHANNESBURG MUNICIPALITY FURTHER POWERS.

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No. of Vote.	TITLE OF VOTE.	Estimate 1903-4.
	Brought Forward ...	£1,592,137
XIV.	Commissioner of Patents	5,565
XV.	Registrar of Deeds	11,446
XVI.	Master of the Supreme Court	11,490
XVII.	Superior Courts	45,108
XVIII.	Prisons	124,935
XIX.	Magistrates	142,451
XX.	Police	370,203
XXI.	Lunatic Asylum	20,148
XXII.	Native Affairs	114,915
XXIII.	Treasury	23,683
XXIV.	Revenue Offices	9,564
XXV.	Audit Office	16,616
XXVI.	Customs	47,893
XXVII.	Postal and Telegraph Department	414,259
XXVIII.	Transport and Immigration	20,000
XXIX.	Transvaal Volunteers	200,000
XXX.	Mines Department	128,215
XXXI.	Land Department	49,080
XXXII.	Irrigation and Water Supply	45,580
XXXIII.	Surveys	27,563
XXXIV.	Agriculture and Forests	134,845
XXXV.	Census	15,000
XXXVI.	Miscellaneous	18,200
	Total Ordinary Expenditure ...	£3,588,896

**ORD.
No. 61
of
1903.**

No. 62 of 1903.]

[Assented to 27 July 1903.

ORDINANCE

**ORD.
No. 62
of
1903.**

To confer further powers on the Municipality of Johannesburg.

WHEREAS the Town Council of Johannesburg is invested with certain powers under Proclamations Nos. 16 of 1901 39 of 1902 and Ordinance No. 43 of 1903 respectively;

And whereas it is desirable to add to and vary such powers with respect to the levying of special rates for tramway purposes and to the erection of hospitals for infectious diseases and subscriptions to charitable and other institutions and other matters incidental thereto;

And whereas it is desirable to make provision for the vesting in the said Town Council of all the assets of the late Stadsraad as constituted under Law No. 9 of 1899;

**ORD.
No. 62
of
1903.**

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Titles.

1. This Ordinance shall be read as one with the Johannesburg Municipal Proclamation 1901 and the Johannesburg Municipality Amendment Proclamation 1902 and may be cited as the Johannesburg Municipality Further Powers Ordinance 1903 and this Ordinance and the said Proclamations and Proclamation (Transvaal) No. 16 of 1901 Proclamation (Transvaal) No. 29 of 1901 the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance 1902 the Johannesburg Municipality (Duties of Chairman) Ordinance 1902 Ordinance No. 41 of 1902 the Johannesburg Borrowing Powers Ordinance 1903 the Johannesburg Municipality Special Borrowing Powers Ordinance 1903 the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 the Johannesburg Municipality Plans of Townships Ordinance 1903 and the Johannesburg Insanitary Area Expropriation Ordinance 1903 may be cited together as the Johannesburg Municipal Statutes 1901 to 1903.

SPECIAL TRAMWAY RATES.

Expense of
outside
tramways to
be within
Ordinance
No. 43 of
1903.

2. The capital cost of constructing as hereinafter defined and any loss that may be incurred in working any extensions of the lines of tramways described in the schedule hereto and shown on the plan annexed thereto beyond the thin black line on the said plan shall be deemed to be abnormal or extraordinary expenditure within the meaning of section sixteen of Ordinance No. 43 of 1903 incurred in respect of any particular area served by any such extension and lying outside such thin black line and it shall be lawful for the Council with respect to such capital cost and loss in working (if any) to exercise all the powers conferred by the said Ordinance. The capital cost of constructing aforesaid shall mean and include the cost of tracks and tramways electrical bonding overhead or other power construction along such tracks and any necessary sites for termini and car stations.

3. The following provisions shall apply to the construction of any tramway in respect of which a special rate is proposed to be levied under the last preceding section of this Ordinance;

Prescribes certain conditions precedent before Council can construct tramways.

**ORD.
No. 62
of
1903.**

(i.) The Council before entering upon the construction of any such tramway shall;

(a) pass a resolution by a majority of Councillors at the time in office at a meeting of the Council held not less than fourteen days after notice shall have been given to the Council at a meeting thereof of an intention to move for the construction of such tramway;

(b) publish daily in twelve issues of each of two or more newspapers circulating in the Municipality an advertisement describing shortly the line of tramway which it is proposed to construct stating the area of land which is proposed to be specially rated by the Council under the powers of the last preceding section and the proportions if any according to which it is proposed that such special rates should be imposed and naming a place where a plan of the proposed tramway and such area as aforesaid may be seen at all reasonable hours.

(ii.) If any person interested as owner lessee or occupier of any land proposed to be specially rated by the Council objects to the construction of any such tramway or to the imposition of any such special rate or to the proportion according to which it is proposed to impose the same or to the exclusion of any other property from the area of land proposed to be specially rated and serves notice in writing of such objection on the Council at any time within one week of the last publication of the advertisement as provided in the preceding sub-section the Council shall not be entitled to proceed with the con-

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of
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struction of any such tramway without the sanction of the Lieutenant-Governor unless such objection be withdrawn.

(iii.) The Lieutenant-Governor may on the application of the Council and on due proof of the proper advertisements having been published appoint some person or persons to make an enquiry on the spot into the propriety of the proposed undertaking and the objection thereto and to report to the Lieutenant-Governor on the matters with respect to which such enquiry was directed and on receiving such report the Lieutenant-Governor may make an order empowering the Council to proceed with the construction of such tramway in the manner proposed by the Council or subject to such conditions and modifications as he may think fit.

HOSPITALS AND CHARITABLE INSTITUTIONS.

Power to erect and maintain Hospitals for infectious diseases.

4. The Council may erect construct equip and maintain either within or without the limits of the Municipality for the use of the inhabitants within the Municipality Hospitals whether permanent or temporary for the reception of patients suffering from infectious diseases and may make such regulations as they think fit as to paying and non-paying patients in such hospitals.

Power to contribute towards the establishment and maintenance of certain institutions.

5. The Council may from time to time make grants of money towards the establishment or maintenance of institutions herein mentioned not being of a private character (that is to say) Hospitals Libraries Art Galleries Museums Asylums for the aged destitute or infirm Homes for destitute orphans and scientific institutions.

ASSETS OF THE LATE STADSRAAD.

Assets in schedule to be vested in the Council.

6. All and singular the property rights and assets belonging to or vested in the late Stadsraad as constituted under Law No. 9 of 1899 shall be and are hereby vested in the Council for all the right title interest claim or demand formerly had possessed or enjoyed therein by such Stadsraad provided that

nothing herein contained shall be deemed to affect or modify the provisions of section two of the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance 1902.

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7. The Registrar of Deeds and the Registrar of Mining Rights and any other official charged with the registration of documents affecting the title to property shall upon production of the usual documents insert the name of the Council in place of the said Stadsraad or their predecessors in office in all registers of property under his or their control and endorse such alteration of name on all title deeds or other documents affecting the title to property and on all bonds and other hypothecations filed of record in his or their office or offices and on all such title deeds documents and hypothecations in the hands of parties as and when produced to him upon payment of the prescribed fee.

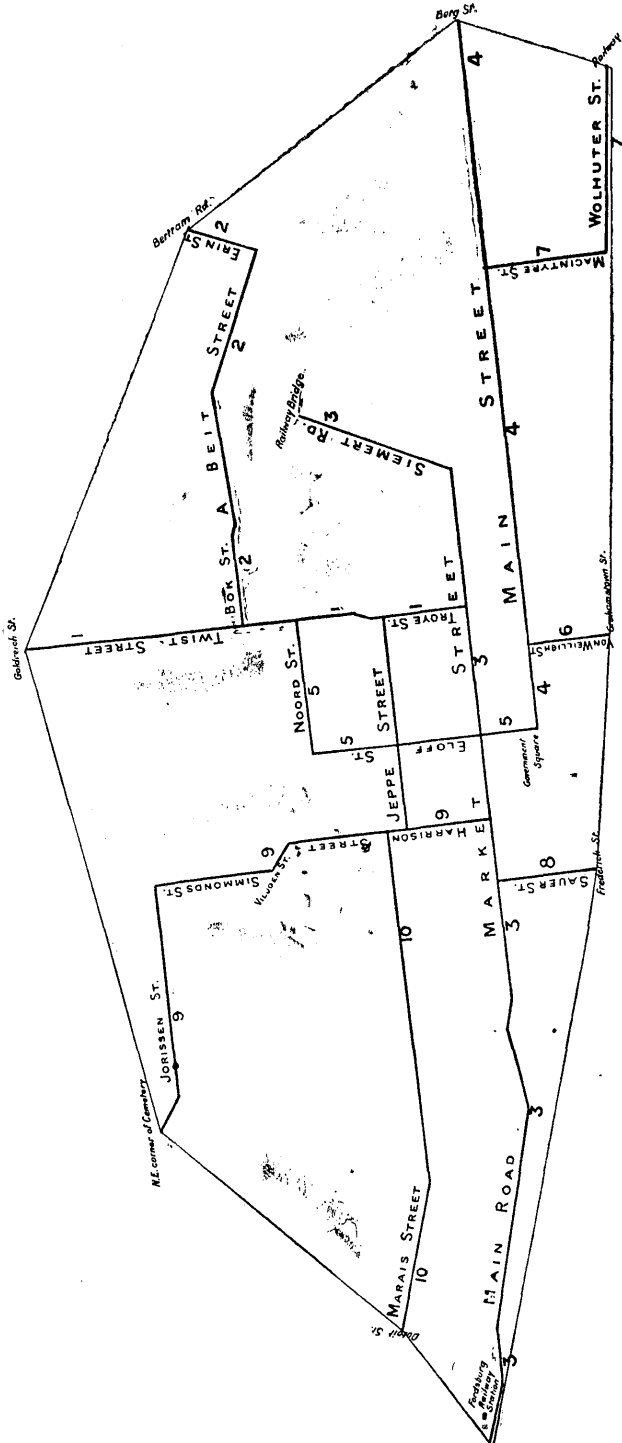
Alteration of registers and documents and exemption from transfer duty.

SCHEDULE.

TRAMWAY ROUTES REFERRED TO IN SECTION 2.

1. Market Street north along Troye Street and Twist Street across the railway by a new bridge continuing along Twist Street to Goldreich Street on Hillbrow.
2. Twist Street opposite Joubert Park east along Bok Street Beit Street thence north along Erin Street to Bertrams Road.
3. Fordsburg Railway Station east through Main and Market Streets thence north-east along Siemert Road to the Railway Bridge.
4. Government Square east along Main Street across Natal Spruit by a new bridge across the railway in Main Street to Berg Street.
5. Government Square north along Eloff Street to Park Station thence east along Noord Street to Twist Street.
6. Main Street south along Von Welligh Street to Grahamstown Street adjacent to the mining ground.
7. Main Street south along Macintyre Street turning east down Wolhuter Street as far as the railway.
8. Market Street south along Sauer Street through Marshall Square to Frederick Street against the mining ground.
9. Market Street north along Harrison Street across the railway thence north-west *via* Viljoen Street Simmonds Street and Jorissen Street to the north-east corner of the Cemetery.
10. Troye Street west *via* Jeppe Street through the extended Bree Street and along Marais Street to Dutoit Street.

PLAN REFERRED TO IN SECTION 2.



No. 63 of 1903.]

[Assented to 30 July 1903.]

**ORD.
No. 63
of
1903.****ORDINANCE****To regulate the Trading in Diamonds.**

WHEREAS it is expedient to make provisions regulating the trade in Diamonds;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

CHAPTER I.**WHO MAY DEAL IN DIAMONDS.**

1. It shall not be lawful for any person save as in this Ordinance is excepted to have in his possession any rough or uncut diamond; and any such person as aforesaid who shall be found in the possession of any rough or uncut diamond and shall be unable to account satisfactorily for or prove his right to the possession of such rough and uncut diamond or to produce his proper permit for the same in accordance with the provisions of this Ordinance shall on conviction be liable to the penalties provided by the next succeeding section.

Possession
of uncut
diamonds.

2. It shall not be lawful for any person save as in this Ordinance excepted to buy deal in or receive by way of barter pledge or otherwise either as principal or agent any rough or uncut diamond or to be an accessory to such buying dealing in or receiving unless such person so buying dealing in or receiving as aforesaid shall be duly licensed or authorised under this Ordinance to deal in diamonds either as buyer or seller broker or factor or shall be duly licensed to carry on the trade or business of a diamond cutter or unless such person buying dealing in or receiving as aforesaid shall be a banker within the Colony.

Prohibition
against and
penalties for
buying or
dealing in
rough or
uncut
diamonds.

Any person convicted of contravening this section shall be liable to a penalty not exceeding one thousand pounds or to imprisonment with or without hard labour for any period not exceeding fifteen years or to both such penalty and imprisonment.

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Imprison-
ment when
fine not paid.

Who may
sell and deal
in diamonds.

3. Where a fine has been inflicted on any person for contravening any of the provisions of this Ordinance it shall be lawful for the Court to sentence such person to an additional term of imprisonment without hard labour for a period not exceeding one year unless such fine shall have been sooner paid provided that where any person shall have been in the first instance sentenced to imprisonment in addition to any fine such further period of imprisonment shall take effect from the termination of the first sentence and shall not exceed the term to which he was originally sentenced.

4. (1) It shall not be lawful save as hereinafter excepted for any person not being a banker licensed diamond dealer or a registered claimholder or the duly accredited and registered agent of a registered claimholder or the holder of a washing permit or prospecting license or otherwise duly authorised under the provisions of this Ordinance to sell offer or expose for sale or to barter pledge or in any way either as principal or agent dispose of or deliver any rough or uncut diamond or diamonds; provided that it shall not be lawful for such banker licensed diamond dealer or other duly authorised person to sell offer or expose for sale barter pledge or in any way dispose of or deliver any rough or uncut diamond unless such diamonds shall be actually the property or in the lawful possession of such banker or diamond dealer or duly authorised person; and provided further that it shall not be lawful for any such registered claimholder or the duly accredited and registered agent of a registered claimholder or the holder of a washing permit or prospecting license to sell offer or expose for sale or barter pledge or in any way dispose of or deliver any rough or uncut diamond unless such rough or uncut diamond shall have been obtained or found in soil taken from any claim registered in the name of such claimholder or in the soil or ground mentioned and specified in such washing permit or in ground not being a mine or alluvial digging worked under such prospecting license.

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(2) Any person convicted of contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance. The onus of proof of lawful possession within the meaning of this section of any such diamond as aforesaid shall in all cases rest on such banker diamond dealer registered claimholder duly accredited and registered agent of a registered claimholder holder of a washing permit and prospecting license or otherwise duly authorised person as aforesaid.

5. (1) Any person being the proprietor of any landed property which has not been proclaimed a mine or alluvial digging who may find win or pick up any rough or uncut diamond or diamonds upon such farm or landed property shall within fourteen days thereafter make a solemn declaration of the fact and upon production of such declaration the Resident Magistrate of the district shall grant a permit to such person to hold or sell or dispose of such diamond. And in the case of a company being the proprietor of any such landed property the secretary manager or other duly authorised representative of such company whose name shall be registered in the office of the Resident Magistrate of the district in which such landed property is situate shall make the declaration aforesaid.

Persons finding diamonds on private property to make declaration within fourteen days.

(2) Any person contravening the provisions in this section contained for declaring such finds as aforesaid shall be liable upon conviction to a penalty not exceeding one hundred pounds or in default of payment to be imprisoned with or without hard labour for a period not exceeding one year; provided that any person who shall sell offer or exchange or barter pledge or in any way dispose of or deliver any rough or uncut diamond found won or picked up on any such landed property without the permit aforesaid shall be liable to the penalties provided by the *second* section of this Ordinance.

6. Any banker or licensed diamond dealer registered claimholder accredited and registered agent of a registered claimholder holder of a washing permit or prospecting license dealer in or cutter of diamonds buying or

Persons competent to purchase not to buy from persons incompetent to sell.

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receiving by way of barter pledge or otherwise either as principal or agent any rough or uncut diamond from any person or in any way dealing with the same with any person not being a banker or licensed dealer or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or not having a washing permit or prospecting license or permit under the last preceding section shall be liable on conviction to the penalties in the *second* section of this Ordinance provided and shall in addition forfeit any license or permit which such person may hold and any right of renewal of the same for such time as the Court may direct and no such person shall thereafter be registered as the agent of any claimholder.

Licensed dealers to adhere to terms of license.

7. Any licensed diamond dealer or diamond cutter in any way dealing in rough or uncut diamonds otherwise than in the manner specially authorised by the license held by him shall on conviction thereof be liable to the penalties in the *second* section of this Ordinance provided and shall in addition forfeit his license and any right of renewal of the same for such time as the Court may think fit and direct.

No dealings allowed between sunset and sunrise or on Sundays.

8. It shall not be lawful for any banker or licensed diamond dealer to buy deal in or receive by way of barter pledge or otherwise or to sell barter pledge or in any way for the purposes of trade dispose of or deliver or for any licensed diamond broker or factor to act as such diamond broker or factor or in any way to negotiate the purchase or sale of diamonds between other persons or act as agent or factor between buyer or seller in respect of any rough or uncut diamond or diamonds between sunset and sunrise or on Sundays; and every person contravening this section shall incur a penalty not exceeding one thousand pounds and in default of payment shall be liable to be imprisoned with or without hard labour for any term not exceeding one year and shall in addition be liable to forfeit any license which such person may hold and any right of renewal of the same for such time as the Court may direct.

9. If in any proceeding under this Ordinance the Court has to be satisfied either that the accused or any witness or other person is not licensed or authorised to deal in diamonds within the meaning of the section under which such accused person is being tried such accused person witness or other person shall be deemed to be unlicensed or unauthorised unless the accused person shall prove to the satisfaction of the Court that he or such witness or other person is duly authorised or licensed as aforesaid.

Burden of proof of being licensed.

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10. It shall not be lawful for any person to export or import rough or uncut diamonds out of or into this Colony unless such importer or exporter shall be licensed or authorised to deal in diamonds or unless such person shall be a banker within the Colony and every person convicted of contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance.

Restrictions on exporting and importing rough or uncut diamonds.

11. (1) It shall be lawful for the Chief Officer of the Police of any district whenever he shall have good cause to believe that any parcel or package is being despatched through the Post Office containing rough or uncut diamonds which have not been entered according to the provisions of this Ordinance in the register of the person despatching them as aforesaid or of which he may at any time have become unlawfully possessed to stop or cause to be stopped such parcel or package as aforesaid at any post office within the Colony either during the transit of such parcel or package or otherwise.

Right of police to detain post packages supposed to contain diamonds sent illegally.

(2) The Chief Officer of Police shall thereupon by a notice in writing served personally on the person who shall have despatched such parcel or package as aforesaid call upon such person as aforesaid to attend either personally or by an agent duly authorised by him in writing at a time and place to be named in such notice for the purpose of being present at the opening and examination of such parcel or package and thereupon on the day and at the place appointed in such notice such Chief Officer of the Police of the district as aforesaid shall proceed to open and examine

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Duty of person finding uncut diamonds outside his claim.

such parcel or package and if there shall be discovered therein any rough or uncut diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance with the provisions of this Ordinance or for the possession of which he is not able satisfactorily to account such person shall on conviction be liable to the penalties provided in the *second* section of this Ordinance and all diamonds contained in such parcel or package shall thereupon be forfeited and sold as hereinafter provided.

12. Whenever any person shall find or pick up any rough or uncut diamond on any ground or place not being the claim or depositing floor of such person nor in any ground or place worked by him under a prospecting license he shall forthwith take and deliver such diamond to the Resident Magistrate of the district who shall thereupon advertise the same in the local newspapers and if within twenty-one days from the date of such advertisement the owner of such diamond shall not have been discovered or in case no person shall have been able to prove to the satisfaction of the Resident Magistrate his right to have such diamond delivered to him the Resident Magistrate shall order the same to be sold and the proceeds thereof to be paid into the Colonial Treasury; provided always that a sum calculated at the rate of thirty-three and one-third per cent. on the amount realised by such sale shall in all cases be paid to the person finding such diamond as aforesaid and provided always that any person so finding or picking up any rough or uncut diamond as aforesaid who shall fail or neglect to deliver the same to the Resident Magistrate as provided by this section shall on conviction thereof be liable to a fine of five hundred pounds sterling or to imprisonment with or without hard labour for a period not exceeding five years.

Powers of entry into and search of premises where stones suspected to be concealed.

13. (1) It shall be lawful for any constable or policeman when thereto authorised by warrant granted under the hand of any Resident Magistrate or Chief Officer of Police which warrant such Magistrate or Chief Officer is hereby authorised and

required to grant upon sufficient cause shown to his satisfaction to enter into and upon and search any stand buildings and premises where he may have good cause to suspect that any rough or uncut diamonds are unlawfully concealed and any person then being upon such stand buildings or premises; and at any time in any highway street or public place to arrest without warrant and search any person whom he may have good cause to suspect of having on his person or in his possession any rough or uncut diamonds unlawfully obtained or without having a proper permit for the same and to stop and search any vehicle in or upon which he shall have good cause to suspect that any such diamonds are concealed or being carried away and to search any person then being in or upon such vehicle.

(2) If there be found any rough or uncut diamonds in or upon such stand buildings or premises or upon such person or vehicle the said constable or policeman shall seize and detain such diamonds and arrest any person then being in or upon such stand building premises or vehicle who may reasonably be suspected of being the possessor of or interested in such diamonds and as soon as may be bring such person before any Resident Magistrate or Justice of the Peace.

(3) If the person arrested as aforesaid shall at the trial fail to produce a proper permit for such diamonds or to account for the possession thereof to the satisfaction of the Court before which such person shall be tried such person shall on conviction be liable to the penalties provided by the *second* section of this Ordinance and on every conviction under this section any diamond found on such stand or in such building or premises or on such person cart or other conveyance as aforesaid may be forfeited and the Court may order the same to be sold; provided that if no conviction takes place and such person be able to prove a *bonâ fide* right to the possession of such diamonds or to produce a proper

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Person selling diamonds by order of Court not to be liable to penalties.

Applications of fines.

Persons having uncut diamonds in their possession not registered at the time of this Ordinance taking effect.

permit for the same the said diamonds or the value thereof shall be restored or paid to such person.

14. No person who by the order in writing of any Court or Resident Magistrate shall sell any rough or uncut diamonds seized detained or forfeited under any of the provisions of this Ordinance shall be liable in respect of such sale to any of the penalties provided for in this Ordinance.

15. All fines recovered and the proceeds of all diamonds forfeited and sold under the provisions of this Ordinance shall be paid into the Colonial Treasury.

16. Every person who shall at the time of the taking effect of this Ordinance have in his possession any rough or uncut diamonds which shall not be registered under any existing law may within three months thereafter obtain from the Resident Magistrate of the district a permit stating the number and weight of such diamonds and after the expiration of such period of three months such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.

CHAPTER II.

LICENSES PERMITS AND REGISTERS.

Persons requiring licenses.

17. It shall not be lawful for any person to deal in rough or uncut diamonds either as buyer seller exporter or importer or to carry on the business or trade of a diamond broker or factor or the business or trade of a diamond cutter unless such person shall be duly licensed for such purposes as aforesaid either as dealer broker or factor or diamond cutter as aforesaid and any person contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance.

Fees on licenses of dealers.

18. On every license to deal in rough and uncut diamonds within this Colony there shall be paid to the Receiver of Revenue the sum of thirty pounds for a yearly license or ten pounds for a quarterly license and every such license shall be in

the form A set forth in the schedule; provided that all such licenses as are quarterly shall no matter when taken out terminate on the last day of the current quarter such quarters ending respectively on the thirty-first day of March thirtieth day of June thirtieth day of September and thirty-first day of December in each year; and all such licenses as are annual shall no matter when taken out expire on the thirty-first day of December then next.

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19. On every license to trade as a diamond broker or factor there shall be paid the sum of fifteen pounds for a yearly license or five pounds for a quarterly license and such license shall be in the form C set forth in the schedule; provided that all such licenses shall terminate and expire as provided for and on the days set forth in the last preceding section.

Fees on
brokers'
licenses.

20. It shall not be lawful for any Revenue Officer to issue any license to deal in rough or uncut diamonds unless the persons so applying for such license shall when applying for the same produce and lodge with such officer a certificate under the hand of the Resident Magistrate of the district in the form B set forth in the schedule; provided that it shall not be lawful for any Resident Magistrate to sign or issue such certificate until the person applying for such certificate shall together with two sufficient sureties have entered into a recognizance in the form G set forth in the schedule and unless the office in respect of which the license is sought shall be in localities or limits from time to time defined †by notice in the *Gazette* under the hand of the Commissioner; provided further that it shall not be lawful for any such Resident Magistrate to grant to any person a certificate for a license to deal in rough or uncut diamonds or to carry on the trade or business of a diamond broker or cutter of diamonds who shall at the time of making application for such certificate be the holder of or interested in any license to deal in intoxicating liquors or in any license to keep a store or eating-house for natives or who

Persons
applying for
licenses to
deal to pro-
duce certi-
cate of
fitness.

†By Govt. Notice No. 837 of 1903 *Gazette* (14 August 1903 p. 651) these localities and limits are defined as the Municipalities of Pretoria and Johannesburg and by Government Notice No. 1022 of 1903 *Gazette* (18 Sept. 1903 p. 863) the town of Christiana is also so defined.

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to buy sell deliver or receive any diamonds such permit to set forth clearly the person from whom and to whom such diamond or diamonds is or are to be bought or received sold or delivered and to be in the form H set forth in the schedule; provided that no such permit shall be granted unless the applicant shall make a solemn declaration that such purchase sale delivery or receiving is not for the purpose of trade and in the case of an applicant for a permit to sell or deliver that such applicant is the lawful owner of such diamond together with a statement showing the lawfulness of his ownership; such declaration shall be in the form I or J as the case may be set forth in the schedule; and provided further that the Magistrate shall keep a record of all such permits and of all such declarations as aforesaid; and provided further that for the purposes of this section the word "trade" shall not be construed as including the trade or business of a diamond cutter.

Washing
permits.

27. (1) It shall be lawful for the Resident Magistrate to issue to any person save as hereinafter excepted a special permit bearing a stamp of the value of one shilling to be affixed thereto by such person and to be cancelled by the Resident Magistrate to sell or dispose of any diamonds that shall have been found by such person in ground or soil bought and washed by him; and such permit shall be called a washing permit and shall be in the form K contained in the schedule and shall set forth clearly the name of the person from whom the ground or soil in which such diamonds shall have been found was bought or received together with the date of such purchase the number of loads of the said soil so bought or received the price paid for the same and the number of loads thereof washed and such permit shall also show the total weight of the parcel of diamonds for which the permit is granted and shall specify the number of diamonds of the weight of ten carats and upwards contained in such parcel and further the weight of any single stone of the value of one hundred pounds and upwards.

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(2) No such permit shall be granted unless the applicant shall make a solemn declaration that such diamonds were actually found by him in such ground or soil as aforesaid and such declaration shall be made in the form L set forth in the schedule.

(3) The Resident Magistrate shall keep a record of all such washing permits and of all such declarations as aforesaid; and no such washing permit shall be issued to any person to whom the Resident Magistrate would not have power to issue a certificate under the *twentieth* section of this Ordinance; and such permit shall only be available in the district over which the Resident Magistrate so issuing such permit shall have jurisdiction.

28. It shall be lawful for any Resident Magistrate to grant to the Chief Officer of the Police of the district or a person duly authorised in writing by him to receive the same a permit to buy or receive one or more rough and uncut diamonds such permit to be in the form H set forth in the schedule and every such Resident Magistrate as aforesaid shall keep a record of all such permits so granted as aforesaid.

Permits to
police and
detectives.

29. Every licensed diamond dealer or cutter of diamonds shall have an office or place of business at some place to be described in his license and shall have affixed on some conspicuous place on the outside of and over or by the side of the outer door of the place in which he may have such office or place of business his name at full length (or where there are partners the name and style of the firm or partnership) and after such name or style the words "Licensed Diamond Dealer" (or "Dealers") or "Licensed Diamond Cutter" (or "Cutters") as the case may be; such name or style and such description shall be publicly visible and legible in letters at least two inches in length and every licensed diamond dealer or cutter contravening this section shall incur a penalty not exceeding twenty pounds for the first offence and for a subsequent offence within two years a penalty not exceeding fifty pounds and shall in any case be liable to forfeit any license

Buyers and
cutters to
have place of
business
mentioned in
license.

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Transactions to be confined to such place of business.

Licenses of persons removing to be endorsed by Revenue Officer.

Broker's buyer's and seller's notes.

held by him or any right of renewal of the the same for such period as the Court may direct.

30. It shall not be lawful for any diamond buyer or seller or cutter to buy sell deal in or receive by way of barter pledge or otherwise any rough or uncut diamond otherwise than in his said office or place of business and any such licensed person as aforesaid convicted of contravening this section shall be liable to the penalties provided in the preceding section in this Ordinance.

31. It shall not be lawful for any licensed diamond buyer or cutter to remove his office or place of business at which he is licensed to deal in or carry on his business as a cutter of diamonds to another place unless the Revenue Officer shall endorse on the license of such diamond dealer or cutter a certificate that such license is transferred to the place to which such diamond dealer or cutter desires to move his office or place of business; and it shall not be lawful for any Revenue Officer to give such certificate unless the Resident Magistrate shall have first endorsed on such license that the place to which it is sought to be transferred is a fit and proper place for the office of or place of business of a licensed diamond dealer or cutter and any licensed diamond buyer seller or cutter contravening this section shall be liable to the penalties provided by the *thirty-fifth* section of this Ordinance.

32. (1) Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of rough or uncut diamonds for or on account of any person employing him as such broker or factor shall deliver to the seller a proper and sufficient broker's bought note and shall also deliver to the purchaser a proper and sufficient broker's sold note; and every registered claimholder accredited and registered agent of a registered claimholder or holder of a washing permit or prospecting license shall in every case in which a sale is effected by him personally pass a seller's note and receive a buyer's note or otherwise as the case may be; and every such broker's

seller's and buyer's note shall respectively set forth all the parties to the transaction in the form M set forth in the schedule and shall set forth the weight of the parcel sold the number of diamonds of the weight of ten carats and upwards and the price per carat and the amount for which such parcel was sold; provided that every diamond above the value of one hundred pounds shall be separately described in every such broker's seller's and buyer's note; and provided also that every such broker's seller's and buyer's note shall be certified as correct by the licensed dealer disposing of the same.

(2) Every person convicted of any offence against this section shall be liable to a penalty not exceeding five hundred pounds and in default of payment to be imprisoned with or without hard labour for a period not exceeding five years and shall in addition be liable to forfeit any license held by him and any right of renewal of the same for such period as the Court may direct.

33. (1) Every banker dealer importer exporter broker factor cutter of diamonds registered claimholder accredited and registered agent of any registered claimholder or holder of a washing permit or prospecting license or a permit issued under the *fifth* section of this Ordinance shall keep a true and correct register in the English language of all their respective dealing in diamonds and in which they shall enter or cause to be entered within twenty-four hours of every transaction:—

All authorised persons to keep records of transactions.

- (a) the date of all purchases sales exports imports and receipts;
- (b) the name of consignor cutter prospector seller buyer and broker or consignee or owner;
- (c) total weight of each parcel;
- (d) the number of stones of ten carats and upwards in each parcel;
- (e) the price received or paid or the duty on import;

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(f) the weight of any single stone found received bought sold cut or consigned (separately or with others) the buyer's valuation of which exceeds one hundred pounds.

(2) Every such register shall be in the form N set forth in the schedule and any person so required to keep a register who shall be convicted of neglecting or failing to keep a proper register as required by this Ordinance shall be liable to a penalty not exceeding five hundred pounds and in default of payment to be imprisoned with or without hard labour for any period not exceeding five years or to both such fine and imprisonment and shall in addition forfeit any license held by him or any right of renewal of the same for such period as the Court may direct.

Records to be forwarded monthly to Chief Officer of Police and produced when required.

34. Every person required by this Ordinance to keep a register shall within three days after the expiration of each month forward to the Chief Officer of the Police of the district a true copy of such register for the previous month together with a solemn declaration of the correctness thereof and shall also produce and exhibit such register whenever the same may be required in any competent Court on the written order of the Chief Officer of the Police of the district; and if he shall refuse or fail to do so he shall be liable to the penalties in the last preceding section mentioned.

Revenue Officer or other officer to keep register of all uncut diamonds brought into district.

35. The Revenue Officer of every district in which this Ordinance shall be in force or such other officer as may be appointed by the Lieutenant-Governor shall keep a register shewing the weight description and value of all rough and uncut diamonds brought or imported into such district the name of the person bringing or importing the same and the place whence they are brought or imported and shall upon application made grant to the person bringing or importing such diamonds a certificate of registration setting forth all of the particulars above-mentioned in the form N in the schedule hereunto annexed upon the payment of the registration fee of one-half per cent. on the value of all such diamonds

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so brought in or imported from any place beyond this Colony; and any person who shall bring or import any rough or uncut diamonds into such district without obtaining such certificate of registration within forty-eight hours of his arrival with or receipt of such diamonds shall upon conviction be liable to a penalty not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding five years or to both such fine and such imprisonment and shall in addition forfeit such diamonds.

36. (1) No rough or uncut diamonds shall be exported from this Colony until the weight and value of the same and the name of the person exporting them shall have been entered in a register to be kept in the form N in the schedule hereunto annexed by the Revenue Officer of the District from which such diamonds are exported or such other officer as may be appointed by the Lieutenant-Governor in that behalf and a registration fee of one-half per cent. on the value of such diamonds shall have been paid. Any person contravening the provisions of this section shall be liable to the penalties provided in the *second* section of this Ordinance.

No rough diamonds to be exported before registered.

(2) The proceeds of the registration fee mentioned in the last preceding sub-section shall be applied to defray the costs incurred in the administration of this Ordinance.

37. Every licensed diamond dealer or cutter of diamonds and every holder of a permit granted under the *twenty-sixth* and *twenty-seventh* sections of this Ordinance or the holder of a prospecting license shall be bound to exhibit his license to any person authorised by the Chief Officer of the Police of the district in writing to demand it and every such licensed person as aforesaid who shall refuse or neglect to produce and exhibit his license or permit when called upon to do so by any person exhibiting such authority as aforesaid to demand it shall for the first offence incur a penalty not exceeding one hundred pounds and for a subsequent offence a penalty not exceeding three hundred pounds and shall in addition in any case be

Penalties for refusing to produce license when called on by proper authority.

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Accused persons forbidden to sell or alienate property till case disposed of.

liable to forfeit any license held by him or any renewal of the same for such period as the Court shall order.

38. It shall not be lawful for any person arrested for any offence against the provisions of this Ordinance to sell exchange give or otherwise alienate any property of which he may be possessed at the time of his arrest whether movable or immovable until he shall have been discharged from custody or acquitted of such offence or if such person shall be convicted and sentenced to pay any fine until such fine shall have been paid or recovered and any such exchange gift or other alienation made contrary to the provisions of this section shall be void.

CHAPTER III.

MISCELLANEOUS.

Penalties on servants stealing diamonds.

39. Any servant who shall steal any diamond the property of or in the lawful possession of his master or shall conceal or retain with intent to convert the same to his own use any rough or uncut diamond or who shall attempt to commit any of the said offences or who shall be an accessory or accomplice in the commission of any of the said offences shall upon conviction be liable to the penalties provided in the *second* section of this Ordinance; provided always that all diamonds found in the possession of any servant then or lately employed by any master who is or was at the time of such employment a licensed dealer in or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or the holder of a washing permit or prospecting license shall unless and until the contrary be proved by such servant be deemed and taken to be the property of such master if such servant be then in the employment of any master not being a licensed dealer in or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or the holder of a washing permit or prospecting license and may be seized and taken possession of by the said master or if

the servant is not then in the employment of any master shall be deemed and taken to be the property of the last such master as aforesaid by whom such servant was employed within three months and may be seized and taken possession of by such master.

40. Any person who shall be convicted of having induced or attempted to induce any servant to steal a diamond from his master or conceal or retain with intent to appropriate to his own use any diamond which it was the duty of such servant to have delivered to his master shall be liable to the penalties provided in the *second* section of this Ordinance.

Penalties for inducing servants to steal diamonds.

41. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Ordinance shall be liable to be charged and dealt with in all respects as the principal.

Accessories may be charged as principals.

42. Any person who shall maliciously place a rough or uncut diamond in the possession of or on the premises of any other person with the intent that such other person shall be convicted under the terms of this Ordinance shall be guilty of an offence and shall be liable to the penalties prescribed in section *two* of this Ordinance.

Penalty for maliciously placing diamond in possession or on premises of other person with intent.

43. In the construction of this Ordinance the following words and expressions shall have the meaning hereby assigned to them unless there be something in the context repugnant thereto that is to say;

Definition of terms.

“Commissioner” shall mean the Commissioner of Mines;

“dealer” shall include buyer seller broker and factor and “deal” shall include any sort of dealing in diamonds;

“servant” shall mean any description of servant whether registered or not;

“public place” shall mean any place except a private residence;

“Resident Magistrate” shall include the Assistant Resident Magistrate for any district;

“diamonds” shall mean rough or uncut diamonds only;

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“rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut shaped and polished by them out of the rough;

“cutter” shall include cleavers and polishers of diamonds;

“Chief Officer of the Police” shall mean in the Pretoria and Witwatersrand district any Commissioner or Deputy Commissioner of the Town Police;

“banker” shall mean any manager cashier or other officer of a joint-stock bank acting in his capacity as such;

“claim” shall include a claim in an alluvial digging or any portion of a mine proclaimed under the Precious Stones Ordinance 1903 held by any person or company separately or jointly in undivided shares with any other person or Company;

“claimholder” shall include the holder of any claim as above defined.

When any form is directed or required to be used such form shall be as nearly as material according to the form set forth in the schedule.

Lieutenant-Governor may make rules for carrying out Chapter II. of this Ordinance.

†44. The Lieutenant-Governor may from time to time make regulations for the better administration of Chapter II. of this Ordinance and by such regulations may alter any forms by this Ordinance provided or provide additional forms and such forms shall be deemed to be forms by this Ordinance directed to be used.

Officers may be appointed by Lieutenant-Governor to discharge duties imposed on Magistrates.

45. It shall be lawful for the Lieutenant-Governor to appoint such officer as he may deem necessary for the discharge of any of the duties by this Ordinance imposed upon any Resident Magistrate or Chief Officer of the Police in any district and as often as any such officer shall be appointed he shall be deemed for the purposes of this Ordinance to be the Resident Magistrate or Chief Officer of Police as the case may be and the several sections of this Ordinance shall be read and construed accordingly.

† For alteration of Form N see Govt. Notice No. 1111 of 1903 *Gazette* (16 Oct. 1903) p. 1012.

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46. It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to apply the provisions of this Ordinance to any other precious stones mentioned in such Proclamation.

Lieutenant-Governor may apply provisions of this Ordinance to other precious stones.

47. This Ordinance may be cited as the Diamond Trade Ordinance 1903.

Title.

SCHEDULE.

A. *Form of Diamond Dealer's License.*

(Diamond Trade Ordinance 1903.)

Revenue Office

.....

.....19.....

A..... B.....
having this day paid to me the sum of.....
and lodged with me a Certificate duly signed by the Resident Magistrate as required by section *twenty* is hereby licensed to export import or deal in rough or uncut diamonds at his office or place of business situated at.....in the town of.....
subject to the obligations and provisions of the above-named Ordinance.

This License expires on the.....day of.....19.....

.....

Receiver of Revenue.

B. *Form of Diamond Dealer's Certificate.*

(Diamond Trade Ordinance 1903.)

I..... Resident Magistrate of.....
do hereby certify that..... whose office is
situate at..... is a fit and proper person to receive a
License to deal in export and import rough or uncut diamonds and
that he is not the holder of a License to sell intoxicating liquors or
of a License to keep a store or eating-house for natives within
.....

.....

Resident Magistrate.

Resident Magistrate's Office

..... day of.....190...

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1903.**

C. *Form of Diamond Broker's License.*
(Diamond Trade Ordinance 1903.)
Revenue Office

.....
.....19.....

A.....B.....
of.....having this day paid to me the sum of
.....and lodged with me a Certificate duly signed by
the Resident Magistrate as required by section *twenty-one* is hereby
licensed to trade as a Diamond Broker subject to the obligations and
provisions of the above-named Ordinance.

This License expires on the.....day of.....19.....

.....
Receiver of Revenue.

D. *Form of Diamond Broker's Certificate.*
(Diamond Trade Ordinance 1903.)

I.....Resident Magistrate of.....
do hereby certify that.....of.....
is a fit and proper person to receive a License to act as a Diamond
Broker or Factor and that he is not the holder of a License to sell
intoxicating liquors or of a License to keep a store or eating-house
for natives within.....

.....
Resident Magistrate.

Resident Magistrate's Office

.....day of.....190...

E. *Form of Diamond Cutter's License.*
(Diamond Trade Ordinance 1903.)
Revenue Office

.....
.....19.....

A.....B.....
having this day paid to me the sum of.....
and lodged with me a Certificate duly signed by the Resident Magistrate
as required by section *twenty-three* is hereby licensed to carry on the
trade or business of cutting cleaving or polishing rough or uncut
diamonds at his place of business situated at.....
in the town of.....subject to the obligations and
provisions of the above-named Ordinance.

This License expires on the.....day of.....19.....

.....
Receiver of Revenue.

F.

Diamond Cutter's Certificate.
(Diamond Trade Ordinance 1903.)

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I.....Resident Magistrate of.....
do hereby certify that.....of.....is a
fit and proper person to receive a License to carry on the trade or
business of cutting cleaving and polishing rough and uncut diamonds
and that he is not the holder of a License to sell intoxicating liquors
or of a License to keep a store or eating-house for natives within
.....

.....
Resident Magistrate.

Resident Magistrate's Office

.....day of.....190...

G. *Recognizance under the Diamond Trade Ordinance 1903.*

On the.....day of.....in the year of Our Lord
One Thousand Nine Hundred and.....appeared before me.....
.....Esquire Resident Magistrate for the District of.....
and acknowledged ourselves to owe Our Lord the King to wit the
said.....the sum of Five Hundred Pounds sterling
and the said.....the sum of Five Hundred Pounds
sterling of good and lawful money to be respectively made and levied
on our several goods and chattels lands and tenements to the use of
our said Lord the King His Heirs and successors if the said.....
shall fail in performing the conditions underwritten. The condition
of this Recognizance is that if the said.....shall strictly
conform to and abide by all and singular the provisions of the said
Diamond Trade Ordinance 1903 during the time the License to be by
him obtained under this Ordinance shall be in force then
this Recognizance shall be null and void or else shall remain in full
force and effect.

The said.....and the said.....and the said
.....and the said.....do hereby further jointly
and severally agree that in the event of the said.....being
convicted of contravening any provisions of the said Ordinance this
Recognizance shall *ipso facto* become at once executable without the
necessity of further process just as if judgment has been obtained
upon it.

Taken and acknowledged this day and year above written before
me aforesaid.

.....
Resident Magistrate.

H.

Form of Permit.

(Permit granted under section *twenty-six* of the Diamond Trade
Ordinance 1903.)

Resident Magistrate's Office

.....190...

Permission is hereby granted unto.....of.....
to purchase (or receive sell or deliver).....diamonds from
(or to).....of the approximate weight of.....

Dated at.....this.....day of.....190...

.....
Resident Magistrate of.....

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I. *Form of Declaration of Purchaser or Receiver.*

I.....of.....do solemnly and sincerely declare that I am desirous of purchasing (or receiving) from A.B.....diamonds of the approximate weight of.....carats which I require for my own use and not for the purposes of trade here or elsewhere and I make this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....day of.....190...

.....
Resident Magistrate of.....

J. *Form of Declaration of Owner.*

I.....of.....do solemnly and sincerely declare that I am desirous of selling (or delivering) to A.B.....diamonds of the approximate weight of.....carats of which I am the lawful and *bona fide* owner (here state how he or she became owner) and that such sale (or delivering) is not for the purposes of trade and I make this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....day of.....190...

.....
Resident Magistrate of.....

K.

Washing Permit.

(Permit granted under section *twenty-seven* of the Diamond Trade Ordinance 1903.)

Permission is hereby granted unto.....of.....to sell export or dispose of the diamonds herein specified and found in the ground herein described.

Dated at.....this.....day of.....190...

.....
Resident Magistrate of.....

From whom ground bought.	Date of purchase.	Number of Loads.	Price paid for ground.	Loads washed.	No. of diamonds of ten carats and upwards.	Weight of any single stone valued above £100.	Total weight of parcel.

L. Form of Declaration for Washing Permit.

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I.....of.....
do solemnly and sincerely declare that the rough and uncut diamonds
hereinafter specified were found by me in.....loads of
diamondiferous ground purchased by me on the.....day of
.....190.....from.....and I make
this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....
day of.....190.....

.....
Resident Magistrate of.....

Specification of Diamonds mentioned in the foregoing declaration.

No. of stones of ten carats and upwards.	Weight of any single stone above the value of £100.	Total weight of parcel.

**M.
Brokers', Companies', and other Licensed Sellers' Notes of Sale.**

**A.
Note to be handed by broker, dealer, etc., to buyer.**

No.....
.....190.....

Bought of.....

Details of parcel, single stones of a value above £100 to be specified. Total of parcel.

No. of stones 10 cts. each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.

.....
Licensed Seller or Broker.

**ORD.
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of
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M.
Brokers', Companies', and other Licensed Sellers' Notes of Sale.

B.
Note to be handed by broker to seller.

No.....
.....190.....

Sold to.....

Details of parcel, single stones of a value above £100 to be specified.

Total of parcel.

No. of stones 10 cts. each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.

.....
Licensed Seller or Broker.

M.
Brokers', Companies', and other Licensed Sellers' Notes of Sale.

C.
Counterfoil to be kept by seller or broker as registered.

No.....
.....190.....

Sold for.....

Sold to.....

Details of parcel, single stones of a value above £100 to be specified.

Total of parcel.

No. of stones 10 cts. each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.

.....
Licensed Seller or Broker.

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of
1903

† N

IMPORTS, PURCHASES, AND/OR FINDS.

Date.	Owner or Consignee.	Broker or own finds.	Details of Parcel. Single Stones of a value above £100 to be specified.						Total of Parcel.				
			No. of Stones 10 carats and over each.	Carats.	Price.	Amount.			No. of Stones 10 carats and over each.	Carats.	Amount.		
						£	s.	d.			£	s.	d.
	Balance on	Hand... ..											

†For alteration of "Form N" see Govt. Notice No. 1111 of 1903
Gazette (16 October 1903) p. 1012.

† N

SALES AND EXPORTS.

Date.	Buyer or Consignee.	Broker.	Details of Parcel. Single Stones of a value above £100 to be specified.						Total of Parcel.					
			No. of Stones 10 carats and over each.	Carats.	Price.	Amount.			No. of Stones 10 carats and over each.	Carats.	Amount.			
						£	s.	d.			£	s.	d.	
	Balance on	Hand... ..												

† For alteration of "Form N" see Govt. Notice No. 1111 of 1903
Gazette (16 October 1903) p. 1012.

No. 64 of 1903.]

[Assented to 30 July 1903.]

ORD.
No. 64
of
1903.

ORDINANCE

To confer Power to Expropriate Land on Municipalities.

WHEREAS it is desirable to confer powers on Municipalities in respect to the expropriation and acquisition of land and other immovable property for Municipal purposes and to the execution and carrying out of sewerage and drainage works;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. This Ordinance shall be cited for all purposes as the Municipalities Powers of Expropriation Ordinance 1903. Title.

2. In this Ordinance unless the context otherwise requires; Definitions

“The Council” means the Council for a Municipality established under any law;

“Land” means and includes;

(a) land with or without buildings thereon;

(b) land or the usufruct thereof;

(c) all land held under any tenure or under lease or stand or claim license;

(d) any servitude over land.

3. Where any notice is required by this Ordinance to be served on or given to any person it shall either be served personally on such person or left at his last usual place of abode and in case any such person shall be absent from this Colony any such notice shall be served on any agent of such person whose name and address are registered at the Offices of the Town Council and shall also be left with the occupier of any land in respect of which such notice is given or if there be no occupier shall be published in the *Gazette* and left with the Registrar of Deeds. Service of notice.

4. This Ordinance is divided into two parts relating to the following subject matters:— Matters dealt with by Ordinance.

Part I.—The Expropriation and Acquisition of Land.

Part II.—Sewerage and Drainage Works.

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1903.**

PART I.

**THE EXPROPRIATION AND ACQUISITION
OF LAND.**

Expropriation of land for certain purposes.

5. The Council may subject to the provisions of this Ordinance for the purpose of or in connection with the construction improvement or alteration of any street square open space park recreation ground sewer drain sewerage works sewage farms drainage works culvert bridge or any other works which the Council is now or may hereafter be empowered to carry out purchase or acquire by compulsory purchase any lands whether situate within or without the limits of the Municipality.

Conditions before Council can expropriate.

6. The following provisions shall prevail with respect to the exercise of the power to purchase lands compulsorily under the last preceding section of this Ordinance:—

(i.) The Council before putting such power in force shall;

(a) pass a resolution by a majority of councillors at the time in office at a meeting of the Council held not less than fourteen days after notice shall have been given to the Council at a meeting thereof of an intention to move for such compulsory purchase;

(b) publish once at least in each of three consecutive weeks in two or more newspapers circulating in the Municipality an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken naming a place where a plan of the proposed undertaking may be seen at all reasonable hours and stating the quantity of lands that they require;

(c) serve on every owner or reputed owner lessee or reputed lessee and occupier of such lands a notice defining in each case the particular lands intended to be taken.

(ii.) If any person interested as owner lessee or occupier of any land proposed to be taken by the Council

objects to the compulsory purchase thereof and serves notice in writing of such objection on the Council at any time within one month of the service of notice on him as provided in the preceding sub-section the Council shall not be entitled to exercise their compulsory power of purchase without the sanction of the Lieutenant-Governor unless such objection be withdrawn.

- (iii.) The Lieutenant-Governor may on the application of the Council and on due proof of the proper advertisements having been published and notices served appoint some person or persons to make an inquiry on the spot into the propriety of the proposed undertaking and the acquisition of the lands proposed to be taken therefor and the objection thereto and to report to the Lieutenant-Governor on the matters in respect of which such enquiry was directed and on receiving such report the Lieutenant-Governor may make an order empowering the Council to put in force with reference to the lands proposed to be taken or any of them the powers conferred by section *five* of this Ordinance and either absolutely or with such conditions and modifications as he may think fit.

7. If after the expiration of the period of one month within which notices of objection may be served no such notices of objection are served on the Council or forthwith after the making of the order of Lieutenant-Governor referred to in the preceding section as the case may be the Council may at any time within three months after such expiration or the date of such order as aforesaid serve a notice on every owner or holder of any interest in the land proposed to be acquired demanding a statement in writing specifying the nature and extent of his ownership or of any interest held by him and under what title the same is held and of the claim made by him in respect thereof and every such notice shall state

Notices to
treat may
be served by
Council.

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that the Council is willing to treat for the purchase thereof and as to the compensation to be made for the damage that may be sustained by him by reason of such purchase or the carrying out of the purposes for which the land is required.

In the absence of agreement the amount of compensation to be settled by arbitration.

8. If for one month after the service of such notice any such owner or holder as aforesaid shall have failed to state the particulars of his claim in respect of any such land or to treat with the Council in respect thereof or if such owner or holder as aforesaid shall not agree as to the amount of compensation to be paid for the interest in such land belonging to him or which he is by this Ordinance enabled to sell or for any damage sustained by him by reason of the carrying out of the purposes for which such land is required then the amount of such compensation shall be settled by arbitration as hereinafter set forth; provided however that nothing herein contained shall prevent an agreement as to the amount to be paid being made between the parties either prior to or after the commencement of arbitration proceedings nor shall anything herein contained prevent the payment by the Council at any time if it shall so think fit of the amount of any mortgage bond or other preferent charge upon the property in respect of which any claim shall be made whether the amount of compensation payable in respect of such property shall have been settled or not; but if any such mortgage bond or other preferent charge shall be so paid in advance by the Council it shall be considered as a payment on account of the amount of compensation payable in respect of such property.

How compensation to be settled by arbitration.

9. All questions as to disputed compensation by this Ordinance required to be settled by arbitration shall subject to the provisions of this Ordinance be settled in manner and form provided by The Expropriation of Land and Arbitration Clauses Proclamation 1902 in the same manner as if the Council were substituted for the Governor as one of the parties to such arbitration and as if the

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name of the Town Clerk of the Council were substituted therein for the Secretary to the Department of Public Works.

10. Upon all proceedings before any arbitrator or arbitrators or umpire as the case may be each party may appear in person or by counsel or solicitors or admitted and licensed law agents and may produce such witnesses and documentary evidence as the arbitrator or arbitrators or umpire as the case may be shall allow.

Each party may appear by counsel.

11. The cost of and incidental to any reference to arbitration shall be borne by the Council unless the arbitrator or arbitrators shall award the same or a less sum than shall have been offered by the Council as provided in section *seven* of this Ordinance in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions.

Costs of arbitration.

12. With respect to the compensation payable by the Council for or in respect of any land required by them or for any right injuriously affected by the exercise of the powers conferred under the provisions of this Ordinance the following provisions shall prevail ;

Basis on which compensation is to be assessed.

- (a) no enhanced or improved value which may accrue to any such property or rights by reason of the carrying out of the said purposes shall be taken into account in assessing such compensation ;
- (b) no addition to or improvements of any such property made after the date of the service of the notice mentioned in sub-section (1) (c) of section *six* (except such addition or improvement as was necessary for the maintenance of the property in a proper state of repair or was undertaken in pursuance of obligations entered into previous to such notice) shall be taken into account and in the case of any interest acquired after the said date no separate estimate of the value thereof shall be made so as to increase the amount of compensation to be paid for such property or rights ;

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(c) interest shall be payable at such rate and from such date as the arbitrators may determine on so much of the compensation payable by the Council as shall remain unpaid until such amount shall be paid.

Persons under disability may transfer.

13. It shall be lawful for all corporations fiduciary heirs or fidei-commissary heirs women married without community of goods guardians curators or trustees under marriage settlements or holding lands for native purposes and all other trustees executors and administrators and all persons entitled to a life interest in any lands whether subject to a lease or not to sell transfer and convey the same and all their right title interest claim and demand therein to the Council and to enter into all necessary agreements for that purpose.

Courts may appoint persons to represent persons interested.

14. It shall be lawful for the Supreme Court or the Witwatersrand High Court in matters within its jurisdiction on application thereto by the Council to appoint any person or persons to represent and act for the purposes of this Ordinance on behalf of any owner or holder of any rights in land or buildings required to be taken as aforesaid who may be absent from this Colony or may be under any disability to act for himself or who cannot after reasonable enquiry be found and in the event of such appointment being made such person or persons so appointed shall be authorised and empowered to act for all the purposes of this Ordinance for and on behalf of every such owner or holder on whose behalf he or they shall have been so appointed.

In case of disputes as to persons entitled money may be paid to Master of the Supreme Court.

15. In case of any dispute as to who is entitled to receive any money to be paid under this Ordinance or in case of any money payable to any person who cannot be found or in case of any interdict with respect to such money it shall be lawful for the Council to pay such money to the Master of the Supreme Court to hold the same in trust for the person or persons entitled thereto and thereupon all liability of the Council in respect of such payment shall come to an end.

16. It shall be lawful for the Council after the expiration of the period of one month mentioned in section *eight* to enter upon take possession of and use any such land before proceedings have been taken to settle the amount of compensation to be paid for it leaving all questions as to such compensation to be settled afterwards in manner provided by this Ordinance.

Entry upon
land.

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of
1903.**

17. In every case in which any land is subject to a mortgage and the Council requires only a portion of the said land the mortgagee of such land may consent that the portion of land so required by the Council be transferred to them released from such mortgage and the consent to the transfer and release of such portion of any lands so mortgaged shall in no way affect the rights of the mortgagee to the remainder of the land and the mortgage bond shall remain and be in full force and effect for the sum due thereon and interest as to the remainder of the lands as if no consent to transfer had been given.

Land subject
to mortgage.

18. In any case in which any land is subject to a mortgage and the Council requires only a portion of the said land and the mortgagee of such land does not consent to the transfer thereof released from such mortgage and if the portion so required be of less value than the amount of the mortgage bond with interest thereon and the mortgagee shall not consider the remaining part of such land a sufficient security for the payment of the said bond the mortgagee may insist and demand that the value of and compensation to be given for that portion of the land so required by the Council may be settled by agreement between him and the Council and if the parties aforesaid disagree respecting the amount of such value or compensation the same shall be determined as in all other cases of disputed compensation and the amount of such value or compensation being so agreed upon or determined shall be paid by the Council to the mortgagee in satisfaction of his mortgage debt in so far as the same may extend and a memorandum of what shall have been so paid shall be

Agreement
between
mortgagee
and Council.

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of
1903.**

Compensation when all land included in mortgage is taken.

written or endorsed on the mortgage bond and upon the official copy thereof filed of record in the Deeds or other Registration Office.

19. In any case in which all land comprised in and affected by a mortgage bond is required to be taken by the Council then the amount of compensation required to be paid by the Council for the taking of such land shall be applied as far as the same is required towards the payment of the mortgage debt and all interest due thereon and the balance of such compensation money shall be paid over to the owner of the land and in any case where the amount of the compensation offered by the Council to be paid for such land is not equal to the amount due on such mortgage bond then the mortgagee shall for the purposes of determining the same as in all other cases of disputed compensation be considered as the owner and all the powers by this Ordinance given to owners in cases of disputed compensation are hereby conferred on the mortgagee; provided that where the compensation when so agreed upon or determined exceeds the amount due on the mortgage bond then the mortgagee must pay over the surplus to the owner; provided further that it may be lawful for the owner at any time before the compensation is agreed upon or determined to redeem the mortgage bond and then the same proceedings shall be had as in all other cases of disputed compensation.

Land comprised in lease and apportionment of rent.

20. If any land shall be comprised in a lease for a term of years unexpired part only of which land shall be required by the Council under this Ordinance the rent payable in respect of the lands comprised shall be apportioned between the lands so required and the residue of such lands and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part and the Council on the other part and if such apportionment be not settled by agreement between the parties such apportionment shall be settled by the Resident Magistrate of the district in which such lands are situate and after

such apportionment the lessee of such lands shall as to all future accruing rent be liable to only so much of the rent as shall be so apportioned in respect of the lands not required as aforesaid and as to the lands not so required and as against the lessee the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease and all the covenants conditions and agreements of such lease except as to the amount of rent to be paid shall remain in force with regard to that part of the land which shall not be required as aforesaid in the same manner as they would have done in case such part only of the land had been included in the lease.

21. Every such lessee as last aforesaid shall be entitled to receive from the Council compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works for which such land is required.

Compensation for damage through severance.

22. If any land shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year and if such person be required to give up possession of any land so occupied by him before the expiration of his term or interest therein he shall be entitled to compensation for the value of the unexpired term or interest in such land and for any just allowance which ought to be made to him by an incoming tenant and for any loss or injury he may sustain or if part only of such land be required compensation for the damage done to him in his tenancy by severing the land held by him or otherwise injuriously affecting the same and the amount of such compensation shall be determined by the Resident Magistrate having jurisdiction in case the parties differ about the same.

Land held on tenancy from year to year.

23. If any party having a greater interest than a tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of such land the Council may require such party to produce

Evidence of lease to be furnished to Council.

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Power to
Council to
sell or deal
with land
bought and
to close
streets.

the lease or grant in respect of which such claim shall be made or the best evidence thereof in his power and if after demand made in writing by the Council such lease or grant or such best evidence thereof be not produced within twenty-one days the party so claiming compensation shall be considered a tenant holding only from month to month and be entitled to compensation accordingly.

24. The Council may from time to time sell let lease or otherwise deal with any land acquired by them under the provisions of this Ordinance and where any land so acquired includes or constitutes the whole of the properties on both sides of any street lane or thoroughfare the Council may close such street lane or thoroughfare and sell let lease or otherwise deal with the land formerly occupied thereby in such manner as they shall think fit; provided always that if the Council decide to close any such street lane or thoroughfare they shall not less than one month prior to so doing advertise their intention in two or more local newspapers during which time any person feeling aggrieved by such contemplated closing may apply to any competent Court for relief and upon such application being made within such period of one month the Court shall be entitled to restrain the Council from such closing unless they shall satisfy the Court that no real or substantial damage will be occasioned to the applicant or until they shall have expressed their willingness to make compensation for such damage as may be found by arbitration under the provisions of this Ordinance to have been caused to such applicant.

PART II.

SEWERAGE AND DRAINAGE WORKS.

Powers as to
sewerage and
drainage.

25. For the purpose of carrying out any drainage or sewerage works the Council may;

- (a) cause such sewers drains and pipes to be made laid altered deepened covered over and maintained either within or (subject to the provisions contained in sections *twenty-eight* and *twenty-nine* of this Ordinance) without the limits

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- of the municipality as shall be necessary for the effectual disposing of the sewage of or draining the municipality or any portion thereof and from time to time to cause to be made and maintained all such reservoirs sluices engines ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers drains and pipes;
- (b) carry such sewers drains or pipes through across or under any public road street square or open space or any place laid out as or intended for a public road street square or open place either within or without the limits of the municipality without paying compensation and after giving reasonable notice in writing to the owner or occupier of their intention of so doing into through or under any land within or (subject to the provisions contained in sections *twenty-eight* and *twenty-nine* of this Ordinance) without the limits of the municipality making compensation for any damage done which compensation shall if not mutually agreed upon be settled by arbitration in manner provided by Part I. of this Ordinance; provided that in settling any compensation payable by the Council hereunder the existence of any sanitary passage through or over which the Council have a right of access to any private land or building for the purposes of sanitary service and which right the Council may be willing to surrender shall be taken into account;
- (c) from time to time alter enlarge divert discontinue close up or destroy any sewers drains or pipes under the control of the Council;
- (d) within or (subject to the provisions of sections *twenty-eight* and *twenty-nine*) without the limits of the municipality construct any works for the purpose of receiving storing disinfecting distributing or otherwise disposing of any sewerage or drainage.

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Vesting of
sewers in
Council and
right of ac-
cess thereto.

26. All sewers drains pipes and ventilating shafts or other conveniences for the disposal of sewage or drainage constructed by or under the control of the Council shall be vested in the Council and the Council or any other persons duly authorised by them shall at all times have a right of access to private property for purposes of inspection maintenance alteration or repair of such sewers drains pipes shafts and other conveniences.

Power to
deal with
land held
for the pur-
pose of
sewerage.

27. The Council may deal with any lands held by them for the purpose of receiving storing disinfecting or distributing sewage or drainage in such manner as they may deem most profitable either by leasing the same for agricultural purposes or by contracting with some person to take the whole or a part of the produce of such land by farming such land and disposing of the produce thereof subject to the restriction that in dealing with land for any of the above purposes provision shall be made for effectually disposing of all sewage or drainage brought to such land without creating a nuisance.

Notice before
commencing
any sewerage
works out-
side municip-
al limits.

28. The Council shall at least one month before commencing the construction or extension of any sewer or any other work for sewerage purposes beyond the limits of the municipality give notice of the intended work by advertisement in one or more local newspapers circulating within the district where the work is to be done or if there be no such newspaper then in one or more newspapers circulating in the municipality. Such notice shall describe the nature of the intended work and shall state the intended termini thereof and particulars of the roads streets squares open spaces and other land (if any) through across under or on which the work is to be done and shall name a place where a plan of the intended work is open for inspection at all reasonable hours and a copy of such notice shall be served on the owners or reputed owners lessees or reputed lessees and occupiers of the land and on the local authority (if any) having the care of such roads streets squares or open spaces.

29. If any such owner lessee or occupier or any such local authority or any other person who would be affected by the intended work objects to such work and serves written notice on the Council of such objection at any time within the said period of one month then the intended work shall not be commenced without the consent of the Lieutenant-Governor unless such application is withdrawn.

Notice of objection by owner.

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30. The Lieutenant-Governor may on the application of the Council appoint some person or persons to make an enquiry on the spot into the propriety of the intended work and the objections thereto and to report to him on the said matter and on receiving the report of such person or persons the Lieutenant-Governor may make an order disallowing the intended work or allowing it with such modifications (if any) as he may deem necessary.

Enquiry by Lieutenant-Governor and action thereon.

31. Any person who without the previous consent in writing of the Council shall ;

Offences and penalties.

- (a) erect or cause to be erected any building or other structure over any sewer drain or pipe vested in or constructed under the authority of the Council ; or
- (b) excavate open up or remove or cause to be excavated opened up or removed the ground under or near to any such sewer drain or pipe ; or
- (c) make or cause to be made any opening into such sewer drain or pipe without the written consent of the Council for the purpose of discharging sewage or drainage into the same or otherwise ; or
- (d) injure or destroy or cause to be injured or destroyed any such sewers drains or pipes or any works or things in connection therewith ;

shall for each offence be liable to a penalty not exceeding fifty pounds and the Council may alter or demolish or otherwise deal with as they may think fit any building or structure so erected fill in and make good any such damage or close any such opening into a sewer drain or pipe and the expenses incurred in so doing shall along

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with such penalty be recoverable from the offender in any competent Court and upon failure to pay such penalty and expenses such person may by order of such Court be imprisoned for any period not exceeding three months.

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of
1903.**

No. 65 of 1903.]

[Assented to 30 July 1903.

ORDINANCE

To Amend "The Deeds Proclamation 1902."

WHEREAS it was the practice in the Deeds Office of the late South African Republic in cases where land was proclaimed a town and was divided into erven which were numbered and shown on a general plan of the town filed in the said Deeds Office to open a Register of the said erven assigning a separate folio to each erf and thereupon to treat the said erven as being duly registered as such and on transfer of the said erven to require a separate Deed of Transfer for each erf;

and whereas it is advisable to continue the said practice and to give legal force and effect to such registration for all purposes and to amend the Deeds Proclamation 1902 in this and also in other respects;

and whereas notarial deeds granting rights to minerals drawn in accordance with the provisions of section *fourteen* of Law No. 7 of 1883 or section *sixteen* of Law No. 20 of 1895 and also notarially drawn leases of land have in most instances been registered in the Deeds Office of the late South African Republic in the Register of Diverse Akten (miscellaneous contracts) only and not against the titles of the properties affected;

and whereas it is advisable to provide for the registration of such deeds and leases against the titles of the said properties;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Section *twenty* of "The Deeds Proclamation 1902" shall be and is hereby repealed and the following provisions shall apply in place thereof;

Repeal
of section
twenty of
Proclama-
tion Trans-
vaal No. 10
of 1902.

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1903.**

- (a) it shall not be lawful to convey more than one piece of land registered as a separate farm or erf or to convey portions of different farms or erven by one and the same deed of transfer and no deed of transfer shall have more than one diagram annexed to it;
- (b) where land has been proclaimed a town and has been divided into erven which have been numbered and shewn on a general plan of the town filed in the Deeds Office and the numbers assigned to the erven have been registered in a register of the town in the said office each of the said erven shall for all purposes be considered as a duly registered erf and whenever in future any land shall be proclaimed a town and shall be divided into erven a general plan of the town showing the numbers assigned to the erven shall be filed in the Deeds Office and the Registrar shall open a register of the town containing a separate folio for each erf and shall make an endorsement on the title deed to such land notifying that the land shewn on such general plan has been proclaimed a town and thereupon the erven in the said town shall for all purposes be considered as duly registered erven;
- (c) where land has been divided into lots exceeding fifteen in number for residential agricultural or other purposes it shall be competent for the Registrar before accepting for registration the transfer or lease of any such lot to require the registered owner of such land to lodge with him a duly approved general plan of the land so divided together with his title deed to such land. The Registrar shall thereupon cause such

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general plan to be registered and an endorsement shall be made upon the title deed notifying that the land shewn on such general plan has been divided into lots. A new register shall then be opened wherein the transfers or leases of such lots and the cessions or transfers of any lease of any such lot shall be registered in the same manner as if the said lots were erven in a duly proclaimed town save that it shall be competent to cede and transfer the leases of more than one lot by one and the same deed of transfer;

(d) on the transfer or lease of any portion of a duly registered portion of land (not being an erf) being tendered for registration in the Deeds Office the Registrar of Deeds may before accepting such transfer or lease for registration call for a sworn declaration to the effect that the land sought to be transferred or leased does not consist of one or a part of one or more than one of a number of lots within the meaning of this section into which the said registered land has been divided.

Cancellation
of general
plan.

2. When a division or sub-division of land into lots under the last preceding section or under section *twenty* of Proclamation Transvaal No. 10 of 1902 has been registered in the Deeds Office by the filing of the general plan and the opening of a separate Register thereof it shall not from and after the taking effect of this Ordinance be lawful for any alteration to be made in such general plan or for such general plan to be cancelled except for the purpose of rectification of errors in survey; provided however that a total or partial cancellation of such general plan may be allowed where it is shewn to the satisfaction of the Registrar of Deeds and the Surveyor-General that it is the intention of the registered owner of the land so sub-divided to abandon the sale or lease of all the lots shewn on such general plan or of all such lots as may not

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then have been sold or leased as the case may be; provided further that the cancellation of part of such general plan shall not take place without an order of the Supreme Court or of any Judge thereof unless the consent of the registered owners of every lot shewn on such plan already sold or leased shall have been obtained; and provided further that any person who has obtained transfer of two or more whole lots which lots are contiguous to each other and form a block not intersected by any street shown on the general plan of the land subdivided into lots may obtain a certificate of registered title in respect of such lots under the provisions of sections *twelve to eighteen* of the said Proclamation and the holder of such certificate of registered title may thereafter sub-divide into lots the land comprised therein or part thereof and such sub-division shall for all purposes be regarded as a new division of land into lots under the last preceding section whether such lots exceed fifteen in number or not.

If a new general plan of the land included in a general plan or part of a general plan which has been cancelled under the provisions of this section be thereafter framed a new register may be opened by the Registrar of Deeds and the division or sub-division may at the discretion of the Registrar for all purposes be treated as a new division or sub-division of the land in question.

3. In any case when by Proclamation any area has been constituted a town or has been included within the limits of a proclaimed town all existing sub-divisions thereof not already registered as erven being one morgen or less in extent and held under separate title deeds shall be considered as erven and shall be transferred to the Register of Erven of the said town kept in the Deeds Office and upon being entered in such Register each on a separate folio shall be for all purposes considered as registered erven. Where any piece of ground which though included within the limits of a proclaimed town is registered as a portion of a farm exceeds one morgen in extent such piece

Registration
of blocks of
land in
towns.

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Issue of certificate of registered title in lieu of lost title of which no duplicate is filed in the Deeds Office.

of ground shall not be registered as an erf but any sub-division thereof being one morgen or less in extent shall upon transfer be entered on a separate folio in the Register of Erven of such town and shall thereupon for all purposes be considered as a registered erf.

4. Should a copy be required of any deed of transfer or deed of grant which has been lost or destroyed the duplicate original whereof is not filed in the Deeds Office it shall be competent for the Registrar of Deeds to issue to the registered owner of such lost deed of transfer or deed of grant a certificate of registered title as nearly as practicable in the form A in the schedule to this Ordinance to serve and avail in lieu of the lost or destroyed deed of grant or deed of transfer; provided that such certificate shall be subject to all conditions servitudes or other encumbrances which according to the records of the Deeds Office were embodied in or endorsed upon the lost deed; and provided further that no such certificate shall be issued for a defined portion or a share in a defined portion of any property except in accordance with a duly approved diagram of such portion which shall be prepared at the expense of the applicant; and provided further that no such certificate shall be issued until notice thereof shall have been published by the Registrar of Deeds in four consecutive numbers of the *Gazette* and shall have been served by the applicant on the registered owner or owners of each of the adjoining farms or erven as the case may be and further until a draft of such certificate with diagram shall have lain for inspection at the Deeds Office for a period of two months from the date of first publication of such notice during which time any person interested may have an opportunity of objecting to its issue. When the owner or owners of any such adjoining farm or erf cannot be found the notice referred to in this section may be served upon the occupier of the farm or erf or when there is no occupier it may be affixed to the door of the principal

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dwelling-house or at some other conspicuous place on such farm or erf. Should any objection be taken it shall be the duty of the person objecting in the absence of any arrangement between the parties to move the Supreme Court or any Judge thereof for an order prohibiting the Registrar from issuing the certificate in question.

5. When any person partnership syndicate or company registered in the Deeds Office as the owner of any property in this Colony or as one of the parties to any mortgage bond or as mandant or mandatory in any power of attorney changes his or its name it shall be competent for the Registrar of Deeds upon application to him by such person partnership syndicate or company and upon proof to his satisfaction that there has been no change of person in law to alter such name in such deed of transfer or mortgage bond or in such power of attorney and also in the Deeds Office Registers into the name or names by which the said person partnership syndicate or company is then known; provided that where there are two or more interdependent deeds one deed shall not be amended without the others.

Change of name of registered owner.

In case a similar change of name be desired in any notarial deed registered in the Deeds Office such change must be effected by a notarially executed deed registered in the Deeds Office. Should such deed be of a nature liable to transfer or other duty it shall be competent for the Registrar of Deeds prior to registration of such deed to call for proof that no change of person in law is effected by such registration.

6. Every notarial deed contemplated by section *fourteen* of Law No. 7 of 1883 or section *sixteen* of Law No. 20 of 1895 and every notarial lease which if executed subsequent to Proclamation Transvaal No. 8 of 1902 would be registrable against the title deeds of the property and which notarial deeds have been registered in the Register of Diverse Akten kept in the Deeds Office of the late South African Republic but not against the title deeds of the property affected thereby shall upon production to the Registrar of

Registration against title of certain deeds already registered in Deeds Office.

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Deeds be noted in the land register of the said property and shall be endorsed on the title thereof provided that;

- (a) a receipt for all transfer duty leviable under the Laws above referred to or to which the contract may now be liable under Proclamation Transvaal No. 8 of 1902 or any amendment thereof be lodged therewith;
- (b) the written consent of the registered owner of the property affected by such deed or lease to such endorsement of his title together with the title deed of the property affected or an order of the Supreme Court or any Judge thereof directing that such endorsement be made be produced to the Registrar of Deeds; provided always that the registration of such contract against the title deed filed in the Deeds Office shall be regarded as effective registration in any case in which such Order of Court has been obtained;
- (c) all Deeds Office regulations on the subject of mineral contracts or leases of land respectively be complied with and that the necessary registration fees be paid.

Rules with regard to fees for searching district land registers kept by Magistrates.

7. It shall be lawful for the Lieutenant-Governor from time to time to frame rules and regulations with regard to the manner of entering up and keeping by Resident Magistrates of the land registers of their respective districts and with regard to the fees to be charged by such Resident Magistrates for searches in and information obtained from such registers.

Provisions of Proclamation Transvaal No. 35 of 1902 to apply.

8. Nothing in this Ordinance contained shall affect the provisions of Proclamation Transvaal No. 35 of 1902 or any amendment thereof.

Title.

9. This Ordinance shall be cited for all purposes as the Deeds Proclamation Amendment Ordinance 1903.

SCHEDULE.

ORD. No. 65 of 1903.

Certificate of Registered Title.

(Under Section 4 of The Deeds Proclamation Amendment Ordinance No. 1903.)

KNOW ALL MEN WHOM IT MAY CONCERN—

That having applied for the issue to him of a certificate of registered Title under section four of "The Deeds Proclamation Amendment Ordinance 1903" in lieu of Deed of Grant (or Deed of Transfer as the case may be) (here describe the deed of grant or transfer under which the applicant holds) which has been lost or destroyed and it appearing from the registers of the Deeds Office that he is the registered owner of the land hereinafter described;

NOW THEREFORE in pursuance of the provisions of the aforesaid Ordinance I the Registrar of Deeds do hereby certify that the said is the registered owner of (describe the property) as will more fully appear from the annexed diagram subject to the following conditions to wit;

.....
.....
.....

And that by virtue of these presents the said his heirs executors administrators and assigns now is and henceforth shall be entitled thereto conformably to local custom Government however reserving its rights.

IN WITNESS WHEREOF I the said Registrar have subscribed to these presents and caused my Seal of Office to be affixed thereto.

Thus done and executed at the Office of the Registrar of Deeds Pretoria on this the day of in the year of Our Lord One Thousand Nine Hundred and.....

.....
Registrar of Deeds.

Registered in the Register of
kept at Pretoria Book page on the day of 19.....

.....
Registrar of Deeds.

NOTE.—When the certificate is issued under an order of Court the necessary recital of the order is to be made.

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of
1903.

No. 66 of 1903.]

[Assented to 30 July 1903.

ORDINANCE

To Amend Law No. 22 of 1898.

WHEREAS it is desirable to amend Law No. 22 of 1898 be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Repeal of
Laws.

1. Law No. 22 of 1898 and so much of any other law as may be repugnant to or inconsistent with this Ordinance shall be and is hereby repealed; but no such repeal shall affect anything duly done or any right or privilege acquired or any liability penalty or forfeiture incurred in respect of any such laws.

Interpreta-
tion Clauses.

2. In the interpretation of this Ordinance unless repugnant to the context the following words and expressions in inverted commas shall have the meaning placed opposite to them;

“block of claims” or “block” means any number of contiguous claims;

“claim” shall mean the portion of ground assigned for mining purposes within any proclaimed alluvial diggings of a size fixed by this Ordinance or the right to dig for precious stones in such portion of ground;

“claimholder” shall mean the registered holder of the right to dig for precious stones in a claim;

“Crown Land” shall mean all unalienated Crown Land and all land the property of the Government of this Colony in whatever way acquired; and any land alienated by the Crown with an express reservation to it of precious stones or minerals;

“Commissioner” shall mean the Commissioner of Mines;

“digging” or “mining” shall mean the winning of precious stones including all work necessary for the purpose irrespective of whether such

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- mining is effected by underground mining works open cuttings or otherwise;
- “discoverer” shall mean a duly licensed prospector who has discovered precious stones on Crown Lands;
- “District Registrar” shall mean the District Registrar or Assistant District Registrar of Mining Rights for the Mining District for which he is appointed;
- “Inspector” shall mean the official appointed as Inspector or Deputy Inspector of Mines for the Mining District in which the mine or alluvial diggings is situated;
- “precious stones” shall include diamonds and any other gems or stones proclaimed such by the Lieutenant-Governor;
- “private land” shall mean any area of ground of which the ownership is vested in an individual or company as shown by title or deed of transfer and in the title of which there is no reservation by the Crown of precious stones and minerals;
- “prospector” shall mean a person who holds a license to prospect for precious stones;
- “prospecting” shall mean the doing of all work which is necessary for the search of precious stones or which has in view the testing of the payability of the place in which precious stones have been found;
- “Registrar” “Assistant Registrar” shall mean respectively the Registrar and Assistant Registrar of Mining Rights;
- “stand” shall mean a defined portion of ground of a size fixed by this Ordinance to which title is issued by the Crown and situated in a stand township;
- “stand township” shall mean every area of ground proclaimed as such;
- “standholder” shall mean the registered holder of the title to a stand issued by the Crown.

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1903.**

Right of disposing of precious stones vested in Crown.

3. The right of mining for and disposing of all precious stones, is vested in the Crown.

CHAPTER I.

PROSPECTING FOR PRECIOUS STONES.

(a) *On Crown Land.*

Prospecting on Crown Land.

4. Any white male inhabitant of this Colony over the age of eighteen shall be at liberty to take out at the office of any District Registrar a license in the form in the first schedule to this Ordinance to prospect for precious stones on Crown Land subject to the following provisions;

- (1) such license may be issued for any period with the right of renewal from time to time for any period and shall bear a revenue stamp of two shillings and sixpence for each month during which it shall be in force and save as hereinafter otherwise provided shall give to the holder thereof the right during such period to enter upon and prospect for precious stones on any Crown Land situated in this Colony;
- (2) nothing contained in any prospecting license shall authorise the holder thereof to prospect on such places as the Lieutenant-Governor may from time to time by notice in the *Gazette* exclude from prospecting or on any public square street road railway cemetery public works or on any area proclaimed a mine or alluvial digging or mining area under this Ordinance or on any area proclaimed a stand township under Law No. 15 of 1898 or Law No. 22 of 1898 or on any land held under any mining title issued under Law No. 15 of 1898 or any amendment thereof or within twenty yards of a prospecting area as hereinafter defined or in any town or village or in any native location without the consent of the Commissioner for Native Affairs;
- (3) a prospector shall have the exclusive right of prospecting for a period not exceeding one month within an area

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hereinafter called a "prospecting area" one thousand yards square at each corner of which it shall be his duty to put in and to maintain pegs not less than two feet high above the ground on which pegs shall be inscribed his name and the date of pegging. Every prospector shall during the currency of his license be at liberty to move to any other portion of Crown Land open for prospecting; provided that by so doing he does not interfere with the prospecting area of any other prospector. Upon such removal his prospecting area shall be open to any other prospector to prospect thereon;

- (4) any person who shall knowingly and wilfully remove or destroy any prospector's pegs or any person who without the consent of the prospector shall knowingly and wilfully prospect within such prospector's prospecting area shall be liable on conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months;
- (5) every prospector shall be bound and obliged in respect of any prospecting area pegged out by him to prospect thereon subject to such regulations as may be made by the Commissioner; and if in the opinion of the District Registrar he shall fail to do so he shall forfeit his license and shall not again be permitted to take out a prospecting license for a period of six months and his prospecting area shall be open to any other prospector to prospect thereon;
- (6) every prospector shall for the purpose of *bonâ fide* prospecting on unoccupied Crown Land be entitled to graze free of cost four draught animals and with the consent of the District Registrar such additional number of draught animals up to sixteen as may be shown by him to be necessary; he shall also have the right to use such

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Provisions applying to prospecting on Crown Land held under lease or other title.

water and cut such timber for his personal use as the District Registrar may authorise.

5. Nothing contained in a prospecting license shall be construed;

†(a) to confer on the holder thereof any right of entry upon Crown Land held under a license issued under the Settlers Ordinance 1903 or any amendment thereof or under lease or under a title to which there is a reservation of precious stones and minerals to the Crown for the purpose of prospecting thereon without the consent of the Commissioner of Lands and unless such holder either undertakes to pay to the licensee or lessee or owner of such land as the case may be the amount of compensation for any surface damage he may cause and gives security to the said Commissioner for the payment of all claims for compensation as they arise and are determined. In the absence of any agreement the amount of such compensation shall be determined by arbitration in manner and form provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902;

(b) to authorise the holder thereof to enter upon any land used as a garden orchard vineyard nursery plantation or ornamental pleasure ground or on land under cultivation or within one hundred yards of any spring reservoir dam or water-works or within two hundred yards of any house homestead or building.

Commissioner may make regulations for prospecting.

6. It shall be lawful for the Commissioner from time to time to make revoke or amend regulations not inconsistent with the provisions of this Ordinance providing for *bona fide* prospecting on Crown Land and the charges to be paid by persons prospecting on occupied Crown Land for the grazing of cattle on such land and the use of water and firewood thereon.

† For "Settlers Ordinance 1903" read "Settlers Ordinance 1902." See *Consolidation of Statutes in the Republic of South Africa, 1904*

(b) On Private Land.

7. Prospecting on private land shall be subject to the following provisions;

Prospecting
on private
land.

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(1) the owner thereof may by himself or his servants prospect thereon without a license on giving notice of his intention to do so to the District Registrar; and any owner of such land prospecting thereon without giving such notice as aforesaid shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment without hard labour for a period not exceeding one month;

(2) any prospector may with the consent in writing of the owner of such land as aforesaid prospect thereon on such terms and conditions as may be agreed upon. It shall be the duty of the owner to give notice to the District Registrar that he has given such consent as aforesaid and to notify to such District Registrar the name and address of the person to whom it has been given; and in default thereof he shall be liable to the penalties in the last preceding sub-section provided.

CHAPTER II.

DISCOVERY OF PRECIOUS STONES. — DUTIES AND RIGHTS OF A DISCOVERER.

8. It shall be the duty of every prospector who shall discover any precious stones within thirty days thereafter to give notice thereof and of the place where such discovery has been made to the District Registrar and thereafter to make once in each month a solemn declaration in the form set forth in the second schedule hereto annexed of the weight and value of the precious stones found by him and of the amount of ground measured in loads of sixteen cubic feet to each load which has yielded the same and to lodge such declaration with the District Registrar; and any person who shall fail to give the notice aforesaid or make and lodge the declaration

Notice to be
given by dis-
coverer of
precious
stones.

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Discoverer's
rights.

required under this section shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

9. (1) Any holder of a prospecting license under the provisions of this Ordinance who shall prove to the satisfaction of the District Registrar with whom he has lodged the declaration mentioned in the preceding section that he has discovered precious stones on Crown Land shall be entitled on production of the certificate mentioned in the next succeeding sub-section on the proclamation of a mine at the place where the discovery was made to an undivided one-tenth share of the mine proclaimed as aforesaid in case the extent thereof exceeds in area two hundred and seventy thousand square feet. Where the extent of the mine does not exceed such area he shall be entitled to such undivided portion thereof as an area of twenty-seven thousand square feet bears to the whole extent of the mine.

(2) Such discoverer shall receive a certificate from the District Registrar that he is so entitled as aforesaid on satisfying the said Registrar that he has discovered a new pipe and not merely an extension of an already discovered pipe and that there are reasonable prospects that precious stones exist therein in payable quantities.

(3) Upon the granting of such certificate as aforesaid all prospecting except by the holder thereof at the place where the discovery was made and within such distance therefrom as may be determined by the Commissioner shall cease.

Discoverer's
rights if
Lieutenant-
Governor
does not see
fit to pro-
claim a mine
at place
where dis-
covery made.

10. It shall be lawful for the holder of the certificate mentioned in section *nine* of this Ordinance should the Lieutenant-Governor not see fit to proclaim a mine at the place referred to in the certificate within six months after the granting of the same to dig for precious stones within an area agreed to by the Commissioner and as far as possible equivalent in extent to the area to which the said certificate entitles him in the same manner and with the same rights and obligations in every respect as if such

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place had been proclaimed a mine; provided that nothing herein contained shall be deemed or taken in any way to interfere with the rights and power of the Lieutenant-Governor at any time to proclaim a mine including the area aforesaid; and provided further that such area and any transfer of it shall be registered in the same way as if it were in a proclaimed mine in manner hereinafter provided.

11. Any person who shall make any declaration referred to in the *eighth* section of this Ordinance well knowing that the precious stones declared to have been found were by himself or by some other person placed or deposited in or on the spot or in the soil dug out or removed from the spot in which such declarant was prospecting or where the discovery of such precious stones is declared as aforesaid to have been made and were not naturally situated in or on the spot or in the soil where they were declared to have been found or discovered or well knowing that the said precious stones were not found or discovered on or near the place where they were declared to have been found or discovered shall upon conviction be liable to such punishment as is by law provided for the crime of perjury.

Penalty for making false declaration of discovery of precious stones.

12. Any person who shall wilfully place or deposit or be accessory to the wilfully placing or depositing of any precious stones in any spot or place with intent to persuade or induce any person to make such solemn declaration as aforesaid or for the purpose of misleading the Lieutenant-Governor or any other person as to the payable nature of a spot or place where precious stones have been or may be declared to have been found and previous to such spot being proclaimed an alluvial digging or mine shall upon conviction be liable to such punishment as is by law provided for the crime of fraud.

The placing of precious stones on places where not naturally found in order to induce prospector to make declaration punishable as fraud.

13. In any proceedings taken for the contravention of the last preceding section if the accused person shall be proved to have placed or deposited or to have been accessory to the placing or depositing of any precious stones in any place where the

Onus of proof when person charged under last section.

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finding thereof would be likely to lead any person to make a declaration of the finding of the same or would tend to mislead the Lieutenant-Governor or any other person he shall be taken to have so placed or deposited such precious stones in contravention of the last preceding section unless he shall produce satisfactory evidence to the contrary.

CHAPTER III.

PROCLAMATION OF MINE AND ALLUVIAL DIGGINGS.

Lieutenant-Governor may test a mine before proclamation.

14. The Lieutenant-Governor may at any time after a discovery of precious stones has been made and shall prior to proclaiming any place a mine or alluvial digging take such steps as he may deem fit for the purpose of testing the character payability and extent of the place at which precious stones have been discovered and for this purpose may appoint such duly qualified persons as he may think fit and may authorise the expenditure of such sums of money as shall be deemed necessary for the purpose of such testing; provided that in no circumstances shall any responsibility whatever attach to the Government in case any proclaimed mine or alluvial digging should after the proclamation thereof prove to be or become unpayable.

Proclamation by Lieutenant-Governor of mine or alluvial digging.

†15. Whenever the Lieutenant-Governor shall be satisfied after taking the steps mentioned in the last preceding section that there are reasonable prospects that precious stones exist in payable quantities it shall be lawful for him after causing the extent of the area containing precious stones to be surveyed to proclaim the area so surveyed a mine or alluvial digging or to proclaim it as portion of an existing mine or alluvial digging as the case may be according as the place where the precious stones have been discovered contains a pipe or is an alluvial deposit or extension of an existing pipe or of an alluvial deposit.

† See Proc. No. 2 Admn. 1904 *Gazette* (22 Jan. 1904) p. 87 by which Premier Mine is proclaimed a mine under this Ordinance.

† 16. (1) For the purpose of working any mine it shall be lawful for the Lieutenant-Governor to cause an area not being diamondiferous to be surveyed beacons off in accordance with regulations made by the Commissioner and proclaimed as a mining area. Such area shall be of sufficient extent for depositing floors machinery and tipping sites and all other matters and things connected with the proper and efficient working of the mine. A plan of the said survey shall be framed and deposited for public inspection at the office of the District Registrar shewing the extent of the mine and mining area and the shape dimensions and boundaries of the area available for depositing floors.

Mining area
and depositing
ground.

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(2) The area so surveyed may from time to time by proclamation in the *Gazette* be reduced or enlarged at the discretion of the Lieutenant-Governor as the necessities of the mine may require and the Lieutenant-Governor may make regulations for the proper laying out of depositing floors machinery and tipping sites in connection with the said mine.

(3) No private land may be proclaimed a mining area without the consent of the owner thereof except for the purpose of working a mine proclaimed on such land.

(4) The area available for depositing floors shall be sufficient in extent for the purpose of depositing soil containing precious stones from the mine and also reef or shaly ground and for the purpose of sinking wells laying tramways erecting compounds and other necessary buildings or doing or performing other works matters and things in connection with mining operations in the mine. The said area shall be in the neighbourhood of or in proximity to the mine but so as not to encroach on a reserve of one hundred yards round the margin thereof which shall be used exclusively for machinery for hauling ground from the mine and the laying of tram-rails for transporting such ground to the depositing area.

† See Proc. No. 2 Admn. 1904 *Gazette* (22 Jan. 1904) p. 87 by which certain area is proclaimed a mining area for the purpose of working the Premier Mine.

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Rights of owner of land or lessee of land included in such Proclamation.

17. The surface rights of the owner of land included under any such Proclamation as aforesaid shall immediately on the publication thereof be suspended until such time as the said Proclamation is with respect to such land revoked or cancelled; and if any portion of land included in such Proclamation is held under a lease other than a mineral lease then such lease shall cease and determine on notice thereof by the Commissioner to the lessee and in such case the lessee shall be entitled to such compensation as may be agreed upon between him and the Commissioner in the case of Crown Land and between the owner the Commissioner and the said lessee in the case of private land.

If no agreement as aforesaid be arrived at then the amount of compensation shall be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

For the purposes of this section a lease shall in the case of Crown Land include any title under which such land is held and lessee shall include the holder of any such title.

How compensation to lessee under last preceding section to be paid.

18. When any lease is determined under the last preceding section the amount due to the lessee as compensation shall be paid out of the Colonial Treasury in the case of Crown Land and in the case of private land by the owner of such land and the Colonial Treasurer in shares proportionate to the respective interests of the owner and the Crown in the mine.

Notice to be given to owner of private land affected before issue of Proclamation.

† 19. No Proclamation of a mine or mining area on private land shall be issued except with the consent of the owner of such land until after three months from the date of a notice to him by the Commissioner of the Lieutenant-Governor's intention to issue such a Proclamation. Such notice shall be served personally on the owner if possible or on his duly authorised agent and shall also be published three times in the *Gazette*.

Cost of Surveys.

20. The cost of the survey of any mine or mining area under this Ordinance shall be paid by the Colonial Treasurer; but the cost

† For notice of intention to proclaim the "Premier" Mine see Govt. Notice No. 1194 of 1903 *Gazette* (30 Oct. 1903) p. 1108.

of the survey of any alluvial digging proclaimed on private land shall be paid by the owner thereof.

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CHAPTER IV.

RIGHTS OF OWNER OF LAND.

21. Every owner of private land may without taking out any license by himself or by others employed by him for that purpose prospect thereon for precious stones and shall be under the same obligations as such prospector of giving the notice and making the declarations required in section *eight* of this Ordinance; and if he shall fail to do so he shall be liable to the penalties provided in the said section.

Owner of land may prospect thereon without license and is under the obligations of any prospector making a discovery.

22. (1) When the place where precious stones have been discovered shall be proclaimed a mine under the provisions of this Ordinance the owner of the land on which the said mine or any portion thereof is situated shall be entitled to an undivided four-tenths share in such mine or portion thereof as the case may be; provided always that in the case of a mine proclaimed under this Ordinance at a place where precious stones were discovered and the discovery notified in accordance with the provisions of Law No. 22 of 1898 prior to the taking effect of this Ordinance if the whole area of the mine or portion thereof as proclaimed is less than two hundred and twenty-five thousand square feet the owner shall be entitled to such undivided proportion thereof as an area of ninety thousand square feet bears to the whole area of the mine or portion thereof as aforesaid.

Owner's share of a proclaimed mine.

(2) Whenever the owner of land on which a mine or portion thereof is situated is entitled under the last preceding sub-section to the whole of such mine or portion as the case may be he shall pay license moneys thereon to the Revenue Officer of the district at the rate of ten shillings per month for every nine hundred square feet of area included in such mine or portion thereof as the case may be; and it shall be competent for the Colonial Treasurer to recover any license moneys in arrear by action at law in any competent Court and judgment given in

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Owner may dig for precious stones to which he is entitled even if Lieutenant-Governor does not see fit to proclaim mine on land.

Owner's share of license money on stands.

Meaning of term "Owner."

Lessee of land with owner's rights to stones entitled to owner's rights.

respect of such claim shall be executed in similar manner to that in which an ordinary judgment of such Court is executed.

23. The owner shall be entitled after the expiration of six months from the date of the lodging of the declaration mentioned in section *eight* of this Ordinance to beacon off and mine within an area agreed to by the Commissioner and as nearly as possible equivalent to the proportion to which he is entitled under the last preceding section if the Lieutenant-Governor should not see fit to proclaim a mine on his land in the same manner as if such Proclamation had been issued; provided that nothing herein contained shall be deemed or taken in any way to prevent the Lieutenant-Governor at any time from proclaiming a mine on such land including the area beacons off as aforesaid.

24. The owner shall be entitled to demand and receive out of the public revenues once every three months one-half the license moneys paid to the Colonial Treasurer in respect of stands in a stand township proclaimed on his land.

25. The term "Owner" shall include all persons duly registered as the proprietors of land in the office of the Registrar of Deeds but if in any case two or more persons shall be registered as the owners of any land in undivided shares all rights and powers conferred upon or reserved to the owner of such land by this Ordinance shall be deemed and taken to be jointly and not severally conferred upon or reserved to such persons.

26. (1) Every lessee of private land in the lease of which the owner shall have agreed to let such land together with his rights in respect of precious stones shall provided such lease be duly registered in the Office of the Registrar of Deeds be entitled during the term of his lease to such rights and privileges accruing to the owner of such land under this Ordinance as shall have been conferred on him by such lease and shall be subject to all obligations imposed by this Ordinance in respect thereof; provided that at the expiration of such lease every right granted to or held by him as such lessee shall revert to the owner.

(2) When in the title to private land or by some notarial deed registered in the Deeds Office the right to the precious stones therein is reserved to some other person than the registered owner such person will on the discovery of precious stones on such land be entitled to the rights conferred by this Ordinance on the owner in respect of such precious stones and will be subject to the obligations imposed in respect thereof.

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CHAPTER V.

WORKING OF A MINE.

27. (1) The Crown shall be entitled to the undivided share in any mine or portion of a mine on private land which remains after deducting the share to which the owner is entitled under section *twenty-two* of this Ordinance and in case the mine or portion thereof be on Crown Land to the undivided share therein after deducting the share to which the discoverer is entitled under section *nine* of this Ordinance.

Share of the
Crown in a
mine.

(2) The Commissioner shall issue a certificate to the owner or discoverer as the case may be certifying the extent of the share in the mine held by him and such certificate shall be registered in the proper office for registering mining rights and shall also be registered against the title deeds of the private land on which such mine is situated.

28. The owner of land on which a mine is situated shall be entitled to work the whole of the said mine for the purpose of winning precious stones therefrom and shall within three months after the proclamation of such mine notify to the Commissioner in writing whether he intends to do so or not.

Owner may
claim to work
mine.

29. (1) Where the mine is worked by the owner he shall provide the capital necessary for the effective working of the mine and shall for the purpose of the division provided for in section *thirty* hereof render yearly an account in which shall be set off against the net produce of the mine such capital actually expended together with interest thereon at the rate of ten per cent. per annum from the date of the expenditure

Capital to be
provided by
owner.

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of such capital. In each such account such interest shall be reckoned on the balance of capital remaining after any such set off as aforesaid. The Crown shall not be entitled to receive any share of the net produce above-mentioned until the whole amount of capital together with interest as aforesaid shall have been so set off.

(2) The precious stones won from the mine or any portion thereof by the owner or his predecessor in title prior to its proclamation shall be included in calculating the net produce for the purposes of this section.

Division of profits.

30. Subject to the provisions of sub-section (1) of section *twenty-nine* hereof the net produce obtained from the working of the mine shall be divided between the Crown and the owner in proportion to their respective shares in the mine.

Meaning of term "capital."

31. The meaning of the term "capital" in this Chapter shall be as defined in section *four* of the Profits Tax (Gold Mines) Proclamation 1902; and the provisions of the said Proclamation for defining and calculating the net produce obtained from the working of gold bearing properties and for ensuring correct statements thereof except in so far as such provisions relate to any allowance for the exhaustion of capital shall *mutatis mutandis* apply for the purpose of the proper carrying out of the last two preceding sections.

Mining operations to be carried on to satisfaction of Commissioner.

32. The owner shall carry on mining operations in the mine to the satisfaction of the Commissioner unless work is suspended with the consent of the Commissioner for any of the following reasons;

- (a) that time is required for the erection or repair of machinery or shafts;
- (b) the influx or scarcity of water;
- (c) a fall of reef on the men;
- (d) scarcity of labour.

Settlement of difference.

33. All differences which may arise between the owner and the Crown in respect of the carrying out of the provisions of this Chapter or in respect of any matter affecting their respective interests in the mine shall be referred for final decision to a Board on which the owner and the Crown

shall be represented in proportion to their respective shares in the mine. The persons representing the Crown on such Board shall be appointed by the Lieutenant-Governor.

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34. If the owner

- (a) refuses to work the said mine; or
- (b) fails to notify to the Commissioner whether he intends to do so or not within the period mentioned in section *twenty-eight*; or
- (c) fails to find the necessary capital for the working of the said mine within twelve months after its proclamation; or
- (d) fails to carry out the decision of the Board mentioned in the last preceding section in respect of any differences referred to such Board;

Lieutenant-Governor may call for tenders for working of mine on certain events happening.

the Lieutenant-Governor may call for public tenders for the working of the said mine under contract on such terms and conditions as may be agreed on between the Lieutenant-Governor and the owner; provided always that in case the Lieutenant-Governor and the owner cannot agree such terms and conditions shall be decided by the Board mentioned in the last preceding section; and provided further that any profits divisible between the Crown and the owner under any such contract as aforesaid shall be divided in proportion to their respective holdings.

35. It shall be lawful for the Lieutenant-Governor in case no satisfactory tender is obtainable for the working of the mine under the last preceding section to lease the said mine to the owner on such terms as may be agreed on.

If no satisfactory tender the Lieutenant-Governor may lease mine to owner.

36. It shall be lawful for the owner with the consent of the Lieutenant-Governor to transfer or mortgage his interest in a mine. Such consent however shall only be required in any case in which the Crown holds an interest in the mine. The registration of any such transfer or mortgage shall be effected according to the provisions of the Registration of Mining Rights Proclamation 1902 or any amendment thereof and the Regulations made thereunder and the transfer of any such interest as afore-

Transfer and mortgage of owner's interest.

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Definition of
"Owner" in
this Chapter.

said shall be subject to the duties imposed by the provisions of the Transfer Duty Proclamation 1902 in respect of transfers of mining rights issued under Law No. 15 of 1898 or any amendment thereof.

Mine on
Crown Land.

37. The term "Owner" in this Chapter shall include any person becoming entitled to the rights conferred by this Ordinance on the owner of land on which a mine is proclaimed.

38. The provisions of the preceding sections of this Chapter shall apply *mutatis mutandis* to a mine proclaimed on Crown Land the discoverer in such case having the rights and obligations conferred on the owner by the said sections.

CHAPTER VI.

ABANDONED MINES AND PORTIONS OF MINES.

Abandonment of any
portion of a
mine.

39. The registered holder of any holding in a mine shall be entitled to abandon the whole or any portion of such holding on giving notice thereof to the Registrar in writing and thereupon such holding or portion thereof shall be deemed and taken to be abandoned. A note shall be made by the Registrar in the proper books of his office of the fact of such abandonment and the date thereof.

Lease of
abandoned
mine or
abandoned
portion of
mine.

40. It shall be at all times lawful for the Lieutenant-Governor to grant a lease of any mine or part of a mine which has been abandoned as aforesaid for such period and on such terms as he shall think fit particulars of which shall be published in the *Gazette*.

CHAPTER VII.

ALLUVIAL DIGGINGS.

A.—Duties and Rights of Discoverer.

Discoverer's
claims in a
proclaimed
alluvial
digging.

41. The holder of a license to prospect who shall prove to the satisfaction of the District Registrar with whom he has lodged the declaration mentioned in the *eighth* section of this Ordinance that he has found precious stones in alluvial and that there are reasonable prospects for believing that they exist in payable quantities shall receive a certificate from the District Registrar that he is entitled to select fifty claims of a size hereinafter provided in

block at the place where such precious stones have been found; and no license money shall be payable on the said claims whilst they are held by such discoverer in his own right; provided always that the Commissioner is satisfied that a genuine discovery has been made. Upon the granting of such certificate as aforesaid all prospecting except by the holder thereof at the place where such discovery was made and within such distance therefrom as the Commissioner may determine shall cease.

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B.—Right of the Owner of Private Land on which an Alluvial Digging is proclaimed.

42. When the place where precious stones have been discovered shall be proclaimed an alluvial digging or portion of an alluvial digging under the provisions of this Ordinance the owner of the property on which the said diggings or portions thereof is situate shall be entitled to select next after the discoverer one hundred claims or a number of claims therein equal to three-tenths of the extent of his land proclaimed whichever of the two is greater on payment by him of the license moneys thereon one month in advance. If such owner is also the discoverer he shall in addition be entitled to the claims mentioned in the last preceding section.

Owner's
claims.

43. The owner of any land on which any alluvial digging is declared shall be entitled to demand and receive out of the Public Revenue half of the license moneys collected in respect of such digging and the persons appointed in that behalf shall be bound to keep books showing the amount of all such moneys and shall account and pay over to such owner at the end of every three months all sums of money due to such owner as aforesaid and shall afford to such owner at all reasonable times inspection of such books.

Owner's
share of
license
money.

44. If the Lieutenant-Governor shall not see fit to proclaim an alluvial digging at the place where precious stones have been discovered in alluvial within three months after the date of the certificate mentioned in section *forty-one* of this Ordinance the

Owner's
rights if no
digging pro-
claimed.

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owner and the discoverer shall be entitled to mark off and work the claims to which he is entitled under the preceding sections as if an alluvial digging had been proclaimed; provided that such claims shall be registered and license moneys paid thereon as if they were situated on a proclaimed alluvial digging.

C.—Distribution of Claims in an Alluvial Digging.

Pegging of claims by public.

45. After an alluvial digging has been proclaimed and after the owner and discoverer have selected the claims to which they are entitled under this Ordinance the remaining area proclaimed shall be available for the pegging of claims by the public; provided always that where such remaining area shall in the opinion of the Lieutenant-Governor be too small to be suitable for public pegging it shall be lawful for the Lieutenant-Governor to sell or otherwise dispose of the claims in such remaining area on such terms as he may think fit.

One claim to be pegged off by each male person over age of eighteen.

46. Save as is otherwise provided in the last preceding section it shall be lawful for any white male person over the age of eighteen years to obtain a license at the office of the District Registrar entitling him to peg off one claim on the area proclaimed.

Pegging off between sunset and sunrise and on Sunday.

47. No such pegging off as aforesaid shall be done between sunset and sunrise or on Sundays. Pegging off at such prohibited times shall be considered illegal and shall give no rights whatever.

In pegging claims regulations made under Law No. 15 of 1898 to apply.

48. In pegging off claims as aforesaid the regulations made at any time under Law No. 15 of 1898 or any amendment thereof in respect of the pegging of claims shall *mutatis mutandis* apply.

Penalty provided for wilfully pegging off a claim in excess of size provided by Ordinance.

49. Any person who shall wilfully peg off a claim in excess of the size provided by this Ordinance shall be liable on conviction thereof to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour for a period not exceeding six months and shall be liable to forfeit the claim pegged out by him.

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50. The size of a claim in an alluvial digging shall be one hundred and fifty feet square.

Size of claims in alluvial diggings.

51. The license money payable by the holders of claims or portions of claims in any alluvial digging situate on Crown Land or on private property shall be such as may be fixed by the Lieutenant-Governor from time to time; provided that when no sum has been so fixed it shall be one pound per month payable in advance for each claim or portion of claim until altered by the Lieutenant-Governor as aforesaid.

License moneys on claims in alluvial diggings.

52. Every registered claim-holder in an alluvial digging which may be proclaimed under the provisions of this Ordinance shall while working his claim be entitled to the use and occupation without extra payment of a piece of ground within the proclaimed area of such digging for the purpose of a residence for such claim-holder and accommodation for his employés. The said piece of ground shall be marked out for each claim-holder by the Inspector.

Right of claim-holder to piece of ground as residence.

53. Any person pegging out a claim in an alluvial digging who shall fail to take out a claim license for the said claim within a period of three days thereafter shall be deemed to have abandoned the same and the District Registrar shall thereupon declare the same to be abandoned. Such claim license shall be as nearly as possible in the form set forth in schedule one to this Ordinance.

Non-registration of claim to be considered as abandonment.

54. It shall be lawful for any claim-holder in an alluvial digging once during the month for which he holds a claim license in such digging and under such license to move the pegs defining the boundaries of his claim to any other unoccupied place in the same digging and there select a claim; provided that notice thereof shall be given to the Beacon Inspector of such digging and on failure to give such notice such claim-holder shall be liable to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Claim-holder allowed to move pegs to another spot in same digging once during month for which he holds license.

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Lieutenant-Governor may grant lease of an abandoned alluvial digging.

Lieutenant-Governor to make rules for Diggers Committees.

Lieutenant-Governor may direct election of Diggers Committee.

Lieutenant-Governor may abolish Committee.

Coloured persons not to be kept in compound except under voluntary contract.

Claim-holder to give notice of intention to erect compound.

Wages payable only in current coin. If otherwise contract null and void.

D.—Abandoned Alluvial Diggings.

55. The provisions of sections *thirty-nine* and *forty* of this Ordinance shall apply *mutatis mutandis* to alluvial diggings.

E.—Diggers Committee.

56. It shall at all times be lawful for the Lieutenant-Governor to make such rules and regulations for the election of a Diggers Committee at any alluvial digging or portion thereof as he may deem fit and to define from time to time as occasion may require the duties powers functions and authorities of such Diggers Committee and to make rules for the guidance of the same.

57. The Lieutenant-Governor may direct that one Diggers Committee shall be elected for one or more alluvial diggings as he may deem advisable and in such manner as he may deem fit.

58. The Lieutenant-Governor may at any time direct that any Diggers Committee shall be abolished or dissolved.

CHAPTER VIII.

COMPOUNDS AND SEARCHING OF NATIVES.

59. No coloured person employed in any mine or digging proclaimed under this Ordinance shall be kept in any compound except under a contract voluntarily entered into by him nor in such case for a longer period than three months but such contract may be renewed from time to time for any period not exceeding three months.

60. No holder of any interest in a mine or alluvial digging shall erect a compound for the accommodation of coloured employes until he shall have given notice of his intention to do so to the Inspector accompanied by plans in duplicate and shall have satisfied the said Inspector that proper sanitary arrangements are made in respect of the said compound.

61. In all contracts to be hereafter made for the hiring of any coloured person employed in or about any mine or digging in this Colony proclaimed under this Ordinance the wages of such person shall be made

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payable in the current coin of the Colony and not otherwise and if in any such contract the whole or part of such wages shall be made payable in any manner other than the current coin aforesaid such contract shall be null and void.

62. If in any contract hereafter to be made between any coloured person as aforesaid and his employer any provision shall be made directly or indirectly respecting the place where or the manner in which or the person or persons with whom the whole or any part of the wages due or to become due to any such coloured person shall be laid out or expended such contract shall be null and void.

Labour contract declared null and void if it contains any clause stipulating where how or with whom any portion of wages shall be expended.

63. The entire amount of the wages earned by and payable to any such coloured person as aforesaid shall be actually paid to him in the current coin of the Colony and every payment made to him by his employer of or in respect of such wages by the delivery to him of goods or otherwise than in the current coin aforesaid shall be null and void.

Payment of wages by the delivery of goods or otherwise than in current coin null and void.

64. Every such coloured person as aforesaid shall be entitled to recover from his employer in any manner by law provided the whole or so much of his wages as shall not have been actually paid to him in the current coin of this Colony; and in any action suit or other proceeding brought by such coloured person the defendant shall not be allowed to make any set off or to claim any reduction of the plaintiff's demand by reason or in respect of any goods wares or merchandise had or received by the plaintiff as or on account of his wages.

When whole or part of wages have not been paid in current coin employé is entitled to recover same by action at law.

65. No employer of any such coloured person as aforesaid shall have or be entitled to maintain any suit or action against such coloured person for or in respect of any goods wares or merchandise sold delivered or supplied on account of wages to such coloured person at any shop kept by or belonging to the said employer or in the profits of which he would have any share or interest.

Employer cannot maintain action against coloured person in respect of any goods supplied on account of wages.

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Employer of coloured persons employed on compounds may only sell necessary goods to them.

66. Where coloured persons employed as aforesaid are located or reside in any buildings or within any compound or place wherein or whereat they may be detained under any restrictions for the prevention of theft of precious stones or otherwise it shall not be competent under any circumstances for the employer of such coloured persons or for any one acting for such employer or under any agreement with him to sell any goods wares or merchandise other than those that shall be reasonably necessary for the use and well-being of such coloured persons during the period they may be detained under such restrictions.

Appointment powers and duties of Inspector of compounds and penalty for obstructing him in execution of the same.

67. (1) So soon as may be after the passing of this Ordinance it shall be lawful for the Lieutenant-Governor to appoint an officer to be styled Inspector of Compounds who shall be charged with the duty and invested with the power of inspecting from time to time all compounds and aiding in the enforcement of the aforesaid provisions. Such officer shall at all reasonable times be admitted into any compound or mine by the owner or person in charge thereof and shall have access to all parts thereof and shall be at liberty to inspect any goods wares or merchandise sold or for sale therein and all books and accounts relating to such goods wares or merchandise and he shall have opportunity for free communication therein with ad or any of the coloured persons therein confined or working.

(2) The said Inspector of Compounds shall be deemed and taken for all legal purposes to have full *locus standi in judicio* and to represent every such person as aforesaid for the purpose of securing the due performance and observance of all duties towards such persons imposed by any law for the regulation of such compounds and for the purpose of protecting generally the rights of such persons.

(3) It shall be lawful for the Lieutenant-Governor from time to time to frame and publish in the *Gazette* regulations defining more particularly the duties and powers of the said Inspector of Compounds and the

time place and manner for the performance of such duties and the exercise of such powers.

(4) Any person obstructing such officer in the discharge of his duty in connection with compounds as aforesaid or refusing or neglecting to allow him to have access or to inspect as aforesaid shall upon conviction before the Resident Magistrate of the district be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding one month unless such fine be sooner paid.

68. It shall be lawful for the Commissioner from time to time to make regulations for the carrying out and enforcing of a proper and efficient system of searching all coloured persons employed in and about a mine or digging; and by such regulations to impose such fines and penalties for the contravention thereof as he may think fit. Such regulations shall after being approved of by the Lieutenant-Governor be published in the *Gazette* and on such publication shall be of full force and effect.

Regulations
for searching
coloured
persons.

CHAPTER IX.

STANDS.

69. In any mining area or alluvial digging proclaimed under this Ordinance the Lieutenant-Governor shall have the right to select without payment as many sites of such size as may be necessary for public buildings sanitary purposes burial grounds and such like purposes; provided that such sites shall not be so situated as to interfere with the proper and efficient working of the mine or to any claims in the digging.

Lieutenant-Governor may select stands for public purposes.

70. It shall be lawful for the Lieutenant-Governor to cause any portion of the mining area or alluvial digging proclaimed under this Ordinance to be surveyed into stands and to cause it to be proclaimed as a stand township. The preferent right to or lease of such stands shall be sold by public auction by the Commissioner and the proceeds of the sale after deduction of the expenses shall be paid to the registered

Proclamation of stand townships in mining areas.

**ORD.
No. 66
of
1903.**

**ORD.
No. 66
of
1903.**

Size of stands.

Provisions of certain laws to apply to stands in stand townships.

Penalty for mining or digging without prospecting license.

By or against whom actions are to be brought.

Discovery of a pipe on an alluvial digging.

owner of the land. The license moneys received in respect of such stands shall be paid to the Colonial Treasurer.

71. The size of such stands as aforesaid and the license money paid in respect thereof shall be such as may be fixed by the Lieutenant-Governor by Proclamation in the *Gazette*.

72. The provisions of Law No. 15 of 1898 or any amendment thereof and the provisions of the Registration of Mining Rights Proclamation 1902 or any amendments thereof and the provisions of the Transfer Duty Proclamation 1902 and of any other law relating to stands in stand townships proclaimed under Law No. 15 of 1898 or any amendment thereof shall apply *mutatis mutandis* to stands in stand townships proclaimed under this Ordinance.

CHAPTER X.

MISCELLANEOUS.

73. Any person prospecting for precious stones without a prospecting license on Crown Land or on private land unless he be the owner thereof shall on conviction be liable to a penalty not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months and any person who may be convicted before a competent Court of contravening any of the regulations framed under the provisions of this Ordinance shall be liable to such penalties as may be by the said regulations prescribed not in any case exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

74. All actions brought by or against a Diggers Committee shall be brought by or against the Chairman of such Committee.

75. (1) When any portion of land proclaimed an alluvial digging is discovered to be a pipe notice of such discovery shall be given by the person making it similar to that required by section *eight* of this Ordinance and on failure to do so he shall be liable to the penalties provided in that section.

**ORD.
No. 66
of
1903.**

(2) It shall be lawful for the Lieutenant-Governor to proclaim a mine at the place where such discovery is made and thereupon the same provisions shall apply as if the said land had not been proclaimed an alluvial digging; provided that a reasonable time shall be allowed to enable any holder of an alluvial claim within the area proclaimed a mine to work out his claim to a depth of ten feet from the surface; and provided further that if such discovery be on private land the discoverer shall be entitled to an undivided fourth part of the share to which the owner may be entitled under this Ordinance.

76. Of the net produce of any mine accruing to the Crown under the provisions of section *thirty* of this Ordinance one half shall be devoted in such manner as may be prescribed by any law or by any regulation lawfully made by the Lieutenant-Governor to the redemption of any loan lawfully raised by the Lieutenant-Governor. The other half shall be used and applied in such manner as the Lieutenant-Governor with the advice and consent of the Legislative Council shall decide.

Application of net produce of any mine accruing to the Crown under this Ordinance.

77. This Ordinance shall apply to every mine and alluvial digging proclaimed after the taking effect thereof whether the discovery of precious stones in the area proclaimed was made before or after such taking effect and may be cited as The Precious Stones Ordinance 1903.

Application of Ordinance and title.

SCHEDULE I.

Form No. 1

Prospecting License.

License is hereby granted to A. B. to search and prospect for precious stones on Crown Lands throughout this Colony under the provisions of the Precious Stones Ordinance 1903 for the period of from to

.....
District Registrar.

NOTE.—Special attention is called to the provisions of sections *four five* and *six* of the aforesaid Ordinance.

**ORD.
No. 66
of
1903.**

Form No. 2.

Claim License.

This is to certify that.....of.....is the registered holder of claim No.situate in the.....alluvial diggings and that the license money for the same has been paid in advance up to the.....

.....
Registrar.

Office of Registrar of Mining Rights

.....190.....

SCHEDULE II.

Form of Declaration.

I..... of.....do solemnly and sincerely declare that the rough and uncut diamonds hereinafter specified were found by me in the ground held in my name under Prospecting License No.during the month of..... 190.....

.....
District Registrar of.....

Specification of Diamonds mentioned in the foregoing Declaration.

No. of Loads of 16 cubic feet.	No. of Stones of 10 carats and upwards.	Weight of any single stone above the value of £100.	Total Weight of Parcel.	Total Value of parcel.

No. 67 of 1903.]

[Assented to 30 July 1903.]

**ORD.
No. 67
of
1903.****ORDINANCE**

To facilitate the carrying out of surveys and other investigations on private land for the purposes of Irrigation and Water Supply.

WHEREAS it is necessary and expedient that surveys and investigations be made in this Colony with a view to the establishment of irrigation works and other works for the supply of water to the inhabitants and to ascertain the hydrographic conditions of the country and that facilities be given for the marking of such surveys and investigations;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. In this Ordinance unless there is something repugnant in the subject or context;

“Director” shall mean the Director of Irrigation and Water Supply and any person employed by him or acting under his written instructions in the exercise of the powers of this Ordinance;

“Survey” shall include all and any of the following acts;

(a) the measurement of the surface of land and water with or without instructions;

(b) inspection of land or water;

(c) measurements of quantities of water;

(d) meteorological and hydrographic observations;

(e) testing the nature of strata;

(f) and generally any operations necessary for the purpose of hydrographic investigations relating to irrigation or water supply.

2. It shall be lawful for the Director for the purpose of making a survey to do all or any of the following acts;

(a) to enter upon any land whether belonging to the Crown or to any private person with such men animals vehicles appliances and instruments as may be necessary;

Interpretation.

Powers of the Director for purpose of making surveys.

**ORD.
No. 67
of
1903.**

- (b) to encamp upon such land and graze thereon all such animals as aforesaid and to take therefrom such fuel and water as may be necessary for their use;
- (c) to examine and take levels of any land or water;
- (d) to search excavate bore or dig or carry out any other works for the survey;
- (e) to erect beacons and other marks for any of the purposes of this Ordinance upon the land so entered upon and to remove the same therefrom;
- (f) to construct any works or appliances upon the land so entered upon;
- (g) to take any steps necessary to determine the levels direction and amount of the flow of water in any river stream reservoir or channel whether on or below the surface of the land so entered upon;
- (h) to take from any such land or adjoining land such material as he may deem necessary for the purposes of the survey;
- (i) to do all other acts as may be reasonably done for the purpose of the survey;

Provided always;

(1) that no person shall enter into any building or enclosed yard attached to a dwelling-house unless with the consent of the occupant thereof;

(2) that the Director shall do as little damage as possible to such land and shall make full compensation for all material used and all damage sustained by the owner or occupier thereof by reason of the exercise of the powers herein conferred the amount of such compensation in case the parties cannot agree being determined in the manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

LIQUOR LICENSING (RAILWAY EMPLOYEES AND AMENDING).

3. Any person who ;

(a) shall wilfully obstruct hinder or prevent the Director in the exercise of any of the powers by this Ordinance conferred ; or

(b) shall injure remove or destroy any appliance beacon excavation or other work which by this Ordinance the Director is empowered to make and erect upon any land entered upon as aforesaid ;

Penalties for obstruction of Director and for injuring works.

**ORD.
No. 67
of
1903.**

shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment thereof to imprisonment with or without hard labour for a period not exceeding three months.

This Ordinance may be cited for all purposes as the Irrigation Survey Ordinance 1903. Title.

No. 68 of 1903.]

[Assented to 30 July 1903.

**ORD.
No. 68
of
1903**

ORDINANCE

To authorise the sale of Malt Liquor to persons employed in railway construction and to further amend in certain respects the "Liquor Licensing Ordinance 1902."

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

1. (1) The Receiver of Revenue for the district in which it is proposed to license the sale of liquor under this section may upon being authorised in writing thereto by the Commissioner of Railways issue a license called a "Railway Employés Liquor License" to any person approved of by such Commissioner under the following conditions ;

Power to Commissioner of Railways to issue "Railway Employés Liquor Licenses" under certain conditions.

(a) such license shall authorise the sale by the holder thereof of ale beer porter cider perry and hop beer only and in quantities not exceeding one reputed quart ;

**ORD.
No. 68
of
1903.**

(b) liquor sold under such license may be consumed on or off the premises in which it is sold;

(c) such license shall authorise a sale only to white male persons of the age of sixteen years and upwards who are employed on the construction of any railway works in this Colony.

(2) There shall be paid in respect of such license to the Revenue Officer issuing it the sum of two pounds for every month or portion thereof for which such license shall be issued.

(3) Such license shall be available for such place for such period and for the sale of the above-mentioned liquors on such days and during such hours as shall be stated on the license.

(4) Any license so granted may at any time be cancelled by the said Commissioner by notice to the licensee. A copy of such notice shall also be sent by the Commissioner to the Receiver of Revenue who issued such license.

(5) Save as otherwise provided in this Ordinance the holder of such license shall for the purpose of the Liquor Licensing Ordinance 1902 and any Ordinance amending the same be deemed to be the holder of a general retail liquor license.

Amendment
of section
nineteen
Liquor
Licensing
Ordinance
1902.

2. The Liquor Licensing Ordinance 1902 shall be and is hereby amended by substituting the words "one quarter" for "one half" and inserting the word "malt" after the word "restaurant" in sub-section (1) of section *nineteen* of the said Ordinance.

Amendment
of section
thirty-two
Liquor
Licensing
Ordinance
1902.

3. Notwithstanding anything contained in sub-section (1) of section *thirty-two* of the Liquor Licensing Ordinance 1902 as amended by the Liquor Licensing Further Amendment Ordinance 1903 it shall be lawful for licensing courts to grant a certificate for a bottle liquor license in addition to any other license which may lawfully be granted for the sale of liquor by retail in any town village or municipality in which there are not more than two hundred and fifty white male inhabitants above the age of sixteen years.

4. This Ordinance may be cited as the Title.
Liquor Licensing (Railway Employées and
Amending) Ordinance 1903 and shall be read
as one with the Liquor Licensing Ordinance
1902 the Liquor Licensing Amendment
Ordinance 1903 and the Liquor Licensing
Further Amendment Ordinance 1903.

**ORD.
No. 68
of
1903.**

No. 69 of 1903.]

[Assented to 9 Dec. 1903

**ORD.
No. 69
of
1903**

ORDINANCE

To further amend the Jury Ordinance 1902.

BE IT ENACTED by the Lieutenant-Governor of the
Transvaal with the advice and consent of the
Legislative Council thereof as follows;

1. Notwithstanding anything in section
seven of the Jury Ordinance 1902 contained
it shall be lawful for the person assigned to
frame the list of Jurors of the Jury District
for the Witwatersrand District for the
period ending the 31st day of December
1904 and any succeeding period to frame
such list in such a manner that it consists
of persons who are qualified to be jurors
and are resident within the limits of the
Municipality of Johannesburg.

Power to
frame jurors'
lists for Wit-
watersrand
District con-
sisting of
persons resi-
dent in
Johannes-
burg only.

2. The list of Jurors of the Jury District
for the Witwatersrand District framed before
the passing of this Ordinance in manner
described by the last preceding section for
the period ending the 31st December 1904
shall be as valid and effectual for all intents
and purposes as if framed after the passing
of this Ordinance.

Validation
of list so
framed be-
fore date
of this
Ordinance.

3. This Ordinance may be cited as the Title.
Jurors (Witwatersrand District) Ordinance
1903 and shall be read as one with the Jury
Ordinance 1902 and any Ordinance amend-
ing the same.

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