

*C. P. Smith*  
*Fraserburg*

*July 1887.*

AFRIKAANSE BIBLIOTHEEK	
1986 -10- 23	
Klasnr:	340
Registernommer:	KAAP 2/1652-1886



STATUTES  
OF THE  
CAPE OF GOOD HOPE,  
1652--1886.

---

EDITED BY

JOSEPH FOSTER, Secretary to the Law Department;  
HERCULES TENNANT, Barrister at Law; and  
E. M. JACKSON, Chief Clerk in the Master's Office.

---

**VOL. II.**

TITLES—"Loans" to "Xanthium Spinosum."

---

PUBLISHED BY AUTHORITY.

---

CAPE TOWN:  
W. A. RICHARDS & SONS, PRINTERS AND PUBLISHERS.  
1887.

## CONTENTS OF VOL. II.

---

Loans—Public—	PAGE
Raising of Public Loans, Act 21, 1878 .....	1437
„ 16, 1881 .....	1438
„ 18, 1883 .....	1442
Conversion of Securities, „ 16, 1886 .....	1444
Sinking Fund, „ 8, 1874 .....	1444
„ 3, 1881 .....	1445
Loans to Local Authorities „ 11, 1882 .....	1446
„ 29, 1885 .....	1450
Public Debt Consolidation, „ 7, 1870 .....	1451
„ 14, 1872 .....	1456
General Loan, „ 14, 1863 .....	1456
„ 8, 1864 .....	1456
„ 11, 1866-67 .....	1458
„ 19, 1867 .....	1461
„ 22, 1868 .....	1461
„ 13, 1871 .....	1462
Griqualand West Debt, „ 40, 1877 .....	1464
„ 24, 1880 .....	1467
East London Harbour, „ 7, 1871 .....	1469
„ 26, 1875 .....	1472
„ 12, 1876 .....	1473
„ 22, 1878 .....	1474
„ 18, 1881 .....	1475
Kowie Harbour, „ 23, 1864 .....	1475
„ 8, 1865 .....	1477
„ 13, 1876 .....	1478
„ 17, 1881 .....	1481
Port Elizabeth Harbour, „ 17, 1862 .....	1482
„ 24, 1864 .....	1483
„ 25, 1875 .....	1483
„ 17, 1878 .....	1485
„ 14, 1879 .....	1486
„ 26, 1883 .....	1487
Table Bay Harbour, „ 9, 1866-67 .....	1487
„ 8, 1872 .....	1489
„ 27, 1879 .....	1492
„ 4, 1880 .....	1493
„ 5, 1880 .....	1494
„ 17, 1882 .....	1494
„ 25, 1883 .....	1495
Immigration, „ 13, 1869 .....	1496
„ 35, 1879 .....	1498
Kei Bridge and Natal Telegraph, Act 6, 1877 .....	1499
Orange River Bridges, Act 26, 1874 .....	1502
„ 21, 1880 .....	1505
Parliament Houses, „ 15, 1879 .....	1506
Railways, „ 15, 1872 .....	1507
„ 13, 1873 .....	1512
„ 19, 1874 .....	1515

Loans—Public—(Continued).		PAGE
Railways,	Act 5, 1876 .....	1519
	„ 8, 1876 .....	1520
	„ 7, 1877 .....	1524
	„ 26, 1878 .....	1525
	„ 34, 1879 .....	1526
	„ 22, 1880 .....	1528
	„ 14, 1881 .....	1530
	„ 20, 1881 .....	1531
	„ 25, 1884 .....	1532
	„ 1, 1885 .....	1533
	„ 1, 1886 .....	1535
Temporary Loan,	„ 23, 1881 .....	1536
	„ 35, 1882 .....	1537
	„ 20, 1883 .....	1537
Telegraphs,	„ 38, 1879 .....	1538
	„ 9, 1880 .....	1540
	„ 19, 1881 .....	1541
War Expenses,	Act 24, 1878 .....	1542
„	„ 1, 1881 .....	1542
Public Works,	„ 8, 1860 .....	1543
	„ 30, 1882 .....	1544
	„ 21, 1883 .....	1546
	„ 17, 1884 .....	1546
	„ 38, 1885 .....	1547
	„ 25, 1886 .....	1548
Clanwilliam Div. Council,	27, 1875 .....	1549
Lotteries,	Plac. May 19, 1789 .....	1551
Lunatics,	Act 20, 1879 .....	1552
Majority Age of,	Ord. 62, 1829 .....	1556
Markets,	Ord. 6, 1837 .....	1557
	„ 20, 1847 .....	1557
Marriage,	O in C 7 Sept. 1838 .....	1560
	„ 20 Feb., 1839 .....	1572
	„ 3 Apl., 1840 .....	1572
	Act 12, 1856 .....	1573
	„ 16, 1860 .....	1576
	„ 9, 1882 .....	1583
Certain Marriages } declared Legal }	Ord. 4, 1848 .....	1585
Antenuptial Contracts,	Act 13, 1857 .....	1590
	„ 21, 1875 .....	1591
Masters and Servants,	„ 15, 1856 .....	1595
	„ 18, 1873 .....	1614
	„ 28, 1874 .....	1623
	„ 7, 1875 .....	1623
	„ 35, 1886 .....	1625
Merchandize Marks,	„ 12, 1864 .....	1627
Merchant Shipping,	„ 13, 1855 .....	1636
	„ 3, 1863 .....	1648
	„ 13, 1874 .....	1649
Light House Dues,	„ 3, 1858 .....	1651
	„ 18, 1861 .....	1652
Military Deserters,	„ 1, 1870 .....	1653
Mines and Minerals—		
Mining Leases, Namaqualand,	Act 12, 1865 .....	1657
Crown Land,	Act 9, 1877 .....	1660
	15, 1883 .....	1662
Alluvial Diggings & Mines,	Act 19, 1883 .....	1662

Mines and Minerals—( <i>Continued</i> ).		PAGE
Alluvial Diggings & Mines, Act 22, 1885 . . . . .		1684
Act 18, 1886 . . . . .		1685
Municipalities—		
(A.) General:		
(Repealed)	„ 45, 1882 . . . . .	1688
(Repealed)	Ord. 9, 1836 . . . . .	1725
	„ 3, 1843 . . . . .	1740
	„ 2, 1844 . . . . .	1740
	„ 8, 1848 . . . . .	1742
	„ 5, 1852 . . . . .	1744
	Act 15, 1860 . . . . .	1746
	„ 13, 1864 . . . . .	1747
	„ 9, 1855 . . . . .	1751
(B.) Special:		
Aliwal North,	„ 18, 1880 . . . . .	1752
Beaufort West,	„ 4, 1866-67 . . . . .	1754
	„ 5, 1869 . . . . .	1760
	„ 20, 1875 . . . . .	1761
	„ 15, 1881 . . . . .	1763
Cape Town,	„ 44, 1882 . . . . .	1765
	„ 28, 1885 . . . . .	1788
	„ 29, 1877 . . . . .	1791
	„ 23, 1882 . . . . .	1793
East London,	„ 23, 1880 . . . . .	1797
	„ 12, 1881 . . . . .	1820
	„ 15, 1882 . . . . .	1823
George Town,	„ 19, 1863 . . . . .	1832
Graaff-Reinet,	„ 16, 1875 . . . . .	1839
	„ 10, 1880 . . . . .	1841
	„ 34, 1886 . . . . .	1858
Graham's Town,	„ 23, 1869 . . . . .	1860
	„ 2, 1871 . . . . .	1875
	„ 12, 1878 . . . . .	1875
	„ 10, 1885 . . . . .	1882
	„ 21, 1886 . . . . .	1884
Sea Point & Green Point,	„ 14, 1859 . . . . .	1885
Hanover,	„ 36, 1877 . . . . .	1907
	„ 42, 1882 . . . . .	1909
Heidelberg,	„ 23, 1876 . . . . .	1911
	„ 35, 1877 . . . . .	1914
Kimberley,	„ 11, 1883 . . . . .	1915
	„ 30, 1884 . . . . .	1940
	„ 10, 1886 . . . . .	1948
	„ 14, 1883 . . . . .	1949
King William's Town,	„ 17, 1869 . . . . .	1951
	„ 21, 1881 . . . . .	1952
Mossel Bay,	„ 7, 1876 . . . . .	1961
	„ 6, 1878 . . . . .	1963
	„ 19, 1882 . . . . .	1965
	„ 7, 1885 . . . . .	1974
Oudtshoorn,	„ 16, 1885 . . . . .	1975
Paarl,	„ 8, 1869 . . . . .	1977
	„ 17, 1879 . . . . .	1979
	„ 6, 1881 . . . . .	1980
Port Elizabeth,	„ 14, 1868 . . . . .	1981
	„ 25, 1873 . . . . .	2000
	„ 8, 1881 . . . . .	2001
	„ 31, 1877 . . . . .	2009

Municipalities—( <i>Continued</i> ).		PAGE
Port Elizabeth,	Act 15, 1886 . . . . .	2017
Queen's Town,	„ 39, 1879 . . . . .	2019
	„ 19, 1885 . . . . .	2040
Stellenbosch,	„ 2, 1882 . . . . .	2044
Swellendam,	„ 13, 1872 . . . . .	2046
Uitenhage,	„ 30, 1877 . . . . .	2048
	„ 12, 1883 . . . . .	2066
	„ 3, 1867 . . . . .	2066
	„ 27, 1874 . . . . .	2078
	„ 14, 1876 . . . . .	2079
Worcester,	„ 23, 1873 . . . . .	2081
	„ 34, 1877 . . . . .	2084
Museum, South African,	„ 17, 1857 . . . . .	2085
Natives—		
Armed Natives entering Colony,	Ord. 2, 1837 . . . . .	2087
Native Children, Introduction of,	Act 22, 1857 . . . . .	2089
Native Emissaries,	„ 26, 1857 . . . . .	2091
	„ 29, 1864 . . . . .	2093
Natives, Estates of,	„ 18, 1864 . . . . .	2093
Native Locations,	„ 40, 1879 . . . . .	2095
	„ 37, 1884 . . . . .	2096
Native Areas, Liquor Licensing	„ 28, 1883 . . . . .	2102
Port Elizabeth Location,	„ 17, 1883 . . . . .	2102
Stockenstrom Locations,	„ 8, 1883 . . . . .	2105
Pass Law,	„ 17, 1864 . . . . .	2107
	„ 22, 1867 . . . . .	2113
Native Territories' Penal Code,	„ 24, 1886 . . . . .	2117
Newspapers,	„ 8, 1859 . . . . .	2176
	„ 29, 1884 . . . . .	2176
Northern Border,	„ 27, 1868 . . . . .	2177
	„ 7, 1874 . . . . .	2182
	„ 29, 1868 . . . . .	2183
	„ 14, 1880 . . . . .	2186
Oaths and Declarations,	Ord. 6, 1845 . . . . .	2186
Ordnance Property,	Act 2, 1858 . . . . .	2189
Ostriches—		
Domesticated,	„ 24, 1875 . . . . .	2190
Export Duty,	„ 24, 1884 . . . . .	2192
Wild Ostriches,	„ 12, 1870 . . . . .	2192
	„ 15, 1875 . . . . .	2195
Theft of Feathers,	„ 32, 1883 . . . . .	2196
	„ 13, 1885 . . . . .	2198
Partnerships' Limited Liability,	„ 24, 1861 . . . . .	2199
Patents,	„ 17, 1860 . . . . .	2202
Police—		
General,	„ 12, 1882 . . . . .	2219
Cape Town,	Ord. 2, 1840 . . . . .	2227
	Act 11, 1860 . . . . .	2235
	„ 31, 1883 . . . . .	2236
Water Police,	„ 13, 1880 . . . . .	2238
Rural Police,	Ord. 25, 1847 . . . . .	2240
	Act 12, 1874 . . . . .	2245
Municipal,	„ 15, 1857 . . . . .	2247
	„ 23, 1885 . . . . .	2251
Divisional,	„ 8, 1873 . . . . .	2252
Police Offences,	„ 27, 1882 . . . . .	2255
	„ 13, 1886 . . . . .	2265

	PAGE
Port Elizabeth Chamber of Commerce, Act 24, 1882 .....	2266
Port Elizabeth Provincial Hospital, ,, 5, 1856 .....	2267
Port Elizabeth Volunteer Drill Hall, ,, 33, 1884 .....	2272
Post Office, ,, 4, 1882 .....	2274
,, 3, 1886 .....	2293
Postal Drafts, ,, 4, 1885 .....	2294
Savings Bank, ,, 6, 1883 .....	2297
,, 4, 1886 .....	2304
Pounds and Trespasses, Ord. 16, 1847 .....	2305
Act 1, 1857 .....	2324
,, 21, 1867 .....	2325
,, 1, 1869 .....	2326
,, 31, 1875 .....	2327
,, 30, 1886 .....	2329
,, 19, 1860 .....	2329
Practitioners,	
A. Legal,	
Charter of Justice §§ 17-24 .....	2330
Act 12, 1858 .....	2332
,, 16, 1873 §§ 19-21 .....	2335
,, 27, 1883 .....	2336
,, 21, 1864 §§ 13-19 .....	2343
,, 3, 1865 § 8 .....	2344
,, 6, 1872 .....	2345
,, 39, 1877 § 21 .....	2346
Ord. 82, 1830 .....	2347
Act 15, 1877 .....	2349
,, 6, 1861 .....	2349
,, 7, 1865 § 106 .....	2353
,, 21, 1879 .....	2353
,, 13, 1880 .....	2354
,, 4, 1883 .....	2357
,, 10, 1884 .....	2375
,, 41, 1885 .....	2377
,, 3, 1883 .....	2378
,, 39, 1885 .....	2384
,, 8, 1884 .....	2396
Ord. 15, 1848 .....	2397
B. Medical,	
Prescription,	
,, 6, 1861 .....	2349
,, 7, 1865 § 106 .....	2353
Prisoners of War,	
,, 21, 1879 .....	2353
,, 13, 1880 .....	2354
Public Health,	
,, 4, 1883 .....	2357
,, 10, 1884 .....	2375
,, 41, 1885 .....	2377
,, 3, 1883 .....	2378
,, 39, 1885 .....	2384
,, 8, 1884 .....	2396
Public Meetings,	
Ord. 15, 1848 .....	2397
Railways—	
1. Regulation of,	
Act 19, 1861 .....	2398
,, 19, 1877 .....	2408
,, 16, 1882 § 2 .....	2408
,, 16, 1883 .....	2409
,, 32, 1886 .....	2413
2. Cape Central,	
,, 5, 1881 .....	2414
,, 31, 1884 .....	2418
3. Graham's Town & Port Alfred,	
,, 3, 1882 .....	2422
4. Green Point and Sea Point,	
,, 11, 1886 .....	2429
5. Imvani and Indwe,	
,, 7, 1879 .....	2430
Reformatory Institutions,	
Resident Magistrates' Courts,	
Ord. 6, 1839 .....	2435
,, 5, 1848 .....	2437
Act 20, 1856 .....	2439
,, 9, 1857 .....	2495
,, 12, 1860 .....	2499
,, 10, 1865 .....	2500
,, 12, 1869 .....	2501
,, 21, 1869 .....	2502
,, 19, 1877 .....	2503
,, 21, 1876 .....	2503



		PAGE
Resident Magistrates' Courts,	Act 16, 1882 .....	2506
	„ 43, 1885 .....	2509
	„ 17, 1886 §§ 12 and 13 ....	2511
	„ 31, 1886 .....	2511
Roads and Bridges—		
1. General,	Ord. 9, 1846 .....	2512
	Act 9, 1858 .....	2532
	„ 23, 1858 .....	2549
	„ 24, 1858 .....	2551
	„ 3, 1859 .....	2552
	„ 11, 1859 .....	2553
	„ 5, 1860 .....	2554
	„ 1, 1863 .....	2557
	„ 13, 1863 .....	2558
	„ 10, 1864 .....	2559
	„ 7, 1869 .....	2568
	„ 3, 1870 .....	2569
	„ 22, 1873 .....	2570
	„ 11, 1877 .....	2580
	„ 37, 1879 .....	2582
	„ 27, 1884 .....	2582
	„ 31, 1885 .....	2585
2. Port Alfred & Komgha Road	Act 30, 1885 .....	2584
3. Locomotives on Roads		2585
4. Main Northern Road,	Act 32, 1868 .....	2587
5. Great Do.	„ 5, 1871 .....	2588
	„ 26, 1884 .....	2589
6. Construction of Bridges,	„ 25, 1864 .....	2589
7. Fish River Bridge,	„ 6, 1867 .....	2595
8. Great Kei River do.,	„ 6, 1877 .....	2599
9. Orange River do.,	„ 15, 1871 .....	2602
	„ 12, 1872 .....	2607
	„ 26, 1874 .....	2608
10. Vaal River do.,	„ 11, 1881 .....	2608
11. Hope Town do.,	„ 12, 1884 .....	2613
Seamen's Clothing,	„ 2, 1870 .....	2615
Sheriff of the Colony,	Ord. 37, 1828 .....	2616
	Charter Justice §§ 25-29 .....	2621
	Ord. 3, 1844 .....	2622
	Act 17, 1886 .....	2623
Stamps and Licences—		
1. General,	Act 3, 1864 .....	2624
	„ 1, 1868 .....	2640
	„ 13, 1870 .....	2640
	„ 17, 1873 .....	2646
	„ 16, 1876 .....	2647
	„ 15, 1877 .....	2648
	„ 20, 1884 .....	2650
2. Bakers,	Ord. 10, 1846 .....	2662
	„ 3, 1838 .....	2664
3. Retail Shops,	„ 11, 1846 .....	2665
4. Hawkers,	Act 10, 1869 .....	2665
	„ 11, 1871 .....	2666
5. Collection of Fees by Stamps,	„ 16, 1877 .....	2666
Sunday Observance,	Ord. 1, 1838 .....	2669
Tacit Hypothecs	Act 5, 1861 .....	2671
Telegraphs—		
	„ 20, 1861 .....	2674

		PAGE
Telegraphs—	Act 5, 1862 .....	2678
	„ 4, 1877 .....	2679
	„ 2, 1879 .....	2680
	„ 8, 1880 .....	2681
	„ 41, 1882 .....	2683
Trade Marks	„ 22, 1877 .....	2684
Tramways—		
Cape Town & Green Point,	Act 33, 1861 .....	2687
	„ 19, 1879 .....	2696
Cape Town City,	„ 24, 1881 .....	2697
Namaqualand,	„ 15, 1865 .....	2706
	„ 24, 1873 .....	2712
	„ 4, 1869 .....	2715
	„ 3, 1871 .....	2722
Port Elizabeth,	„ 30, 1879 .....	2725
Transfer Duty,	„ 5, 1884 .....	2737
Tree Planting,	„ 4, 1876 .....	2757
Turf Club, South African,	„ 20, 1882 .....	2758
	„ 9, 1886 .....	2763
Vagrancy,	„ 23, 1879 .....	2763
Village Management Boards—		
	„ 29, 1881 .....	2768
	„ 28, 1882 .....	2774
	„ 7, 1884 .....	2775
Vineyards, Protection of,	„ 9, 1876 .....	2776
	„ 27, 1880 .....	2778
	„ 9, 1886 .....	2780
Water, Right to Passage of,	„ 26, 1882 .....	2783
Weights and Measures,	„ 11, 1858 .....	2786
	„ 15, 1876 .....	2792
Wills—		
	Proc. 12, July 1882 .....	2795
	Ord. 15, 1845 .....	2796
	Act 22, 1876 .....	2797
	„ 3, 1878 .....	2798
Witnesses—		
Attendance in Neighbouring States,	Act 12, 1886 .....	2798
Expenses in Criminal Cases,	Ord. 59, 1829 .....	2801
	„ 69, 1830 .....	2802
	„ 26, 1847 .....	2803
	Act 7, 1857 .....	2804
Xanthium Spinosum	„ 27, 1864 .....	2805

## LOANS (Public).

1. Act 21—1878, (Raising of Public Loans).	36. Act 27—1879, (Table Bay Harbour).
2. „ 16—1881, do.	37. „ 4—1880, do.
3. „ 18—1883, do.	38. „ 5—1880, do.
4. „ 16—1886, (Conversion of Securities into Stock).	39. „ 17—1882, do.
5. „ 8—1874, (Sinking Fund Act 1864 repealed).	40. „ 25—1883, do.
6. „ 3—1881, (Sinking Fund established under certain Acts).	41. „ 13—1869, (Immigration).
7. „ 11—1882, (Loans to Local Authorities).	42. „ 35—1879, do.
8. „ 29—1885, do.	43. „ 6—1877, (Kei Bridge and Natal Telegraph).
9. „ 7—1870, (Public Debt Consolidated).	44. „ 26—1874, (Orange River Bridges).
10. „ 14—1872, (Act 7, 1870, amended).	45. „ 21—1880, do.
11. „ 14—1863, (Loan for General Purposes).	46. „ 15—1879, (Parliament Houses).
12. „ 8—1864, do.	47. „ 15—1872, (Railways).
13. „ 11—1866-67, do.	48. „ 13—1873, do.
14. „ 19—1867, (Act 11, 1866-67 amended).	49. „ 19—1874, do.
15. „ 22—1868, (Act 19, 1867, explained).	50. „ 5—1876, do.
16. „ 13—1871, (Redemption of Loan under Act 11, 1866-67).	51. „ 8—1876, do.
17. „ 40—1877, (Griqualand West Debt).	52. „ 7—1877, do.
18. „ 24—1880, do.	53. „ 26—1878, do.
19. „ 7—1871, (East London Harbour).	54. „ 34—1879, do.
20. „ 26—1875, do.	55. „ 22—1880, do.
21. „ 12—1876, do.	56. „ 14—1881, do.
22. „ 22—1878, do.	57. „ 20—1881, do.
23. „ 18—1881, do.	58. „ 25—1884, do.
24. „ 23—1864, (Kowie Harbour).	59. „ 1—1885, do.
25. „ 8—1865, do.	60. „ 1—1886, do.
26. „ 13—1876, do.	61. „ 23—1881, (Temporary Loan).
27. „ 17—1881, do.	62. „ 35—1882, do.
28. „ 17—1862, (Port Elizabeth Harbour).	63. „ 20—1883, do.
29. „ 24—1864, do.	64. „ 38—1879, (Telegraphs).
30. „ 25—1875, do.	65. „ 9—1880, do.
31. „ 17—1878, do.	66. „ 19—1881, do.
32. „ 14—1879, do.	67. „ 24—1878, (War Expenses).
33. „ 26—1883, do.	68. „ 1—1881, do.
34. „ 9—1866-67, (Table Bay Harbour).	69. „ 8—1860, (Public Works)
35. „ 8—1872, do.	70. „ 30—1882, do.
	71. „ 21—1883, do.
	72. „ 17—1884, do.
	73. „ 38—1885, do.
	74. „ 25—1886, do.
	75. „ 27—1875, (Clanwilliam Divisional Council Loan).

No. 21—1878.]

[August 2, 1878.]

### ACT

To Facilitate the Raising of Loans through the Crown Agents for the Colony.

WHEREAS it is expedient to prevent certain delays arising from the formalities at present observed in the issue of debentures and other securities for loans for the purposes of the government of this Colony : Be it therefore enacted by the Governor of the Cape

Preamble

a

No. 21—1878.

Governor may empower agents to sign temporary certificates to be issued until the real debentures have been actually signed.

of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

1. Whenever the Governor shall, by any Act of Parliament, be authorized to raise any loans in the United Kingdom of Great Britain and Ireland, for the purposes of the government of this Colony, it shall be lawful for the said Governor, acting by and with the advice of the Executive Council, to empower and appoint the Crown Agents for the Colonies, or other duly accredited agent or agents of this Colony, to sign debentures, bonds, or certificates, to be issued by them to persons taking up such loan, or any part thereof, until the debentures, bonds, or other securities, which are intended to be finally issued in regard to such loan, shall have been actually issued, whereupon the said debentures, bonds, and certificates, signed as aforesaid, shall be withdrawn, and such debentures, bonds, or other securities, shall be substituted for and instead of them; but, until such lastmentioned issue and substitution, the debentures signed as aforesaid shall be as fully and effectually charged on the revenues of this Colony as if the same had been signed by all or any of the executive officers of the Government for the time being by command of the Governor acting as aforesaid.

Debentures may be pledged pending their sale.

2. It shall be lawful for the said Crown Agents or other duly accredited agent or agents of the Colony as aforesaid, when authorized so to do, to pledge and deposit from time to time any debentures or other securities issued in respect of any loan, with any bank, public or joint-stock company, or private individual who may be ready and willing to advance and who shall advance any sum of money on the security of such pledge and deposit, for such period, at such rate of interest, and on such terms and conditions as to the said Crown Agents or other duly accredited agent or agents as aforesaid, shall seem reasonable; and from time to time to redeem any such debentures so pledged and deposited, when and as soon as the sale thereof shall have been effected.

Short title.

3. This Act may be cited as “The Loans Facilitation Act, 1878.”

No. 16—1881.]

[June 25, 1881.

## ACT

To Declare the Terms and Conditions applicable to Loans authorized to be raised by the Government of the Cape of Good Hope, and to provide for the creation of Cape of Good Hope Consolidated Stock.

Preamble.

WHEREAS it is expedient to define in one Act the terms and conditions applicable to all loans hereafter authorized to be raised by the Parliament of the Cape of Good Hope, and whereas it is expedient to provide for the creation of Cape of Good Hope

Consolidated Stock, and to enable this Colony to take advantage of the provisions of an Act of the Imperial Parliament, intituled "The Colonial Stock Act, 1877:"

No. 16—1881.

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. As often as by any Act passed during the present or any future session, authority shall be given to raise any sum of money for the purposes mentioned in such Act, the Governor may from time to time, as he may deem expedient, raise such sum either by debentures or stock issued in this Colony (hereinafter referred to as "Colonial Stock"), or by Cape of Good Hope Consolidated Stock, or partly by debentures, partly by colonial stock, and partly by consolidated stock.

Loans to be raised by debentures or "Colonial Stock," or by "Cape of Good Hope Consolidated Stock."

2. [Repealed by Act No. 18, 1883, § 2.]

3. When the borrowing shall be upon colonial stock, the following provisions shall be observed: (1)

Provisions when borrowing is on Colonial Stock.

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by such purchaser or by his order, of a scrip certificate of the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary and countersigned by the said Treasurer and by the Controller and Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.

2. Such stock shall bear interest at a rate to be specified in the said scrip certificate, and such interest shall be payable half-yearly on the 15th day of April and 15th day of October in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasurer in Cape Town.

3. Such stock shall be transferable by transfer in the books of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.

<sup>1</sup> See Act 18, 1883, § 3.

No. 16—1881.

4. Such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders or any part of any such tenders as circumstances may make expedient.

On Consolidated Stock provisions of Imperial "Colonial Stock Act, 1877," to apply.

4. When borrowing shall be upon consolidated stock, such stock shall be issued in England under the provisions of the Act of the Imperial Parliament, intituled the "Colonial Stock Act, 1877," upon the best and most favourable terms that can be obtained, and on such other conditions, subject to the provisions of this Act, as the Governor, with the advice of the Executive Council, may, before the issue thereof, from time to time determine.

In case of sinking fund one per cent. beyond annual interest of loan to be charged on revenues.

5. In case provision be made for the gradual extinction of any loan to be raised under the authority of any such Act by the terms and conditions upon which such loan shall be raised, there shall be charged and chargeable upon, and set apart out of the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of the principal or capital sum of such loan, and a further sum equal to one pound sterling per centum on such whole amount; and such sums shall be annually charged on and be payable out of the revenues of the Colony so long as any portion of such loan or any interest thereon shall remain unpaid and unextinguished, and no longer. <sup>(1)</sup>

Portion of such fund not required for interest to be applied in extinguishing the debt.

6. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony as shall not be required for the payment of the interest, for the time being, due upon any such loan as is in the last section mentioned, shall be applied in redeeming the loan in such manner and form as shall be provided by the terms and conditions whereon and whereunder the debentures or stock certificates for the same, as the case may be, shall have been issued. <sup>(1)</sup>

Cancellation of redeemed debentures.

7. All debentures or stock certificates which shall be redeemed as aforesaid, shall immediately on the receipt thereof, be cancelled by or on behalf of the said Treasurer, and shall be duly advertised as so cancelled.

Special accounts to be kept, and submitted to Parliament

8. An account showing the amount of all stock and debentures issued from time to time under authority of any Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys or of so much thereof as shall for the time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and

<sup>1</sup> See § 5, Act No. 18, 1883, *infra*.

cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of every session thereof.

No. 16—1881.

9. The Governor, with the advice of the Executive Council, shall have and may exercise the following powers and authorities, or any of them :

Powers and authorities given to the Governor.

- (1) He may from time to time declare all or any of the existing loans of this Colony, whether in the form of debentures or colonial stock, to be convertible into consolidated stock of such denominations and on such conditions as he may before the creation thereof from time to time determine.
- (2) He may authorize the creation and issue of such an amount of consolidated stock in exchange for the securities held for such loans as may be necessary.
- (3) He may authorize the creation and sale of any such consolidated stock for the purpose of raising money for redeeming any outstanding loans, and of paying any expenses in the creation of consolidated stock, and otherwise carrying out the provisions of this Act, on such conditions as he may determine.
- (4) Any conversion so authorized may be effected either by arrangement with the holders of existing securities, or by purchase thereof out of moneys raised by the sale of new consolidated stock, or partly in one way and partly in the other.

Any power by this section conferred on the Governor may be exercised from time to time, and he may alter any conditions as often as occasion shall require, provided that no contract or engagement previously entered into shall be prejudicially affected thereby.

10. Nothing in this Act contained shall authorize an increase of the capital, or of the annual charge on any loan, except that when securities exchanged for consolidated stock bear a higher rate of interest than the consolidated stock an additional amount of consolidated stock may be created and issued to make up the difference in saleable value between the securities and the consolidated stock.

Capital of loan not to be increased.—Exception.

11. All loans raised under the authority of any such Act as is in the first section mentioned, and all existing loans converted into consolidated stock, and interest thereon, and all charges and expenses incurred in carrying out the provisions of this Act, or any agreement made in pursuance thereof, shall be chargeable upon and payable out of the revenue of this Colony.

Loans chargeable on the Colonial revenue.

12. The Governor, with the advice of the Executive Council, may from time to time enter into such agreement with the Crown Agents, or any bank, or any person or persons, as to the Governor may seem fit, providing for all or any of the following things :

What agreements the Governor may enter into in regard to loans.

No. 16—1881.

- (1) For inscribing consolidated stock in the books of such agents, bank, person, or persons.
- (2) For managing the creation, inscription and issue of consolidated stock.
- (3) For effecting the conversion of loans into consolidated stock, and managing transfers thereof.
- (4) For paying interest on consolidated stock.
- (5) For issuing consolidated stock certificates to bearer, and as often as occasion shall require, re-issuing or re-inscribing consolidated stock, and re-issuing consolidated stock certificates.
- (6) For receiving from time to time all moneys raised by or on behalf of the Colony under this Act.
- (7) For paying such money from time to time into such account, or into such bank as may be duly appointed in that behalf.
- (8) For issuing scrip for deposits on loans.
- (9) For paying off capital of loans and generally conducting all business connected with such loans.
- (10) And for the protection and remuneration of such agents, person, or persons, or bank, in respect of any such agreements.

Such agreements as valid as if embodied in this Act.

13. Every agreement made in pursuance of this Act shall be as valid and effectual as if the terms thereof had been herein embodied.

Powers the Governor may exercise.

14. The Governor, with the advice of the Executive Council, shall have and may exercise the powers following :

- (1) He may from time to time appoint an agent or agents in England for the purposes of this Act, and may empower such agent or agents to exercise all or any of the powers by this Act exercisable by the Governor.
- (2) He may at any time remove or accept the resignation of any agent, and appoint another or others.

Short title.

15. The short title of this Act shall be "The Cape of Good Hope General Loans Act, 1881."

No. 18—1883.]

[September 27, 1883.

## ACT

To Amend "The Cape of Good Hope General Loans Act, 1881."

Preamble.

WHEREAS it is expedient to amend "The Cape of Good Hope General Loans Act, 1881," and to make further provision for declaring the terms and conditions applicable to loans authorized to be raised by the Parliament of the Cape of Good Hope: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—



1. So much of the said recited Act or of any other law as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

No. 18—1883.  
Repeal of Enactments.

2. As often as by any Act passed heretofore or hereafter authority shall have been or shall be given to raise any sum of money, and the Governor shall determine to raise such sum or part thereof upon debentures, such debentures may be issued in this Colony, in England, or elsewhere, in sums of one hundred pounds, or any multiple of one hundred pounds, upon the best and most favourable terms obtainable, anything in the second section of the said "Cape of Good Hope General Loans Act, 1881," to the contrary notwithstanding.

Debentures may be issued in multiples of £100 in the Colony or elsewhere.

3. As often as colonial stock shall be put up for public tender under the provisions of the third section of the said recited Act, and the tenders received shall be deemed unsatisfactory, or tenders for a portion only of the amount to be issued shall be accepted, it shall be lawful for the Treasurer of the Colony to issue the whole or part of such stock, or of such portion thereof as may not have been disposed of by public tender, to any persons applying for the same, at the best price obtainable not being less than the highest rate offered by tender, or if no tenders shall have been received, at not less than par.

Disposal of Stock when tenders insufficient.

4. The charges necessarily incurred in raising any loan including discount (if any), commission (if any), and all incidental expenses, shall in future be a first charge against the amount raised : and in the case of a loan raised for any public work, such charges shall be deemed to form part of the cost of such work.

Expenses of raising loan.

5. As often as by the terms and conditions upon which any loan shall have been or shall hereafter be raised provision shall be made for investing such portion of the fund as under the provisions of the fifth and sixth sections of the said recited Act shall be applicable for the redemption of such loan, the Governor shall have and may exercise in addition to the powers by the said Act conferred the powers following :

Powers of Governor in investing Sinking Fund.

- (1) He may appoint two or more persons to invest such fund by purchase of Cape of Good Hope Government debentures or stock of any description.
- (2) He may give directions as to the securities to be purchased, and for the care and safe custody thereof, or for the cancellation of any colonial debentures or stock certificates purchased.
- (3) He may make all necessary provisions and rules for carrying out and giving effect to such terms and conditions.

6. This Act shall be construed as one with "The Cape of Good Hope General Loans Act, 1881," and this Act and the said Act may be cited together as "The Cape of Good Hope General Loans Acts, 1881 and 1883."

Title and construction of Act.

No. 16—1886.]

[June 18, 1886.

## ACT

To Authorize the Conversion into Cape of Good Hope Consolidated Stock, for the redemption of which no Sinking Fund shall be required, of securities for the redemption of which a Sinking Fund is now authorized.

Preamble.

WHEREAS it is expedient to reduce the annual charge of the Public Debt in respect of the Sinking Fund created by certain Acts authorizing the raising of Loans for Public Purposes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Securities issued subject to provision for Sinking Fund may be converted into Consolidated Stock.

1. Notwithstanding anything contained in any Act authorizing the raising of loans for public purposes, whereby it is required that the sum of one pound per centum per annum upon the total amount of such loans shall be set apart out of the annual revenues of the Colony for the gradual extinction of the debt created by such loans, it shall be lawful for the Governor, and he is hereby authorized to initiate and enter into arrangements with the holders of existing securities whereby such securities may be converted into Cape of Good Hope Consolidated Stock for the redemption of which no Sinking Fund shall be required.

No. 8—1874.]

[July 29, 1874.

## ACT

To Repeal the “Sinking Fund Act, 1864,” and the 2nd Section of the Act No. 5 of 1870.

Preamble.

WHEREAS, under and by virtue of the Sinking Fund Act, 1864, and of the second section of the Act No. 5 of 1870, intituled “An Act to amend in certain respects the Act No. 19 of 1864,” intituled “An Act to provide for the Leasing of Crown Lands, and other purposes,” large sums of money have been paid to the “Commissioners for administering the Sinking Fund of the Cape of Good Hope,” a great portion of which they are unable to invest as by law contemplated, and the same remain idle and uninvested in their hands; and whereas “The Public Debt Consolidation Act, 1870,” provides for a Sinking Fund for, and the extinction of, all the Public Debts of this Colony up to the time of the passing of the said Act, and all Acts passed since that time, authorizing the borrowing of money, have in like manner provided for the extinction of such debts, and it has therefore become unnecessary that the provisions of the said first mentioned Acts should continue, and it is advisable that the uninvested moneys and assets of the said commissioners, and the moneys which would otherwise be

payable to them, under and by virtue of the said second section of the said Act No. 5 of 1870, should be paid to the Treasurer-General, to be available for the purpose of carrying on such public works as are already or may be authorized to be carried on, and that the moneys to arise from existing investments made by the said commissioners should be dealt with in like manner: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 8—1874.

1. The said “Sinking Fund Act, 1864,” the second section of the said Act No. 5 of 1870, and so much of any other Act as is repugnant to or inconsistent with the provisions of this Act, are hereby repealed: Provided that such repeal shall not affect any act already done by the said commissioners, or any bonds or securities taken by them, or debentures purchased by them, or any cessions of any such bonds or securities made by them.

Repugnant Acts repealed.

2. All bonds and securities taken by the said commissioners and in their hands, or in the hands of any person or persons on their behalf, at the time of the taking effect of this Act, shall by them be forthwith ceded and handed over to the Treasurer-General of this Colony, who shall stand in the same position with respect to such bonds and securities as the said commissioners did at the time of such cession, and the said Treasurer-General for the time being shall sue for, recover, and receive the moneys due and to become due upon and in respect of such bonds and securities, and shall take all other steps which may be necessary, in and about the same, and all moneys to be received by the said Treasurer-General under or by virtue of any such bonds or securities shall form part of the general revenue of the Colony.

Commissioners of Sinking Fund to hand over all bonds and securities to the Treasurer-General.

3. All moneys and other assets in the hands of the said commissioners, or of any person or persons on their behalf, at the time of the taking effect of this Act, shall be forthwith paid over by them to the Treasurer-General as part of the general revenue of this Colony.

All moneys in hands of Commissioners or other persons to be paid over to Treasurer-General.

4. This Act may for all purposes be cited as the “Sinking Fund Repeal Act, 1874.”

Short title.

No. 3—1881.]

[June 6, 1881.

ACT

To Amend and Add to the Provisions of certain Loan Acts.

WHEREAS certain Acts of Parliament, hereinafter mentioned, do not contain sufficient provisions for the creation of funds for the payment of the interest upon, and the gradual extinction of, the debts raised or to be raised upon debentures under the authority of

Preamble.

No. 3—1881.

such Acts respectively: And whereas it is desirable that such provisions should be made: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Besides interest on loans raised under certain Acts a sum of £1 per cent. on the capital to be annually set aside.

1. In addition to the annual interest charged upon the several sums of money raised or to be raised by debentures under the authority of the following Acts, that is to say:—No. 25 of 1875, No. 26 of 1875, No. 12 of 1876, No. 17 of 1878, No. 22 of 1878, No. 14 of 1879, No. 15 of 1879, No. 34 of 1879, No. 35 of 1879, No. 38 of 1879, and No. 22 of 1880, there shall be charged and chargeable upon, and set apart out of the annual revenues of this Colony, an annual sum equal to one pound sterling per centum upon the total amount of the principal or capital sum which has already been or may hereafter be raised upon debentures under the authority of the said recited Acts respectively, and such sum shall continue to be charged and payable out of the said revenues so long as any portion of the said debt, or any interest thereon, shall remain unpaid and unextinguished, and no longer. <sup>(1)</sup>

Sinking fund so provided to be applied in redemption of debentures.

2. The fund charged and chargeable under the last preceding section shall be applied in redeeming and cancelling such debentures as aforesaid, in such manner and form as shall have been or shall be provided by the terms and conditions whereon and whereunder such debentures shall have been or shall be issued.

Redeemed debentures to be cancelled by treasurer.

3. All debentures which shall be redeemed under the authority of this Act shall, immediately on receipt thereof, be cancelled by or on behalf of the Treasurer of the Colony, and shall be duly advertised as so cancelled.

Short title.

4. This Act may be cited as the “Loans Amendment Act, 1881.”

No. 11—1882.]

[June 14, 1882.

## ACT

## To Provide for granting Loans to Local Authorities for Public Purposes.

Preamble.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation clause.

1. In this Act, save where there is something in the context inconsistent therewith, the following terms shall have the meanings set against them respectively:

“The Treasurer,” the Treasurer-General of the Colony.

“The Commissioner,” the Commissioner of Crown Lands and Public Works.

<sup>1</sup> But see Act 16, 1886, *supra*.

“Local Authority,” any municipality, divisional council, harbour commission or harbour board, water commission, irrigation board, hospital board, or school committee, constituted under the laws in force for the time being for the constitution of municipalities, divisional councils, harbours commissions or harbour boards, water commissions, irrigation boards, hospital boards, or school committees. <sup>(1)</sup>

2. The Governor may, subject to the provisions of this Act and out of such funds as Parliament shall from time to time provide for that purpose, grant loans to any local authority for all or any of the purposes following : For what purposes Governor may grant loans to local authorities.

- (1) The opening and making of new streets and roads, and the diverting, altering or increasing the width of streets and roads.
- (2) The construction, purchase, and establishment of bridges, culverts, ferries, harbour works or jetties.
- (3) The construction, enlargement, and alteration of sewers and drains and works connected with sewerage and drainage, or for sanitary purposes.
- (4) The construction or purchase of waterworks, reservoirs or dams.
- (5) The construction and purchase of works for lighting by gas, electricity or otherwise.
- (6) The construction and purchase of buildings for town halls, municipal offices, divisional council offices, market houses, public schools, or for school purposes.
- (7) For providing baths and washhouses.
- (8) For providing pleasure grounds, botanic gardens, libraries, museums and places of public resort and recreation.
- (9) The construction, establishment, or providing of hospitals, asylums, and other buildings or places for charitable purposes.
- (10) The purchase of land and materials, and making compensation to the owners of any lands or buildings compulsorily taken for any of the foregoing purposes.
- (11) For repaying any loan heretofore raised by any local authority for any purpose herein mentioned. <sup>(2)</sup>

3. Every application for a loan under the provisions of this Act shall be in writing addressed to the Commissioner, and shall distinctly state the purpose and object of the proposed loan. Purpose of loan to be stated.

4. The Commissioner may, upon receipt of any such application, call for such estimates, plans, specifications, reports, returns, and other information, and may cause such inspection to be made as he shall deem necessary for the purpose of determining whether Estimates, plans, &c., may be called for.

<sup>1</sup> See § 1, Act 29, 1885, *infra*

<sup>2</sup> See § 2, Act 29, 1885.

1448 LOANS—PUBLIC (LOCAL AUTHORITIES' LOANS).

No. 11—1882.

the loan applied for is one proper to be granted: and if in any case the local authority shall not have given notice of their intention to apply for the loan, the Commissioner may require such notice to be given as he may deem necessary.

Commissioner may give certificate in favour of loan.

5. The Commissioner shall, if satisfied that the loan applied for is one proper to be granted, issue his certificate to the effect that in his opinion the requisite conditions prescribed by this Act have been complied with, and that no objection exists to the granting of such loan, and may state therein whether the proposed loan should be advanced in one sum or several sums, and the time or times of such payments respectively.

No uncertified application to be submitted to Governor.

6. No application for a loan under this Act shall be submitted to the Governor until the Commissioner shall have enquired into such application and certified as aforesaid.

Loans subject to conditions prescribed by this Act.

7. Every loan advanced to any local authority shall, notwithstanding anything to the contrary contained in any Act or Ordinance under which such local authority is authorized to raise money be subject to the conditions prescribed by this Act, and whenever the word "interest" is used in respect of any loan so authorized to be raised, such word shall be taken to mean and include the half-yearly sums required by this Act, to be paid according to the schedule hereto, as interest upon and in liquidation of such loan.

Loan to be a charge on rates, property, &c.

8. Every loan advanced to any local authority shall, subject to any prior charge or hypothecation, be a charge upon the rates, revenues, and land, of such local authority.

No loan for a greater period than forty years.

9. The term of any loan advanced under the provisions of this Act shall not exceed forty years, and shall at or before the granting thereof be determined by the Governor.

How loans to be redeemed.

10. Every such loan shall be liquidated by payment to the Treasurer by the local authority on the first days of January and July, respectively, in every year of one moiety of the annual payment required to redeem such loan, according to the scale prescribed in the schedule hereto, and such sum shall continue to be payable until all moneys advanced from time to time by the Treasurer, together with the interest accruing thereon, shall be paid: Provided that the term of such loan shall be deemed to begin on such date, not more than five years after the authorization of the same, as the Governor shall prescribe, but interest calculated at five per centum per annum shall be payable on any sum advanced by the Treasurer from the date on which it is advanced.

Appropriation of money paid in redemption of loans.

11. Every moiety of such annual payment shall be placed to the credit of the local authority making the same, and shall be appropriated by the Treasurer in the manner following:

The proportion of interest included in each such payment shall be paid into the public revenue, and the balance to credit of the Loans to Public Bodies' account.

Statement of loans to be published in Government Gazette.

12. The Treasurer shall half-yearly, after the first days of January and July respectively, cause to be published in the

*Government Gazette* a detailed statement of all loans at the time so advanced to and not repaid by all such local authorities under the provisions of this Act.

No. 11—1882.

13. If any local authority, having the power to make, levy, and receive rates or impose dues, shall neglect to pay any moneys required by this Act to be paid for a period of sixty days and upwards after the same shall have become due and payable, the Treasurer may forthwith make and levy a rate or rates of sufficient amount, or collect and receive any dues payable to the local authority, as the case may be, and for that purpose the Treasurer shall have and may exercise all the powers vested in or exercised by the local authority for making, levying, and recovering rates upon all rateable property within the jurisdiction of such local authority, or for collecting and receiving such sums as aforesaid; and if, after payment out of the proceeds of any such rates or dues received of the amount due to the treasury, with interest thereon, and the expenses of and incidental to the making, levying, and recovering or receiving such rates or dues there shall remain any balance, such balance shall be paid over to the local authority.

How payments may be enforced.

14. If any loan shall be advanced under the authority of this Act, to any local authority not having the power to make, levy, and recover rates or impose dues, the following provisions shall apply:

Provisions to apply to cases of loans granted upon security other than that of rates.

- (1) Such loan shall be secured by mortgage bond passed by, or by the authority of, the local authority in favour of the Treasurer before a Registrar of Deeds, upon the security of immovable property vested in such local authority.
- (2) In case such local authority shall neglect to pay any moneys required by this Act to be paid for a period of sixty days and upwards after the same shall have become due and payable, the Treasurer may take possession of the property hypothecated; and may after notice of not less than thirty days, published in the *Government Gazette*, and in some newspaper (if any) circulating in the neighbourhood, of his intention so to do, cause such property to be sold publicly to the highest bidder, upon such terms as to credit or otherwise as he may determine.
- (3) Out of the proceeds realized by the sale of such property there shall in the first place be paid the expenses of and incidental to the taking and holding possession and of the sale thereof, and the balance shall be applied to or towards the sum then due by the local authority to the Colonial Treasury for interest and principal in respect of such loan: And if there be any surplus such surplus shall be paid over to the local authority.
- (4) In case any such property shall be sold as aforesaid, the Treasurer is hereby invested with the power and authority

1450 LOANS—PUBLIC (LOCAL AUTHORITIES' LOANS).

No. 11—1882.

to pass transfer in due and customary form to the purchaser thereof: and shall for such purpose be, and be deemed to be, a trustee for such local authority.

Public Bodies' Debts Act, 1867, to apply.

15. Notwithstanding anything in this Act contained, the local authority shall in respect of any loan advanced under the provisions hereof be subject to the provisions of the "Public Bodies Debts Acts, 1867."

Short title.

16. This Act may be cited for all purposes as "The Local Works Loans Act, 1882."

SCHEDULE.

Table for the Redemption of Loans, showing the annual sum required to repay a Loan of £100, and interest within the following periods:

Years in which Loan Repayable.	Annual Payment.	Years in which Loan Repayable.	Annual Payment.
	£ s. d.		£ s. d.
2 .. ..	53 15 8	22 .. .	7 12 0
3 .. ..	36 14 5	23 .. ..	7 8 4
4 .. ..	28 4 1	24 .. ..	7 5 0
5 .. ..	23 2 0	25 .. ..	7 1 11
6 .. ..	19 14 1	26 .. ..	6 19 2
7 .. ..	17 5 8	27 .. ..	6 16 7
8 .. ..	15 9 6	28 .. ..	6 14 3
9 .. ..	14 1 5	29 .. ..	6 12 1
10 .. .	12 19 0	30 .. ..	6 10 1
11 .. ..	12 0 10	31 .. ..	6 8 4
12 .. ..	11 5 8	32 .. ..	6 6 6
13 .. ..	10 12 11	33 .. ..	6 5 0
14 .. ..	10 2 1	34 .. ..	6 3 6
15 .. ..	9 12 8	35 .. ..	6 2 2
16 .. .	9 4 7	36 .. ..	6 1 0
17 .. ..	8 17 5	37 .. ..	5 19 8
18 .. ..	8 11 1	38 .. ..	5 18 8
19 .. ..	8 5 6	39 .. ..	5 17 6
20 .. ..	8 0 6	40 .. ..	5 16 8
21 .. ..	7 16 0		

No. 29—1885.]

[August 11, 1885.

ACT

To Alter and Extend the Provisions of the "Local Works Loans Act, 1882."

Preamble.

WHEREAS it is expedient to alter and extend the Act No. 11 of 1882, commonly called the "Local Works Loans Acts, 1882," and to authorize and empower the Governor to grant loans out



of moneys provided for the purposes of the said Act to trustees of public cemeteries appointed under the provisions of the "Cemeteries Act, 1883:" Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 29—1885.

1. From and after the passing of this Act the term "local authority" shall, for the purposes of the Local Works Loans Act, 1882, be deemed and taken to include the trustees of any public cemetery duly appointed under the provisions of the "Cemeteries Act, 1883."

"Local authority" includes trustees under "Cemeteries Act, 1883."

2. The Governor may subject to the provisions of the "Local Works Loans Act, 1882," and out of such funds as Parliament shall have provided or shall hereafter provide for the purposes of the said Act, grant loans to such duly appointed trustees for the purpose of the due exercise of the powers and performance of the functions conferred upon such trustees by the "Cemeteries Act, 1883," especially the seventh section thereof; and every loan so granted shall be deemed and taken to be a loan granted under the "Local Works Loans Act, 1882," as though it were a loan granted for all or any of the purposes specified in the second section of the last mentioned Act.

Governor may grant loans to such trustees under Local Works Loans Act.

3. This Act may be cited as the "Local Works Loans Act Amendment Act (Cemeteries), 1885."

Short title.

No. 7—1870.]

[May 5, 1870.

ACT

To Consolidate the Public Debts of the Colony payable in England.

WHEREAS the public debts of this Colony made payable in England amount in all to a sum of one million four hundred and twenty-three thousand four hundred pounds, with interest, whereof divers sums are payable, respectively, at divers times from the thirty-first day of January, one thousand eight hundred and seventy, to the thirty-first day of December, one thousand nine hundred, respectively, as will more fully appear in the statement thereof contained in the schedule hereto: And whereas provision has been already made for the payment of the sum of fifty thousand pounds sterling, due and payable in the course of the year one thousand eight hundred and seventy, and there remains the sum of one million three hundred and seventy-three thousand four hundred pounds, with the interest thereon, to be provided for: And whereas there is good reason to believe that the said debts, other than the said debt of fifty thousand pounds sterling last before mentioned, may be consolidated with advantage to this Colony, and that provision may be made by which the same may be fully consolidated, and by which, at the same time, the yearly

Preamble.

No. 7—1870.

interest thereon may be paid and the debts themselves may be gradually extinguished, so that within a term of thirty-seven years the same may be altogether discharged by means of an annual charge on the revenues of the Colony continued during the said term of thirty-seven years, not exceeding the sum of ninety thousand pounds: And whereas it is expedient that such consolidation should be effected as far as possible: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Agents for conversion of debts.

1. It shall be lawful for the Governor to appoint the Agents-General for the time being for the Crown Colonies in England, or such other person or persons as to him shall seem fit, as agents for the conversion of the said debts.

Funds for effecting conversion may be raised upon debentures.

2. It shall be lawful, for the purposes of such conversion, for the Governor, through such agent or agents, to raise and take up upon debentures, subject to such terms and conditions as shall seem best calculated to effect such conversion on the best terms for the Colony, such sum or sums of money as may be necessary to effect the same: Provided that the annual charge to be thereby imposed on the public revenues of the Colony for the purposes of paying the interest and providing for the extinction of the entire of the debt thereby created shall not at any time exceed such sum as, together with the interest due on the said public debts intended to be consolidated, and for the time being remaining unconverted and unconsolidated, shall amount to a sum of ninety thousand pounds sterling yearly: And provided, also, that the terms on which such debentures shall be issued by the Governor as aforesaid shall provide for the complete extinction of the entire debt thereby created within the term of thirty-seven years, by means of such annual charge as aforesaid on the revenues of the Colony; after which period such annual charge shall cease and determine, unless Parliament shall otherwise direct.

Annual charge on public revenue not to exceed £90,000.

Extinction of debt to be provided for.

Powers of Governor in regard to repayment of loan, terms of debentures, &c.

3. The Governor shall, through such agent or agents as aforesaid, and subject to the conditions in the last foregoing section mentioned, have full power to prescribe the mode and conditions of repayment of the loan to be taken up on such debentures as are hereby authorized, and the terms and conditions of such debentures, and the time and place of such repayment, and the rate of interest thereon, and the time and place for payment of such interest.

Moneys borrowed under this Act chargeable on colonial revenue.

4. All sums of money borrowed under the authority of this Act, and the debentures upon which the same shall be raised respectively, shall be charged and chargeable on the revenues of this Colony.

5. [Repealed by Act No. 14—1872.]

Fund for payment of interest and for extinction of debt.

6. As a fund for the payment of such interest and for the gradual extinction of the debt to be raised under authority of this Act, there shall be charged and chargeable upon, and set apart

out of, the annual revenues of this Colony an annual sum equal to the interest on the whole amount of such debentures as shall be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act; and such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act, or any interest thereon, shall remain unpaid and unextinguished; and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

7. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, or for the necessary expenses of such consolidation and conversion as aforesaid, shall be applied in redeeming and cancelling the debentures to be raised under authority of this Act, in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued respectively.

8. All moneys to be raised under the authority of this Act shall be accounted for in a separate account, and shall be applied towards the conversion and consolidation, redemption, payment, and discharge of the said several public debts of this Colony proposed to be consolidated, and to no other purpose; but it shall be lawful thereout to pay the necessary charges of effecting such conversion, consolidation, redemption, payment, and discharge.

9. The Governor may, through such agent or agents as aforesaid, accept in payment for the debentures to be issued under the authority of this Act any debentures of the Government of this Colony specified in the schedule hereto, at such rates and on such terms as may be fixed by the Governor through such agent or agents as aforesaid; and all such rates and terms shall be notified by public advertisement in the *London Gazette* and in the *Government Gazette* of this Colony.

10. All the powers which under this Act may be exercised by the Governor through such agent or agents as aforesaid may be also exercised, wholly or in part, by any person or persons to whom such powers shall have been, wholly or in part, delegated by such agent or agents as aforesaid, subject to the conditions of such delegation imposed thereon by the person so delegating such powers.

11. All such debentures of the Government of this Colony which shall be redeemed, or purchased, or converted under the authority of this Act, or by means of the moneys raised thereunder, and which are chargeable on the general revenues only of this Colony, shall immediately on the receipt thereof be cancelled by such agent or agents as aforesaid, and shall by him or them as soon as may be thereafter be transmitted to the Treasurer-General of the Colony.

No. 7—1870.

Debentures charge-  
able on other funds  
to be ceded to Treas-  
urer-General when  
redeemed.

12. All such debentures of the Government of this Colony which shall be redeemed, or purchased, or converted under the authority of this Act, or by means of the moneys raised thereunder, which are chargeable on any funds other than and in addition to the general revenue of this Colony shall be ceded by the holder thereof to the Treasurer-General of this Colony, and shall as soon as may be after the receipt thereof by such agent or agents as aforesaid, be transmitted to such Treasurer-General, to be by him held on account of the general revenue of this Colony, as a security against such funds other than such general revenue.

Accounts to be laid  
before Parliament.

13. A full account of all the moneys from time to time raised under the provisions of this Act, and of the application thereof, and of all debentures redeemed, or purchased, or converted by means thereof, shall be from time to time laid on the table of both Houses of Parliament at the commencement of each session thereof, or so soon thereafter as the same shall be prepared.

Short title.

14. This Act may be cited for all purposes as "The Public Debt Consolidation Act, 1870."

---

*(For Schedule see next page.)*

SCHEDULE.

Number and date of Act.	Purpose of Loan.	Rate of Interest.	Amount of Debt.	When redeemable.
No. 4 of 1852 .. ..	Kowie Harbour Improvement .. ..	6 per cent.	£12,500	October, 1876.
„ 22 „ 1859 .. ..	Immigration .. ..	do.	50,000	January, 1870.
„ 6 „ 1860 .. ..	Table Bay Improvement .. ..	do.	100,000	October, 1880.
„ 6 „ 1860 .. ..	Do. do. .. ..	do.	100,000	October, 1890.
„ 7 „ 1860 .. ..	Mossel Bay Improvement .. ..	do.	6,500	October, 1875.
„ 8 „ 1860 .. ..	General .. ..	do.	150,000	January, 1891.
„ 9 „ 1860 .. ..	Immigration .. ..	do.	25,000	June, 1881.
„ 26 „ 1861 .. ..	General .. ..	do.	200,000	December, 1873.
„ 17 „ 1862 .. ..	Port Elizabeth Improvement .. ..	do.	29,500	October, 1892.
„ 14 „ 1863 .. ..	General .. ..	do.	150,000	April, 1891.
„ 18 „ 1863 .. ..	Kowie Improvement .. ..	do.	24,000	October, 1884.
„ 22 „ 1863 .. ..	Mossel Bay Improvement .. ..	do.	1,500	October, 1875.
„ 8 „ 1864 .. ..	General .. ..	5 per cent.	255,400	December, 1900.
„ 23 „ 1864 .. ..	Kowie Harbour Improvement .. ..	6 per cent.	20,000	December, 1900.
„ 24 „ 1864 .. ..	Port Elizabeth Improvement .. ..	do.	29,000	October, 1894.
„ 8 „ 1865 .. ..	Kowie Harbour Improvement .. ..	do.	20,000	December, 1900.
„ 9 „ 1866-'7 .. ..	Table Bay Improvement .. ..	do.	50,000	October, 1900.
„ 11 „ 1866-'7 .. ..	General .. ..	do.	200,000	October, 1900.
			£1,423,400	

62

LOANS—PUBLIC (DEBT CONSOLIDATION). 1455

No. 7—1870.

No. 14—1872.]

[July 31, 1872.

## ACT

To Amend "The Public Debt Consolidation Act, 1870."

Preamble.

WHEREAS it may be expedient to alter the rate of interest to be payable on such debentures as may be issued under the authority of "The Public Debt Consolidation Act, 1870:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Section 5 of "The Public Debt Consolidation Act, 1870," repealed.

1. The fifth section of "The Public Debt Consolidation Act, 1870," is hereby repealed, and the second section of this Act hereby substituted in lieu thereof, and the said Act shall be read and construed as if the second section hereof were therein inserted instead of the said fifth section.

Rate of interest.

2. Interest after any rate not exceeding five pounds sterling per centum per annum shall be payable on such debentures as may be issued under the authority of the aforesaid "Public Debt Consolidation Act," and shall be charged and chargeable on the revenues of this Colony as in the said last-mentioned Act is provided.

No. 14—1863.]

[July 28, 1863.

## ACT

To Authorize the Raising of a Loan of One Hundred and Fifty Thousand Pounds.

Preamble.

WHEREAS it is necessary to authorize a loan for the public service of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Amount of loan and terms thereof.

1. It shall be lawful for the Governor to borrow and take up, by debentures bearing interest at the rate of six per cent. per annum, to be issued in England, upon the best and most favourable terms that can be obtained, any sum or sums of money not exceeding in the whole the sum of one hundred and fifty thousand pounds.

To be a charge on the general revenue.

2. All sums so borrowed under the authority of this Act shall, together with interest to accrue thereon, be charged upon and made payable out of the general revenue of this Colony.

No. 8—1864.]

[July 26, 1864.

## AN ACT

To Authorize the Raising upon Loan of a Sum not exceeding £234,000.

Preamble.

WHEREAS it is necessary to take up upon debentures the sum of two hundred and thirty-four thousand pounds, for the purpose

of meeting the several liabilities and requirements in the schedule to this Act set forth: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 8—1864.

1. It shall be lawful for the Governor to issue or cause to be issued, in England, through the Crown Agents for the Colonies, debentures for securing the payment of any sum or sums not exceeding in the whole the sum of two hundred and thirty-four thousand pounds sterling.

Loan to be raised in England.

2. Each such debenture shall specify the rate of interest to be payable thereon, being a rate not exceeding five per cent. per annum, and that such interest shall be payable half-yearly, at the office of the Crown Agents aforesaid, in London, and that the principal of such debentures shall be payable at the said office on the thirty-first day of December which will be in the year of our Lord one thousand nine hundred.

Rate of interest and dates of payment of principal and interest specified

3. All sums borrowed under the authority of this Act, together with the interest to accrue due thereon, are hereby charged upon and made payable out of the public revenue of this Colony, and more especially out of the Sinking Fund created by the "Sinking Fund Act, 1864," and shall be paid off, from and out of the said Sinking Fund and the said revenue, according to the tenor of the debentures aforesaid to be issued for securing the payment of such sums and such interest.

To be charged on public revenue and on "sinking fund."

4. An account, showing the amount of all moneys borrowed under this Act, and the expenditure thereof, or of so much thereof as shall have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next ensuing session thereof.

Accounts to be laid before Parliament.

5. This Act may be cited for all purposes as "The Loan Act, 1864."

Short title.

SCHEDULE.

For the liquidation of debentures issued under the Acts No. 8 and No. 10 of 1857 and No. 16 and No. 21 of 1858, and falling due in January, 1865 .. ..	£118,800
For the payment of sums borrowed from time to time by the Government .. .. .	115,200
	£234,000

No. 11—1866-67.]

[Jan. 12, 1867.

## ACT

For Raising Two Hundred Thousand Pounds by Debentures, for paying off Unsecured Debt, and other purposes.

Preamble.

WHEREAS, from accidental circumstances, the revenue of the Colony fell considerably short of the authorized expenditure during the years 1865 and 1866: And whereas it became necessary for the Government to obtain temporary loans from the Guardian's Fund, as well as from certain persons and co-partnerships, as will be more fully shown in the annexed schedules; and it is expedient that the sum of two hundred thousand pounds should be raised by debentures, as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £200,000 on debentures authorized.

1. It shall and may be lawful for the Governor to raise and take up upon debentures such sum or sums of money as from time to time shall seem to him fit and necessary for the exigencies of the public service, not exceeding in the whole the sum of two hundred thousand pounds; and the Governor shall, out of the first moneys to be so taken up or raised, cause to be paid the sum of one hundred and ninety-seven thousand seven hundred and seven pounds, portion of the sum of two hundred and forty-eight thousand pounds appearing in the second schedule hereunto annexed, already obtained by him on loan as aforesaid.

Previous temporary loans to be paid off out of proceeds.

Mode of issuing debentures.

2. Such debentures shall be issued for sums not exceeding five hundred pounds, nor less than one hundred pounds each, and shall bear date the 15th of April, 1867, and shall be signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the Treasurer-General and Auditor-General of the Colony, and shall bear interest at the rate of six pounds per cent. per annum until the 15th of October, 1900.

Rate of interest.

Debentures when and where payable.

3. Such debentures shall be payable at par, at the office of the Crown Agents for the Colonies, London, on the 15th October, 1900, and after that date shall cease to bear interest.

Interest payable out of current revenue.

4. The Governor shall from time to time, out of the current revenue of the Colony, pay the interest upon the said debentures, and may also out of such current revenue from time to time buy up and cancel such debentures.

Power to buy up and cancel debentures.

Interest when and where payable.

5. Interest shall be payable on the said debentures at the office of the Crown Agents for the Colonies aforesaid on the 15th October, next succeeding the issue thereof, and thereafter on the 15th of April and the 15th of October in each year, until the 15th of October, 1900, or until such debentures respectively shall be redeemed and cancelled as aforesaid.



6. All such debentures shall be transferable by delivery without indorsement, and payment of principal or interest due upon any such debenture to any person presenting the same shall be a good discharge for such principal or interest, respectively, to the Government, who shall not be bound to make any inquiry as to the title of such person to the debenture so presented.

No. 11—1866-'67.  
Transfer of debentures.

7. All such debentures shall be put up for public tender in London, and may be disposed of for the best terms, not being less than par, which can be thus obtained. If more tenders than one, offering the same terms, shall be received for a greater amount of such debentures than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

Disposal of debentures.

8. The capital sum and interest of the said debentures, payable as hereinbefore is provided, shall be charged and chargeable on and payable out of the general revenue of this Colony.

Principal and interest to form charge on public revenue

9. An account showing the amount of all such debentures issued under the authority of this Act, and the moneys realized thereby and the expenditure thereof, or of so much as shall have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session which shall have been held after the notice of the issue of such debentures.

Accounts to be submitted to Parliament.

FIRST SCHEDULE.

		1865.			
REVENUE.				EXPENDITURE.	
£519,044				£614,741	
		Deficiency ..		£95,692	
		1866.			
REVENUE.				EXPENDITURE.	
Quarter ending—					
31st March ..	£119,809	} Actual.		£153,183	} Actual.
30th June ..	127,534			145,888	
30th September	140,003			159,290	
31st December	133,300			164,300	
				£622,661	
		Deficiency ..		£102,015	
Deficiency, 1865 ..		..		£95,692	
,, 1866 ..		..		102,015	
				£197,707	

Exclusive of Tulbagh Kloof Railway Expenditure, £49,083 7s. 5d. defrayed out of the Loans of £248,000, but not yet authorized.

No. 11—1866-'67.

## SECOND SCHEDULE. (1)

TEMPORARY LOANS ON 30TH NOVEMBER, 1866.

*Cape of Good Hope Bank.*

	£10,000		
	30,000		
	10,000		
	15,000		
	10,000		
	15,000		
Kaffrarian Loan ..	5,000	..	..
	—————		
			£95,000

*Port Elizabeth Bank.*

	£10,000		
	7,000		
	2,000		
	2,000		
	—————	..	..
			21,000

*Colonial Bank.*

Loan taken over from Port Elizabeth Bank			10,000
--	--	--	--------

*Guardian's Fund.*

	£6,000		
	4,000		
	5,000		
	5,000		
	5,000		
	5,000		
	5,000		
	5,000		
	7,000		
	12,000		
	6,000		
	6,000		
	4,000		
	10,000		
	6,000		
	5,000		
	4,000		
	6,000		
	4,000		
	5,000		
	—————	..	..
			£115,000

*Harbour Board.*

Balance of Loan .. .. .			7,000
			—————
			£248,000

<sup>1</sup> See Acts 19, 1867, and 22, 1868, *infra*.

No. 19—1867.] [August 16, 1867.

ACT

To Amend Act No. 11 of 1866-67. <sup>(1)</sup>

WHEREAS by an Act, numbered 11 of 1866-67, entitled “An Act for raising £200,000 by Debentures for paying off Unsecured Debt, and other purposes,” it was among other matters provided that certain moneys to be raised under the provisions of the same Act should be appropriated to paying off the sum of £197,707 therein mentioned: And whereas a portion of the said sum of £197,707 was due and payable to the Master of the Supreme Court, as custodian of the Guardian’s Fund: And whereas it has since been found necessary to raise, by means of temporary loans, further sums of money for the public service of the Colony, and it is therefore expedient that the provision of the said Act which directs the appropriation of a portion of the said £197,707 towards payment of the sum due to the said Master of the Supreme Court should be repealed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

So much of the said Act as provides for the appropriation of a portion of the said sum of £197,707 towards the payment of the debt so due as aforesaid to the Master of the Supreme Court shall be and the same is hereby repealed, and it shall be lawful to allocate such portion of the said moneys so appropriated by the said Act as aforesaid towards the liquidation and discharge of the temporary loans so incurred and due as aforesaid to persons or bodies corporate other than the said Master: Provided, however, that the debt due to the Master of the Supreme Court shall be paid off and discharged so soon as the finances of the Colony shall allow.

Provision in Act 11 of 1866-67, for repayment of debt due to Guardian’s Fund out of loan raised, repealed.

No. 22—1868.] [Sept. 2, 1868.

ACT

To Remove Doubts as to the intent of the Act No. 19 of 1867.

WHEREAS doubts have arisen in respect to the true meaning and intent of the Act No. 19 of the year 1867, entitled “Act to amend Act No. 11 of 1866-67,” and it is expedient to remove the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

Nothing in the said Act No. 19 of the year 1867 contained shall be construed to diminish or impair the rights possessed before the passing of the Act No. 11 of the year 1866-67, by the Master of

Rights of Master to demand repayment of loans to Colonial Government not affected.

<sup>1</sup> See Act 22, 1868, *infra*.

No. 22—1868.

the Supreme Court of demanding the repayment, at any time and at all times, when required, of any sums that may have been advanced by the said Master on loan to the Colonial Government, out of the moneys entrusted to him as custodian of the Guardian's Fund.

No. 13—1871.]

[August 11, 1871.

## ACT

To Empower the Governor to Raise the Sum of Fifty Thousand Pounds Sterling for the purpose of redeeming a like Sum raised by means of Debentures, under authority of the Act No. 12 of 1866-67.

Preamble.

WHEREAS a sum of fifty thousand pounds sterling was, under authority of Act No. 12 of 1866-67, raised by means of debentures charged on the revenues of this Colony, bearing interest at the rate of six pounds sterling per cent. and redeemable on the first day of January, 1872; and whereas it is expedient that the same should be redeemed, and that a sum of fifty thousand pounds sterling should be raised or taken up by the Governor, as hereinafter is provided, for the purpose of redeeming the said debentures: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £50,000 upon stock or perpetual annuities authorized.

1. It shall and may be lawful for the Governor to raise and take up upon stock or perpetual annuities such sum of money not exceeding in the whole the sum of fifty thousand pounds sterling, to be applied in redeeming the said debentures issued under the authority of the said Act No. 12 of 1866-67.

Mode of issuing stock.

2. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be opened for that purpose by the Treasurer-General of this Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer by such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the said Treasurer and by the Auditor of the Colony, and which scrip certificate shall be preserved in the office of the said Treasurer.

Rate of interest, and when and where payable.

3. Such stock shall bear interest after the rate of five pounds sterling per centum of the nominal amount of such stock, from the first day of January or the first day of July next, before the issue of the said scrip certificate, which shall last happen, and such interest shall be payable thereafter half-yearly, on the first day of July and the first day of January in each year; the first of such payments to be made on the half-yearly day which shall happen

next after the opening of such credit in the books of the Treasurer-General as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder, or his duly authorized attorney, at the office of the Treasury in Cape Town.

4. All such interest shall be charged and chargeable on, and payable out of the general revenue of the Colony. Interest charged on general revenue.

5. Such stock shall be transferable by transfer in the books of the Treasurer-General, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer-General a receipt or certificate stating the amount of such stock standing to his credit in such books. Transfer of stock.

6. There shall be paid into the Treasury upon every transfer in the said books of any sums of such stock a sum of two shillings and six pence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion : Provided that instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable; and no transfer shall be actually made in such books as aforesaid, unless and until such sum as shall be payable as aforesaid shall be paid. Fee payable on transfer.

7. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient. Disposal of stock.

8. The Governor shall from time to time, out of the current revenue of the Colony, pay the interest upon the said stock, and may also, out of such current revenue, or any moneys to be appropriated for that purpose, from time to time, buy up and cancel any part of such stock. Power to pay interest and buy up stock out of current revenue.

9. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended so far as shall be necessary in redeeming the said debentures issued under the authority of the said Act No. 12 of 1866-67. Moneys realized to be carried to separate account, and how applied.

10. An account showing the amount of all such stock issued under authority of this Act, and the moneys realized by the issue and sale thereof, and the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof; and an account of the Accounts to be laid before Parliament.

o. 13—1871.      amount of the same stock for the time being outstanding, and of all such sums thereof, as shall from time to time be bought in and cancelled, if any, shall also be laid before Parliament in each succeeding session thereof.

No. 40 of 1877.]

[Aug. 1, 1879.

ACT

To Empower the Governor to Raise a Sum of not exceeding One Hundred and Seventy-Five Thousand Pounds for the purpose of liquidating certain Liabilities of the Province of Griqualand West.

Preamble.

WHEREAS in case of the annexation of the Province of Griqualand West to this Colony, it is advisable that the Governor should be empowered to raise a sum of not exceeding one hundred and seventy-five thousand pounds, in order to pay off certain liabilities of the Government of the said Province, as in the schedule hereto annexed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor to raise £175,000 debentures or stock.

1. It shall be lawful for the Governor to raise and take up upon the security of the public revenue of this Colony, either by debentures or stock, or partly by debentures and partly by stock, such sum or sums of money not exceeding in the whole the sum of one hundred and seventy-five thousand pounds sterling, as shall, from time to time seem to him fit and necessary, for the purpose of liquidating the debts and liabilities in the preamble of this Act mentioned.

Provisions to be observed in borrowing on debentures.

2. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed:

Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Provisions to be observed in borrowing on stock.

3. In so far as the said borrowing shall be upon stock the following provisions shall be observed:

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed,

such certificate being signed by the Colonial Secretary and countersigned by the said Treasurer and by the Controller and Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.

2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum on the nominal amount of such stock, from the 15th day of April, or the 15th day of October next preceding the issue of the said scrip certificate which shall last happen, and such interest shall be payable thereafter half-yearly on the 15th day of April, and the 15th day of October in each year; the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter, as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasurer in Cape Town.
3. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time buy up and cancel such stock or any part thereof.
4. Such stock shall be transferable by transfer in the books of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.
5. There shall be paid into the Treasury upon every transfer in the said books of any sum of such stock a sum of two shillings and sixpence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that instead of any fractional part of a penny which would, under this provision, be payable, a full sum of one penny shall be payable; and no transfer shall be actually made in such books as aforesaid, unless and until such sum as shall be payable as aforesaid shall be paid.
6. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be

No. 40—1877.

received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders or any part of any such tenders as circumstances may make expedient.

7. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended, so far as shall be necessary, for the purposes mentioned in the preamble of this Act.

Fund for payment of interest and gradual extinction of debt.

4. As a fund for the payment of the interest upon, and for the gradual extinction of the debt to be raised upon debentures under authority of this Act, there shall be charged and chargeable upon, and set apart out of the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of such debentures as shall from time to time be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall from time to time be raised upon debentures under the authority of this Act; and such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act upon debentures or any interest thereon shall remain unpaid and unextinguished, and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine. <sup>(1)</sup>

Fund not used in payment of interest to be applied in redeeming debentures

5. Such portion of the fund which shall, under the last foregoing section, be charged and chargeable annually on the revenues of this Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, shall be applied in redeeming and cancelling such debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Redeemed debentures to be cancelled

6. All debentures which shall be redeemed under the authority of this Act shall, immediately on the receipt thereof, be cancelled by or on behalf of such Treasurer, and shall be duly advertised as so cancelled.

Guardian fund may be used in purchasing stock or debentures.

7. Notwithstanding anything herein contained, it shall be lawful for the Governor to dispose of to the Master of the Supreme Court, in his capacity of administrator of the Guardian's Fund, and the said Master is hereby authorized to invest any unemployed moneys belonging to such fund in so much of any such stock and so many of any such debentures as he may apply for, on such terms as may be mutually agreed upon, provided that every such investment shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Accounts to be laid annually before Parliament.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the

<sup>1</sup> See Act 16, 1886, *supra*.



moneys realized by the issue and sale thereof, and of the application of all such moneys or of so much thereof as shall for the time being have been applied, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled (if any) vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

No. 40—1877.

9. This Act may be cited as the Griqualand West Loan Act, 1877, and shall commence and take effect from and after the annexation of the said Province of Griqualand West to this Colony, and not sooner; and so soon as this Act shall take effect the said Ordinance of Griqualand West No. 1, 1877, shall stand repealed.

Short title.

SCHEDULE.

Schedule.

To be paid to the Government of the Orange Free State for final settlement of all disputes as to the boundaries of the Province of Griqualand West, a sum not exceeding .. .. .	£90,000	0	0
To be paid to H. M. Government for the cost of removal of troops, 1875, a sum not exceeding	20,000	0	0
Miscellaneous purposes, including cost of raising this loan .. .. .	15,000	0	0
To be paid to bank, for overdrafts, about .. ..	20,000	0	0
To be paid to the Government of the Cape of Good Hope for advances, about .. .. .	30,000	0	0
Total ..	£175,000	0	0

No. 24—1880.]

[July 30, 1880.

ACT

To empower the Governor to Raise a Sum of not exceeding One Hundred and Thirty-three Thousand Three Hundred and Seventy-six Pounds Sterling for the purpose of Liquidating certain Liabilities of the Province of Griqualand West.

WHEREAS the Province of Griqualand West is about to be annexed to this Colony, and whereas it is expedient that the Governor should be empowered to raise a sum of not exceeding one hundred and thirty-three thousand three hundred and seventy-six pounds sterling, in addition to and over and above the moneys he is empowered to raise under and by virtue of Act No. 40 of 1877, in order to pay off certain liabilities of the Government of the said Province, as in the schedule hereto annexed: Be it

Preamble.

No. 24—1880.

enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Power to raise on stock or debentures, £133,376.

1. It shall be lawful for the Governor to raise and take up upon the security of the public revenue of this Colony, either by debentures or stock, or partly by debentures and partly by stock, such sum or sums of money not exceeding in the whole the sum of one hundred and thirty-three thousand three hundred and seventy-six pounds sterling, in addition to and over and above the moneys he is empowered to raise under Act No. 40 of 1877, as shall from time to time seem to him fit and necessary, for the purpose of liquidating the debts and liabilities in the preamble of this Act mentioned.

In case Free State before 13th July, 1881, establish a certain railway, further sum of £15,000 to be raised in aid thereof.

2. In case the Government of the Orange Free State shall, on or before the 13th day of July, 1881, establish a line of railway to connect with the Natal railway, or with any line of railway made or constructed, or to be made or constructed within this Colony, it shall be lawful for the said Governor to raise and take up in manner provided by the first section of this Act, a further sum of fifteen thousand pounds sterling, which sum shall be paid to the said Government of the Orange Free State, in aid of the expenditure incurred by that State in making or constructing within the territory of the said State the line of railway so connecting with the Natal railway, or any line of railway within this Colony as aforesaid.

3. [§§ 3-9 are identical with §§ 2-8 of Act 40, 1877, *supra*.]

Short title.  
When Act to take effect.

10. This Act may be cited as “The Griqualand West Loan Act, 1880,” and shall commence and take effect from and after the annexation of the said Province of Griqualand West to this Colony, and not sooner; and so soon as this Act shall take effect the Ordinance of Griqualand West No. 1, 1877, shall stand repealed.

SCHEDULE.

1. To be paid to local savings banks, a sum not exceeding .. .. .	£10,390	0	0
2. To be paid to Standard Bank for over-drafts, a sum not exceeding .. .. .	50,246	0	0
3. To be paid to Crown Agents, a sum not exceeding .. .. .	16,673	0	0
4. To be paid to the Government of the Cape of Good Hope:			
For balance of account .. .. .	£8,567	0	0
For post office money			
orders cashed .. .. .	7,000	0	0
For ocean postage .. .. .	500	0	0
		16,067	0
5. Settlement of the claim of the London and South African Exploration Company .. .. .	40,000	0	0
Total .. .. .	133,376	0	0

No. 7—1871.]

[August 11, 1871.

ACT

To Provide for Raising a Sum of One Hundred Thousand Pounds Sterling, to improve the Harbour of East London, and for Levying Wharfage Dues at the said Harbour.

WHEREAS it is expedient that the harbour of East London should be improved and rendered more commodious and secure for shipping, and it is estimated that a sum of one hundred thousand pounds sterling will be required to effect such works as will be necessary for that purpose: And whereas it is expedient that the said sum of one hundred thousand pounds sterling should be raised in such manner as is hereinafter described, but so that out of the entire sum of one hundred thousand pounds sterling so to be raised not more than fifteen thousand pounds sterling shall be raised in any one period of twelve months: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise and take up, upon the security of the public revenue of this Colony, and upon stock <sup>(1)</sup> or perpetual annuities, such sum or sums of money as from time to time shall seem to him fit and necessary for the purposes aforesaid, not exceeding in the whole the sum of one hundred thousand pounds sterling for the harbour of East London. <sup>(2)</sup>

Loan of £100,000 upon stock or perpetual annuities authorized.

2. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be opened for that purpose by the Treasurer-General of this Colony, such credit to be given, in the first instance, upon production and delivery to the said Treasurer by such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the said Treasurer-General and by the Auditor-General of the Colony, which scrip certificate shall be preserved in the office of the said Treasurer.

Mode of issuing stock.

3. Such stock shall bear interest after the rate of five pounds <sup>(3)</sup> sterling per centum of the nominal amount of such stock from the first day of January, or the first day of July next, before the issue of the said scrip certificates respectively, which shall last happen, and such interest shall be payable thereafter half-yearly, on the first day of July and the first day of January in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of

Rate of interest, and when and where payable.

<sup>1</sup> See § 2, Act 26, 1875.

<sup>2</sup> Printed as amended by Act No. 26, 1875.

<sup>3</sup> But see § 4, Act 26, 1875.

- No. 7—1871.      the Treasurer-General as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasurer in Cape Town.
- Interest charged on general revenue.      4. All such interest shall be charged and chargeable on and payable out of the general revenue of the Colony.
- Transfer of stock.      5. Such stock shall be transferable by transfer in the books of the Treasurer-General, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer-General a receipt or certificate stating the amount of such stock standing to his credit in such books.
- Fee payable on transfer.      6. There shall be payable upon every transfer in the said books of any such stock a sum of two shillings and sixpence upon every hundred pounds of such stock to be transferred in such books and on every other sum so transferred in the like proportion: Provided that, instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable and no transfer shall be actually made in such books unless and until such sum as shall be payable as aforesaid shall have been paid.
- Disposal of stock.      7. All such stock shall be put up for public tender from time to time, at such times and in such amounts as may seem fit, so that however, not more than a sufficient sum thereof to raise the sum of fifteen thousand pounds sterling shall be issued within any one period of twelve months, and may be disposed of for the best terms which can be thus obtained; if more tenders than one, offering the same terms, shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of such tenders, as circumstances may make expedient.
- Power to pay interest and buy up stock out of current revenue.      8. The Governor shall, from time to time, out of current revenue of the Colony, pay the interest upon the said stock; and may also, out of such current revenue, from time to time, buy up and cancel any part of such stock.
- Moneys realized to be carried to separate account, and how applied.      9. The moneys realized from time to time by the issue of such stock, shall be carried to a separate account, and shall be expended so far as may be necessary in the prosecution of the harbour works before mentioned, and not otherwise.
- Accounts to be laid before Parliament.      10. An account showing the amount of all such stock as may, from time to time, be issued under the authority of this Act, and of the moneys from time to time realized thereby, and the expenditure thereof, or of so much thereof, as shall have been expended for the time being, vouched by the Auditor-General of the Colony shall be laid before both Houses of Parliament within fourteen days after the commencement of each such session of Parliament

as shall have been held next after the notice of the issue of any such stock shall be published, and an account of the amount of the same stock for the time being outstanding, and of all such sums thereof as shall have from time to time been bought in and cancelled, if any, shall also be laid before Parliament in each succeeding session thereof.

No 7—1871.

11. And whereas for the purpose of reimbursing to the Govern-  
ment, wholly or in part, the interest upon the moneys to be expended under this Act at the harbour of East London, it is expedient that wharfage dues shall be levied at the said harbour, be it enacted as follows: There shall be levied and paid to the principal officer of Customs East London, upon all goods, articles, matters and things landed or shipped at or in the harbour of East London, and not by the schedule to this Act exempted from the payment of wharfage dues, the several dues of wharfage set forth in the tariff constituting the schedule to this Act.

Wharfage dues to be levied.

SCHEDULE No. 1.

Upon all wool shipped or landed at East London harbour there shall be payable and be paid sixpence for and upon every one hundred pounds of the weight thereof.

Upon all goods, articles, matters, or things, except wool, shipped or landed at the said harbour, dues shall be payable and be paid at and after the rate of ten shillings for every one hundred pounds of the value thereof.

EXEMPTIONS.

1. All public stores, naval and military baggage, and personal baggage of passengers.
2. Ships' stores outwards.
3. All goods shipped upon which dues had been paid on importations under this Act.
4. [Repealed by § 3 Act No. 22, 1878.]

SCHEDULE No. 2.

I, A. B., do hereby declare that I am cognizant of the value of the following articles about to be shipped by me (or by C.D., according to the fact) on board the —, in East London harbour, namely (here describe the articles, with marks and numbers, if any); and I do further declare that the said articles are of the value of —.

(Signed) A. B.

The above declaration under the Act No. —,  
was made and subscribed this — day  
of —, 187—, in the presence of —

C. D.

(\* \* \* When the articles are landed or about to be landed, the above form will be altered according to the facts.)

No. 26—1875.]

[June 30, 1875.

## ACT

To Amend the Act No. 7 of 1871, intituled “An Act for Raising a Sum of One Hundred Thousand Pounds Sterling to Improve the Harbour of East London, and for Levying Wharfage Dues at the said Harbour.”<sup>(1)</sup>

Preamble.

WHEREAS by the Act No. 7 of 1871, intituled “An Act to provide for raising a Sum of One Hundred Thousand Pounds Sterling to Improve the Harbour of East London, and for levying Wharfage Dues at the said Harbour,” power is given to raise and take up upon stock or perpetual annuities, bearing interest after the rate of five pounds per centum per annum on the said sum, but not more than fifteen thousand pounds thereof in any one period of twelve months; and whereas it is expedient that the yearly limit aforesaid should be removed, that the rate of interest should be reduced, that the said money should be able to be raised upon debentures as well as upon stock, and that the said Act should in other respects be amended: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 7 of 1871 amended.

1. So much of the said Act No. 7 of 1871 as provides that not more than fifteen thousand pounds on the whole shall be raised during any one period of twelve months is hereby repealed.

Governor may raise £100,000.

2. It shall be lawful for the Governor to raise the said sum of one hundred thousand pounds, not only by stock as in the said Act mentioned, but partly by stock and partly by debentures, or wholly by debentures.

Provisions to be observed, if borrowed on debentures.

3. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed; such debentures shall be issued in this Colony, or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue thereon shall be charged upon and made payable out of the general revenue of this Colony.

Rate of interest.

4. The interest to be paid upon any stock which may be hereafter issued under the said Act, shall be after the rate of four pounds ten shillings per centum per annum, instead of five pounds per centum per annum as in the said Act mentioned.

Ninth and tenth sections of Act 7 of 1871, to apply to debentures under this Act.

5. The ninth and tenth sections of the said Act shall, *mutatis mutandis*, apply to debentures to be issued as aforesaid in like manner as if such debentures had been mentioned in the said sections as well as stock.

<sup>1</sup> See Act No. 3, 1881, *supra*.

6. The person by whom any goods, articles, matters, or things chargeable with dues of wharfage at East London, shall be or be about to be landed or shipped at or in the harbour of East London, or his known agent, shall be bound to state to the principal officer of Customs at East London, who shall be entitled to demand and receive the dues payable thereon, the value thereof; and if it shall appear to the said officer that the same are not valued according to the actual value thereof, the said officer may require the person who shall have landed or shipped, or be about to land or ship, any goods, articles, matters, or things, to make and subscribe a declaration, which declaration shall be in substance in the form in the second schedule to the said Act set forth; and the value stated in such declaration shall be the value upon which dues shall be paid: Provided that it shall be lawful for such officer, as often as it shall be made to appear to him that the value of any goods, articles, matters, or things, landed at East London cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfage, but in every such case such officer shall take a bond or obligation for the payment of such wharfage, at or before such time as shall in that behalf be specified in such bond or obligation.

No. 26—1875.  
How value of goods, &c., to be ascertained

7. Any person who shall wilfully and corruptly make and subscribe any such declaration as aforesaid, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall upon conviction thereof, be liable to such punishment as shall be by law provided for the crime of perjury.

Punishment for false declaration.

No. 12—1876.]

[July 4, 1876.

ACT

To make further provision for the purpose of Improving the Harbour of East London. (1)

WHEREAS by the Act No. 7 of 1871, as amended by the Act No. 26 of 1875, the Governor was authorized to raise and take up, upon the security of the public revenue of this Colony, a sum of not exceeding one hundred thousand pounds, for the purpose of improving the harbour of East London, and rendering the same more commodious and secure for shipping; and whereas it is expedient that the Governor should be authorized to raise and take up, upon the same terms and conditions as the said sum of one hundred thousand pounds was authorized to be raised, a further sum of one hundred thousand pounds for the purpose aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

<sup>1</sup> See Act No. 3, 1881, *supra*.

No. 12—1876. Further loan of £100,000 authorized.

1. It shall be lawful for the Governor to raise and take up, upon the security of the public revenue of this Colony, such further sum or sums of money, not exceeding in the whole the sum of one hundred thousand pounds, as may from time to time be necessary, for the purpose of completing the said harbour works at East London, and rendering the said harbour more commodious and secure for shipping; and all the provisions contained in the said Act No. 7 of 1871, as amended by the said Act No. 26 of 1875, with respect to the said sum of one hundred thousand pounds so authorized to be borrowed as aforesaid, shall apply to the said additional sum of one hundred thousand pounds, as if the whole sum of two hundred thousand pounds had been by the said Acts authorized to be borrowed.

Short title. 2. This Act may be cited for all purposes as “The East London Harbour Loan Act, 1876,” and the said Acts No. 7 of 1871, and No. 26 of 1875, respectively, as “The East London Harbour Act, 1871,” and “The East London Harbour Amendment Act, 1875.”

No. 22—1878.]

[August 2, 1878.

### ACT

To Authorize the Raising of a further Sum of £100,000 Sterling to Improve the Harbour of East London, and to levy additional Wharfage Dues at the said Harbour. (1)

Preamble.

WHEREAS by the Act No. 12 of 1876, power is given to the Governor to raise and take up on the terms in the said Act mentioned a sum of one hundred thousand pounds for the purposes in such Act, and in the Act No. 7 of 1871 therein referred to set forth, and to levy wharfage dues at the said harbour: And whereas such sum of £100,000 is inadequate and insufficient to carry out the aforesaid purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Governor may raise further loan of £100,000. Purposes of this loan.

1. It shall be lawful for the Governor to raise a further sum of £100,000 from time to time, as occasion may require, by stock or debentures, or partly by stock and partly by debentures, for the purposes set forth in the said Acts No. 7 of 1871, and No. 12 of 1876 and for the purpose of the further improvement of the harbour of East London and the works connected therewith.

<sup>1</sup> See Act No. 3, 1881, *supra*.



2. The third, fourth, and fifth sections of Act No. 26 of 1875, shall be taken and deemed to apply to all sums borrowed under the authority hereby given.

3. Paragraph 4 of the exemptions contained in schedule No. 1 of Act No. 7 of 1871 is hereby repealed.

4. This Act may be cited as the "East London Harbour Loan Act, 1878."

No. 22—1878.

Third, fourth, and fifth sections of Act 26 of 1875 to apply to this loan.

Paragraph 4 of Schedule 1 of Act 7 of 1871 repealed.  
Short title.

No. 18—1881.]

[June 25, 1881.]

ACT

To Authorize the Raising of a further Sum of One Hundred Thousand Pounds Sterling to Improve the Harbour of East London. (<sup>1</sup>)

WHEREAS by the Act No. 22 of 1878, power is given to the Governor to raise and take up on the terms in the said Act mentioned, the sum of one hundred thousand pounds (£100,000), for the purposes in that Act referred to and set forth: and whereas such sum of one hundred thousand pounds (£100,000) is inadequate and insufficient to carry out the aforesaid purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise a further sum of one hundred thousand pounds (£100,000) from time to time as occasion may require, for the purposes set forth in the said Act No. 22 of 1878, and for the purpose of the further improvement of the harbour of East London and the works connected therewith.

Power to raise £100,000.

2. This Act may be cited as the "East London Harbour Loan Act, 1881."

Short title.

No. 23—1864.]

[July 26, 1864.]

AN ACT

To make further Provision towards Completing the Improvement of the Kowie Harbour.

WHEREAS by the Act No. 18, 1863, entitled "An Act for making further provision to complete the Improvement of the Kowie Harbour," authority was given to the Governor to raise a certain sum of money to be lent to the directors of the Kowie Harbour Improvement Company, to enable them to continue the works at the said harbour for the period in that behalf in the said Act specified: And whereas it is expedient to provide means for enabling the

Preamble.

<sup>1</sup> Further sums raised by Acts 21 of 1883, 17 of 1884, 38 of 1885, and 25 of 1886, *infra*.

No. 23—1864.

said directors to discharge certain liabilities of the said company, and to continue the said works, and for that purpose to authorize the Governor to raise a loan of twenty thousand pounds upon the credit of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £20,000 authorized upon debentures.

1. It shall be lawful for the Governor to borrow and take up, in England, upon debentures to be issued through the Crown Agents for the Colonies, bearing interest at a rate not exceeding six per cent. per annum, the sum of twenty thousand pounds sterling; which debentures shall be and the same are hereby charged upon the public revenue of the Colony.

Principal and interest of debentures payable in London.

2. The interest upon all such debentures shall be payable in London half-yearly at the office of the Crown Agents for the Colonies, and the principal of all such debentures shall be payable at the said office on the thirty-first day of December which will be in the year of our Lord one thousand nine hundred, and the debentures so to be issued as aforesaid shall, amongst other things, stipulate for such payments to be so made.

Loan to be paid over to the Kowie Harbour Improvement Company.

3. It shall be lawful for the Governor to pay to the directors of the said company the sum of twenty thousand pounds so to be borrowed as aforesaid, and such sum shall by such company be applied to or towards the objects specified in the preamble of this Act.

Loan to form second charge upon the fund and assets of the Kowie Harbour Improvement Company.

4. The sum of twenty thousand pounds to be raised as aforesaid by the Government of this Colony for the purpose of the harbour works aforesaid, with the interest upon the same, shall be and the same is hereby charged, in favour of the said Government, upon the dues of wharfage and crannage levied and to be levied at the said harbour, and upon the proceeds of the sales of all lands vested in the said directors for the purpose of the said works, and upon all other the assets of the said company, such sum of twenty thousand pounds, with the interest thereupon, to be a second charge upon the said funds and assets, and to rank thereon next after the sum of twenty-four thousand pounds borrowed and taken up under and by virtue of the Act aforesaid, No. 18, 1863.

Accounts of receipts and expenditure to be laid before Parliament.

5. An account showing the amount of all moneys received under this Act by the directors of the company aforesaid, and the expenditure thereof, or of so much thereof as shall have been expended, vouched by the said directors, shall be laid before both Houses of Parliament at the next ensuing session thereof.

Short title.

6. This Act may be cited for all purposes as "The Kowie Harbour Loan Act, 1864."

No. 8—1865.]

[Oct. 10, 1865.

## ACT

To Make Provision for Completing the Improvement of  
Kowie Harbour.

WHEREAS by the Act No. 23 of 1864, entitled “An Act for making further provision towards completing the Improvement of the Kowie Harbour,” authority was given to the Governor to raise a certain sum of money to be lent to the directors of the Kowie Harbour Improvement Company, to enable them to discharge certain liabilities of the said company, and to continue the works at the said harbour, for the period in that behalf in the said Act specified: And whereas it is expedient to provide means for enabling the said directors to complete the said works, and for that purpose to authorize the Governor to raise a loan of twenty thousand pounds upon the credit of this Colony, which amount the directors have represented will, without any further grant from the public revenue, be sufficient for the final completion of the said works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to borrow and take up, in England, upon debentures to be issued through the Crown Agents for the Colonies, bearing interest at a rate not exceeding six per cent. per annum, the sum of twenty thousand pounds sterling; which debentures shall be and the same are hereby charged upon the public revenue of the Colony.

Loan of £20,000 to be raised.

2. The interest upon all such debentures shall be payable in London half-yearly, at the office of the Crown Agents for the Colonies, and the principal of all such debentures shall be payable at the said office on the thirty-first day of December, which will be in the year of our Lord one thousand nine hundred; and the debentures so to be issued as aforesaid shall, amongst other things, stipulate for such payments to be so made.

Principal and interest of debentures payable in London.

3. It shall be lawful for the Governor to pay to the directors of the said company the sum of twenty thousand pounds, so to be borrowed as aforesaid, and such sum shall by such company be applied to the final completion of the improvement of the Kowie Harbour.

Loan to be paid over to directors of Kowie Harbour Improvement Company

4. The sum of twenty thousand pounds, to be raised as aforesaid by the Government of this Colony, for the purpose of the harbour works aforesaid, with the interest upon the same, shall be and the same is hereby charged, in favour of the said Government, upon the dues of wharfage and crannage levied and to be levied at the said harbour, and upon the proceeds of the sales of all lands vested in the said directors for the purpose of the said works, and

Loan to form third charge on funds and assets of company.

No. 8—1865.

upon all other the assets of the said company ; such sum of twenty thousand pounds, with the interest thereupon, to be a third charge upon the said funds and assets, and to rank thereon next after the sum of twenty-four thousand pounds borrowed and taken up under and by virtue of the Act No. 18, 1863, and the sum of twenty thousand pounds borrowed and taken up under and by virtue of the Act aforesaid No. 23, 1864.

Accounts of receipts and expenditure to be laid before Parliament.

5. An account showing the amount of all moneys received under this Act by the directors of the company aforesaid, and the expenditure thereof, or of so much thereof, as shall have been expended, vouched by the said directors, shall be laid before both Houses of Parliament at the next ensuing session thereof.

Short title.

6. This Act may be cited for all purposes as “The Kowie Harbour Loan Act, 1865.”

No. 13—1876.]

[July 4, 1876.

## ACT

To provide for the Repayment of certain Sums advanced by the Colonial Government for and in respect of the Kowie Harbour Works, and to make further provision for the purpose of Improving the said Harbour.

Preamble.

WHEREAS by the seventh section of the Act No. 16 of 1869, intituled “An Act for the Dissolution of the Kowie Harbour Improvement Company,” the Governor was authorized to take up and borrow, upon the credit of the general revenue of this Colony, such sum or sums as should be necessary for the purposes in the schedule to the said Act specified, not exceeding in the whole the sum of forty thousand pounds : And whereas the money necessary for the said purposes, amounting to the sum of forty thousand four hundred and four pounds six shillings, has been advanced out of the general revenue of the Colony, and the said borrowing powers have not yet been exercised : And whereas other sums of money, amounting in the whole to the sum of forty-five thousand three hundred and sixty-four pounds fifteen shillings and two pence, have been advanced out of the said general revenue for the purpose of carrying on the harbour works at the Kowie, and a further sum is required for the purpose of completing the said works, and it is expedient that in order to repay the said sums so advanced as aforesaid, and also to provide a further sum in order to complete the said works, the Governor should be empowered to raise, as hereinafter mentioned, a sum of not exceeding one hundred and fifty thousand pounds : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Section 7, Act 16 of 1869, repealed.

1. The seventh section of the said Act No. 16 of 1869 is hereby repealed.

2. It shall be lawful for the Governor to raise and take up, upon the security of the public revenue of this Colony, either by debentures or stock, or partly by debentures and partly by stock, such sum or sums of money, not exceeding in the whole the sum of one hundred and fifty thousand pounds sterling, as shall from time to time seem to him fit and necessary for the purposes aforesaid.

No. 13—1876.  
Loan of £150,000  
authorized.

3. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed :—Such debentures shall be issued in this Colony, or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Provisions if borrowing upon debentures.

4. In so far as the said borrowing shall be upon stock, the following provisions shall be observed :

Provisions if borrowing upon stock.

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by such purchaser or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary and countersigned by the said Treasurer and by the Controller and Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.
2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum on the nominal amount of such stock, from the fifteenth day of April, or the fifteenth day of October next preceding the issue of the said scrip certificate which shall last happen, and such interest shall be payable thereafter half-yearly, on the fifteenth day of April and the fifteenth day of October in each year; the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit, in the books of the said Treasurer as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder, or his duly authorized attorney, at the office of the Treasurer in Cape Town.
3. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony,

No. 13—1876.

and the Governor shall from time to time pay such interest, and may also, out of such revenue or any moneys to be appropriated for that purpose, from time to time buy up and cancel such stock or any part thereof.

4. Such stock shall be transferable by transfer in the books, of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.
5. There shall be paid into the Treasury upon every transfer in the said books of any sums of such stock, a sum of two shillings and sixpence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable; and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.
6. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders or any part of such tenders, as circumstances may make expedient.
7. The moneys realized for the issue and sale of such stock shall be carried to a separate account, and shall be expended so far as shall be necessary for the purposes mentioned in the preamble of this Act.
5. As a fund for the payment of the interest upon, and for the gradual extinction of the debt to be raised upon debentures under authority of this Act, there shall be charged and chargeable upon and set apart out of, the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of such debentures as shall from time to time be issued under authority of this Act; and a further sum equal to one pound sterling per annum on the total amount of the principal or capital sum shall from time to time be raised upon debentures under the authority of this Act: And such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act upon debentures or any interest thereon shall remain unpaid and unextinguished,

Formation of fund  
for payment of in-  
terest and extinction  
of loan.

and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

No. 13—1876.

6. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony, as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, shall be applied in redeeming and cancelling such debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Portion of fund not required for payment of interest to be applied in redeeming debentures.

7. All debentures which shall be redeemed under the authority of this Act shall, immediately on the receipt thereof, be cancelled by or on behalf of the said Treasurer, and shall be duly advertised as so cancelled.

Redeemed debentures to be cancelled by Treasurer and advertised.

8. All moneys raised under authority of this Act shall be carried to a separate account, and shall be expended so far as may be necessary for the purposes in the preamble to this Act mentioned and not otherwise.

Separate account to be kept. Moneys to be expended only for purposes mentioned in preamble.

9. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be brought in and cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Accounts to be submitted annually to Parliament.

10. This Act may for all purposes be cited as "The Kowie Harbour Loan Act, 1876."

Short title.

No. 17—1881.]

[June 25, 1881.

ACT

To Authorize the Raising of a Further Sum of Forty Thousand Pounds sterling to Improve the Kowie Harbour (1).

WHEREAS by the Act No. 13 of 1876, power is given to the Governor to raise and take up on the terms in the said Act mentioned, the sum of £150,000, for the purposes in the said Act referred to and set forth: And whereas such sum of £150,000 is inadequate and insufficient to carry out the said purposes so far as relates to the completion of the harbour works in the said Act

Preamble.

<sup>1</sup> Further sums raised by Acts 21 of 1883, and 17 of 1884, *infra*.

1482 LOANS—PUBLIC (PORT ELIZABETH HARBOUR).

- No. 17—1881. mentioned: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—
- Power to raise £40,000. 1. It shall be lawful for the Governor to raise a further sum of forty thousand pounds (£40,000) from time to time as occasion may require, for the purpose of further carrying on and improving the harbour works at the Kowie and the works connected therewith.
- Short title. 2. This Act may be cited as the “Kowie Harbour Loan Act, 1881.”

No. 17—1862.]

[August 7, 1862.

AN ACT

To extend certain Provisions of the Act No. 10 of 1858, entitled “An Act for Enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues.”

- Preamble. WHEREAS by the Act No. 10 of 1858, entitled “An Act for Enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues,” power and authority were granted to the harbour board of Port Elizabeth to effect certain loans, not exceeding twenty thousand five hundred pounds in the whole, with the sanction of the Governor and upon security of the general revenue, for the purpose of constructing such works in or at Algoa Bay as the said board shall judge fit to be constructed: And whereas it is necessary and expedient that the said board should be authorized to effect certain additional loans not exceeding twenty-nine thousand five hundred pounds for the purpose of completing the works now in progress under and by virtue of the provisions of the Act No 10 of 1858 aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Harbour Board authorized to raise an additional loan of £29,500 subject to the provisions of Act 10, 1858. 1. It shall be lawful for the said board to borrow and take up from time to time upon interest such further sum or sums of money, not exceeding twenty-nine thousand five hundred pounds in the whole, as may be necessary for completing the works now constructing under, by virtue of, and subject to the provisions of the Act No. 10 of 1858 aforesaid; and all the provisions contained in the said Act with regard to the money thereby authorized to be borrowed shall apply to the said additional loans in the same manner as if the whole sum of fifty thousand pounds had been by the said Act authorized to be borrowed.
- Short title. 2. This Act may be cited for all purposes as the “Port Elizabeth Harbour Wharfage Amendment Act.”



No. 24—1864.]

[July 26, 1864.

AN ACT

For Making further Provision to complete the Improvement of the Harbour of Algoa Bay.

WHEREAS by the Acts No. 10 of 1858 and 17 of 1862, the Harbour Board of Port Elizabeth was empowered to borrow and take up sums of money, amounting in all to fifty thousand pounds, with the sanction of the Governor and upon the security of the general revenue, for the purpose of constructing such works in or at Algoa Bay as the said board should judge fit : And whereas it is expedient that the said board should be authorized to raise in a similar manner, upon the security of the wharfage dues and other property belonging to the said board, and upon the further security of the general revenue of the Colony, a further sum of twenty-nine thousand pounds, which it is expected will be sufficient to complete the works already commenced and in progress under charge of the said board : Be it enacted by the Governor of the Cape of Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be lawful for the said board to borrow and take up from time to time upon interest such further sum or sums of money, not exceeding twenty-nine thousand pounds in the whole, as may be necessary for completing the works now constructing under, by virtue of, and subject to the provisions of the Act No. 10 of 1858 aforesaid ; and all the provisions contained in the said Act with regard to the money thereby authorized to be borrowed shall apply to the said additional loans in the same manner as if the whole sum of seventy-nine thousand pounds had been by the said Act authorized to be borrowed.

Additional loan of £29,000 authorized.

Provisions of Act No. 10 of 1858 to apply to this loan.

2. This Act may be cited for all purposes as the “Algoa Bay Harbour Amendment Act, 1864.”

Short Title.

No. 25—1875.]

[June 30, 1875.

ACT

To enable the Harbour Board of Port Elizabeth to Raise a further Loan of £100,000, and to provide for the Payment of the Interest thereof. (1)

WHEREAS it is desirable that certain works, as recommended by Sir John Coode, for improving the harbour of Port Elizabeth, namely, the construction of the outer jetty, and the retaining bank in connection therewith on the south side of the breakwater should

Preamble.

<sup>1</sup> See Act 3, 1881, *supra*.

No. 25—1875.

be proceeded with, and to that end that the board of commissioners for the time being for the said harbour should be empowered to raise on loan such further sums of money as may from time to time be necessary for prosecuting the said works to completion, not exceeding in the whole the sum of one hundred thousand pounds sterling, under the guarantee of the general revenue of this Colony; and whereas it is expedient that provision should be made for raising by means of increased wharfage dues as hereinafter mentioned sums sufficient annually to keep down the interest on all sums of money for the time being due and owing by the said commissioners, as well as for the payment of the costs of managing and keeping in repair the said works and for completing the works now in progress; and whereas the Act No. 14 of 1867, intituled “Act to enable the Harbour Board of Port Elizabeth to raise a further Loan of Forty Thousand Pounds, and to provide for keeping down the Interest thereof,” has not been acted upon, and it is advisable to repeal the said Act. Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act 14 of 1867 repealed.

Further sum of £100,000 may be borrowed to complete harbour works.

Extent to which Act No. 10 of 1858 is to apply.

Dues which may be levied.

1. The said Act No. 14 of 1867 is hereby repealed.
2. It shall be lawful for the said board to borrow and take up from time to time upon interest, with the sanction of the Governor, and under the guarantee of the general revenue of this Colony, such sum or sums of money, not exceeding in the whole, in addition to the sums already borrowed by the said board under the authority of Parliament and still due, the sum of one hundred thousand pounds sterling, to be applied for the purpose of proceeding with and prosecuting to completion the said works so recommended as aforesaid; and, save and except as is hereinafter excepted, all the provisions of the Act No. 10 of 1858, intituled “An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues,” so far as the same relate to the money thereby authorized to be borrowed, shall apply to the said sums hereby authorized to be borrowed as if the same were borrowed under the authority of the said Act.
3. From and after the borrowing of the money, or any portion thereof, hereby authorized to be borrowed, it shall be lawful for the said board, and they are hereby required, to levy or cause to be levied upon all goods, articles, matters, and things, landed or shipped in Algoa Bay, and not by the schedule to this Act exempted from the payment of wharfage dues, the several dues or rates set forth in the tariff contained in the schedule to this Act annexed, instead of the dues or rates set forth in the tariff contained in schedule No. 1 of the aforesaid Act No. 10 of 1858, and all the provisions of the said Act No. 10 of 1858, shall apply and extend to the dues and rates set forth in the schedule hereunto annexed, precisely as if the said dues or rates had been inserted in the aforesaid schedule No. 1 to the said Act No. 10 of 1858, annexed.

SCHEDULE.

No. 25—1875.

1. Upon all wool shipped or landed in Algoa Bay there shall be payable and be paid four pence halfpenny for and upon every one hundred pounds of the weight thereof.

2. Upon all goods, articles, matters, or things, except wool, shipped or landed in Algoa Bay, dues shall be payable and be paid at and after the rate of seven shillings and sixpence for every one hundred pounds of the value thereof.

EXEMPTIONS.

1. All public stores, naval, or military baggage and personal baggage of passengers.

2. Ship's stores outwards.

3. All goods shipped upon which dues had been paid on importation under this Act.

4. All goods shipped to or landed from any place without the Colony.

5. Bullion and coin.

No. 17—1878.]

[August 2, 1878.

ACT

To Enable the Harbour Board of Port Elizabeth to Raise a further Loan of £67,000 and to provide for the Payment of the Interest thereof. (1)

WHEREAS, by Act No. 25 of 1875, the Harbour Board of Port Elizabeth was authorized and empowered to raise a sum of £100,000 for the purposes in such Act mentioned: And whereas such sum is insufficient to meet the expenditure necessary for the proper completion of the works contemplated in such Act: And whereas the said Harbour Board is indebted to the Government of this Colony for the balance of certain advances of money made to the said board under the authority of Act No. 14 of 1867: And whereas it is expedient to empower the said board to raise on loan a sum not exceeding £67,000 sterling, for the purpose of completing the said works, and repaying the said advances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the said board to borrow and take up, from time to time, on interest, with the sanction of the Governor, and under the guarantee of the general revenue of this Colony, such sum or sums of money not exceeding in the whole, in addition to the sums already borrowed by the said board under the authority of Parliament, a sum not exceeding £67,000 sterling, to be applied to the purposes following, that is to say:

Harbour Board empowered to raise further loan not exceeding £67,000.

<sup>1</sup> See Act 3, 1881, *supra*.

1486 LOANS—PUBLIC (PORT ELIZABETH HARBOUR).

No. 17—1878.  
Purposes to which loan is to be applied.

- (1) For the construction of a new wrought iron jetty, to replace the present wooden one, which has fallen into decay, a sum not exceeding £27,000.
- (2) For the repayment of the balance of the advances made by the Colonial Government for the prosecution of the works of the said board under the authority of Act No. 14 of 1867, a sum not exceeding £40,000 sterling.

Provisions of Act 10 of 1858, as amended by Act 25 of 1875, to apply to this loan.

2. All the provisions of Act No. 10 of 1858, intituled "An Act to enable the Harbour Board of Port Elizabeth to levy certain Wharfage Dues" (except as the same are, in some respects, altered or amended by Act No. 25 of 1875) shall, so far as the same shall relate to money thereby authorized to be borrowed, apply to the sums hereby authorized to be borrowed, as if the same were borrowed under the authority of the said Act.

Short title.

3. This Act may be cited as the "Port Elizabeth Harbour Board Loan Act, 1878."

No. 14—1879.]

[Sept. 11, 1879.

ACT

To Enable the Harbour Board of Port Elizabeth to Raise a further Loan of £100,000, and to provide for the Payment thereof. (1)

Preamble.

WHEREAS, by Act No. 17 of 1878, the Harbour Board of Port Elizabeth was authorized and empowered to raise a loan of £67,000 for the purposes in such Act mentioned: And whereas it is expedient to empower the said board to raise on loan a sum not exceeding £100,000 for the purpose of carrying out and completing certain further works necessary for the improvement of the harbour of Port Elizabeth and the safety of the shipping frequenting the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Loan of £100,000 authorized.

1. It shall be lawful for the said board to borrow and take up, from time to time, on interest, with the sanction of the Governor, and under the guarantee of the general revenue of this Colony, such sum or sums of money, not exceeding in the whole, in addition to the sums already borrowed by the said board under the authority of Parliament, a sum not exceeding £100,000 sterling, to be applied to the object of providing additional jetties, wharves, and such other works as may be necessary to facilitate landing and shipping operations at the said port.

Provisions of Act 10 of 1858 to apply.

2. All the provisions of Act No. 10 of 1858 entitled "An Act to enable the Harbour Board of Port Elizabeth to levy certain

<sup>1</sup> See Act 3, 1881, *supra*.

Wharfage Dues” (except as the same are, in some respects, altered and amended by Act No. 25 of 1875), shall, so far as the same shall relate to money thereby authorized to be borrowed, apply to the sums hereby authorized to be borrowed, as if the same were borrowed under the authority of the said Act.

No. 26—1883.

3. This Act may be cited as the “Port Elizabeth Harbour Board Loan Act, 1879.”

Short title.

No. 26—1883.]

[September 27, 1883.]

ACT

For Raising a further Sum of Fifty Thousand Pounds Sterling for carrying on certain Harbour Works at Port Elizabeth. (1)

WHEREAS it is expedient to provide a further sum of Fifty Thousand Pounds sterling for carrying on certain works necessary for the improvement of the Harbour of Port Elizabeth: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise a further sum, not exceeding Fifty Thousand Pounds sterling, from time to time as occasion may require: and all moneys so received shall be applied to the purpose in the preamble to this Act mentioned.

Power to Governor to raise £50,000.

2. The application of the moneys to be raised as aforesaid shall be entrusted to the “Port Elizabeth Harbour Board,” appointed under the provisions of any law relating to the management of the harbour of Port Elizabeth, and the said Harbour Board shall, in respect of such application, have and exercise all the powers conferred upon such board by any such law.

Money to be entrusted to Port Elizabeth Harbour Board.

3. The short title of this Act shall be the “Port Elizabeth Harbour Loan Act, 1883.”

Short title.

No. 9—1866-67.]

[January 12, 1867.]

ACT

For Raising the further Sum of Fifty Thousand Pounds for the Completion of the Breakwater and Docks in Table Bay.

WHEREAS by accounts and estimates framed up to the 31st May, 1866, printed by order of the Honourable the House of Assembly on the 1st of November, 1866, it appears that in addition to the sums already expended on the said 31st May, 1866, on the works

Preamble.

<sup>1</sup> Further sums raised by Acts 17 of 1884 and 38 of 1885, *infra*.

No. 9—1866-'67.

now in progress for improving the harbour of Table Bay and constructing a breakwater therein, there will be required for the completion, to the extent described in the said estimate of the said works, sums of money amounting together to seventy-five thousand two hundred and thirty-one pounds sterling, and that there will be further required for the payment of the interest and other charges on sums already borrowed in respect of the said works and for maintaining in repair the works already constructed as part of or necessary for the said works, and for maintaining the establishment necessary to the proper use of the works so already constructed, during the period to elapse between the said 31st of May, 1866, and the 31st of December, 1867, sums amounting in the whole to twenty-one thousand six hundred and twenty-two pounds sterling: And whereas to meet the said requirements, amounting in the whole to ninety-six thousand eight hundred and fifty-three pounds sterling, the Commissioners of Table Bay Harbour were, on the 1st of June, 1866, possessed of a sum of nineteen thousand seven hundred and thirty-nine pounds two shillings and six pence sterling, and expected in the period to elapse between the said 31st of May, 1866, and 31st of December, 1867, to receive further sums, amounting in the whole to thirty-two thousand and ten pounds sterling, making a total of fifty-one thousand seven hundred and forty-nine pounds two shillings and six pence sterling, leaving a balance to be provided for of a sum approaching fifty thousand pounds sterling: And whereas it is expected that on the 31st of December, 1867, the said works now in progress will be so completed, and the harbour and docks contemplated be available for purposes of trade: And whereas by an Act passed in the year 1858, and numbered 20, entitled "An Act for constructing a Breakwater to form a Harbour of Refuge in Table Bay and otherwise improving the said Harbour," and by a further Act passed in the year 1860, and numbered 6, being an Act to amend the said Act No. 20 of 1858, the Governor was authorized to take up upon debentures, or such other form of loan as he should consider preferable, sums not exceeding in the whole two hundred thousand pounds sterling, in manner by the said Acts provided: And whereas it is expedient that a further sum of fifty thousand pounds sterling should be in like manner taken up or raised, to enable the said works to be made so complete and available for the purposes of trade, and to maintain in the meantime such works as are already constructed and the establishment necessary for the proper use thereof, and to discharge the interest in the meantime becoming due on the moneys already raised as aforesaid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Further loan of  
£50,000 authorized.

That it shall be lawful for the Government to raise, in manner provided by the said Acts No. 20 of 1858 and No. 6 of 1860 for

the purpose of so completing as aforesaid the said works and other purposes hereinbefore mentioned, a sum not exceeding in the whole the sum of fifty thousand pounds sterling, in addition to the sum of two hundred thousand pounds sterling which under the said Acts he was empowered to raise for the purposes therein mentioned in like manner, in all respects, as if the said additional sum of fifty thousand pounds sterling were part of the said sum of two hundred thousand pounds sterling.

No. 9—1866-'67.

No. 8—1872.]

[July 31, 1872.

ACT

To Empower the Governor to Raise a Sum not exceeding Seventy-nine Thousand Nine Hundred and Fifty Pounds Sterling for the purpose of Constructing a Graving Dock in Table Bay, and for redeeming certain Debentures issued under authority of the Acts No. 26 of 1868 and No. 11 of 1870.

WHEREAS it is desirable that a Graving Dock should be constructed in connection with the Harbour of Table Bay, and the Imperial Government has agreed to contribute towards the construction of such dock, and it is expedient that a sum of not exceeding thirty thousand pounds sterling should, in addition, be raised or taken up by the Governor, as hereinafter is provided, for the purpose of constructing the same: And whereas debentures in the whole amounting to the sum of forty-nine thousand nine hundred and fifty pounds sterling issued under authority of the Acts No. 26 of 1868 and No. 11 of 1870, respectively, will be payable on the fifteenth day of October, 1872, and it is desirable that the said sum should be raised or taken up by the Governor as hereinafter is provided, for the purpose of redeeming the said debentures: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise and take up upon stock or perpetual annuities such sum or sums of money not exceeding in the whole the sum of seventy-nine thousand nine hundred and fifty pounds sterling, to be applied as hereinafter mentioned, that is to say, a sum not exceeding thirty thousand pounds sterling, for the purpose of constructing the said dock, and a sum not exceeding forty-nine thousand nine hundred and fifty thousand pounds sterling for the purpose of redeeming the said debentures.

Loan authorized.

2. The application of the sum or sums of money to be from time to time raised as aforesaid for the purpose of constructing the said dock shall be entrusted to the commissioners for the time being

Application of loan.

- No. 8-1872. appointed or to be appointed under the provisions of any Act relating to the management of the docks and breakwater in Table Bay, and such commissioners shall, in respect to such application, have and exercise all the powers conferred upon them by any such Act.
- Mode of raising stock. 3. The stock to be raised and taken up as aforesaid shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be opened for that purpose by the Treasurer-General of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer by such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary for the time being by command of the Governor, and countersigned by the said Treasurer and by the Auditor of the Colony, and which scrip certificate shall be preserved in the office of the said Treasurer.
- Rate of interest, and when payable. 4. Such stock shall bear interest after the rate of five pounds sterling per centum of the nominal amount of such stock, from the first day of January or the first day of July next before the issue of the said scrip certificate, which shall last happen, and such interest shall be payable thereafter half-yearly, on the first day of July and the first day of January in each year; the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the Treasurer-General as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder, or his duly authorized attorney, at the office of the Treasury in Cape Town.
- Stock and interest charged on general revenue. 5. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony, and the Governor shall from time to time pay such interest, and may also, out of such revenue or any moneys to be appropriated for that purpose from time to time, buy up and cancel such stock, or any part thereof.
- But charged, in first instance, on harbour revenues. 6. Notwithstanding that the stock to be issued as aforesaid, together with the interest thereon, is hereby charged upon the general revenue of this Colony, the same shall be and is hereby made a charge in the first instance upon the dues of wharfage and cranage, dock dues, harbour rates, warehouse rent, and all other revenues accruing to the commissioners aforesaid, and who shall, out of such revenues, indemnify the Governor for all moneys paid out of the general revenue of the Colony on account of such stock, or of any interest thereon.
- Transfer of stock. 7. Such stock shall be transferable by transfer in the books of the Treasurer-General, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been



made in the said books, shall be entitled to require and demand of the said Treasurer-General a receipt or certificate stating the amount of such stock standing to his credit in such books.

No. 8—1872.

8. There shall be paid into the Treasury upon every transfer in the said books of any sums of such stock a sum of two shillings and six pence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that, instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable; and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.

Fee payable on transfer.

9. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient: Provided that it shall be lawful to dispose of to the Master of the Supreme Court, in his capacity of administrator of the Guardian's Fund, and he is hereby authorized to invest any unemployed moneys belonging to such fund in so much of the said stock as he may apply for, at par, with interest at the rate of five per cent. per annum: Provided, further, that any such investment by the said Master shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Disposal of stock.

Stock may be disposed of to Master of Supreme Court.

10. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended so far as shall be necessary for the respective purposes mentioned in the preamble of this Act.

Separate accounts to be kept.

11. An account showing the amount of all stock issued under authority of this Act, and the moneys realized by the issue and sale thereof, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof; and an account of the amount of the same stock for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, shall also be laid before Parliament in each succeeding session thereof.

Accounts to be laid before Parliament.

No. 27—1879.]

[Sept. 11, 1879.

## ACT

For Raising the further Sum of Fifty Thousand Pounds for the Completion of the Graving Dock in Table Bay.

Preamble.

WHEREAS it appears that a further sum of fifty thousand pounds will be required for the completion of the Graving Dock in Table Bay: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Authority to raise £50,000.

1. It shall be lawful for the Table Bay Dock and Breakwater Commission, with the sanction of the Governor, to raise and take up upon debentures or stock, or partly upon debentures and partly upon stock, such sum or sums of money as from time to time shall be necessary, not exceeding, in the whole, the sum of fifty thousand pounds, and all sums to be so raised shall be applied to the purposes in the preamble to this Act mentioned.

2. [§ § 2-6 are identical with § § 2-6 Act 40, 1877, *supra*.]

Moneys raised to be entrusted to harbour commissioners.

7. The application as aforesaid of all sums of money raised under the authority of this Act shall be entrusted to the commissioners for the time being appointed, or to be appointed, under the provisions of any Act relating to the management of the docks and breakwater in Table Bay; and such commissioners shall, in respect to such application, have and exercise all the powers conferred upon them by any such Act.

Accounts to be laid before Parliament.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended; and of all other moneys which have been expended upon the said graving dock out of the general revenue of the Colony, or otherwise, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Short title.

9. This Act may be cited as the "Table Bay Harbour Loan Act, 1879."

No. 4—1880.]

[July 26, 1880.

ACT

For providing a Sum sufficient to Redeem the Sum of Eighty-five Thousand Nine Hundred Pounds, coming due and payable from and out of the General Revenue of this Colony on the 15th day of October, 1880, being part of the Debt originally incurred under Act No. 6 of 1860.

WHEREAS it appears that a sum of eighty-five thousand nine hundred pounds will be required for the redemption of the loan falling due on 15th October, 1880, under Act No. 6 of 1860: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Table Bay Dock and Breakwater Commission, with the sanction of the Governor, to raise and take up upon debentures or stock, or partly upon debentures and partly upon stock, such sum or sums of money as from time to time shall be necessary, not exceeding, in the whole, the sum of eighty-five thousand and nine hundred pounds; and all sums to be so raised shall be applied to the purposes in the preamble to this Act mentioned.

Power to raise on stock or debentures—£85,900.

2. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed:—Such debentures shall be issued in this Colony, or in England, or partly in this Colony and partly in England, for sums, not exceeding five hundred pounds nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Debentures in sums not exceeding £500 to be issued here or in England.

3. The several provisions of the second, third, fourth, fifth, sixth, and seventh sections of Act No. 27 of 1879 shall, *mutatis mutandis*, apply to this Act and the moneys hereby authorized to be issued.

Certain section of Act 27 of 1879 to apply.

4. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended; and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Accounts of stock and debentures, &c., to be laid before Parliament.

5. This Act may be cited as “The Table Bay Loan Redemption Act, 1880.”

Short title.

No. 5—1880.]

[July 26, 1880.]

## ACT

For Raising the Sum of £100,000 for the Extension of the Breakwater in Table Bay.

Preamble.

WHEREAS it is expedient that the Breakwater in Table Bay should be extended: And whereas it is necessary to provide the sum of £100,000 towards making such extension: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Power to raise  
£100,000.

1. It shall be lawful for the Table Bay Dock and Breakwater Commission, with the sanction of the Governor, to raise and take up upon debentures or stock, or partly upon debentures and partly upon stock, such sum or sums of money, as from time to time shall be necessary, not exceeding in the whole the sum of £100,000; and all sums to be so raised shall be applied to the purposes in the preamble to this Act mentioned.

Provisions of Act  
27 of 1879 to apply.

2. The several provisions of the second, third, fourth, fifth, sixth, and seventh sections of Act No. 27 of 1879 shall, *mutatis mutandis*, apply to this Act and the moneys hereby authorized to be issued.

Accounts of stock,  
debentures, &c., to  
be laid before Parlia-  
ment.

3. An account showing the amount of all stock and debentures issued from time to time under the authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended; and an account of the amount of such stock and debentures for the time being outstanding, and of all such issues thereof as shall from time to time be bought in and cancelled, if any, vouched for by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Short title.

4. This Act may be cited as “The Table Bay Breakwater Loan Act, 1880.”

No. 17—1882.]

[June 22, 1882.]

## ACT

For Raising the Sum of Two Hundred Thousand Pounds Sterling towards the Extension of the Breakwater and Construction of the Outer Harbour of Table Bay.

Preamble.

WHEREAS it is desirable that the works necessary to form the outer harbour of Table Bay should be forthwith commenced and carried out simultaneously with the extension of the breakwater:

and whereas it is necessary to provide the sum of two hundred thousand pounds sterling towards carrying on such works: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 25—1883.

1. It shall be lawful for the Governor to raise a further sum not exceeding two hundred thousand pounds from time to time as occasion may require; and all moneys so raised shall be applied to the purposes in the preamble to this Act mentioned.

Power to raise loan of £200,000.

2. The application of the moneys to be raised as aforesaid shall be entrusted to the "Table Bay Harbour Board," appointed or to be appointed under the provisions of any Act relating to the management of the docks and breakwater in Table Bay, and the said Harbour Board shall in respect to such application, have and exercise all the powers conferred upon such board by any such Act.

Application of moneys.

3. The short title of this Act shall be "The Table Bay Harbour Loan Act, 1882."

Short title.

No. 25—1883.]

[September 27, 1883.

ACT

For Raising a further Sum of One Hundred Thousand Pounds Sterling, for carrying on the Extension of the Breakwater, and Construction of the Outer Harbour of Table Bay. (1)

WHEREAS it is necessary to provide a further sum of one hundred thousand pounds sterling for carrying on the extension of the Breakwater and construction of the Outer Harbour of Table Bay: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise a further sum not exceeding one hundred thousand pounds sterling, from time to time, as occasion may require; and all moneys so raised shall be applied to the purposes in the preamble to this Act mentioned.

Power to raise Loan of £100,000.

2. The application of the moneys to be raised as aforesaid shall be entrusted to the "Table Bay Harbour Board," appointed or to be appointed under the provisions of any Act relating to the management of the Docks and Breakwater in Table Bay, and the said Harbour Board shall, in respect to such application, have and exercise all the powers conferred upon such board by any such Act.

Application of Moneys. of

3. The short title of this Act shall be "The Table Bay Harbour Board Loan Act, 1883."

Short title.

<sup>1</sup> Further sums raised by Acts 38 of 1885 and 25 of 1886, *infra*.

No. 13—1869.]

[October 18, 1869.

## ACT

To Empower the Governor to raise the Sum of Fifty Thousand Pounds Sterling, for the purpose of redeeming a like Sum raised by means of Debentures under authority of the Act No. 22 of 1859.

Preamble.

WHEREAS a sum of fifty thousand pounds sterling was, under authority of Act No. 22 of 1859, raised by means of debentures charged on the revenues of this Colony, bearing interest at six pounds sterling per cent. and redeemable on the thirty-first day of January, 1870, or so soon thereafter as due notice within the provisions of the said Act No. 22 of 1859 should be given, as therein mentioned, of the intention of the Governor to redeem the same: And whereas it is expedient that the same should be redeemed as soon as may be, and that a sum of fifty thousand pounds sterling should be raised or taken up by the Governor, as hereinafter is provided, for the purpose of redeeming the said debentures: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor empowered to raise loan upon stock or perpetual annuities.

1. It shall and may be lawful for the Governor to raise and take up upon stock or perpetual annuities such sum of money not exceeding in the whole the sum of fifty thousand pounds sterling to be applied in redeeming the said debentures issued under the authority of the said Act No. 22 of 1859.

Stock, how to be issued.

2. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be opened for that purpose by the Treasurer-General of this Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer by such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary for the time being, by command of the Governor, and countersigned by the said Treasurer and by the Auditor of the Colony, and which scrip certificate shall be preserved in the office of the said Treasurer.

Rate of interest.

3. Such stock shall bear interest after the rate of four pounds and ten shillings sterling per centum of the nominal amount of such stock, from the first day of January or the first day of July next before the issue of the said scrip certificate, which shall last happen, and such interest shall be payable thereafter half-yearly, on the first day of July and the first day of January in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the Treasurer-General as aforesaid, and shall be paid on such days respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such

Date from which interest is to commence.

Interest payable half-yearly.

lawful holder, or his duly authorized attorney, at the office of the Treasury in Cape Town.

No. 13—1869.

4. All such interest shall be charged and chargeable on and payable out of the general revenue of the Colony.

Interest chargeable on general revenue.

5. Such stock shall be transferable by transfer in the books of the Treasurer-General, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer-General a receipt or certificate stating the amount of such stock standing to his credit in such books.

Transfer of stock.

6. There shall be paid into the Treasury upon every transfer in the said books of any sum of such stock a sum of two shillings and sixpence upon every hundred pounds sterling to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable, and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.

Fee payable on transfer.

7. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

How stock shall be disposed of.

8. The Governor shall from time to time, out of the current revenue of the Colony, pay the interest upon the said stock, and may also out of such current revenue, or any moneys to be appropriated for that purpose, from time to time buy up and cancel any part of such stock.

Governor to pay interest out of current revenue, and may also buy up and cancel stock.

9. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended, so far as shall be necessary, in redeeming the said debentures issued under the authority of the said Act No. 22 of 1859.

Moneys realized to be carried to separate account, and how to be applied.

10. An account showing the amount of all such stock issued under authority of this Act, and the moneys realized by the issue and sale thereof, and the expenditure of all such moneys or of so much thereof as shall for the time being have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof; and an account of the amount of the same stock for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, shall also be laid before Parliament in each succeeding session thereof.

Accounts to be laid before Parliament.

No. 35—1879.]

[Sept. 11, 1879.

## ACT

To Enable the Governor to Borrow a Sum not exceeding £100,000, for the purpose of introducing Immigrants into this Colony.

- Preamble. WHEREAS it is expedient to introduce into this Colony from Europe or elsewhere, various classes of immigrants for the purpose of developing and adding to its resources: And whereas it is necessary to provide the moneys required for carrying out such introduction: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—
- Power to raise £100,000. 1. It shall be lawful for the Governor to raise from time to time, on debentures or on stock, or partly on debentures and partly on stock, such sums of money not exceeding in the whole the sum of one hundred thousand pounds, for the purpose of bringing from Europe, and introducing into this Colony, the several classes of immigrants mentioned in the schedule to this Act annexed.
- Borrowing powers. 2. The borrowing powers and other provisions contained in sections two and three of Act No. 6 of 1877 (together with the several sub-sections of the last-named sections) shall *mutatis mutandis*, apply to all sums of money borrowed under the authority of this Act.
- Accounts to be laid before Parliament. 3. An account showing the amount of all stock and debentures issued from time to time under the authority of this Act, and of the moneys realised by the issue and sale thereof, and of the expenditure of all such moneys or of so much thereof as shall have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and the like accounts within fourteen days after the commencement of each succeeding session thereof.
- Governor to issue regulation for conducting immigration. 4. The immigration under this Act shall be conducted upon such terms and under such limitations and conditions as the Governor may from time to time see fit to determine.
- Short title. 5. This Act may be cited as the "Immigration Loan Act, 1879."

## SCHEDULE.

The classes of immigrants to be introduced under this Act shall be the following:—

1. Agriculturists, to be located on certain crown lands of the Colony, under the provisions of any statute which may be enacted by the Legislature; also the families of such agriculturists.



2. Agriculturists, agricultural labourers, mechanics, artizans, and other skilled workmen who may be willing to immigrate to the Colony under contract of service with employers of such labour; also such agricultural labourers and their families as may be introduced by Government into this Colony.

No. 35—1879.

No. 6—1877.]

[August 8, 1877.

ACT

To Provide the means for paying for the Construction of a Bridge across the Great Kei River, and for the Construction and Equipment of a Line of Telegraph from Komgha to Natal, and for the Levying of Tolls on such Bridge. <sup>(1)</sup>

WHEREAS it is expedient that a sum of money not exceeding fifty thousand pounds should be raised for the purpose of paying for the construction of the bridge now in course of construction across the Great Kei River, on the main line of road from King William's Town to Clarkebury, and that a sum not exceeding forty thousand pounds should be provided for the purpose of paying for the construction and equipment of a line of telegraph from Komgha to Natal, and that provision should be made for the levying of tolls on such bridge: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, from time to time as he may deem expedient, to raise—either by debentures or stock, or partly by debentures and partly by stock—a sum of money not exceeding ninety thousand pounds, to be applied as follows, that is to say:—A sum not exceeding fifty thousand pounds, for the purpose of paying for the construction of the said bridge in the preamble of this Act mentioned, and a sum not exceeding forty thousand pounds, for the purpose of constructing and equipping the line of telegraph in the said preamble also mentioned.

Governor may raise £90,000 by debentures and stock.

2. <sup>(1)</sup> In so far as the said borrowing shall be upon debentures, the following provisions shall be observed:—Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Provisions for borrowing on debentures.

3. In so far as the said borrowing shall be upon stock, the following provisions shall be observed:

Provisions for borrowing on stock.

<sup>1</sup> See Acts 38, 1879, and 9, 1880, *infra*.

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by such purchaser, or by his order, of a scrip certificate of the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary, and countersigned by the said Treasurer and by the Controller and Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.
2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum of the nominal amount of such stock, from the 15th day of April or the 15th day of October next preceding the issue of the said scrip certificate which shall last happen, and such interest shall be payable thereafter half-yearly on the 15th day of April and the 15th day of October in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter as demand shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasurer in Cape Town.
3. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time buy up and cancel such stock or any part thereof.
4. Such stock shall be transferable by transfer in the books of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.
5. There shall be paid into the Treasury upon every transfer in the said books of any sum of such stock a sum of two shillings and sixpence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable:

and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.

6. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

7. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended, so far as shall be necessary, for the purposes mentioned in the preamble of this Act.

4. As a fund for the payment of the interest upon, and for the gradual extinction of the debt to be raised upon debentures under authority of this Act, there shall be charged and chargeable upon, and set apart out of the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of such debentures as shall from time to time be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall from time to time be raised upon debentures under the authority of this Act ; and such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act upon debentures, or any interest thereon shall remain unpaid and unextinguished ; and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

Creation of fund for the payment of interest on debentures.

5. Such portion of the fund which shall under the last foregoing section be charged, and chargeable annually, on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, shall be applied in redeeming and cancelling such debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Balance of fund to be applied in redeeming and cancelling debentures.

6. All debentures which shall be redeemed under the authority of this Act shall, immediately on the receipt thereof, be cancelled by or on behalf of the said Treasurer, and shall be duly advertised as so cancelled.

Redeemed debentures to be cancelled by treasurer and advertised.

7. Notwithstanding anything herein contained, it shall be lawful for the Governor to dispose of to the Master of the Supreme Court, in his capacity of administrator of the Guardian's Fund, and the said Master is hereby authorized to invest any unemployed moneys belonging to such fund in so much of any such stock, and so many

Master may invest in such stock or debentures.

1502 LOANS—PUBLIC (KEI BRIDGE AND NATAL TELEGRAPH).

No. 6—1877.

of any such debentures as he may apply for, on such terms as may be mutually agreed upon, provided that every such investment shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Accounts to be rendered to Parliament.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Tolls may be demanded at bridge.

9. From and after the opening of the said bridge for public traffic, such person or persons as shall be authorized in that behalf by the Governor shall be entitled to demand and receive thereat such tolls as may from time to time be fixed by the Governor and notified in the *Government Gazette*.

Penalty for evading toll.

10. Any person entitled to demand and receive any toll payable as aforesaid, may prevent the passing over the said bridge of any person, animal, or vehicle, for or in respect of whom or which such toll shall be payable until the same be paid; and if any person liable to any toll, from whom it has been duly demanded, or who, by any act of his own, intended to prevent a due demand from being made, may have succeeded in preventing such demand from being made, and who without paying the said toll, and without the consent of the person entitled to demand the same, or without some other lawful authority, may have proceeded through or beyond the place where the same is of right demandable shall incur a fine of not exceeding ten pounds, to be recovered by any person who will sue for the same by summary process in the nearest Court of the Resident Magistrate, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Short title.

11. This Act may be cited as the "Kei Bridge and Natal Telegraph Act, 1877."

No. 26—1874.]

[July 31, 1874.

ACT

To Provide for the Construction of certain Bridges over the Orange River.

Preamble.

WHEREAS by the Acts No. 15 of 1871 and No. 12 of 1872, certain provisions were made for promoting the construction of a

bridge or bridges over the Orange River: And whereas there is reason to believe that a convention will shortly be entered into between the Government of this Colony and the Government of the Orange Free State, under which, besides the provisions mentioned in the said first mentioned Act, the Government of this Colony will be enabled to construct the said three first mentioned bridges, with power, however, to the Government of the Orange Free State or any company formed therein to construct any one or more of the said bridges on the same terms as the Government of this Colony or any company formed therein may be authorized to construct the same, and with a further provision that the Government of the said Orange Free State shall be at liberty to receive one-half of the revenue to be derived from any bridge or bridges to be constructed by the Government of this Colony, upon payment to the said Government of one-half of the money expended in and about constructing such bridge or bridges, and upon such other terms as may be deemed fair and reasonable: And whereas it is proposed that four bridges shall be constructed over the said river, that is to say, at some convenient site in the vicinity of Aliwal North, Bethulie, Colesberg, and Hope Town respectively: And whereas the last of the said proposed bridges would abut upon the Province of Griqualand West, and it is expedient therefore that power should be given to the Governor to enter into a convention with the Government of the said Province similar to that proposed to be entered into with the said Government of the Orange Free State: And whereas in case of the construction of the said bridges, or any of them, by or on behalf of the Government of this Colony, it will be necessary to provide for raising money for such construction, not exceeding three hundred thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the said Acts No. 15 of 1871 and No. 12 of 1872, and of any other law in force in this Colony, as is repugnant or inconsistent with any of the provisions of this Act, is hereby repealed.

Repugnant laws repealed.

2. It shall be lawful for the Governor to enter into a convention as aforesaid with the Government of the Orange Free State, which shall be binding on this Colony, and upon such convention being entered into and published by proclamation in the *Government Gazette* the same shall be of the same force and shall have the same effect as if it had been introduced in so many enacting clauses in this Act.

Convention may be entered into with Free State.

3. For the purpose of constructing the said bridges it shall be lawful for the Governor to raise, as hereafter mentioned, a sum not exceeding three hundred thousand pounds sterling.

Loan for construction of bridges authorized.

4. The said sum of three hundred thousand pounds sterling may be raised from time to time, as it may be deemed expedient by the

Loan to be raised by debentures.

No. 26—1874.

Governor, by debentures, to be issued in this Colony or in England or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each upon the best and most favourable terms that can be obtained and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Extinction of debt provided for.

5. As a fund for the payment of the interest upon, and for the gradual extinction of, the debt to be raised under authority of this Act, there shall be charged, and chargeable upon, and set apart out of the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of such debentures as shall from time to time be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall from time to time be raised under the authority of this Act; and such sum shall be annually charged on and payable out of the revenue of the Colony so long as any portion of the debt to be incurred under authority of this Act or any interest thereon shall remain unpaid and unextinguished, and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

Sums not required for payment of interest to be applied in cancelling debentures.

6. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, shall be applied in redeeming and cancelling such debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Redeemed debentures to be cancelled by Treasurer.

7. All debentures which shall be redeemed under the authority of this Act shall immediately, on receipt thereof, be cancelled by or on behalf of the Treasurer of this Colony.

Guardians' Fund may be invested in debentures.

8. Notwithstanding anything herein contained it shall be lawful for the Governor to dispose of to the Master of the Supreme Court in his capacity of administrator of the Guardian's Fund, and the said Master is hereby authorized to invest any unemployed moneys belonging to such fund, in so many of any such debentures as he may apply for on such terms as may be mutually agreed upon: Provided that every such investment shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Annual accounts to be laid before Parliament.

9. An account showing the amount of all debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys or of so much thereof as shall for the time being have been expended, distinguishing the total sums expended upon each of the said bridges and an account of the amount of such debentures for the time being outstanding and of all such sums thereof as

shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

No. 21—1880.

10. It shall be lawful for the Governor to enter into a convention with the Government of Griqualand West, which shall be binding upon this Colony, for the purpose of enabling the said bridge over the Orange River, in the vicinity of Hope Town, to be constructed similar to the convention which may be entered into with the Government of the Orange Free State, and upon such convention being entered into and published by proclamation in the *Government Gazette*, the same shall be of the same force and shall have the same effect as if it had been embodied in so many enacting clauses of this Act.

Convention may be entered into with Griqualand West.

11. Such of the said bridges as may be constructed on behalf of the Government of this Colony, shall be constructed by contractors to be approved of by the said Government.

Bridges may be built by contract.

12. This Act may for all purposes be cited as "The Orange River Bridges Act, 1874."

Short title.

No. 21—1880.]

[July 30, 1880.

ACT

To Authorize the Governor to Borrow a Sum not exceeding Forty-one Thousand Two Hundred and Thirty-seven Pounds, for the purpose of completing certain Bridges over the Orange River. (1)

WHEREAS it is expedient to incur certain expenditure, in addition to the expenditure already authorized by Act No. 26 of 1874, for the construction of certain bridges over the Orange River: And whereas it is necessary to provide the money required for such purpose: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. For the purpose of carrying out the works hereinbefore mentioned, it shall be lawful for the Governor to raise from time to time, either by debentures or stock, or partly by debentures and partly by stock, a sum of money not exceeding the sum of £41,237 (forty-one thousand two hundred and thirty-seven pounds) sterling, to be applied as follows, that is to say:—

Authority to raise the sum of £41,237.

(a) For the works of the said bridges over the Orange River, in addition to the amount provided by Act No. 26 of 1874, the sum of £40,000 (forty thousand pounds).

<sup>1</sup> Further sums raised by Acts 30 of 1882, 21 of 1883, 38 of 1885, and 25 of 1886, *infra*.

- No. 15—1879.      (b) For discount and charges of raising loan, the sum of £1,237  
 (one thousand two hundred and thirty-seven pounds).
- Borrowing powers.      2. The several borrowing powers and other provisions contained  
 in sections two to eight inclusive of Act No. 6 of 1877 shall,  
*mutatis mutandis*, apply to all sums of money borrowed under the  
 authority of this Act.
- Short title.      3. This Act may be cited as “The Additional Orange River  
 Bridges Loan Act, 1880.”

No. 15—1879.]

[Sept. 11, 1879.

ACT

To Empower the Governor to Raise a Sum not exceeding  
 £120,000 for the purpose of providing suitable  
 Houses of Parliament. <sup>(1)</sup>

- Preamble.      WHEREAS the present accommodation afforded to the Legislative  
 Council and the House of Assembly respectively, is wholly  
 inadequate, inconvenient, and unsuitable, and it is desirable to  
 make better provision for such accommodation: Be it therefore  
 enacted by the Governor of the Cape of Good Hope, with the  
 advice and consent of the Legislative Council and the House of  
 Assembly thereof, as follows:—
- £120,000 to be raised for building Houses of Parliament.      1. It shall be lawful for the Governor to raise and take up upon  
 debentures or stock, or partly upon debentures and partly on stock  
 any sum or sums of money not exceeding in the whole the sum of  
 £120,000 sterling <sup>(2)</sup> for the purpose of erecting a building or  
 buildings which shall contain the accommodation necessary for and  
 suitable to the Legislative Council and the House of Assembly of  
 this Colony, together with the various offices required for the  
 transaction of the business connected with the said Legislative  
 Council and House of Assembly respectively.
- Borrowing powers.      2. The several borrowing powers and other provisions contained  
 in sections 2 and 3 of Act No. 6 of 1877 (together with the several  
 sub-sections of the last named sections) shall *mutatis mutandis*  
 apply to all sums of money borrowed under the authority of this  
 Act.
- Accounts to be rendered.      3. An account showing the amount of all stock and debentures  
 issued from time to time under the authority of this Act, and of  
 the moneys realised by the issue and sale thereof, and of the  
 expenditure of all such moneys, or of so much thereof as shall have  
 been expended, and an account of the amount of such stock and  
 debentures for the time being outstanding, vouched by the  
 Controller and Auditor-General, shall be laid before both Houses

<sup>1</sup> See Act No. 3, 1881.

<sup>2</sup> Further sums raised by Acts 21 of 1883 and 17 of 1884, *infra*.



of Parliament within fourteen days after the commencement of the next session thereof, and the like accounts within fourteen days after the commencement of each succeeding session thereof.

No. 15—1872.

4. This Act may be cited as the “Houses of Parliament Loan Act, 1879.”

Short title.

No. 15—1872.]

[July 31, 1872.

ACT

For Authorizing the Purchase of the Cape Town and Wellington Railway with its Appurtenances, and for Working the same, and for Raising the necessary Funds for such Purchase.

WHEREAS it is desirable with a view to railway extension and otherwise that the line of railway known as the Cape Town and Wellington Railway, together with the lease of the Wynberg Railway, and all other the property of the Cape Railway Company (hereinafter called the company) should be purchased and worked by the Colonial Government: And whereas negotiations have been going on for some time for such purchase, and heads of an agreement have been proposed between the said company and the Crown Agents for the Colonies representing the Government of this Colony, and it is desirable that the Governor should be authorized to make the said purchase upon the terms contained in the heads of agreement in the first schedule hereto, and to raise the funds necessary for concluding such purchase: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to make and conclude a contract with the said company for the purchase of the said Cape Town and Wellington Railway, and all the property, both movable, and immovable, assets, rights, and privileges of the said company including the lease of the Wynberg Railway, and all claims of the said company upon the Government, upon terms not less favourable to the Colony than those contained in the heads of agreement in the first schedule hereto.

Purchase authorized.

2. From and after such date as shall in any agreement to be entered into pursuant to this Act be in that behalf provided, the said railway and property, assets, rights, and privileges shall be handed over to and shall then and thereupon be and become vested in Her Majesty the Queen in her Colonial Government, and the said Government shall thereupon be and is hereby vested with the same rights, powers, duties, functions, and privileges as to working

Effect of purchase

No. 15—1872.

the said railway and otherwise as theretofore the said company was vested with, and the said Government shall then and thereupon, with respect to any Acts relating to the said railway, or to railways generally, be in the like position, in all respects, as if the said railway were a railway belonging to a company, and the said Government were a board of directors of the said railway.

3. [Repealed by Act 19, 1874.]

Raising of funds  
for purpose of purchase.

4. For the purpose of purchasing the said railway and property pursuant to the terms in the first section of this Act mentioned, it shall be lawful for the Governor, and he is hereby authorized to issue debentures not exceeding in amount seven hundred and eighty thousand pounds.

Issue of debentures.

5. Such debentures shall be issued for sums not exceeding five hundred pounds sterling, nor less than one hundred pounds sterling each and shall be signed by the Colonial Secretary, by command of the Governor, and countersigned by the Treasurer-General and Auditor-General, and shall bear interest at the rate of four pounds and ten shillings per centum per annum, until the same shall be redeemed, cancelled, and extinguished under any of the powers or provisions of this Act.

Debentures and interest chargeable on general colonial revenue.

6. Such debentures, together with the interest from time to time to accrue thereon, shall be and are hereby charged upon and made payable out of the general revenue of the Colony; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time, buy up and cancel such debentures.

Interest when and where payable.

7. Interest shall be payable on the said debentures at the office of the Crown Agents for the Colonies aforesaid on the fifteenth day of April or the fifteenth day of October next succeeding the issue thereof, which shall first happen, and thereafter on the fifteenth day of April and the fifteenth day of October in each year, until such debentures, respectively, shall be redeemed and cancelled, and such interest shall be free of all colonial taxes.

Transfer of debentures.

8. All such debentures shall be transferable by delivery without endorsement; and payment of principal or interest due upon any such debenture to any person presenting the same shall be a good discharge for such principal or interest, respectively, to the Government, who shall not be bound to make any inquiry as to the title of such person to the debenture so presented.

How where any portion of purchase amount shall be payable in money.

9. If any of the amounts payable in pursuance of the said agreement shall be payable in money, the debentures to be issued for the purpose of raising such money shall be put up for public tender in London, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such debentures than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

10. Should any or all of the holders of the debentures of the said company mentioned in the second schedule hereto be willing to receive debentures of the Colonial Government in lieu of the said debentures of the said company, it shall be lawful for the Governor, under the powers hereinbefore contained, to issue to such holders in exchange for such company's debentures, Colonial Government debentures as aforesaid, bearing interest as aforesaid, and redeemable as herein is provided, upon such equitable terms of exchange, having regard to the relative duration and value thereof, as the Governor shall empower the Crown Agents for the Colonies to accept.

No. 15—1872.

Government debentures may be given in exchange for existing company's debentures.

11. Should any holders of the debentures of the said company not be willing to receive in lieu thereof debentures of the Colonial Government as aforesaid, such company's debentures, together with the interest from time to time to accrue thereon, shall be and are hereby charged upon and made payable out of the general revenue of the Colony, and the Governor shall from time to time pay such interest, and may also out of such revenue, or any moneys to be appropriated for that purpose from time to time, buy up and cancel such debentures, and the said company's debentures and the interest thereon shall be payable in London as they become due, free of all colonial taxes; and the Governor may, in order to raise money to pay such debentures as they fall due, issue Government debentures as aforesaid, and sell the same by public tender as aforesaid.

Company's debentures not so exchanged chargeable on general colonial revenue.

12. To provide for the gradual extinction of the debentures to be issued under this Act, and for the payment of the interest in the meantime thereon, there shall be charged and chargeable upon and set apart out of the annual revenue of this Colony, such annual amount as shall be sufficient to satisfy the terms of agreement which shall be entered into under the provisions of this Act, in regard to the sinking fund stipulated in the said heads of agreement contained in the first schedule hereto, and also the annual interest upon all such debentures as shall from time to time remain due.

Sinking fund for extinction of debentures.

13. Such portion of the fund which shall under the last foregoing section be charged and chargeable annually on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the said debentures, shall be applied in redeeming and cancelling the said debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Application of sinking fund.

14. An account showing the amount of all debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, and an account of the amount of such debentures for the time being outstanding, and of all such sums

Accounts to be laid before Parliament annually.

No. 15—1872.

thereof as shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Short title.

15. This Act may for all purposes be cited as the "Cape Town and Wellington Railway Purchase Act, 1872."

---

#### SCHEDULE I.

Proposed Heads of Agreement between the Government of the Colony of the Cape of Good Hope, hereinafter called the Government, of the one part, and the Cape Railway Company, hereinafter called the Company, of the other part.

1. The Government to buy and the company to sell the railways from Wellington to Fort Knokke and from Fort Knokke to Cape Town, the lease of the Wynberg railway, and all other the assets, property, rights, and privileges of the company, including all claims of the company upon the Government.

2. The purchase to be completed, the purchase money to be paid and the Government to be let into possession of the railways and other property sold on a date to be agreed upon by the contracting parties.

3. All outgoings to be paid by the company up to and including the date so agreed upon, and after that date by the Government; and the balance to be struck, and the net surplus which may be then in the company's hands, after discharging all their existing liabilities including a dividend of three per cent. upon the preferent stock, and a dividend of two and a half per cent. upon the ordinary stock, and including also any apportioned interest due upon debentures under clause 4 (a), for the half-year then ending, excepting the debentures hereinafter mentioned, to belong to the Government.

4. In consideration of such purchase, the Government to assume the following liabilities:

- (a) To take upon itself the debenture debt of the company, amounting to £200,000 and to pay the interest and principal thereof as they shall respectively from time to time fall due. The interest accrued to the day of transfer to be provided by the company. All the rights of the debenture-holders to be preserved.
- (b) To pay to the company for the extinction of its preference stock, representing £30,000, the sum of £32,400 in money.
- (c) To hand over to the company for the extinction of its ordinary stock, representing £523,109, and to cover all expenses incidental to the liquidation of the company, including the cost of obtaining an Act of the Imperial Legislature, if necessary, to carry the same into effect, debentures of the Government representing £530,000.

These debentures (a) to be issued in sums of £100, and multiples of £100; (b) To bear interest at four and a half per cent. per annum; (c) To be paid off at par by the operation of a one per cent. cumulative sinking fund applied to annual drawings. The accretions to such fund to commence

at the expiration of one year from the date of the debenture, and the first drawing to take place towards the end of the second year, and thenceforward yearly.

(d) The interest and principal of the debentures to be paid in London, free of all colonial taxes.

5. The company to pay their own expenses of liquidation, including the expense of obtaining an Act of the Imperial Legislature, if necessary, to carry the same into effect.

6. The Government to pay the expenses of transfer, and of obtaining an Act of the Colonial Legislature to carry this agreement into effect.

7. The Government to pay in cash such reasonable compensation to the officers and persons engaged in the management of the company in England as shall (in case of dispute) be awarded by the Crown Agents for the Colonies, or either of them.

8. The Government to take upon itself all the engagements of the company to all their officers and servants in the Colony, and either to continue to employ the said officers and servants upon the railway upon terms not less favourable to them than those on which they are now employed by the company, or to make to them respectively such reasonable compensation as shall, in case of dispute, be awarded by the Chief Justice of the Colony, or by an arbitrator appointed by him.

9. The directors of the company to use their best endeavours to obtain a ratification of this agreement by the stock-holders of the company, and if necessary to carry a Bill confirming it through the Imperial Parliament.

10. If this agreement shall not, within such time as shall be agreed to, in writing, between the Crown Agents and the chairman of the company, be ratified by the stock-holders of the company, it shall be void, and everything contained herein shall be of no effect.

SCHEDULE II.

Statement of the Railway Company's Liabilities in respect of Debentures.

Nature of Debt.	Amount.	Rate of Interest.	Date of Expiry.
Debentures	£ 38,700	6 per cent.	1st June, 1873.
	4,400	„ „	1st October, 1873.
	31,500	5½	„ „
	500	6 „	1st June, 1874.
	24,600	„ „	1st October, 1874.
	11,500	„ „	1st June, 1875.
	7,300	„ „	1st October, 1875.
	1,000	„ „	„ 1876.
	10,200	„ „	„ 1879.
	23,300	„ „	1st December, 1879.
	47,000	„ „	1st April, 1882.
	200,000		

No. 13—1873.]

[June 26, 1873.

## ACT

To Provide for Constructing, Equipping, and Working of a  
Railway from Port Elizabeth to the Bushman's River,  
and a Railway from Wellington to Worcester.

Preamble.

WHEREAS it is expedient that a railway should be constructed, equipped, maintained, and worked from Port Elizabeth to the Bushman's River, and that a railway should also be constructed, equipped, maintained, and worked from Wellington to Worcester, and that the necessary funds for constructing and equipping such railways should be provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Railways to be constructed and worked from Port Elizabeth to Bushman's River and from Wellington to Worcester, and officers appointed by Governor.

1. The Governor shall, as soon as conveniently may be after the passing of this Act, cause to be constructed, equipped, maintained, and worked the railways in the preamble of this Act mentioned, and shall appoint such engineers and other officers, and do and perform all such acts, matters, and things as he may deem necessary or expedient for the said purposes.

Lands may be entered upon subject to compensation to owners.

2. Any person being duly authorized by the Governor so to do may enter upon any land for the purpose of surveying the same, and of picking or boring in order to ascertain the nature of the soil, or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Provisions of Road Act, 1858, as to acquiring lands, &c., for road purposes, to apply to lands, &c., for railways.

3. All and singular the powers and authorities which are by the Act No. 9 of 1858, intituled "An Act to provide for the Management of the Public Roads of the Colony," bestowed upon the Commissioners of Roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned, or of any works in connection therewith, are hereby bestowed upon the Governor, or any person charged by him with the making or maintaining of the railways aforesaid, precisely as if the said powers and authorities were, *mutatis mutandis*, herein again set forth, and as if the said railways were public roads: Provided, however, that if any land or materials belonging to any person who shall be absent from the Colony, or whose place of residence shall be unknown to the Governor, shall be required for the making or maintaining of the railways aforesaid, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9 of 1858, upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor.

Notice to absent proprietors, if published in Gazette, to be sufficient.

4. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony and to buildings and works connected therewith, shall, *mutatis mutandis* extend and apply to injuries done to the lines of railway hereby authorized to be constructed and any buildings or works connected therewith, precisely as if the said lines of railway were main roads.

No. 13—1873.  
Injuries to railway lines to be regulated by provisions of Act 9 of 1858, as to main roads.

5. The several provisions of Act No. 19 of 1861, intituled “An Act for the Regulation of Railways in this Colony,” save and except the twenty-ninth and thirtieth sections thereof, shall, *mutatis mutandis*, apply to the railways to be constructed under this Act, precisely as if the said railway belonged to a company, and there were a board of directors, the functions of the said board being performed by the Governor with the advice of the Executive Council.

Provisions of Railways Regulation Act 1861, except 29th and 30th sections, to apply.

6. For the purpose of constructing the said railway from Port Elizabeth to Bushman’s River, for which the sums of thirty thousand and one hundred thousand pounds respectively have already been authorized by resolution of both Houses of Parliament and the said railway from Wellington to Worcester, for which the sum of forty thousand pounds has already been authorized in manner aforesaid, it shall be lawful for the Governor to raise, as hereinafter mentioned, a sum not exceeding six hundred and sixty thousand pounds sterling, whereof the sum of three hundred and forty-five thousand pounds sterling shall be applied for the purpose of constructing and equipping the said railway from Port Elizabeth to the Bushman’s River, and a sum not exceeding three hundred and fifteen thousand pounds sterling, for the purpose of constructing and equipping the said railway from Wellington to Worcester.

Loan of £660,000 to be raised, £345,000 to be applied to Port Elizabeth railway and £315,000 to Worcester railway.

7. The said sum of six hundred and sixty thousand pounds sterling may be raised from time to time, as it may be deemed expedient by the Governor, either by debentures or stock, or partly by debentures and partly by stock.

Loan to be raised by debentures or stock.

8. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed :—Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Mode of issuing debentures.

9. In so far as the said borrowing shall be upon stock, the following provisions shall be observed :

Provisions under which stock shall be issued.

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by

Stock to be issued by scrip certificate.

No. 13—1873.

To bear interest at  
4½ per cent.Stock and interest  
to be paid out of  
general revenue.Mode of transfer of  
stock.Fee on transfer of  
stock.Tenders for stock  
be called for.

- such purchaser, or by his order, of a scrip certificate for the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary and countersigned by the said Treasurer and by the Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.
2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum on the nominal amount of such stock, from the 15th day of April or the 15th day of October next preceding the issue of the said scrip certificates, which shall last happen, and such interest shall be payable thereafter half-yearly on the 15th day of April and the 15th day of October in each year; the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter, as demands shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasury in Cape Town.
  3. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time buy up and cancel such stock or any part thereof.
  4. Such stock shall be transferable by transfer in the books of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.
  5. There shall be paid into the Treasury upon every transfer in the said books of any sums of such stock a sum of two shillings and sixpence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion: Provided that, instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable; and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.
  6. All such stock shall be put up for public tender in such amounts as may from time to time seem fit and may be



disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

No. 13—1873.

7. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended, so far as shall be necessary, for the purposes mentioned in the preamble of this Act.

Accounts to be kept

10. Any debentures which may be issued under this Act shall be subject to the provisions of the "Public Debt Consolidation Act, 1870," in like manner as if they had existed at the time of the passing of the said Act, and were included in the schedule thereto.

Debentures to be subject to Debt Consolidation Act.

11. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Accounts to be laid before Parliament annually.

12. This Act may be cited for all purposes as the "Railway Act, 1873."

Short title.

No. 19—1874.]

[July 31, 1874.

ACT

To provide for Constructing, Equipping, and Working certain Railways, and to relieve the Divisions of the Cape, Stellenbosch, and the Paarl, from the charge commonly called Sub-Guarantee to which the Immovable Property in the said Divisions is now liable.

WHEREAS it is expedient that certain railways should be constructed, equipped, maintained, and worked, that is to say:

Preamble.

1. From East London, *via* Blaney, to King William's Town, and from Blaney to Queen's Town;
2. From Worcester, *via* Hex River and De Staat, to Beaufort West;

No. 19—1874.

3. From the Bushman's River to Cradoek ;
4. From Bushman's River to Graham's Town. <sup>(1)</sup>
5. From Belleville on the Cape Town and Wellington Railway, *via* Kraaifontein, to Malmesbury, and from Kraaifontein to Muller's Vley ;
6. From the Zwartkop's River, *via* Uitenhage, to Graaff-Reinet ; and
7. In Cape Town, from the Castle to the Docks ;

And whereas it is also expedient that the necessary funds for constructing and equipping the said railways should be provided : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Governor shall cause sections of railway to be constructed, equipped, maintained, and worked.

1. The Governor shall, as soon as conveniently may be after the passing of this Act, cause to be constructed and equipped, either under contract for each separate line of railway or otherwise, the several railways in the preamble of this Act mentioned, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers, and do and perform all such acts, matters, and things as he may deem necessary or expedient for the said purposes : Provided, however, that instead of constructing and equipping so much of the said railway sixthly above mentioned as lies between the Zwartkops River and Uitenhage, it shall be competent for the Governor to exercise the power of purchase contained in the "Port Elizabeth and Uitenhage Railway Company (Limited) Act, 1871."

Lands may be entered, &c.

2. Any person being duly authorized by the Governor so to do may enter upon any land for the purpose of surveying the same, and of probing or boring in order to ascertain the nature of the soil, or of setting out the said several lines of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Powers of Commissioners under Act No. 9 of 1858, bestowed upon Governor in regard to taking or acquiring lands and materials.

3. All and singular the powers and authorities which are by the Act No. 9 of 1858, intituled "An Act to provide for the Management of the Public Roads of the Colony," bestowed upon the Commissioners of Roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned, or of any works in connection therewith, are hereby bestowed upon the Governor, or any person charged by him with the making or maintaining of the railways aforesaid, precisely as if the said powers and authorities were, *mutatis mutandis*, herein again set forth, and as if the said railways were public roads : Provided however, that if any land or materials belonging to any person who shall be absent from the Colony, or whose place of residence shall be unknown to the Governor, shall

<sup>1</sup> Printed as amended by Act 5, 1876.

No. 19—1874.

be required for the making or maintaining of the railways aforesaid, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9 of 1858 upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor: Provided, also, that it shall not be necessary before the exercise of any such powers or authorities as aforesaid, that any proceeding shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for the Governor, or any person charged by him with the making or maintaining of the railways aforesaid, to enter upon, take possession of, and use any land or materials which may be required for the purposes of any of the said railways whenever he may think fit, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in manner provided by the 12th and 13th sections of the said Act No. 9 of 1858.

4. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, and to buildings and works connected therewith, shall, *mutatis mutandis*, extend and apply to injuries done to the lines of railway hereby authorized to be constructed and any buildings or works connected therewith, precisely as if the said lines of railway were main roads.

Provisions of sections 56 and 57 of Act No. 9 of 1858 to extend to railway lines.

5. The several provisions of Act No. 19 of 1861, intituled "An Act for the Regulation of Railways in this Colony," save and except the twenty-ninth and thirtieth sections thereof, shall, *mutatis mutandis*, apply to the railways to be constructed under this Act, precisely as if the said railway belonged to a company, and there were a board of directors, the functions of the said board being performed by the Governor with the advice of the Executive Council.

Act No. 19 of 1861 to apply to railways under this Act.

6. For the purpose of constructing and equipping the said railways in the preamble of this Act mentioned it shall be lawful for the Governor to expend a sum not exceeding four millions eight hundred and five thousand and eighty pounds sterling, as follows, that is to say:

Sums to be expended.

1. For the purpose of constructing and equipping the said railway from East London to King William's Town, and from Blaney to Queen's Town, the sum of one million and sixty-nine thousand pounds sterling, which said sum includes a sum of twenty-five thousand pounds already authorized by resolution of both Houses of Parliament to be expended upon the construction of the first section of the said line of railway from East London.
2. For the purpose of constructing and equipping the said railway from Worcester to Beaufort West, a sum not

f

No. 19—1874.

exceeding one million three hundred and ninety thousand pounds sterling.

3. For the purpose of constructing and equipping the said railway from the Bushman's River to Cradoek, a sum not exceeding eight hundred and forty-two thousand pounds sterling.
4. <sup>(1)</sup> For the purpose of constructing and equipping the said railway from Bushman's River to Graham's Town, a sum not exceeding two hundred and fifty-five thousand two hundred pounds sterling.
5. For the purpose of constructing and equipping the said railway from Belleville to Malmesbury and from Kraaifontein to Muller's Vley, a sum not exceeding two hundred and twenty-eight thousand pounds sterling.
6. For the purpose of constructing and equipping the said railway from the Zwartkop's River to Graaff-Reinet, a sum not exceeding nine hundred and forty thousand pounds sterling, which said sum includes the money required for the purchase of the said railway between Zwartkop's River and Uitenhage and the matters and things appertaining thereto; and
7. For the purpose of constructing and equipping the said railway from the Castle to the Docks, a sum not exceeding eight thousand and eighty pounds sterling.

Loan of £4,000,000 authorized.

7. And whereas it is estimated that of the said sum of four millions eight hundred and five thousand and eighty pounds sterling, a sum not exceeding four millions will be required to be raised by loan, the residue of the said sum being provided from and out of the proceeds of the sale of crown lands, heretofore paid to the commissioners of the Sinking Funds, under the 2nd section of the Act No. 5 of 1870 for purpose now otherwise provided for, and from and out of other existing sources of revenue, it shall be lawful for the Governor to raise the said sum of four million pounds, from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock.

8. [ §§ 8-12 are identical with §§ 2-6 Act 40, 1877, *supra* ].

Master of supreme Court may invest moneys in stock and debentures.

13. Notwithstanding anything herein contained, it shall be lawful for the Governor to dispose of to the Master of the Supreme Court, in his capacity of Administrator of the Guardian's Fund, and the said Master is hereby authorized to invest any unemployeed moneys belonging to such fund in so much of any such stock and so many of any such debentures as he may apply for, on such terms as may be mutually agreed upon, provided that every such investment shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Accounts to be submitted annually to Parliament.

14. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the

<sup>1</sup> Printed as amended by Act 5, 1876, *infra*.

moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended; and of all other moneys which have been expended upon the said railways out of the general revenue of the Colony, or otherwise, distinguishing the total sums expended upon each line of railway, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

No. 19—1874.

15. And whereas under and by virtue of the Acts relating to the construction of the Cape Town and Wellington Railway, to wit, the Acts No. 20 of 1857, No. 10 of 1862, and No. 15 of 1872, a certain charge in the nature of a sub-guarantee is imposed upon the immovable property of or belonging to the division of the Cape (including the municipalities of Cape Town and Green Point), and the divisions of Stellenbosch and the Paarl; and whereas the railways in the preamble of this Act mentioned are to be constructed without imposing any such charge upon property of or belonging to the divisions through which the said lines of railway will pass: Be it enacted, that the said charge upon the immovable property of or belonging to the said divisions, and the liability thereof to any rate in respect of such charge, shall cease as from the 1st of January last past: Provided that nothing herein contained shall discharge or relieve any such property, or the owners or occupiers thereof or the Divisional Council of either of the said divisions, from any liability for any sum or sums of money due in respect of the said sub-guarantee for any period prior to the 1st day of January aforesaid, but such moneys shall be in the same plight and condition as if this Act had not passed.

Sub-guarantee under Acts No. 20 of 1857, No. 10 of 1862, and No. 15 of 1872, abolished.

16. This Act may for all purposes be cited as the "Railways Act, 1874."

Short title.

No. 5—1876.]

[July 4, 1876.]

## ACT

To Authorize the Construction of a Railway from the Bushman's River to Graham's Town, instead of a Railway from Graham's Town to the Little Fish River.

WHEREAS by the "Railways Act, 1874," a railway is authorized to be constructed, equipped, maintained, and worked from Graham's Town to the Little Fish River (on the line to Cradock),

Preamble.

f 2

No. 5—1876.

and for the purpose of constructing and equipping the said railway, the Governor was authorized to expend a sum not exceeding, £328,000 sterling : And whereas it is expedient that a railway from Bushman's River to Graham's Town should be substituted for the said first-mentioned railway : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble of Act 19 of 1874 amended.

1. In lieu of the Railway No. 4, mentioned in the preamble of the said "Railways Act, 1874," the following shall be considered as inserted in the said preamble :

4. From Bushman's River to Graham's Town.

Section 6 of Act 19 of 1874 amended.

2. In lieu of the paragraph numbered 4 of the sixth section of the said Act, the following shall be considered as inserted :

4. For the purpose of constructing and equipping the said railway from Bushman's River to Graham's Town, a sum not exceeding two hundred and fifty-five thousand two hundred pounds sterling.

Provisions of Act 19 of 1874 to apply to Bushman's River and Graham's Town Railway.

3. All and singular the other provisions of the said Act shall apply to the said railway from Bushman's River to Graham's Town, as if the said railway had been mentioned in the said Act, instead of the said railway from Graham's Town to the Little Fish River.

Short title.

4. This Act may be cited for all purposes as the "Graham's Town Railway Act, 1876."

No. 8—1876.]

[July 4, 1876.

## ACT

For Authorizing the Purchase of the Wynberg Railway, with its Appurtenances, and for working the same, and for Raising the necessary Funds for such Purchase.

Preamble.

WHEREAS it is desirable, with a view to railway extension and otherwise, that the line of railway known as the Wynberg Railway, and all the property of the Wynberg Railway Company (hereinafter called the company) should be purchased and worked by the Colonial Government : And whereas a provisional agreement for such purpose, as in the schedule hereunto, has been entered into between the said company and the Commissioner of Crown Lands and Public Works, acting for and on behalf of the said Colonial Government, and it is desirable that the said agreement should be confirmed, and that the Governor should be authorized to raise the funds necessary for concluding such purchase : Be it enacted by the Governor of the Cape of Good Hope, with the

advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 8—1876.

1. The provisional agreement in the schedule hereto is hereby ratified and confirmed, and shall be of the same force as if it had been set forth in so many enacting clauses in this Act. Provisional agreement in schedule confirmed.

2. From and after the taking effect of this Act the said Government shall be and is hereby vested with the same rights, powers, duties, functions and privileges as to working the said railway and otherwise, as theretofore the said company was vested with, and the said Government shall then and thereupon, with respect to any Acts relating to the said railway or railways generally, be in the like position in all respects as if the said railway were a railway belonging to a company, and the said Government were a board of directors of the said railway. Government vested with rights, &c., of late Wynberg Railway Company.

3. No formal transfer to the Government of the lands of the said company shall be necessary, but the same shall from and after the taking effect of this Act, vest in Her Majesty the Queen in her Colonial Government as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed according to the law and custom of this Colony. Lands held by Company vested in the Government.

4. When the affairs of the said company have been completely wound up and liquidated, it shall be lawful for the Governor, upon a certificate to that effect, signed by the directors for the time being of the said company, by proclamation in the *Government Gazette* to declare that the said company shall be dissolved from and after such date as shall be fixed for the purpose in the said proclamation, and the said company shall be dissolved accordingly. Company may be dissolved by Proclamation in Gazette.

5. For the purpose of paying off the debentures in the said agreement mentioned, amounting to the sum of twenty-three thousand seven hundred pounds sterling, which will become payable on the fifteenth day of February, 1877, it shall be lawful for the Governor to raise the said sum either by debentures or stock, or partly by debentures and partly by stock. Loan authorized to pay debentures in agreement.

6. [§§ 6-10 are identical with §§ 2-6, Acts 40, 1877, *supra*.]

11. For the purpose of carrying out the fourth and fifth clauses of the said agreement, it shall be lawful for the Governor, and he is hereby authorized, to issue and deliver to the directors of the said company for the time being debentures as in the said clauses mentioned not exceeding in amount fifty-one thousand three hundred pounds sterling; which debentures shall be signed by the Colonial Secretary by command of the Governor, and countersigned by the Treasurer of the Colony and the Controller and Auditor-General, and such debentures, together with the interest from time to time to accrue thereon, shall be and are hereby charged upon and made payable out of the general revenue of the Colony; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time buy up and cancel Debentures to value of £51,300 to be delivered to directors of company in payment of remaining portion of purchase amount.

No. 8--1876.

such debentures. The interest on the said debentures shall be payable at the office of the Crown Agents for the Colonies, on the first day of January or on the first day of July next succeeding the issue thereof, whichever shall first happen, and thereafter on the first day of January and the first day of July in each year, until such debentures respectively shall be redeemed and cancelled. The first payment of interest shall include interest from the first day of January, 1876. All such debentures shall be transferable by delivery without endorsement; and payment of principal or interest due upon any such debenture to any person presenting the same shall be a good discharge for such principal or interest respectively to the Government, who shall not be bound to make any inquiry as to the title of such person to the debenture so presented.

Short title.

12. This Act may be cited for all purposes as the "Wynberg Railway Purchase Act, 1876."

---

SCHEDULE.

---

Agreement made and entered into this eleventh day of April, One  
Thousand Eight Hundred and Seventy-six.

Between John Xavier Merriman, Esquire, Commissioner of Crown Lands and Public Works, and as such acting for and on behalf of the Government of the Colony of the Cape of Good Hope, hereinafter called the Government, of the first part, and the Wynberg Railway Company (Limited), incorporated by Act No. 35 of 1861, hereinafter called the company, of the second part.

First. The Government hereby agrees to buy, and the company hereby agrees to sell to the Government, and to put the Government in undisturbed possession of for the price or sum of seventy-five thousand pounds (£75,000) sterling, to be paid or satisfied in manner hereinafter provided, the whole of the Wynberg Railway from its junction with the Wellington Railway near Salt River, to and including its terminus at Plumstead near Wynberg, together with all the buildings, lands, furniture, and fittings of stations, fixed and movable plant appertaining to the railway as worked by and leased to the Government, and all rights and privileges of the company appertaining to the said railway, of whatever nature or kind whatsoever, and all matters and things whatsoever appertaining to the said railway as worked and leased aforesaid, in or to which the company has any right, title, or interest.

Second. In consideration of such purchase the Government hereby agrees to pay or satisfy the said sum of seventy-five thousand pounds sterling in manner following, that is to say:

Third. The Government will take over and become responsible for the payment or satisfaction of the debenture debt of the company, amounting to twenty-three thousand seven hundred pounds sterling, together with the interest which shall accrue thereon half-yearly from the fifteenth day of August, one thousand eight hundred and



seventy-five, which debenture debt bears interest as follows:—Seven thousand pounds sterling at the rate of five per cent. per annum, and sixteen thousand seven hundred pounds sterling at the rate of six per cent. per annum, and the whole of the capital of which is payable on the fifteenth day of February one thousand eight hundred and seventy-seven, at which date the Government undertakes to pay the same, with such interest as may then be due thereon, to the respective debenture holders.

Fourth. For the remainder of the said sum of seventy-five thousand pounds sterling, namely, fifty-one thousand three hundred pounds sterling, the Government will deliver to the directors of the company within a reasonable time, but not later than one month after the passing of the Act hereinafter mentioned, debentures, duly signed under the authority of Parliament, forming a charge upon and payable out of the general revenue of the Colony. The debentures shall be issued for sums of one hundred pounds and fifty pounds each, or multiples of one hundred pounds and fifty pounds, and shall bear interest at the rate of four and a half per cent. per annum, from the first day of January, one thousand eight hundred and seventy-six, after which date no rent shall be payable by the Government to the company under the lease of the railway, if the Act hereinafter mentioned shall have been passed.

Fifth. The interest on the said debentures shall be payable half-yearly at London, and the principal shall be redeemable on the thirty-first day of December, one thousand eight hundred and ninety-nine, and shall be payable at London.

Sixth. In case this agreement shall be sanctioned and ratified by Act of Parliament in manner hereinafter mentioned, then and in such case from and after the promulgation of such Act, the whole of the said railway, together with all the buildings, land, furniture, and fittings of stations, fixed and movable plant appertaining to the railway, as worked by and leased to the Government, and all rights and privileges of the company pertaining to the said railway, of what nature or kind whatsoever and all matters and things whatsoever appertaining to the said railway, as worked and leased aforesaid, in or to which the company has any right, title, or interest shall vest in the Government absolutely; and all right, title, and interest of the company therein, and the lease of the railway and all and singular the provisions or matters and things therein contained, shall cease and determine.

Seventh. The Government will take over all the liabilities of the company in respect of the construction and working of the line.

Eighth. The Government will pay all expenses of transfer and of any Legislative Act which may be necessary to carry out this agreement, and the expenses of the liquidation of the said Wynberg Railway Company.

Ninth. The Government will use its best endeavours to obtain a ratification of this agreement by Act of the Colonial Parliament during its next session.

Tenth. In case such Act shall not be passed during such session, this agreement shall be void, and everything herein contained shall be of no effect.

No. 8—1876.

In witness whereof the parties hereto have hereunto set their hands at Cape Town aforesaid.

JOHN X. MERRIMAN,  
Commissioner.  
R. H. ARDERNE,  
E. LANDSBERG,  
WILLIAM HALL,  
JOHN MILLER.

Signed in presence of

R. TRIMEN,  
E. TRILL,  
JOHN R. REID.

No. 7—1877.]

[August 8, 1877.

## ACT

To Provide for Raising a further Sum of Money for the purpose of Constructing and Equipping the Railway from East London to King William's Town, and from Blaney to Queen's Town.

Preamble.

WHEREAS, by the "Railways Act, 1874," the Governor was authorized to expend a sum of one million and sixty-nine thousand pounds sterling for the purpose of constructing and equipping a railway from East London *via* Blaney to King William's Town, and from Blaney to Queen's Town, and whereas by reason of the construction of works not contemplated at the time of the passing of the said Act, and otherwise, the said sum will not be sufficient for the due purpose, and it is expedient that the Governor should be authorized to raise and expend a further sum not exceeding one hundred and fifty thousand pounds for the said purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Further sum of  
£150,000 may be  
raised.

1. It shall be lawful for the Governor from time to time as he may deem expedient to raise, either by debentures or stock, or partly by debentures and partly by stock, a sum or sums of money not exceeding in the whole the sum of one hundred and fifty thousand pounds sterling in addition to the said sum of one million and sixty-nine thousand pounds sterling for the purpose of constructing and equipping the said railway.

Certain provisions  
of Railways Act,  
1874, to apply to  
money borrowed un-  
der this Act.

2. All and singular the provisions of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth sections of the said "Railways Act, 1874," relating to the money authorized to be borrowed by the said Act, shall apply, *mutatis mutandis*, to the sum of one hundred and fifty thousand pounds sterling hereby authorized to be borrowed, as if the same were borrowed under the authority of the said Act.

Short title.

3. This Act may be cited as "The East London and Queen's Town Railway Further Loan Act, 1877."

No. 26—1878.]

[August 2, 1878.

## ACT

To Provide for the Completion of certain Lines of Railway now in process of Construction, and for certain additional Works.

WHEREAS it is expedient to provide for the completion and equipment of certain lines of railway which have already been commenced and are in process of construction, and to carry out certain additional works not hitherto provided for in connection with certain railways, whether completed or not completed, and to raise the necessary funds for such purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the Governor to expend a sum not exceeding one million eight hundred and sixty-five thousand six hundred and fifty-eight pounds sterling for the purposes following, that is to say:

1. For the completion of the line from Worcester to Beaufort West, the sum of £222,792 sterling, in addition to the sum of £1,390,000 provided for such line by Act No. 19 of 1874. Worcester to Beaufort West.
2. For the completion of the line from Bushman's River to Cradock, the sum of £521,242 sterling, in addition to the sum of £842,000 provided for such line by Act No. 19 of 1874. Bushman's River to Cradock.
3. For the completion of the line from Bushman's River to Graham's Town, the sum of £226,924 sterling, in addition to the sum of £255,200 provided for such line by Act No. 5 of 1876. Bushman's River to Graham's Town.
4. For the completion of the line from Zwartkops to Graaff-Reinet the sum of £176,200 sterling in addition to the sum of £940,000 provided for such line by Act No. 19 of 1874. Zwartkops to Graaff-Reinet.
5. For the completion of the line from East London to Queen's Town, the sum of £384,500 sterling, in addition to the sums provided for such line by Acts No. 19 of 1874 and No. 7 of 1877, amounting in the aggregate to £1,219,000. East London to Queen's Town.
6. For certain additional works recommended by the report of the Railway Commission, bearing date the 18th day of February 1878, a sum of £166,000 sterling, according to the specification of such works, and the costs of the sums respectively set forth and enumerated in the schedule to this Act annexed. Additional works recommended by Railway Commission
7. For the charges in respect of interest during construction, and cost of raising loan, £168,000. Interest.

- No. 26—1878. Governor authorized to raise the above sum.
2. For the purposes aforesaid it shall be lawful for the Governor to raise the said sum of one million eight hundred and sixty-five thousand six hundred and fifty-eight pounds sterling from time to time, as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock.
- Certain sections of Act 19 of 1874 to apply to these loans.
3. The sections of Act No. 19 of 1874, numbered respectively 8, 9 (with the sub-sections thereto), 10, 11, 12, and 14, shall *mutatis mutandis*, be deemed and taken to apply to the borrowing authorized under this Act.
- Short title.
4. This Act may be cited as the "Railway Loan Act, 1878."

---

SCHEDULE.

Schedule.	(a) Additional accommodation at Terminal Station, Port Elizabeth .. .. .	£20,000
	(b) Additional accommodation at Uitenhage Station .. .. .	5,000
	(c) Additional Water-ways, Graaff-Reinet Line, and Pitching to Slopes, Cradock Line. . . . .	20,000
	(d) Signal arrangements, Midland and North-Eastern Railways .. .. .	1,000
	(e) Goods Yard, Sheds, &c., Riverside, Panmure .. .. .	5,000
	(f) Additional Goods Shed accommodation at Terminal Station, Cape Town, and sundry Station improvements along lines, Western System. . . . .	10,000
	(g) Water Supply .. .. .	10,000
	(h) Fencing, for protection of Stores .. .. .	5,000
	(i) Automatic Continuous Brakes .. .. .	30,000
	(j) Fencing Lines .. .. .	60,000
		<hr/> £166,000

No. 34—1879.]

[Sept. 11, 1879.

ACT

To Enable the Governor to Borrow a Sum not exceeding £140,000 for the purpose of completing certain Railway Works.

Preamble.

WHEREAS it is expedient that certain additions shall be made to the existing railway station accommodation at Port Elizabeth: And whereas it is also necessary to provide house accommodation for tradesmen and others employed in maintaining and working the line of railway from East London to Queen's Town: And whereas it is necessary to provide the money required for carrying out both the above purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. For the purpose of carrying out the works in the preamble to this Act mentioned, it shall be lawful for the Governor to raise from time to time, either by debentures or stock, or partly by debentures and partly by stock, a sum of money not exceeding the sum of £140,000, to be applied as follows, that is to say: a sum not exceeding £130,000 for the purpose of providing the said additional railway station accommodation at Port Elizabeth, and a sum not exceeding £10,000 for the purpose of providing the said house accommodation for employés on the line of railway between East London and Queen's Town.

No. 31—1879.  
Power to raise  
£140,000.

2. The several borrowing powers and other provisions contained in sections two and three of Act No. 6 of 1877 (together with the several sub-sections of such lastnamed section) shall, *mutatis mutandis*, apply to all sums of money borrowed under the authority of this Act.

Borrowing powers.

3. An account shewing the amount of all stock and debentures issued from time to time under the authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall have been expended, and an account of the amount of such stock and debentures for the time being outstanding, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and the like accounts within fourteen days after the commencement of every succeeding session thereof.

Accounts to be laid  
before Parliament.

4. All and singular the powers and authorities with regard to the taking and appropriation of land which are bestowed by previous Acts upon the Governor, or any person charged by him in the making and maintenance of the railway from Bushman's River to Port Elizabeth are hereby bestowed upon him with regard to the extension of railway accommodation at Port Elizabeth.

Powers to appropriate land for extension of railway accommodation at Port Elizabeth.

5. This Act may be cited as the "Additional Railway Works Loan Act, 1879."

Short title.

No. 22—1880.]

[July 30, 1880.

## ACT

To enable the Governor to Borrow a Sum not exceeding Three Hundred and Forty-nine Thousand Five Hundred and Fourteen Pounds Ten Shillings and Ten Pence (£349,514 10s. 10d.) for the purpose of completing certain Railway Works; and the further Sum of One Hundred and Eighty-one Thousand Nine Hundred and Eighty-five Pounds One Shilling and Three Pence (£181,985 1s. 3d.) to cover the Expenditure authorized to be incurred by Act No. 13 of 1879. <sup>(1)</sup>

Preamble.

WHEREAS it is necessary to incur the expenditure of a sum of three hundred and forty-nine thousand five hundred and fourteen pounds ten shillings and ten pence (£349,514 10s. 10d.) in the construction and equipment of certain railways in excess of the sums already appropriated for that purpose: And whereas, by Act No. 13 of 1879, the expenditure was authorized of a sum not exceeding one hundred and eighty-one thousand nine hundred and eighty-five pounds one shilling and three pence (£181,985 1s. 3d.) for the construction and equipment of certain lines of railways, but no power or authority was given to the Governor to borrow such last-mentioned sum, or any part thereof: And whereas it is necessary to provide for the raising upon loan of both the aforesaid sums: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Expenditure of  
£349,514 10s. 10d.  
authorized.

1. The expenditure of a further sum not exceeding three hundred and forty-nine thousand five hundred and fourteen pounds ten shillings and ten pence (£349,514 10s. 10d.) sterling, in addition to the sums already authorized for the construction and equipment of railways, is hereby authorized as follows:

- (a) For the Wellington and Worcester railway, a sum of two thousand five hundred and five pounds sixteen shillings and seven pence (£2,505 16s. 7d).
- (b) For the Worcester and Beaufort West railway, a sum of fifty-three thousand four hundred and ninety-eight pounds (£53,498).
- (c) For the Malmesbury and Loop Line railway, a sum of three thousand three hundred and thirty pounds one shilling and five pence (£3,330 1s. 5d).
- (d) For the Castle and Docks railway, a sum of four hundred and three pounds twelve shillings and two pence (£403 12s. 2d).

<sup>1</sup> See Act No. 3, 1881.

- (e) For the Port Elizabeth and Bushman's River railway, a sum of three thousand four hundred and forty-four pounds and eight pence (£3,444 0s. 8d).
- (f) For the East London and Queen's Town railway, a sum of two hundred and twenty-five thousand pounds (£225,000).
- (g) For the terminal works, Cape Town, a sum of ten thousand five hundred and seventy-six pounds (£10,576).
- (h) For additional rolling stock for Western railways, a sum of thirty-four thousand eight hundred and twelve pounds (£34,812).
- (i) For discount and charges of raising loans, a sum of fifteen thousand nine hundred and forty-five pounds (£15,945).

No. 22—1880.

2. For the purpose of carrying out the works in the last preceding section mentioned, and for the purpose of providing for the expenditure authorized to be incurred by Act No. 13 of 1879, it shall be lawful for the Governor to raise from time to time, either by debentures or stock, or partly by debentures and partly by stock, a sum not exceeding the sum of five hundred and thirty-one thousand four hundred and ninety-nine pounds twelve shillings and one penny (£531,499 12s. 1d.) to be applied as follows, that is to say:—A sum not exceeding the sum of three hundred and forty-nine thousand five hundred and fourteen pounds ten shillings and ten pence (£349,514 10s. 10d.) for the purposes in the first section of this Act mentioned; and a sum not exceeding the sum of one hundred and eighty-one thousand nine hundred and eighty-five pounds one shilling and three pence (£181,985 1s. 3d.) for the purposes in Act No. 13 of 1879 mentioned and provided for.

Borrowing powers to provide for the above sum, and for money authorized to be spent by Act 13 of 1879.

3. The several borrowing powers and other provisions contained in sections 2 and 3 of Act No. 6 of 1877 (together with the several sub-sections of such last-named section) shall *mutatis mutandis*, apply to all sums of money borrowed under the authority of this Act.

Borrowing powers of Act 6 of 1867 to apply.

4. An account showing the amount of all stock and debentures issued from time to time under the authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall have been expended, and an account of the amount of such stock and debentures for the time being outstanding, vouched for by the Controller and Auditor General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and the like accounts within fourteen days after the commencement of each succeeding session thereof.

Accounts to be laid before Parliament.

5. This Act may be cited as the "Additional Railway Works Loan Act, 1880."

Short title.

No. 14—1881.]

[June 25, 1881,

## ACT

## To provide for Constructing, Equipping and Working certain Railways. (1)

Preamble.

WHEREAS it is expedient that certain railways, in addition to the railways already constructed, should be constructed, equipped, maintained, and worked, that is to say :

1. From Queen's to Aliwal North, *via* Burghersdorp.
2. From Beaufort West to Hope Town, with a view to its ultimate extension to Kimberley.
3. From Cradock to Colesberg.
4. From Wynberg to Kalk Bay.
5. From a point at or near Colesberg on the Cradock Extension to a point at or near the one hundred and eightieth mile, from Beaufort West on the Beaufort West Extension :

And whereas it is expedient to raise the necessary funds for the aforesaid purposes : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Governor to provide for construction and equipment of railways mentioned in preamble.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act cause to be constructed and equipped, either under contract for each separate line of railway or otherwise the several railways in the preamble of this Act mentioned, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers and do and perform all such acts, matters, and things as he may deem necessary or expedient for such purposes.

Sections 2, 3, 4 and 5 of Act 19 of 1874 to apply.

2. For the several purposes in the preceding section mentioned, the several powers and provisions given and contained in the sections of Act No 19 of 1874, numbered 2, 3, 4 and 5, shall be deemed and taken, *mutatis mutandis*, to apply to this Act.

Governor may expend on the railways thus provided for £3,954,636.

3. For the purpose of constructing and equipping the said railways in the preamble of this Act mentioned, it shall be lawful for the Governor to expend a sum not exceeding three million nine hundred and fifty-four thousand six hundred and thirty-six pounds (£3,954,636) as follows, that is to say :

1. For the purpose of constructing and equipping the said railway from Queen's Town to Aliwal North, a sum not exceeding one million one hundred and seventy thousand pounds (£1,170,000).
2. For the purpose of constructing and equipping the said railway from Beaufort West to Hope Town, a sum not exceeding one million five hundred and twenty-four thousand nine hundred and thirty pounds (£1,524,930).

<sup>1</sup> See Act 25, 1884, *infra*.



3. For the purpose of constructing and equipping the said railway from Cradock to Colesberg, a sum not exceeding six hundred and fifty-seven thousand seven hundred and six pounds (£657,706). No. 14—1881.  
---
4. For the purpose of constructing and equipping the said railway from Wynberg to Kalk Bay, a sum not exceeding fifty-two thousand pounds (£52,000).
5. For the purpose of constructing and equipping the said railway from a point at or near Colesberg on the Cradock Extension to a point at or near the one hundred and eightieth mile from Beaufort West on the Beaufort West Extension, a sum not exceeding five hundred and fifty thousand pounds (£550,000).
4. For the several purposes aforesaid it shall be lawful for the Governor to raise a sum of three million nine hundred and fifty-four thousand six hundred and thirty-six pounds (£3,954,636) from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission, and other incidental charges, shall be a first charge against the amount thereof. Such sum to be raised by debentures or stock.
5. The sections of Act No. 19 of 1874, numbered respectively 8 and 9 (with sub-sections), 10, 11, 12, and 14, shall, *mutatis mutandis*, be deemed and taken to apply to the borrowing authorized under this Act. Sections 8, 9, 10, 11, 12, and 14 of Act 19 of 1874 to apply.
6. This Act may be cited as the "Railway Extension Act, 1881." Short title.

No. 20—1881.]

[June 25, 1881.]

## ACT

To Authorize the Raising of a Sum of Six Hundred and Forty-nine Thousand Nine Hundred and Sixty Pounds Sterling, for the purpose of Completing, Improving and Equipping certain Railways.

WHEREAS it is desirable to make provision for the completion, improvement and equipment of certain railways already authorized to be constructed, equipped and worked in this Colony: And whereas it is necessary to raise a sum of six hundred and forty-nine thousand nine hundred and sixty pounds (£649,960) for such purposes:

Preamble

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

- No. 20—1881.      1. It shall be lawful for the Governor to raise and take up a  
 Power to raise      sum of money not exceeding six hundred and forty-nine thousand  
 £649,960.            nine hundred and sixty pounds (£649,960), to be applied to the  
                              several purposes in the schedule to this Act annexed.
- Short title.         2. This Act may be cited as the “Railways Completion and  
 Equipment Act, 1881.”

---

SCHEDULE.

Western Railways .. .. .	£198,926
Midland and North-Eastern Railways .. .. .	352,772
East London and Queen's Town Railway .. .. .	98,262
	£649,960

---

No. 25—1884.]

[July 25, 1884.

ACT

To Authorize the Expenditure of a further Sum of Two Hundred and Eighty-two Thousand Pounds (£282,000) sterling, in the Construction and Equipment of Railways already authorized, and in providing a Reserve of Store for the Service of the Railway System generally.

reamble.            WHEREAS it is desirable to incur a certain expenditure in completing and equipping certain lines of railway, in addition to the expenditure already authorized for those purposes, and for providing a reserve of stores for the service of the Railway System generally: And whereas it is desirable that the Governor should be authorized to apply to the purpose of meeting such expenditure moneys raised and taken up for the purpose of constructing and equipping certain other lines of railway and for other purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

- Power to raise      1. It shall be lawful for the Governor to expend, from time to  
 £535,000.            time, as occasion may require, a sum not exceeding five hundred  
                              and thirty-five thousand pounds (£535,000), for the following  
                              purposes, that is to say :
- (1) For the purpose of constructing and equipping the railway from Beaufort West to Hope Town, the sum of one hundred and seven thousand pounds (£107,000).
  - (2) For the purpose of constructing and equipping the line of railway from Wynberg to Kalk Bay, the sum of fifty-six thousand pounds (£56,000).
  - (3) For the purpose of constructing and equipping the line of railway from Cradock to Colesberg, the sum of one hundred and eighty-two thousand pounds (£182,000).

(4) For the purpose of creating a reserve of stores for the service of the Railway System generally, the sum of one hundred and ninety thousand pounds (£190,000).

No. 25—1884.

2. It shall be lawful for the Governor to apply to the purposes in the last section of this Act mentioned a sum of two hundred and fifty-three thousand pounds (£253,000) out of the moneys authorized by Act No. 14 of 1881, to be raised and taken up for the construction and equipment of certain other lines of railway, this is to say :

Power to apply £253,000 raised under Act 14 of 1881.

(1) From the appropriation for the purpose of constructing and equipping the railway from a point at or near Colesberg on the Cradock Extension, to a point at or near the one hundred and eightieth mile from Beaufort West on the Beaufort West Extension (being from Naauw Poort to De Aar), the sum of one hundred and sixty-nine thousand pounds (£169,000).

(2) From the appropriation for the railway from Queen's Town to Aliwal North, the sum of eighty-four thousand pounds (£84,000.)

3. It shall be lawful for the Governor to apply for the purposes mentioned in the first section of this Act, a sum of two hundred and eighty-two thousand pounds (£282,000), in addition to the sums mentioned in the last preceding section, out of the moneys authorized to be raised and taken up under the provisions of the "Temporary Loans Act," being the Act No. 20 of 1883.

Power to apply £282,000 to purposes in first section.

4. This Act may be cited as the "Railway Additional Expenditure Act, 1884."

Short title.

No. 1—1885.]

[May 30, 1885.

ACT

To Authorize the Construction, Working and Maintenance of a Line of Railway from Orange River Station to Kimberley.

WHEREAS it is expedient to complete the trunk or main line of railway from the Orange River Station to Kimberley at as early a date as possible : and whereas it is expedient to raise the necessary funds for the aforesaid purpose : and whereas Her Majesty's Imperial Government have consented to advance to the Government of this Colony the sum of four hundred thousand pounds sterling to be expended in the construction of the said railway as a temporary loan out of the Consolidated Fund of the United Kingdom for a period of five years bearing interest at the rate of three pounds ten shillings per centum per annum : and whereas it is required that the negotiation of the said loan upon the conditions of payment of interest aforesaid and eventual repayment to the

Preamble.

g

- No. 1—1885. Imperial Government of the capital sum so advanced as a temporary loan, should have the sanction of the Legislature of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—
- Railway authorized to be constructed. 1. The Governor shall immediately after the passing of this Act cause to be constructed a line of railway from the present terminus at the Orange River Station, to Kimberley, at an expenditure not exceeding the sum of four hundred thousand pounds sterling, exclusive of the cost of erecting bridges over the Orange River and Modder River for which provision has already been made by Acts No. 30 of 1882 and No. 21 of 1883, the said line of railway to be completed ready for traffic not later than the 28th November, 1885.
- Negotiation for loan of £400,000 from Imperial Government sanctioned. 2. For the purposes mentioned in the preceding section of this Act, the Government of this Colony is authorized to accept from Her Majesty's Imperial Government advances, by way of loan, not exceeding in the whole the sum of four hundred thousand pounds sterling, bearing interest at the rate of three pounds ten shillings per centum per annum, for a period of five years reckoned from the day on which such advances shall have been made: provided that the said loan shall be appropriated to the construction of the said line of railway and to no other purpose whatsoever; and provided further that the said loan shall not be subject to the terms and conditions of Act No. 16 of 1881.
- Capital and Interest for Imperial loan to be a charge upon Colonial Revenue. 3. The general revenues of this Colony shall be, and they are hereby charged, firstly, with the payment half-yearly of the said interest on the said loan to Her Majesty's Imperial Government, for the period of five years aforementioned, and secondly, with the sum or sums required to repay to Her Majesty's Imperial Government at the expiration of five years, the capital sum of the loan of four hundred thousand pounds sterling, the said repayment to be made in precisely the same manner as regards numbers and amounts of respective instalments by which the said advance shall have been made, that is to say that repayment of each instalment shall be made at the expiration of five years from the day on which and at the place where such instalment shall have been advanced.
- Mode of repayment. 4. In order to meet the requirements of the Act of the Imperial Parliament entitled the "Cape of Good Hope (Advance) Act, 1885," the Treasurer of the Colony is hereby authorized to issue and deposit with Her Majesty's Imperial Government as security for any advance to be made under the provisions of this Act such number of debentures of the Government of the Colony of the Cape of Good Hope, bearing interest at the rate of five per centum per annum, as in nominal amount shall be equal to the amount of the said advance with an addition of one-sixteenth of the amount of such advance. And the value of such debentures as well as the
- Debentures to be deposited with Imperial Government as security for advances.

interest thereon shall in like manner be chargeable, and are hereby charged to the general revenues of the Colony. (1)

No. 1—1886.

5. For the purpose of raising if necessary the sum or sums required under this Act for the repayment of the loan aforesaid, the Governor may borrow any sum or sums not exceeding four hundred thousand pounds according to the terms and conditions of Act No. 16 of 1881.

The Governor may borrow money required for the repayment of instalments as they fall due.

6. The Colonial Government shall render to Her Majesty's Imperial Treasury such abstract accounts of expenditure on the said railway, certified by the Controller and Auditor-General of this Colony, and such reports of the progress of the works, certified by the Railway Engineer-in-Chief, as may from time to time be required.

Abstract of expenditure and report of progress of works to be rendered to H.M. Treasury.

7. For the purposes of this Act the several powers and provisions given and contained in the sections of Act No. 19 of 1874, numbered 2, 3, 4, and 5, shall be deemed and taken *mutatis mutandis* to apply to this Act.

Certain Sections of Act 19 of 1874 to apply.

8. This Act may be cited as the "Kimberley Railway Extension Act, 1885."

Short title.

No. 1—1886.]

[April 23, 1886.

ACT

To Amend and Add to a certain Clause in Act No. 1 of 1885, being the "Kimberley Railway Extension Act, 1885." (2)

WHEREAS no provision is made in the Act No. 1 of 1885, being the "Kimberley Railway Extension Act, 1885," for charging the debentures therein authorized to be issued upon the general revenues of the Colony: and whereas it is desirable that such provision should be made: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. To the fourth section of the Act No. 1 of 1885 there shall be added, at the end thereof, the words following, that is to say, "And the value of such debentures as well as the interest thereon shall in like manner be chargeable, and are hereby charged to the general revenues of the Colony," and such section shall henceforth be read as if such additional words had originally been included therein.

4th Section of Act of 1885 amended by making debentures therein authorized chargeable to the general revenue.

2. This Act may be cited as the "Kimberley Railway Extension Amendment Act, 1886."

Short title.

<sup>1</sup> Printed as amended by Act No. 1, 1886.

<sup>2</sup> Further sums raised for railway purposes by Acts 30 of 1882, 21 of 1883, 17 of 1884, and 25 of 1886, *infra*.

No. 23—1881.]

[June 25, 1881.

## ACT

For Raising a Sum not exceeding One Million Pounds Sterling for Extraordinary Services during the Year ending 30th June, 1882.

Preamble.

WHEREAS it is expedient and necessary for the public service that the Governor should be empowered to raise and take up upon loan from time to time such sums of money not exceeding one million pounds sterling, as may be required to provide for extraordinary services during the year ending on the 30th June, 1882, until adequate provision can be made therefor by Parliament in its next ensuing session: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Government may raise by Debentures or Treasury Bills, £1,000,000.

1. It shall be lawful for the Governor to raise and take up upon debentures or treasury bills to be issued in this Colony or in England, such sum of money as from time to time shall seem to him fit and necessary for the exigencies of the public service, not exceeding in the whole the sum of one million pounds sterling, to be applied as may be needful towards payments to be made for the public service authorized, or to be authorized, by Parliament.

Rate of Interest.

2. Such debentures or treasury bills shall bear interest at a rate to be agreed upon by the Governor, and the capital sum and interest shall be charged and chargeable on and payable out of the general revenue of the Colony.

Debentures, &c., payable at par.

3. Such debentures or treasury bills shall be payable at par, at such time or times, or after such notice as the Governor shall, before issue thereof, fix and determine.

Accounts to be laid before Parliament.

4. An account shewing the amount of all such debentures or bills issued under the authority of this Act, and the moneys realised thereby, and the expenditure thereof, or of so much as shall have been expended, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof.

Provisions of "General Loans Act, 1881," not to apply.

5. The provisions of an Act passed during the present session, intituled "The Cape of Good Hope General Loans Act, 1881," shall not be deemed to apply to the loans authorized by this Act.

Short title.

6. The short title of this Act shall be "The Temporary Loans Act, 1881."

No. 35—1882.]

[June 29, 1882.

ACT

For Raising a Sum not exceeding One Million Pounds Sterling for the Public Service.

WHEREAS it is expedient and necessary that the Governor should be empowered to raise and take up upon loan from time to time such sums of money not exceeding one million pounds as may be required for the public service until adequate provision can be made therefor by Parliament in its next ensuing session : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be lawful for the Governor to raise and take up upon debentures or treasury bills to be issued in this Colony or in England, such sum of money as from time to time shall seem to him fit and necessary for the exigencies of the public service not exceeding in the whole the sum of one million pounds to be applied as may be needful towards payments to be made for the public service, authorized or to be authorized by Parliament.

Power to raise £1,000,000 for public service.

2. Such debentures or treasury bills shall bear interest at a rate to be agreed upon by the Governor, and the capital sum and interest shall be charged and chargeable on and payable out of the general revenue of the Colony.

Interest and capital charged on general revenue.

3. Such debentures or treasury bills shall be payable at par, at such time or times, or after such notice as the Governor shall, before issue thereof, fix and determine.

Debentures payable at par.

4. An account shewing the amount of all such debentures or bills issued under the authority of this Act, and the moneys realised thereby, and the expenditure thereof, or of so much as shall have been expended, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof.

Account of money received and expended to be kept.

5. The provisions of "The Cape of Good Hope General Loans Act, 1881," shall not be deemed to apply to the loans authorized by this Act.

Provisions of "Cape of Good Hope Loans Act, 1881," not to apply.

6. The short title of this Act shall be "The Temporary Loans Act, 1882."

Short title.

No. 20—1883.]

[September 27, 1883.

ACT

For Raising a Sum not exceeding One Million Pounds Sterling for the Public Service.

WHEREAS it is expedient and necessary that the Governor should be empowered to raise and take up upon loan from time to time

Preamble.

- No. 20—1883. — such sums of money not exceeding one million pounds as may be required for the public service: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Power to raise £1,000,000 for public service. 1. It shall be lawful for the Governor to raise and take up upon debentures or treasury bills to be issued in this Colony or in England, such sum of money as from time to time shall seem to him fit and necessary for the exigencies of the public service not exceeding in the whole the sum of one million pounds to be applied as may be needful towards payments to be made for the public service, authorized or to be authorized by Parliament. <sup>(1)</sup>
- Interest and capital charged on general revenue. 2. Such debentures or treasury bills shall bear interest at a rate to be agreed upon by the Governor, and the capital sum and interest shall be charged and chargeable on and payable out of the general revenue of the Colony.
- Debentures payable at par. 3. Such debentures or treasury bills shall be payable at par, at such time or times, or after such notice as the Governor shall, before issue thereof, fix and determine.
- Account of money received and expended to be kept. 4. An account shewing the amount of all such debentures or bills issued under the authority of this Act, and the moneys realised thereby, and the expenditure thereof, or of so much as shall have been expended, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof.
- Provisions of "Cape of Good Hope Loans Act, 1881," not to apply. 5. The provisions of "The Cape of Good Hope General Loans Act, 1881," shall not be deemed to apply to the loans authorized by this Act.
- Short title. 6. The short title of this Act shall be "The Temporary Loans Act, 1883."

No. 38—1879.]

[Sept. 11, 1879.]

## ACT

To Empower the Governor to Raise a Sum not exceeding £60,000, for the purpose of Constructing certain Lines of Telegraph. <sup>(2)</sup>

Preamble.

WHEREAS it is desirable to construct certain lines of telegraph not heretofore provided for: And whereas it is desirable that a sum not exceeding £60,000 sterling should be raised for the purpose of the said construction: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

<sup>1</sup> See § 3, Act No. 25, 1884.<sup>1</sup> See Act No. 3, 1881.



1. It shall be lawful for the Governor to raise and take up upon debentures or stock, or partly upon debentures and partly upon stock, such sum or sums of money not exceeding in the whole the sum of £60,000 sterling, for the purpose of constructing the lines of telegraph in the schedule to this Act mentioned.

No. 38—1879.  
Authority to raise  
£60,000.

2. The several borrowing powers and other provisions contained in sections two and three of Act No. 6 of 1877 (together with the several sub-sections of such last named section) shall, *mutatis mutandis*, apply to all sums of money borrowed under the authority of this Act.

Borrowing powers.

3. An account, showing the amount of all stock and debentures issued from time to time under the authority of this Act, and of the moneys realised by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall have been expended, and an account of the amount of such stock and debentures for the time being outstanding, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and the like accounts within fourteen days after the commencement of every succeeding session thereof.

Accounts to be laid  
before Parliament.

4. It shall be lawful to expend, for the purposes recited in the schedule, so much of the loan authorized under Act No. 6 (1) of 1877 as may not be expended in the completion of the work for which the said loan was intended.

Certain funds under  
Act 8 of 1877 may  
be used.

5. This Act may be cited as the "Telegraph Loan Act, 1879."

Short title.

SCHEDULE.

1. Aliwal North to Maseru .. .. .	£14,000
2. Richmond to Hope Town, <i>via</i> Hanover and Philip's Town .. .. .	15,000
3. Bitterwater to Carnarvon, <i>via</i> Fraserburg .. .. .	14,000
4. Worcester to Montagu, <i>via</i> Robertson .. .. .	3,000
5. George to Knysna .. .. .	1,700
6. Avontuur to Uniondale, Fort Beaufort, to King William's Town for a second wire .. .. .	1,300
7. Malmesbury to Calvinia, <i>via</i> Piquetberg and Clan- william .. .. .	17,500
	£66,500

<sup>1</sup> Printed as amended by Act No. 9, 1880.

No. 9—1880.]

[July 26, 1880.

## ACT

To Alter and Amend in certain respects Act No. 38 of 1879, entitled “An Act to empower the Governor to Raise a Sum not exceeding £60,000 for the purpose of Constructing certain Lines of Telegraph.”

Preamble.

WHEREAS by the Act No. 38 of 1879 it was, amongst other things, enacted that it should be lawful for the Governor to raise and take up, upon debentures or stock, or partly on debentures and partly on stock, such sum or sums of money, not exceeding in the whole the sum of £60,000 sterling, for the purpose of constructing three lines of telegraph in the schedule to the Act mentioned: And whereas the last line of telegraph in such schedule mentioned is a line from Piquetberg Road Station to Calvinia, *via* Porterville, Piquetberg, and Clanwilliam: And whereas it is desirable to substitute another line in place of such last-mentioned line: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House Assembly thereof, as follows:—

Repeal of inconsistent schedule of Act 38 of 1879.

1. So much of the schedule to Act No. 38 of 1879 as is inconsistent with the provisions of this present Act is hereby repealed.

Line of telegraph to be according to schedule hereto.

2. In lieu and instead of the line of telegraph being No. 7 in the schedule to the Act No. 38 of 1879 mentioned, there shall be substituted the line in the schedule to this present Act mentioned; and the amount authorized by the aforesaid Act to be expended on the said line No. 7 in the schedule thereto mentioned, shall be expended on the line substituted for the same by the provisions of this Act.

And whereas there is a clerical error or misprint in the 4th section of the said Act, No. 38 of 1879, and it is desirable to correct the same: Be it therefore further enacted as aforesaid:

Correction of misprint in Act 38 of 1879.

3. For the words “Act No. 8 of 1877,” contained in the 4th section of Act No. 38 of 1879, shall be substituted and read the words “Act No. 6 of 1877.”

Short title.

4. This Act may be cited as “The Telegraph Loan Amendment Act, 1880.”

---

 SCHEDULE.

Malmesbury to Calvinia, *via* Piquetberg and Clanwilliam.

No. 19—1881.]

[June 25, 1881.

ACT

To Authorize the Raising of a Further Sum of Fifty-four Thousand Three Hundred and Fifty-Eight Pounds for the purpose of Completing certain Lines of Telegraph already authorized, and of Improving in certain respects Existing Lines. (1)

WHEREAS it is desirable to complete the construction of certain lines of telegraph already authorized and to improve in certain respects existing lines: And whereas it is desirable that a sum of fifty-four thousand three hundred and fifty-eight pounds (£54,358) sterling shall be raised for the purposes set forth in the preamble: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise and take up a sum of fifty-four thousand three hundred and fifty-eight pounds (£54,358) from time to time as occasion may require for the purposes mentioned in the preamble.

Power to raise £54,358.

2. This Act may be cited as the “Telegraph Loan Act, 1881.”

Short title.

SCHEDULE.

For completion of line from Aliwal North to Maseru .. .. .	£7,000	0	0
For repayment of advance from Revenue, for construction of lines authorized by Act No. 38 of 1879:—in excess .. .. .	6,646	0	0
For completion of line between Philips Town and Hope Town .. .. .	6,500	0	0
For amount of expenditure to be incurred in erecting second wire between Fort Beaufort and Kimberley .. .. .	8,500	0	0
Cape Town to Worcester: Wellington and Malmesbury Loop .. .. .	2,400	0	0
Worcester to Beaufort West .. .. .	4,600	0	0
Beaufort West to Somerset East .. .. .	4,080	0	0
George to Port Elizabeth .. .. .	5,000	0	0
Fort Beaufort to Umzimkulu .. .. .	7,392	0	0
Fort Beaufort to Seymour .. .. .	1,240	0	0
Private Wires .. .. .	1,000	0	0
	£54,358	0	0

<sup>1</sup> Further sums raised by Act 30, 1882, *infra*.

No. 24—1878.]

[August 2, 1878.

## ACT

To Provide for the Expenses of carrying out Military Operations within and beyond the Boundaries of the Colony.

Preamble.

WHEREAS it is expedient to provide for the expenses incurred in carrying out military operations against enemies and rebels within and beyond the boundaries of the Colony, and to raise the necessary funds for that purpose: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

What sum Governor may expend.

1. It shall be lawful for the Governor to expend a sum not exceeding seven hundred and fifty thousand pounds sterling for the purpose of paying the expenses which have been or may be incurred as aforesaid.

Governor empowered to raise this sum.

2. For the purpose aforesaid it shall be lawful for the Governor to raise the sum of seven hundred and fifty thousand pounds sterling from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock.

Provisions with regard to loans raised upon debentures.

3. In so far as the said borrowing shall be upon debentures the following provisions shall be observed: Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not less than £100, and for any multiple of £100, upon the best and most favourable terms that can be obtained, and the interest to accrue thereon shall be charged upon and payable out of the general revenue of this Colony.

Certain sections of Act 19 of 1874 to apply to this Act.

4. The sections of Act No. 19 of 1874, numbered respectively 9 (with the sub-sections thereto), 10, 11, 12, and 14, shall, *mutatis mutandis*, be deemed and taken to apply to the borrowing authorized under this Act.

Short title.

5. This Act may be cited as the "War Expenses Loan Act 1878."

No. 1—1881.]

[April 20, 1881.

## ACT

To Provide for the Expenses of Carrying out Military Operations within and beyond the Boundaries of the Colony.

Preamble.

WHEREAS it is expedient to provide for the expenses incurred in carrying out military operations against enemies and rebels within and beyond the boundaries of the Colony, and to raise the necessary funds for that purpose: Be it therefore enacted by the Governor

of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 1—1881.

1. It shall be lawful for the Governor to expend a sum of money not exceeding two million pounds sterling for the purpose of paying the expenses which have been, or may be, incurred as aforesaid.

Expenditure of £2,000,000 authorized.

2. For the purpose aforesaid it shall be lawful for the Governor to raise the sum of two million pounds sterling from time to time as he may deem expedient, either by debentures, or stock, or partly by debentures and partly by stock.

Sums to be borrowed on debentures or stock.

3. In so far as the said borrowing shall be upon debentures the following provisions shall be observed: such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not less than one hundred pounds sterling, and for any multiple of one hundred pounds, upon the best and most favourable terms that can be obtained, and the interest to accrue thereon shall be charged upon and payable out of the general revenue of this Colony.

Debentures to be not less than £100 each, and in multiples of £100.

4. The sections of Act No. 6 of 1877, numbered respectively two, three (with the several sub-sections to such last mentioned section), four, five, six, seven and eight shall, *mutatis mutandis*, be deemed and taken to apply to the borrowing authorized under this Act.

Sections 2, 3, 4, 5, 6, 7 and 8 of Act 6 of 1877 to apply.

5. This Act may be cited as the "War Expenses Loan Act 1881."

Short title.

No. 8—1860.]

[July 17, 1860.

ACT

To Provide the Means for Carrying on of certain Public Works.

WHEREAS it is expedient that means should be provided for carrying on in this Colony certain public works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to borrow and take up upon debentures bearing interest at a rate not exceeding six per cent. any sum or sums of money, not exceeding in the whole the aggregate of the several sums mentioned in the schedules A, B, C, and D, to this Act annexed.

Governor may raise loans for the purposes of certain public works.

2. All such debentures as aforesaid shall be, and the same are hereby, charged upon and made payable out of the general revenue of this Colony. And all such debentures shall be issued in London, and not in this Colony, unless it should at any time be found that the same could not be issued in London upon as favourable terms as if issued in this Colony.

Debentures charged on the general revenue.

To be issued in London, unless more favourable terms can be obtained in this Colony.

No. 8—1860.  
 Debentures when  
 to be made payable,  
 and how and when  
 to be paid off.

3. The said debentures shall be made payable at such time or times as the said Governor shall deem expedient: Provided that they shall be paid off and discharged, as nearly as may be practicable, in the order of the dates of their issue, and that no such debenture shall be so paid off until after six months' previous notice in the *Government Gazette*, as also in the *London Gazette*, of the intention of the Government to discharge it at the time mentioned in such notice.

Account of moneys  
 borrowed under this  
 Act to be laid before  
 Parliament.

4. An account showing the amount of all moneys borrowed under this Act and the expenditure thereof, or of so much thereof as shall have been expended, vouched by the Auditor-General of the Colony, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next ensuing session thereof.

---

#### SCHEDULE A.

Loan for roads and  
 bridges.

For the construction and improvement of roads and bridges,—balance required upon the sums voted for this service for the year 1860, sixty thousand pounds.

---

#### SCHEDULE B.

Ditto building and  
 improvement of pri-  
 sons.

For the building and improvement of prisons—balance required beyond the sums authorized to be raised by debentures under the Act No. 10 of 1857, fifty thousand pounds.

---

#### SCHEDULE C.

Ditto expropria-  
 tion of land for rail-  
 way purposes.

For providing for the expropriation of land required for the construction of the Cape Town and Wellington Railway, pending the future transfer of this charge to the costs of the said railway, under the Act No. 20, 1857, and for the supervision of the construction of the railway, a sum not exceeding twenty thousand pounds.

---

#### SCHEDULE D.

Ditto new general  
 hospital.

For the erection of a new General Hospital in Cape Town,—total estimated cost, twenty thousand pounds.

No. 30—1882.]

[June 29, 1882.

### ACT

To Authorize the Raising of Money for certain Public Purposes.

Preamble.

WHEREAS it is expedient to authorize the raising of a sum of money for the construction of public works and for other purposes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the Governor from time to time, as occasion may require, to raise and take up a sum of money not exceeding three hundred and nine thousand three hundred and sixty-five pounds, to be applied to the several purposes mentioned in the schedule to this Act annexed.

No. 30—1882.  
Power to raise  
£309,365.

2. This Act may be cited as “The Public Loan Act, 1882.”

Short title.

SCHEDULE.

For the construction of telegraphs, authorized by the “Telegraph Extension Act, 1882” .. ..	£36,365	0	0
For the purposes of the “Local Works Loans Act, 1882.” .. ..	50,000	0	0
For the purposes of the “Irrigation Act, 1877,” and the “Municipalities Irrigation Works Loans Act, 1879” .. ..	50,000	0	0
For Irrigation purposes:—			
Works at Van Wyk’s Vley, in the District of Carnarvon	£20,000	0	0
Works at Stoltz Hoek Dam, in the District of Beaufort West .. ..	5,000	0	0
	25,000	0	0
For Works and Buildings:—			
Transference of Robben Island Asylum: Preliminary Ex- penses .. ..		15,000	0
For Bridges:—			
Orange River Bridges, to supplement expenditure authorized by Acts No. 26 of 1874 and No. 21 of 1880	£17,000	0	0
For the Cradock Bridge ..	6,000	0	0
	23,000	0	0
For Railway purposes:—			
Fencing Railways .. ..	£50,000	0	0
Water supply .. ..	30,000	0	0
Survey of Oudtshoorn and Mossel Bay Railway ..	10,000	0	0
Riet River Bridge, and Kimber- ley Railway survey ..	20,000	0	0
	110,000	0	0
	£309,365	0	0

No. 21—1883.]

[September 27, 1883.

## ACT

## To Authorize the Raising of Money for certain Public Purposes.

Preamble.

WHEREAS it is expedient to authorize the raising of money for the construction of public works and for certain public purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to borrow  
£1,942,048.

1. It shall be lawful for the Governor from time to time as occasion may require, to raise and take up sums of money not exceeding one million nine hundred and forty-two thousand and forty-eight pounds to be applied to the several purposes mentioned in the schedule to this Act annexed.

Short title.

2. This Act may be cited as the “Public Loan Act, 1883.”

## SCHEDULE.

1. For carrying on and improving the Harbour Works of East London .. .. .	£100,000
2. For carrying on and improving the Harbour Works of the Kowie.. .. .	40,000
3. For the Houses of Parliament .. .. .	100,000
4. For the Railway Bridge over the Orange River, near Hope Town .. .. .	60,000
5. For Loans under the “Local Works Loans Act, 1882” .. .. .	130,000
6. For Public Buildings, Magistrate’s Court and Offices at Port Elizabeth .. .. .	10,000
7. For repayment, in part, of sums advanced from Revenue .. .. .	1,500,000
8. For Compensation to be paid to Europeans who sustained loss in consequence of the action of Colonial Forces during the late Basuto Rebellion .. .. .	2,048
	<hr/>
	£1,942,048

No. 17—1884.]

[July 25, 1884.

## ACT

## To Authorize the Raising of a Sum of £139,800 for the Prosecution of certain Public Works.

Preamble.

WHEREAS it is desirable to prosecute and carry on certain public works already authorized, and to complete some of such works, and also to provide further funds for giving effect to the provisions of Acts at present in operation: And whereas there is a sum of £20,800 sterling, which will fall due upon the 1st day of October



next, being the balance of certain debentures authorized to be issued under the Act No. 7 of 1870, known as the "Public Debt Consolidation Act," and comprehended in the schedule to such Act as "Kowie Harbour Improvement, £24,000;" and it is desirable to provide for the payment of such balance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

No. 17—1884.

1. It shall be lawful for the Governor to raise and take up a sum of one hundred and thirty-nine thousand and eight hundred pounds sterling, from time to time, as occasion may require, for the several purposes mentioned in the schedule to this Act. Power to raise  
£139,800.

2. This Act may be cited as "The Public Works Loan Act, 1884." Short title.

SCHEDULE.

(1.) For the purposes of the "Irrigation Act, No. 8 of 1877," and the "Municipalities Irrigation Loans Act, No 28 of 1879"	£10,000
(2.) For Irrigation purposes	
Works at Van Wyk's Vley, in the District of Carnarvon .. ..	£5,000
Works at Stol's Hoek, in the District of Beaufort West .. ..	£4,000
	£9,000
(3.) Works and Buildings:	
Houses of Parliament .. ..	£15,000
(4.) Harbour Works:	
East London .. ..	£15,000
Port Elizabeth .. ..	£20,000
(5.) Railways:	
Graham's Town and Port Alfred Railway, Subsidy under Act No. 5 of 1881 .. ..	£50,000
(6.) Kowie Harbour:	
Debentures .. ..	£20,800
	£139,800
Total ..	

No. 38—1885.]

[August 11, 1885.

ACT

To Authorize the Raising of Money for certain Public Purposes.

WHEREAS it is expedient to authorize the raising of a sum of money for the construction of public works and for other purposes: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

No. 38—1885.

Governor empowered to raise certain sum for purposes specified in schedule.

1. It shall be lawful for the Governor from time to time, as occasion may require, to raise and take up a sum of money not exceeding one hundred and ninety-five thousand two hundred pounds, to be applied to the several purposes mentioned in the schedule to this Act annexed.

Short title.

2. This Act may be cited as "The Public Works Loan Act, 1885."

Schedule.

## SCHEDULE.

	£	s.	d.
1. For the purposes of the "Irrigation Act, 1877," and the Municipalities Irrigation Works Loans Act, 1879" ..	25,000	0	0
2. For the purposes of the "Local Works Loans Act, 1882"	50,000	0	0
3. For Works and Buildings:—			
Harbour Works:			
Table Bay .. .. .	£50,000	0	0
Port Elizabeth .. .. .	21,000	0	0
East London .. .. .	15,000	0	0
	£86,000	0	0
Public Offices at Port Elizabeth .. .. .	16,000	0	0
		102,000	0 0
4. Roads:			
Meiring's Poort .. .. .	£5,000	0	0
Caledon Kloof .. .. .	300	0	0
Old Katberg Road .. .. .	350	0	0
Van Rhyn's Pass, Calvinia .. .. .	400	0	0
Clanwilliam, Troe Troe, and Thorn Bay	500	0	0
Garies and Stinkfontein, Namaqualand	500	0	0
Peddie to Great Kei River Mouth .. .. .	2,650	0	0
		9,700	0 0
5. Bridges:			
Breede River Bridge (Robertson) .. .. .	£2,500	0	0
Berg River Bridge (Vleeschbank) .. .. .	2,500	0	0
Orange River Bridges .. .. .	3,300	0	0
Gilfillan Bridge .. .. .	200	0	0
		8,500	0 0
Total .. .. .		195,200	0 0

Act No. 25 of 1886.]

[July 6, 1886.

## ACT

To Authorize the Raising of Money for certain Public Purposes.

Preamble.

WHEREAS it is expedient to authorize the raising of a sum of money for the construction of public works and for other purposes:

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 25—1886.

1. It shall be lawful for the Governor from time to time, as occasion may require, to raise and take up a sum of money not exceeding one hundred and ninety-three thousand one hundred pounds, to be applied to the several purposes mentioned in the schedule to this Act annexed.

Governor empowered to raise £193,100 for purposes specified in Schedule.

2. This Act may be cited as “The Public Works Loan Act, 1886.”

Short title.

SCHEDULE.

Schedule.

Kimberley Railway .. .. .	£22,000
Orange River Road Bridges, Costs of Arbitration, and Claim .. .. .	13,100
Kei Bridge and Kokstad Road .. .. .	5,000
St. John's Trunk Road .. .. .	10,000
Port Alfred and Kei Mouth Road .. .. .	6,000
East London Harbour .. .. .	3,500
Expenses of Raising Launch “Lizzie” .. .. .	1,500
Table Bay Harbour .. .. .	50,000
Purchase of Farm “Groote Constantia” .. .. .	7,000
Subsidy—Worcester and Roodewal Railway .. .. .	75,000
	<hr/>
	£193,100

No. 27—1875.]

[June 30, 1875.

ACT

For enabling the Divisional Council of Clanwilliam to borrow Moneys, upon the security of Road Rates and Tolls, for the Construction of a Road over the Pakhuis Mountain. (1)

WHEREAS it is expedient that the Divisional Council of Clanwilliam should be empowered to borrow moneys, upon the security of the road rates and tolls of the said division, for the purpose of constructing a public road over the Pakhuis Mountain by which the inhabitants would be benefited: And whereas the annual amount of road rates to be levied under Act No. 9, 1858, is not sufficient to meet the first outlay of this work: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of Act No. 9, 1858, intituled “An Act to provide for the Management of the Public Roads of this Colony,” as is repugnant to or inconsistent with any of the provisions of this Act shall, so far as regards the provisions of this Act, be, and the same is hereby repealed.

Inconsistent portion of Act 9, 1858, repealed.

<sup>1</sup> This Act should have been printed under “Divisional Council Loans.”

1550      LOANS (CLANWILLIAM DIVISIONAL COUNCIL).

No. 27—1875.

Conditions under which Council may borrow sum or sums not exceeding £20,000.

2. It shall be lawful for the said Divisional Council from time to time by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Act No. 9 of 1858 aforesaid, or under the Act No. 10 of 1864, intituled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," any sum or sums of money that may at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose hereinbefore mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Divisional Council, at a meeting at which there shall be present not fewer than five members, exclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least fourteen days next before the day appointed for such meeting, a notice signed by the secretary to such council, stating that the question of such loan will come under consideration of such meeting, which notice the said secretary shall issue at the instance of the chairman of the said council; and provided that no loan or loans or debts contracted by said council under this Act shall at any time exceed the sum of three thousand pounds sterling; and provided that no such loan as aforesaid shall be capable of being effected in any year in which the road rates levied and collected under the said Act No. 9, 1858, shall be less than one penny in the pound on the value of the property liable to be rated in the said division of Clanwilliam; and provided that, except as is hereinafter mentioned, no such loan shall be applied for the payment of any previous loan that may have been raised by the said council.

Tenders to be invited for sum or sums required.

3. In every case in which it shall be resolved by said council to raise any such loans as aforesaid, the said council shall, by a notice in the *Government Gazette*, call for tenders for the sum or sums required, and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of interest, and the bond, declaration, or obligation pledging the tolls or rates agreed upon to be pledged for ensuring the repayment of the sum or sums borrowed by said council, and the interest thereon, shall be signed by three members on behalf of such council, of whom the Civil Commissioner of the division shall not be one.

Moneys borrowed to be kept separate.

4. All moneys raised as aforesaid under this Act shall on receipt thereof be deposited in a bank, to be chosen by the said council, to the credit of a separate account, and all sums required shall be drawn by cheques, signed by the secretary and countersigned by the chairman.

Separate accounts to be kept and abstracts submitted half yearly to Colonial Secretary.

5. The said council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December then preceding, and all liabilities and assets on the same days.

6. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of the "Divisional Councils Act, 1865," and the provisions of the eighty-third and eighty-fifth sections of the said Act shall apply to all accounts, books, and papers connected with the same road.

Pl: May 19, 1789.  
Accounts to be audited.

7. It shall be incumbent on the said council, and they are hereby required, after the payment of the interest on any loan or loans as aforesaid, and providing for the necessary repairs of the said road, to set apart the remainder, if any, of the tolls levied on the same road, and the further sum of one hundred pounds sterling annually from their general revenue, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.

Fund for repayment of loan.

8. All the necessary costs and expenses attending the procuring of this Act, and carrying the provisions thereof into effect, shall be paid out of the money to be received under the provisions of this Act.

Provision for payment of cost of Act.

9. This Act may be cited for all purposes as the "Clanwilliam Divisional Council Loan Act, 1875."

Short title.

(1) PROHIBITION OF LOTTERIES.

[May 19, 1789.

HAVING observed that the drawing of lotteries in this place is carried to such a height, that unless the practice be timely checked and opposed, the greatest irregularities cannot fail to arise, and the most baneful consequences will be entailed on the public in general, we have thought fit and determined hereby peremptorily to prohibit and forbid all persons whomsoever from disposing of any property by way of lottery, under the penalty, in case of detection, of a fine of twenty-five rix dollars, in behalf of the fiscal, over and above the forfeiture of the property proposed to be raffled for; which penalty shall likewise be incurred by all persons who shall have taken one or more tickets in such lottery; and in case of default of payment of the said fine, the parties convicted shall be severely flogged. And all tavern-keepers and publicans, or others, who shall have permitted lotteries to take place in their houses, shall forfeit a double fine, and such tavern-keepers or publicans shall ever be precluded from obtaining a renewal of their licence.

Preamble.

Lotteries forbidden.  
Penalty, twenty-five rds. and forfeiture of articles raffled

Double fine on publicans.

Thus done and decreed in the Castle of Good Hope, the 19th May, 1789, and published and affixed on the 27th following.

C. J. VAN DE GRAAFF.

By order of His Excellency the Governor and Council,

C. VAN AERSSEN, Pr. Secretary.

<sup>1</sup> Art Unions legalized by 28, 1860, which see.

No. 20—1879.]

[Sept. 11, 1879.]

## ACT

## To Provide for the Safe Custody of Persons Dangerously Insane, and for the Care and Custody of Persons of Unsound Mind.

Preamble.

WHEREAS it is expedient to make provision for the safe custody of, and the prevention of crimes being committed by persons dangerously insane, and also for the care and custody of persons who are insane but not dangerously so: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

How magistrates to deal with persons of unsound mind.

1. Whenever any person shall be discovered and apprehended under circumstances indicating derangement of mind, and a purpose of committing suicide, or manifesting an intention to commit any crime or offence for which, if committed for trial, such person would be liable to be indicted, it shall be lawful for any Resident Magistrate before whom such person may be brought, to call to his assistance any two duly qualified medical practitioners (one of whom shall, if practicable, be the district surgeon); and if upon view and examination of the person so apprehended, and upon proof upon oath by such two medical practitioners to the effect that in their opinion the said person is a dangerous lunatic or dangerous idiot, the said Magistrate shall be satisfied that such person is a dangerous lunatic or dangerous idiot, then it shall be lawful for such Magistrate, by warrant under his hand, to commit such person to some hospital or other place of safe confinement within this Colony, there to be kept in strict custody until such person shall be discharged by order of the Supreme Court or Eastern Districts Court, or any Circuit Court, or shall be removed to some lunatic asylum by order of the Governor, as hereinafter provided: Provided always, that every such person so detained in such hospital or other place of confinement as aforesaid, shall be allowed the privilege of being visited by his friends and legal advisers at such reasonable and convenient times as may be appointed for that purpose by the Magistrate or the superintendent of such hospital or other place of confinement.

Lunatics under commitment may be visited by their friends.

Governor may by warrant remove criminals of unsound mind to lunatic asylum.

2. The Governor may direct, by warrant under the hand of the Colonial Secretary or the Under Colonial Secretary, that any person who may be detained in any hospital or other place of confinement, by virtue of any warrant as aforesaid, or any person who may be in any prison or place of confinement under any sentence of death or imprisonment, or under any warrant of default of surety to keep the peace, or to answer any criminal charge, or in consequence of any order of any Resident Magistrate or Justice of the Peace, or under any other than civil process.

and in respect of whom it shall be certified by two duly qualified medical practitioners that such person is insane, shall be removed to such lunatic asylum or hospital as the Governor shall appoint: And every person so removed shall remain under confinement in such asylum or hospital until it shall be certified to the Governor, upon oath or solemn declaration by two medical practitioners, that such person has become of sound mind: Whereupon the Governor shall, if such person shall remain subject to be continued in custody, issue his warrant under the hand of the Colonial or Under Colonial Secretary to the superintendent or other person having charge of any such asylum or hospital, directing that such person shall be remitted to the prison or other place of confinement from which he shall have been taken; or if the period of imprisonment or custody of such person shall have expired, or if such person shall not be under any sentence of imprisonment, or otherwise liable to be detained in custody, that such person shall be discharged.

No. 20—1879.

Such persons may be released if they become of sound mind.

3. Whenever it shall be certified to the Governor, by two duly qualified medical practitioners, that any person committed for trial, for any crime or offence, is insane or an idiot, the Governor may, by warrant under the hand of the Colonial Secretary or Under Colonial Secretary, order that such person shall be removed to such lunatic asylum or hospital as he shall appoint, there to be detained, unless in the meantime admitted to bail by some legal authority until the criminal sessions of the Supreme or Eastern Districts Court, or any Circuit Court, at which such person shall be brought to trial, or indicted according to the due course of the law, and such person shall then be remitted to the custody of the keeper of the gaol, or other person in whose custody such person may have been under the terms of the original committal, in order to his being tried for such crime or offence, or otherwise disposed of according to law: Provided always, that every such person, while so detained in such lunatic asylum or hospital, shall have the same liberty and privilege of seeing his friends and legal advisers at all reasonable times as he would have had in the gaol or other prison from which he may have been removed.

How persons of unsound mind, under committal for trial, are to be dealt with.

4. In all cases in which it shall be given in evidence, upon the trial of any person charged with any crime or offence, that such person was insane at the time of the commission of such crime and offence, and such person shall be acquitted, the jury shall be required to find, specially, whether such person was insane at the time of committing such crime or offence, and to declare whether such person was acquitted by them on account of such insanity, and in case they shall find that such person was insane at the time of committing such offence, and shall declare that he was acquitted on that ground, the Court before which such trial shall be had shall order such person to be kept in strict custody in such gaol, lunatic

Finding of juries on trial when prisoner is of unsound mind.

How to deal with prisoner acquitted by reason of insanity.

No. 20—1879.

asylum, or other place of confinement, and in such manner as to the Court may seem fit, until the pleasure of the Governor shall be known; and the Governor may thereupon give such order for the safe custody of such person in such place and in such manner and for such time as to the Governor shall seem fit.

Persons ceasing to be dangerous lunatics.

5. If at any time after the issue of any warrant for the detention of a person as a dangerous lunatic or a dangerous idiot, under the provisions of the first section of this Act, it shall be certified to the Governor by two qualified medical practitioners that the person for whose detention such warrant was issued as aforesaid, has ceased to be or is not a dangerous lunatic or dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful for the Governor by warrant under the hand of the Colonial or Under Colonial Secretary to order the liberation of such person from custody, unless he shall be detained therein for some other cause by due process of law.

Provisions for maintenance of people of unsound mind.

6. When any insane or idiotic person shall be committed to any gaol, hospital, or other place of confinement as aforesaid, for the purpose of being received into such hospital or lunatic asylum as the Governor may appoint, the removal to and from, and the maintenance in such last mentioned hospital or asylum, of such insane person shall, until further provision be made therefor, be defrayed out of the colonial revenues: Provided always, that all sums so paid may be recovered from the estate, if any, of such insane person or from any person or persons liable by law to pay for or contribute towards the maintenance of such insane person by the Civil Commissioner of the district in which such estate is situate or in which such last named persons shall reside.

Agreement may be made with curator of lunatic for his maintenance.

7. Notwithstanding the provisions of the preceding section, it shall be lawful for the keeper of any such hospital or asylum, in all cases where any lunatic or idiot confined under the provisions of this Act shall be possessed of sufficient means to defray the expense of his maintenance in any such hospital or asylum, to agree with the curator of the property of such lunatic or idiot for his maintenance whilst detained therein, and such curator shall be, and is hereby, empowered to reimburse himself all necessary sums expended in such maintenance out of any funds or property belonging to such lunatic or idiot, which funds or property are hereby made chargeable therewith.

Visitors to be appointed to lunatic asylums.

8. The Governor may appoint one or more fit and proper person or persons to be the visitor or visitors of each lunatic asylum within the Colony, and may remove any such visitor or visitors, and appoint another, or others, in his or their stead; and some one of such visitors shall be required to visit each such lunatic asylum at such times as the Governor shall direct, unless prevented by illness or other sufficient cause, and shall, from time to time, make such reports to the Colonial Secretary as may be required by the order of the Governor.



9. If the Supreme or Eastern Districts Court, or any Judge thereof, presiding at any Circuit Court, shall receive information, upon oath, or otherwise shall have any reason or cause to suspect that any person of sound mind is confined as a lunatic or idiot within any gaol, hospital, lunatic asylum, or other place of confinement under this Act, such Court or Judge shall have full power and authority to cause the keeper or superintendent of such gaol, hospital, asylum, or other place of confinement, by any warrant or order, directed to such keeper or superintendent, to bring such confined person before such Court or Judge for examination, at a time to be specified in such warrant or order; and if, upon the examination of such confined person, or of any medical or other witness who may be called to testify as to the supposed sanity or insanity of such confined person, it shall appear to the satisfaction of such Court or Judge that such confined person is of sound mind, it shall be thereupon lawful for such Court or Judge, upon the oath, or affirmation of such witness, and such Court or Judge is hereby required to direct such confined person to be immediately discharged from custody, unless he shall be liable to be detained in custody for some other cause by due process of law.

No. 20—1879.

Judges of supreme, eastern districts, and circuit courts may enquire into cases of alleged sanity of persons confined in lunatic asylum.

Orders to be made after enquiry.

10. If any application shall be made to the Governor by any relative or friend of any person labouring under insanity or idiotcy and in confinement by virtue of this Act, and such relative or friend shall be willing to undertake the charge of and to support such insane or idiotic person, the Governor may, if he shall think fit, and if such insane or idiotic person shall not be liable to be detained in custody for any other cause by due process of law, by warrant under the hand of the Colonial or Under Colonial Secretary, order the discharge of such insane person from the gaol, hospital, lunatic asylum, or other place wherein he shall be confined: Provided that no person who shall have been committed to such gaol, hospital, or asylum as a dangerous lunatic or dangerous idiot, shall be so discharged, unless his friend or relative shall enter into sufficient recognizance for the peaceable behaviour, safe custody, and proper treatment of such dangerous lunatic or idiot before a Resident Magistrate or one of the Judges of the Supreme Court: Provided further, if it shall at any time be shown to the satisfaction of the Governor that any of the conditions of such recognizance shall have been broken, the Governor may issue a warrant under the hand of the Colonial or Under Colonial Secretary, directing that such dangerous lunatic or idiot shall be again confined in the gaol, hospital, or asylum from which he shall have been so discharged, or such other place as to the Governor may seem fit.

Lunatics may be taken care of by their friends.

Recognizance to be entered into in cases of dangerous lunatics.

If recognizance broken, lunatics to be recommitted.

11. No action shall lie against any person whatever on account of any act, matter, or thing done or commanded by him in carrying the provisions of this Act into effect, unless such action be commenced within three months after the cause of action or

Limitations of actions under this Act.

Ord. 62—1829. complaint shall have arisen; and if any person shall be sued on account of any act, matter, or thing which he shall have so done or commanded to be done, he may plead the general issue, and give the special matter in evidence.

Provisions of Act to be retrospective. 12. All persons who may have subjected themselves to any penalty, action, or indictment by promoting, ordering, or being in any way concerned in the care, charge, or custody of persons, who may, before the time at which this Act shall take effect, have been committed to prison or put under confinement in any gaol or hospital by the authority of any Magistrate or Judge, or of the Governor, as dangerous lunatics, or who having been charged with or convicted of some crime or offence, have been confined as insane persons, shall be, and hereby are, indemnified, freed, and discharged from all penalties, actions, indictments, and liabilities which may have been incurred by reason of the confinement of such persons; and all such persons who at the date at which this Act shall take effect shall be under such confinement, are hereby declared to be subject to the provisions of this Act so far as the same may be applicable.

Powers of superior courts not affected. 13. Nothing in this Act contained shall be construed to alter or affect the powers and authorities vested in the superior Courts of the Colony, or the mode of procedure in such Courts for declaring persons to be of unsound mind, or for the appointment of curators to the person or property of any lunatic.

Short title. 14. This Act may be cited for all purposes as the "Lunatic Law Amendment Act, 1879."

No. 62.—Sd. G. Lowry Cole.]

[June 20, 1829.

Ordinance for declaring the Age of Twenty-one Years to be the Legal Age of Majority in this Colony.

Preamble.

WHEREAS doubts have arisen as to the legal age of majority of certain of His Majesty's subjects residing or being in this Colony; and whereas it is expedient that such doubts should be removed, and that the same period of majority should be fixed for all persons whatever: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance all persons when they shall attain or who have already attained the full age of twenty-one years shall be deemed to have attained the legal age of majority.

Deeds, wills, contracts, &c., of prior date not affected. 2. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to alter the term at which in any act, deed, will, contract or agreement passed, executed, or entered into prior to the passing of this Ordinance any beneficial interest in favour of any person is provided or declared to commence or determine.

3. And be it further enacted that nothing herein contained shall extend or be construed to prevent any testator from bequeathing his property in any such manner as by the laws of this Colony he might have done before the passing of this Ordinance.

Ord. 6—1837.  
Law of inheritance  
not affected.

4. And be it further enacted that nothing herein contained shall extend or be construed to prevent any person, under the age of twenty-one years from attaining his majority at an earlier period by operation of law.

Nor attainment of  
majority by opera-  
tion of law.

No. 6.—Sd. B. D'Urban.] [August 23, 1837.]

Ordinance to Authorize the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the same in Villages or other places not being Municipalities.

WHEREAS it is expedient to establish markets in certain villages and other places convenient for holding the same in which resident householders are not sufficiently numerous to form municipalities, and to frame regulations for the same : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance it shall be lawful for the Governor of the Colony, by and with the advice of the Executive Council, by any proclamation to be published in the *Government Gazette*, in that behalf from time to time as occasion may require to establish a market at any village or place not being a municipality as he shall deem expedient, and to provide all necessary regulations for the same, and such regulations to alter and the said markets to abolish when and so often as he shall deem expedient : Provided, always, that the tariff of dues to be taken at any such market shall not exceed the highest tariff of market dues taken in any municipality.

No. 20.—Sd. Henry Pottinger.] [Oct. 29, 1847.]

Ordinance for relieving Agricultural and other Produce and other Articles from the necessity of passing through Public Markets.

WHEREAS under and by virtue of certain powers and authorities contained in the following Ordinances respectively, that is to say, the Ordinance No. 9, 1836, entitled " Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony on which the local Regulations of each shall be founded ;" the Ordinance No. 6 of 1837, entitled " Ordinance to authorize the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the

Preamble.

Ord. 20—1847.

same in Villages and other places not being Municipalities," and the Ordinance No. 1, 1840, entitled "Ordinance for the better regulation of the Municipal Board for Cape Town and the Vicinity thereof," markets have been established in various towns and villages throughout the Colony and various regulations regarding the said markets having the force of law been from time to time framed and published: And whereas by the respective regulations of and concerning the said markets respectively or the greater number of the said markets it is provided and required that certain produce and other articles brought into the said towns or villages, shall be obliged to pass through the market established within the same, and be there sold by public sale, in case the same shall not have been previously entered in manner and form as by such regulations respectively prescribed, upon the registry of such market, on pain of certain penalties in and by the said regulations in that behalf provided: And whereas the compulsory provisions aforesaid whereby the owners of produce or other articles brought into such towns or villages for sale are prevented from selling the same where and when and in what manner they themselves deem best, and are forced to pass the same through the public market and pay market dues and charges thereupon, are subversive of that freedom in regard to their dealings which the inhabitants are entitled to enjoy and are justly deemed oppressive by many farmers and others frequenting the several towns and villages in which such compulsory provisions exist: And whereas it is expedient to annul and make void all such compulsory provisions, leaving all such markets as aforesaid to be resorted to by persons voluntarily desirous of so doing but by none other: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all municipal or market regulations heretofore framed and published under and by virtue of any of the aforesaid Ordinances respectively, in so far as such regulations or any of them shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, avoided, and annulled, and the same are hereby repealed, avoided, and annulled accordingly.

Repeal of repugnant municipal market regulations.

Relief of produce, &c., from passing market.

2. And be it enacted that no person conveying or carrying any agricultural or other produce or any article, matter, or thing whatever to and into any town or village in this Colony shall henceforth be required or obliged under any pain or penalty whatsoever to carry or convey the same into or upon any market established in such town or village under or by virtue of the said Ordinances respectively, nor to pass the same through or sell the same at any such market, nor to pay or satisfy any manner of municipal or market dues or charges in respect of any produce, article, matter, or thing not voluntarily carried or conveyed into or within the precincts of the market, nor to enter or cause to be entered upon any market registry any produce, article, matter, or

thing not as aforesaid voluntarily brought to such market ; but on the contrary all persons whomsoever shall be fully and lawfully entitled to bring into, through, or out of every town and village for sale or barter or any other purpose any description of property whatsoever, and to dispose of the same elsewhere than at or on the public market, or to take the same away again as he shall deem expedient, without being thereby liable to pay any fine, forfeiture, due or charge whatsoever : Provided always, that nothing herein contained shall be taken or construed so as to impair or affect any such market regulation as aforesaid so far as it may relate to any produce, article, matter, or thing which shall be voluntarily carried or conveyed into or within the precincts of any such market as aforesaid in order to be sold or offered for sale thereat, and such produce, article, matter, or thing shall be subject to all such regulations and be liable to the like dues and charges as if this Ordinance never had been passed.

Ord. 20—1847.

3. And be it enacted that it shall not be competent or lawful for any municipal or market regulation to be hereafter framed and published whether under and by virtue of the Ordinances aforesaid or of the Ordinance No. 4, 1839, entitled "Ordinance for the creation of a Municipal Board for the Districts of Green Point and Sea Point," to make or render it compulsory upon any person to convey or carry any produce, matter or thing to any particular market or place of sale or to impose any fine or penalty upon any person for not conveying or carrying the same to such market or place or to impose any due or charge upon or in regard to the sale, barter, or other disposition of any property not voluntarily and actually conveyed or carried into or upon the public market.

Prohibition of future municipal and market regulations making it compulsory for produce to pass market.

4. And be it enacted that the limits of every market established in any town or village under or by virtue of any of the Ordinances aforesaid respectively shall remain and continue as fixed or reputed, at the time of the promulgation of this Ordinance, unless altered or enlarged by some regulation, municipal or otherwise, having the force of law, duly framed and published.

Limits of markets.

5. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Exclusion of Natal.

6. And be it enacted that this Ordinance shall commence and take effect from and after the 1st day of January, 1848.

Time of taking effect.

## MARRIAGE.

- |   |  |
|---|--|
| 1. 7 Sept., 1838, (Order in Council).<br>2. 20 Feb., 1839, do.<br>3. 3 April, 1840, do.<br>4. Act 12—1856, (To secure inheritance of Minors).<br>5. ,, 16—1860, (Marriage Law amended). | 6. Act 9—1882, (Marriage Licences).<br>7. Ord. 4—1848, (Certain Marriages declared legal).<br>8. Act 13—1857, do.<br>9. ,, 21—1875, (Antenuptial Contracts). |
|---|--|

MARRIAGE ORDER IN COUNCIL IN FORCE IN THIS COLONY FROM  
THE 1ST FEBRUARY, 1839.

*At the Court at Windsor, the 7th Day of September, 1838.*

PRESENT :

The QUEEN'S Most Excellent Majesty.

The Lord Chancellor. Earl of Albemarle. Viscount Falkland.	The Viscount Palmerston. Viscount Melbourne. Lord Glenelg.
--	--

WHEREAS since the abolition of slavery throughout the British colonies, plantations, and possessions abroad the marriage laws of the said colonies, plantations, and possessions have been found inappropriate to the altered condition thereof and inadequate to the increased desire for lawful matrimony therein : And whereas it is expedient and necessary to amend the said marriage laws and to adapt the same to the altered state and condition of society in the said colonies, plantations, and possessions :—

Banns, publication  
of, before marriages.

2. It is therefore hereby ordered by the Queen's Most Excellent Majesty, by and with the advice of her Privy Council, that from and after the taking effect of this Order it shall be lawful for any minister of the Christian religion, ordained or otherwise set apart to the ministry of the Christian religion, according to the usage of the persuasion to which he may belong, to publish within the colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, or any of them, banns of marriage between persons desirous of being joined together in matrimony, and such publication shall be made in an audible manner some time during public divine service on a Sunday in the face of the congregation before whom such minister shall officiate in the parish in which both or one of the parties to be married shall dwell, and shall contain the christian and other name and surname and place of abode of each of the said parties, and shall be so published by some such minister for three Sundays preceding the solemnization of the marriage during the morning service if there be service in the morning, or if there shall be no morning service then during the evening service.

Publication of banns  
in different parishes  
and churches.

3. And if the parties to be married shall dwell in different parishes the banns shall be published in like manner in both such parishes ; and if the said parties shall be of different persuasions

the banns shall be published in like manner before each of the congregations to which the said parties may respectively belong, whether both the said congregations shall assemble in the same parish or not.

Order in Council,  
7th Sept. 1838.

4. And where one or both of the parties shall dwell in any extra-parochial place then if there be a congregation of the persuasion to which any such party shall belong assembling for public divine worship as aforesaid in such extra-parochial place the banns of the party or parties dwelling in such extra-parochial place shall be published in manner aforesaid in such extra-parochial place.

Publication of  
banns in extra-paro-  
chial places.

5. And if there shall be no such congregation in such extra-parochial place then the banns of such of the parties to be married as shall dwell in such extra-parochial place shall be published in manner aforesaid in some parish next adjoining to such extra-parochial place.

Publication of  
banns in extra-paro-  
chial places, con-  
tinued.

6. And in cases where the banns shall have been published in different places the officiating minister at either of the said places shall on the request of both or either of the parties whose banns shall have been published as aforesaid give to the party requiring the same a certificate of the banns having been duly published in the place of which he is an officiating minister, and on the production of such certificate to the officiating minister of the other place where the banns were published or of such certificates to any other such minister as aforesaid in the parish or extra-parochial place to which one of the parties shall belong it shall be lawful for such minister where the banns were published on receiving such certificate from such other minister where the banns were published, or for such minister as aforesaid to whom the certificates of such ministers of both places where the banns were published [shall be produced] on receipt of such certificate or certificates (as the case may be) to solemnize matrimony between the said parties according to such form and ceremony as shall be in use or be adopted by the persuasion to which the minister solemnizing such marriage shall belong.

Certificate of pro-  
clamation.

Celebration of mar-  
riage.

7. Provided that whenever the form and ceremony used shall be other than that of the United Church of England and Ireland (<sup>1</sup>) each of the parties shall in some part of the ceremony make the following declaration :

Declaration by par-  
ties.

“I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C.D., here present.”

And each of the parties shall say to the other :

“I call upon these persons here present to witness that I, A.B., do take C.D. to be my lawful wedded wife (or husband).”

8. And it is hereby further ordered that no minister shall be obliged to publish banns between any persons whomsoever unless

Notice of names  
and abode of parties.

<sup>1</sup> See Order in Council April 3, 1840, *infra*.

Order in Council,  
7th Sept. 1888.

the persons to be married shall two days at least before the time required for the first publication of such banns respectively deliver or cause to be delivered to such minister a notice of their true christian and other names and surnames, and a description of their place or respective places of abode in such parish or extra-parochial place as aforesaid, and of the time during which they have dwelt in such place or places.

Marriage to be  
within three months  
of publication of  
banns.

9. And that it shall not be lawful for any minister to solemnize any marriage after three calendar months from the last publication of banns of such marriage; and in all cases where three calendar months shall have elapsed without the marriage having been solemnized, the publication of such banns shall be void; and before the said parties can be married by banns it shall be necessary to republish the banns anew in manner and form aforesaid as if no banns had ever been published between them.

Marriage of minors.

10. And be it further enacted that no such minister as aforesaid who shall solemnize any marriage after due publication of banns as aforesaid between persons both or one of whom (not being a widow or widower) shall at the time of such marriage be under legal age, shall be answerable or responsible or liable to any pains penalty, or proceeding for having solemnized such marriage without the consent of the parents or guardians or other person (if any) whose consent is required by law, unless such parents or guardian, or other person or one of them shall forbid the marriage, and give notice thereof to such minister before he has solemnized the same; and in case such marriage shall be forbidden as aforesaid and such notice shall be given as aforesaid the publication of the banns for such marriage shall be absolutely void.

Special licences.

11. And it is hereby further ordered that where by any law in force or which may hereafter be in force in any of the Colonies to to which this order applies by which licences <sup>(1)</sup> for marriage without the publication of banns may be granted or issued in any such Colony by the Governor thereof or any other civil authority therein, it shall be lawful for the parties intending marriage or either of them to require that such licence shall authorize the solemnization of the marriage in respect of which such licence is applied for in any place where and by any minister by whom such marriage could have been solemnized by virtue of this Act if banns thereof had been published as aforesaid.

Marriage officers,  
appointment of.

12. <sup>(2)</sup> And whereas it may happen that in some of the Colonies to which this order applies or in some parts thereof respectively there may not be any such minister as aforesaid or not a sufficient number of such ministers to afford convenient facilities for marriage, and it is expedient to provide for such cases, it is therefore further ordered that in every such case and whenever the same shall happen in any of the said Colonies it shall be lawful for the

<sup>1</sup> As to Special Licences see Act 9, 1882, *infra*.

<sup>2</sup> See §§ 1, 3, and 4, Act 16, 1860, *infra*.



Governor of such Colony to appoint by writing under his hand and official seal one or more such fit and proper person or persons as he shall from time to time deem necessary or expedient, to be called the marriage officer, to solemnize marriages within such part or parts of the Colony in which such appointment shall be made as the Governor shall from time to time direct; and it shall be lawful for the Governor at any time and from time to time to revoke and cancel any such appointment or appointments, and to alter, vary, enlarge, or contract the district or districts in which any person so appointed shall have power or jurisdiction to celebrate marriage for any cause which to him shall seem meet; and every such appointment shall specify the part or district within which the person thereby appointed shall have power and jurisdiction to celebrate marriage.

Order in Council,  
7th Sept. 1838.

13. And until some law shall be made, passed, allowed, and promulgated for regulating marriages by persons so appointed, it shall be lawful for the Governor and he is hereby required to direct, declare, and promulgate the manner by which the intention of parties to marry before any such marriage officer shall be made public.

Marriage before  
marriage officer.

14. Provided, always, that it shall not be lawful for any such marriage officer to solemnize marriage between persons one or both of whom shall be under lawful age (unless in the case of a widow or widower) after such marriage shall be forbidden, and notice thereof given to him by any person having lawful authority to forbid the same.

Marriage of minors  
before officer.

15. Provided, always, that in every marriage before any such marriage officer not celebrated according to the form of the United Church of England and Ireland the parties shall in some part of the ceremony respectively make the declarations hereinbefore set forth as in the case of marriage by any such minister as aforesaid.

Declaration by  
spouses before officer.

16. Provided, also, that every such minister as aforesaid may nevertheless publish banns and celebrate marriage under and by virtue of this order in any part or district within which any such marriage officer shall have power or jurisdiction to celebrate marriage as fully as if no such marriage officer had ever been appointed.

Marriage officer co-  
ordinate with minis-  
ters.

17. And whereas it may happen that the parents or parent, guardians or guardian, of one or both of the parties to be married may be *non compos mentis* or absent from the Colony or otherwise incapable in law or in fact of consenting or may be induced unreasonably and improperly to withhold his, her, or their consent to a proper marriage, or may be dead, it is therefore hereby ordered that in case any such parent or guardian whose consent is necessary to a marriage shall be *non compos mentis* or absent from the Colony or otherwise incapable as aforesaid of consenting or shall withhold his, her, or their consent to any marriage or in case there shall be no one capable of consenting, it shall be lawful for any person desirous of marriage, to whose marriage such consent is necessary

When consent of  
parents, &c., cannot  
be had, judicial con-  
sent may be given.

Order in Council,  
7th Sept. 1888.  
*or Judge President  
of E. P. & High Courts  
Act 35-1896*

but cannot be given or is withheld, to apply by petition to the chief civil judge or person officiating as such for the time being of the Colony, who is hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to him to be proper the said chief civil judge or person officiating as such shall judicially declare by his order in writing that such marriage is proper and may be solemnized forthwith; and every marriage duly solemnized in pursuance or under the authority or direction of such order shall be as good, valid and effectual to all intents and purposes whatsoever as if such consent as aforesaid had been duly given thereto.

Matters not necessary to be proved in regard to a marriage duly solemnized.

18. And it is hereby further ordered that after the solemnization of any marriage under or by virtue of this Act it shall not be necessary in support of such marriage or in any action, suit, or proceeding when the same may come into question, to give any proof of the actual dwelling of the parties married or of either of them before the marriage or that the banns were published or that the marriage was solemnized in the place and by a person where and by whom the same ought to have been published and solemnized respectively, nor shall any evidence be received to prove the contrary.

Actions to compel marriage.

19. And it is hereby further ordered that in no case whatsoever shall any suit or proceeding be had in any Court or before any jurisdiction whatsoever to compel the celebration of any marriage by reason of any promise or marriage-contract entered into or by reason of seduction or of any cause whatsoever which shall arise after the taking effect of this order, any law or usage to the contrary notwithstanding.

Damages in default of marriage.

20. Provided, always, that nothing herein contained shall prevent any person aggrieved from suing for or recovering damages in any Court or by any proceeding wherein and whereby damages may be lawfully recovered for breach of promise of marriage or for seduction or other cause as aforesaid.

Hours for marriage.

21. And in order to preserve evidence of marriages and to make the proof thereof certain and easy and for the direction of such ministers and marriage officers as aforesaid in the registration thereof, it is hereby further ordered that from and after the passing and taking effect of this order all marriages (except marriages by special licence to marry at any time and place where such special licences can be lawfully granted) shall be solemnized with open doors between the hours of eight in the forenoon and four in the afternoon, in the presence of two or more credible witnesses beside the minister or marriage officer who shall solemnize the same; and that immediately after the solemnization of every marriage an entry thereof shall be made in a marriage-register book to be kept for that purpose by some such minister or marriage officer as aforesaid, or in some safe custody for the place in which marriages

Register of marriages.

may be solemnized, and in every such entry in every such register it shall be expressed that the marriage was had by banns or licence; and if both or either of the parties married by licence be under age and not a widow or widower, that it was had with the consent of the parents, or guardians, or other person or persons having lawful authority to withhold consent to the marriage, or after such order of the chief civil judge or other person officiating as such as aforesaid, and shall be signed by the minister or marriage officer as the case may be with his proper addition, and by the parties married, and shall be attested by such two witnesses; and every such entry shall be in the form or to the effect of the following specimen:

Order in Council,  
7th Sept. 1838.

## ORIGINAL REGISTER.

1838. Marriages solemnized at George Town, in the Parish  
of in the County of 1838.

When married.	Names and Surnames.	Ages.	Condition	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Car-penter.		After Banns	Henry Chambers Father.

Married in the Wesleyan chapel, at George Town aforesaid, after banns by me,

A. B., Wesleyan Minister.

This marriage was solemnized between

us, { John Williams, } In the presence of us, { C. D.  
{ Lucy Chambers, } { E. F.

and of every such entry, at the same time, before the parties depart shall then and there be made in a separate piece of paper, parchment, or vellum a duplicate original register, in which the same matter shall be entered and signed, and attested by the same parties in manner or to the effect of the following specimen:

Order in Council  
7th Sept. 1838.

## DUPLICATE ORIGINAL REGISTER.

1838. Marriages solemnized at George Town, in the Parish  
of in the County of 1838.

No.	When married.	Names and Surnames.	Ages.	Condition	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Car-penter.		After Banns	Henry Chambers Father.

Married in the Wesleyan Chapel, at George Town aforesaid, after banns by me,

A. B., Wesleyan Minister.

This marriage was solemnized between

us, { John Williams, } In the presence of us, { C. D.  
Lucy Chambers, } { E. F.

Examined with the original register by me, and found to be correct.

A. B.

Which said duplicate original register shall be left in the hands of the minister or marriage officer by whom the marriage was solemnized; and every such duplicate original register shall within one calendar month from the date thereof be transmitted to the Colonial Secretary of the Colony, if there be one, and all such duplicates shall be filed and safely preserved by him in his office; and every such original register and also every copy thereof, certified under the hand of the minister or marriage officer who for the time being shall have the lawful custody of the original to be a true copy, and every such duplicate original register and also every copy thereof, certified under the hand of such Colonial Secretary to be a true copy, shall respectively be good evidence of the facts therein recorded in pursuance of this order in and before all Courts and proceedings whatsoever in which it shall be necessary to give evidence of the marriage to which the same shall relate.

Searches in regis-  
ter.

22. And it is hereby further ordered that it shall be lawful for all persons at all reasonable times in the day (except Sundays) to search the original register-book and also the file of duplicate original registers, in the presence of the person for the time being having the care of the same respectively or his deputy, and to

have a true copy or true copies of any entries or entry therein or filed as aforesaid certified under the hand of the minister, marriage officer, or officer for the time being respectively having the custody of the original or duplicate original register as aforesaid (as the case may be), which true copies or copy such minister, marriage officer, or Colonial Secretary is hereby required to make and certify under his hand to be a true copy in the form of the duplicate original register, except that the same shall be headed "certified copy (or copies) of original (or duplicate original) marriage register" (as the case may be), and shall be dated on the day, month, and year when the same shall be delivered.

Order in Council,  
7th Sept. 1838.

23. (1) And it is hereby further ordered that in order to meet the expense and as a remuneration for the trouble occasioned by the performance of any duty under this order the following fees shall be demandable and payable before the performance of the duty to which the same respectively relate, that is to say :

Fees payable.

For solemnizing and registering a marriage and transmitting the duplicate original to the Colonial Secretary, *four shillings*.

For every general search not directed to any particular entry, *four shillings*.

For every search for a particular entry, *two shillings*.

For every search for two or more particular entries, and not exceeding four entries, *one shilling* each.

For every search for any number of particular entries exceeding four, *four shillings*.

For every such certified copy as aforesaid, *two shillings*.

24. (1) Provided, always, that nothing herein contained shall prevent any clergyman of the Established Church of England and Ireland from receiving for any duty performed by him under this order such fees or payments as have heretofore been customarily paid to such clergyman according to the rules of the said church for the performance of such duties respectively.

Customary fees of  
clergy.

25. Provided, always, that nothing in this order contained shall authorize or require any clergyman of the established church aforesaid to solemnize marriage in any other manner than is prescribed by the rubric.

Marriages by clergy  
to be according to  
rubric.

26. Provided, also, that it shall be lawful for the Governor to authorize such marriage officers as aforesaid to receive such further or other remuneration as he shall from time to time think the nature of their duties shall reasonably require.

Remuneration of  
marriage officers.

27. And it is hereby further ordered that if any person shall unlawfully and maliciously erase, obliterate, or destroy, or cause or procure to be erased, obliterated, or destroyed, any such original register or duplicate original register as aforesaid, such person shall be deemed guilty of a misdemeanour, and on being duly convicted

Injury to marriage  
register.

<sup>1</sup> See Order in Council, 20th Feb., 1839, *infra*.

Order in Council,  
7th Sept. 1838.

thereof shall be liable to be imprisoned in the common gaol in the jurisdiction in which he shall be tried and convicted thereof for any term not less than three nor exceeding twelve calendar months.

Falsification of register or certificates.

28. And if any person shall unlawfully and wilfully forge or alter or falsely make or cause or procure or permit to be forged or altered or falsely made any such original register or duplicate original register or any certified copy thereof respectively, or shall knowingly and wilfully deliver, offer, alter, or put off any such forged, false, or altered copy, he shall be liable for such his offence on conviction thereof to be imprisoned in such gaol as aforesaid for any term not exceeding eighteen months nor less than six months.

Legislation by colonies.

29. And it is hereby further ordered that it shall and may be lawful for the respective local Legislatures of the said Colonies of British Guiana, Trinidad, St. Lucia, Cape of Good Hope, and Mauritius, by any Ordinance to be by them for that purpose made, to provide for the better adaptation of this present order to the local circumstances of such Colonies respectively: Provided that such Ordinance be not in contradiction or repugnant to any of the provisions of this order, and that all such Ordinances be made, confirmed, or disallowed as the case may be in the manner and according to the rules provided by law in reference to any other Ordinances of the said respective local Legislatures.

30. And whereas since the abolition of slavery in the British Colonies, plantations, and possessions abroad doubts have arisen and exist as to the validity of certain marriages contracted and solemnized previous to the abolition of slavery in the said Colonies, plantations, and possessions between slaves and between parties one of whom was a slave, and also in some cases between free persons of colour, and since the abolition of slavery between apprentices and other persons of free condition by ministers of the Christian religion other than clergymen of the United Church of England and Ireland, and it is expedient and necessary that all such doubts shall be removed and such marriages and reputed marriages should be ascertained and confirmed, and that all persons who may have solemnized any such marriages or reputed marriages or who have in any manner assisted thereat should be indemnified from and against all pains, penalties, forfeitures and proceedings to which such persons or any of them may be liable therefor:

Confirmation of marriages doubtful as to solemnization.

31. It is therefore further ordered that all marriages which at any time before the taking effect of this order shall have been solemnized in any of the Colonies to which this order applies by or before any such ministers of the Christian religion as aforesaid shall be and the same are hereby declared to be and to have been from the time of the solemnization thereof respectively good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary thereof in any wise notwithstanding; and all pains, penalties, forfeitures, and proceedings of whatsoever kind or

description which any such Christian minister may have incurred or become liable to before the taking effect of this order by reason of his having solemnized or assisted at any marriage whatsoever or in any wise in relation thereto is and are hereby remitted, released, repealed, and made void.

Order in Council,  
7th Sept. 1838.

32. And whereas in the Colonies in which marriages have been celebrated as aforesaid registers thereof have been duly made and kept by such ministers as aforesaid who officiated thereat, it is therefore further ordered that all such registers and all copies thereof respectively certified under the hand of the person for the time being having the lawful care of the same to be true copies shall be and are hereby declared to be good evidence of such marriages as aforesaid respectively as fully as if such registers had been made and kept and such certified copies had been made respectively by persons appointed by law to make and keep the same, and shall be received in evidence in all Courts and before all Judges and Magistrates.

Registers and certificates of such doubtful marriages.

33. And it is hereby further ordered that the better to preserve evidence of marriages so registered and to facilitate the proof thereof, every person in whose custody any register lawfully is or shall be at the time shall within six months after the promulgation of this order, to which the same extends, respectively make or cause to be made a fair and correct copy of every such register and of every entry therein contained, and it shall be lawful for any such Christian minister as aforesaid to examine, verify, and correct (if and where found incorrect) by the original any such copy of a register kept by the persuasion to which he belongs, and to take the same before any Magistrate, and make and sign the following declaration, which any Magistrate to whom the same shall be tendered is hereby authorized and required to receive and to certify, in manner following, that is to say :

Record of such registers.

I, A. B. (describe the persuasion to which he belongs), do hereby solemnly, sincerely, and truly declare that I have carefully examined this copy beginning the            day of (month and year) and ending on the            day of (month and year), and containing            pages and entries of marriage, with the original register, and I believe the same to be throughout a true and faithful copy of the original register of which it purports to be a copy.

(Signed)      A.B.

The said A. B. appeared this            day of            before me, C. D., one of Her Majesty's Justices of the Peace in and for            and made and signed the above declaration in my presence.

(Signed)      C.D.

Order in Council,  
7th Sept. 1838.  
---

Which declaration and Magistrate's certificate thereof shall be entered and signed at the end of the copy to which it relates, and the copy shall be then securely sealed up and forthwith sent to the Colonial Secretary as aforesaid to be by him kept with the registers of marriages in his office, where the same may be searched, and every copy of any entry therein certified under his hand to be a true copy shall be of the same force and effect as any certified copy whatsoever made by him is or can be, and which certified copies he is hereby required to make and may receive payment for as in other cases.

False declaration  
by minister as to  
such registers.

34. And if any such minister as aforesaid shall wilfully make and sign any such declaration knowing the same to be false he shall be liable to the pains and penalties to which persons guilty of wilful and corrupt perjury are liable.

Marriages *de facto*  
without celebration.

35. And whereas in consequence of imperfect instruction in the Christian religion and from other causes many marriages *de facto* have taken place between persons one or both of whom were in the condition of slavery but which marriages *de facto* have never been sanctioned by any public ceremony or formally registered, and in many such cases the parties have had offspring of such last-mentioned marriages, and it is expedient that provision should be forthwith made for enabling such persons to confer upon their children the benefit of children born in lawful wedlock :

36. It is therefore further ordered that it shall be lawful for all persons having contracted marriage as last aforesaid at any time within one year after the coming into operation of this order, duly to solemnize the marriage ceremony before any clergyman of the established church or in any other manner authorized by this order, and every person so recognizing a previous marriage *de facto* shall at the same time make and sign the following declaration, which shall also be attested by the witnesses present and signed by the minister or marriage officer before whom the ceremony is performed :

We, A. B. and C. D., do hereby severally solemnly, sincerely, and truly declare that on the          day of          in the year          or thereabout, at          we, the said A. B. and C. D., intermarried with each other, and that we have had issue of the said marriage          children and no more, namely: (here state the names and ages of the children, and if any be dead, state the fact).

(Signed)          A. B.  
  C. D.

X. Y.

Relation back of  
ceremony as to  
*de facto* marriages.

37. And such marriage ceremony shall have relation back to the time of the marriage *de facto*, and all such children shall be deemed and taken to have been born in holy wedlock and shall possess and enjoy all the rights, privileges, and advantages of persons born in lawful wedlock; and to preserve evidence thereof a duplicate original declaration shall then and there, before the parties



depart be made, signed, and attested in the same manner, and the original declaration shall be appended to and kept with the original register and the duplicate original declaration shall be appended to, sent, and kept with the duplicate original register, and shall for all purposes of evidence be deemed part thereof respectively: Provided, always, and it is hereby declared that such last-mentioned ceremony and declaration may be performed and made without the previous publication of banns or a licence.

Order in Council,  
7th Sept. 1888.

38. And it is hereby further ordered that where in any Colony to which this order applies any other language than English shall be commonly used the Governor shall cause a true and faithful translation of this order, and particularly of the several forms and declarations herein contained, to be made, expressing the true intent and meaning thereof; and such translation when promulgated by the Governor may be lawfully used by all persons speaking such language; and everything done under this order by means of such translation shall be as valid and effectual to all intents and purposes whatsoever as if the same had been done in the original language of this order, any law or custom to the contrary notwithstanding.

Translation of this  
order where English  
language not used.

39. And it is hereby further ordered that the word "Governor" in this order shall be taken to mean the Governor or other officer lawfully administering the Government of such Colony; and the word "parish" in Colonies divided into parishes shall be taken in its ordinary sense, and in Colonies not divided into parishes shall be taken to mean such other districts or divisions as for civil purposes are equivalent to parishes; and the term "extra-parochial place" shall be taken to mean any place not included in any such parish, district, or division; and if in any case there be no such district or division, or if it be uncertain to what kind of district or division the word "parish" is hereby intended to apply the same shall be determined and officially declared by the Governor.

Interpretation  
terms used.

40. And it is further ordered that this order shall take effect and come into operation in the Colony of Mauritius on the first day of February one thousand eight hundred and thirty-nine; in the Colony of the Cape of Good Hope on the said first day of February one thousand eight hundred and thirty-nine, and in all other Colonies to which it applies or extends on the first day of December one thousand eight hundred and thirty-eight.

First operation of  
order.

41. And it is further ordered and declared that within the meaning and for the purposes of this order all Islands and Territories dependent upon any of the Colonies to which this order applies or extends and constituting parts of the same Colonial Government shall respectively be taken to be parts of such respective Colonies.

Local operation of  
order.

42. And the Right Honourable Lord Glenelg, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

## ORDER IN COUNCIL, FEBRUARY 20, 1839.

Fees of clergy

WHEREAS on the 7th day of September, 1838, an order was passed by Her Majesty with the advice of Her Privy Council for giving validity to certain marriages contracted within the Colonies of British Guiana, Trinidad, Saint Lucia, the Cape of Good Hope, and Mauritius, and for regulating the celebration of marriages therein hereafter in certain cases: And whereas doubts have arisen whether according to the right construction of the said order the legal effect thereof is not to take away the right theretofore vested in the clergy or ministers of religion within the said Colonies to the fees heretofore payable to them on the celebration of marriages therein: Now, therefore, for the removal of such doubts it is hereby declared and ordered by the Queen's Most Excellent Majesty, with the advice of Her Privy Council that nothing in the said recited order contained extends or shall be construed to extend to deprive any clergyman or any minister of religion in any of the said Colonies hereafter celebrating any marriage therein of any fee, perquisite, or emolument on such celebration which would have been legally payable to him thereupon if the said recited order had not been made, or to take away from any such clergyman or minister any right of action or other remedy which could have been had by him for the recovery of any fee, perquisite, or emolument on any marriage hereafter to be celebrated by him if the said recited order had not been made, anything in the said recited order contained to the contrary notwithstanding.

And the Most Noble the Marquess of Normanby, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

ORDER IN COUNCIL. <sup>(1)</sup>

April 3, 1840.

*At the Court at Buckingham Palace, the 3rd day of April, 1840.*

PRESENT:

The QUEEN'S Most Excellent Majesty.

Lord Chancellor,	Earl of Minto,
Lord President,	Viscount Palmerston,
Lord Privy Seal,	Viscount Melbourne,
Marquis of Normanby,	Viscount Duncan,
Lord Steward,	Viscount Morpeth,
Lord Chamberlain,	Lord Holland,
Earl of Albemarle,	Mr. Macaulay.

Marriages according to ritual of Dutch Reformed Church.

WHEREAS by an Order made by Her Majesty in Council on the 7th day of September, 1838, it was, amongst other things, ordered that whenever the form and ceremony used in the solemnization

<sup>1</sup> Published in *Gazette* of 31st July, 1840.

of marriages at the Colony of the Cape of Good Hope should be other than that of the United Church of England and Ireland, each of the parties should in some part of the ceremony, make a certain declaration therein set forth, and should each address to the other certain words therein prescribed;—and whereas it has been represented to Her Majesty, that the ceremonial of marriage previously in use by the Reformed Dutch Church in the said Colony prescribes the making of a declaration and the use of words by parties contracting marriage, equivalent to the declaration and the words so prescribed as aforesaid by the said Order of Council,—It is therefore ordered by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, that so much of the said recited Order in Council shall be, and the same is hereby, repealed, so far as the said Order requires, that at marriages celebrated at the Cape of Good Hope according to the forms and ritual of the Dutch Reformed Church, the before-mentioned declaration shall be made, and the before-mentioned words spoken.

Order in Council,  
Apr. 3, 1840.  
—

And the Right Honourable Lord JOHN RUSSELL, one of Her Majesty's Principal Secretaries of State, having the Department of the Colonies, is to give the necessary directions herein accordingly.

(Signed)

C. GREVILLE.

No. 12—1856.]

[June 4, 1856.]

### AN ACT

#### For Better Securing in certain Cases the Inheritances of Minors.

WHEREAS, from ignorance, neglect, and other causes, it not unfrequently happens that the survivor of two spouses, who at the time of the death of the first dying of them, had children of their marriage, under age, not merely fails to settle for, or secure in proper time, and in the usual way, the inheritances accruing to such minor children out of the estate of their deceased parent, but proceeds to marry again, without settling for or securing such inheritances, whereby confusion and litigation are likely to be created, and such minors are exposed to the risk of injury and loss : And whereas, whilst it is the duty of the several Matrimonial Courts of the Colony, before which all persons about to be married by special licence are bound to appear, to ascertain, in the case of widowers and widows, having minor children of a former marriage, that the inheritances which have devolved upon such minors have been settled for or secured, no provision exists of the same nature or with the same object in regard to surviving spouses who are minded

Preamble.

No. 12—1856.

to marry not by special licence, but by banns : And whereas, it is expedient to make such provision : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

A widower or widow shall, prior to re-marriage pay to the Master of the Supreme Court the inheritance due to their minor children, or secure such inheritance by a deed of "kinderbewys."

1. As often as any widower or widow, <sup>(1)</sup> being the parent of any minor child, entitled to claim from such widower or widow any inheritance out of the estate of his or her deceased spouse, shall be minded to contract another marriage, and to that end shall be desirous to have the banns of such intended marriage published by any minister of religion or marriage officer in this Colony, such widower or widow, or his or her agent, shall obtain and deliver to the Resident Magistrate of the district in which such banns are intended to be published, a certificate, signed by the Master of the Supreme Court, certifying that the amount of inheritance due to such minor child as aforesaid, from and out of the estate of his or her deceased parent, has been paid into the Guardian's Fund, or otherwise, a certificate from the Registrar of Deeds, certifying that the customary bond or obligation, commonly called a "kinderbewys," is registered in the debt registry, for securing the amount of such inheritance : Provided that should it be necessary to publish the banns of any such marriage in more districts than one, then one such certificate as aforesaid shall be delivered to the Resident Magistrate of each district ; or otherwise one such certificate shall be delivered to one of the said Magistrates, and a copy thereof, certified by such Magistrate to be correct, shall be delivered to the other Magistrate : And provided, also, that the said Master and the said Registrar shall, upon request, grant such certificates as aforesaid, without fee or charge. <sup>(2)</sup>

Magistrate's certificate.

2. The Resident Magistrate, upon receiving such a certificate or attested copy of certificate as aforesaid, shall deliver to the party delivering the same to him a certificate signed by him, certifying that it has been made to appear to him, that no reason exists, arising out of unsecured inheritances of minor children, why the banns of marriage of the widower or widow who shall be named in such certificate should not be published.

In case of doubt or question as to minor's title to inheritance.

3. In any case in which any widower or widow, having any minor child who is alleged not to be by law entitled to any inheritance from or out of the estate of his or her deceased parent, shall be minded to contract another marriage, such widower or widow shall apply to the Resident Magistrate of the district in which banns are desired or required to be published, for a certificate, of the like tenor as that in the last preceding section mentioned : Provided that in any such case, involving matter of law, which the said Magistrate shall decline to take upon him to determine without legal advice, he shall require the party applying for such certificate to state, under the inspection and subject to the correction of such

<sup>1</sup> See also § 14 Proc. 15, May, 1805, and § 22, Ord. 105.

<sup>2</sup> But see Sched. 2, Act 20, 1884 (Stamps and Licences).

Magistrate, a case for the written opinion of the Attorney-General of the Colony, and to obtain such opinion for the information of such Magistrate, who shall grant his certificate as aforesaid, in case the said Attorney-General shall be of opinion that the minor child or children in question are not, by law, entitled to any inheritance from or out of the estate of its or their deceased parent; but who shall withhold such certificate in case the said Attorney-General shall not give such an opinion as aforesaid, as also in case no opinion of the said Attorney-General shall be produced: Provided, further, that when any such banns as in this section mentioned are desired or required to be published in each of two districts, a certificate from each Resident Magistrate shall be necessary; and provided, also, that it shall be lawful for any such Magistrate to grant his certificate, although he shall not have received the certain other certificate in the first section mentioned,—in case it shall be made to appear to him by the party applying for his certificate that the value of the joint estate in question in such case was under one hundred pounds sterling.

4. In any case under this Act in which the Resident Magistrate shall see cause to withhold his certificate aforesaid, it shall be lawful for the person who shall have applied for such certificate to apply to a Judge of the Supreme Court, in Chamber, for an order upon such Magistrate, to grant such certificate, and thereupon it shall be lawful for such Judge, in the most summary and least expensive manner, to inquire into the case, and after inspecting such documents, and calling for such proofs, as to him shall seem needful, to grant or refuse such order, as to him shall seem expedient: Provided that in no case shall the costs of making any such order be awarded against the Magistrate, unless the necessity for such order shall have arisen from his wilful neglect or default.

If magistrate refuse certificate, application to judge in chamber.

5. No such certificate as aforesaid, whether made upon a Judge's order or not, shall be of any force or effect in law, except simply to authorize the publication of banns of marriage; and all matters and things regarding the rights, inheritances, estates, or interests of minors, and of all others, shall be judged of, after the granting of such certificate, precisely as if the same never had been granted.

Certificate has no legal force except as authorizing publication of banns

6. (1) No minister of religion or marriage officer shall publish the banns of any person whom he shall know to be a widower or widow, having a minor child or children of a former marriage, until there shall be delivered to him such a certificate as aforesaid, signed by the Resident Magistrate of the district in which such banns are desired or required to be published; and if any such minister or marriage officer shall discover, after one or more publications of banns, that either of the parties intending to marry is such a widower or widow as aforesaid, then such minister or marriage officer shall suspend the further publication of such banns

Banns not to be published until such certificate is produced.

As to Marriages by Special Licence see § 6, Act 9, 1882.

No. 12—1856.

until he shall be furnished with such certificate as aforesaid: Provided, also that if such discovery as aforesaid shall be made after the publication of banns shall have been completed, such minister or marriage officer shall not solemnize the marriage until such certificate shall have been delivered to him.

Act when to commence.

7. This Act shall commence and take effect from and after the promulgation thereof.

No. 16—1860.]

[July 17, 1860.

## ACT

## To Amend the Law concerning Marriages.

Preamble.

WHEREAS it is expedient to afford additional facilities for contracting valid marriages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Resident magistrates to be marriage officers.

1. The several Resident Magistrates of this Colony are hereby made and constituted marriage officers before whom marriages may be contracted.

Provisions of schedule A to apply to marriages before magistrates.

2. All and singular the clauses and provisions in the schedule marked A to this Act annexed shall apply to marriages to be contracted before any Resident Magistrate, as fully and to all intents and purposes as if the said clauses and provisions were here set forth as so many sections of this Act.

Appointments of marriage officers already made, confirmed.

3. All appointments of marriage officers heretofore made by the Governor of this Colony for the time being are hereby ratified and confirmed, and declared to be and to have been as legal, valid, and effectual as if the order of Her Majesty the Queen in Council of the 7th September, 1838, had by express words authorized the making of every such appointment.

Governor may appoint marriage officers for Jews and Mohammedans.

4. The Governor may appoint in manner and form as in the twelfth section of the said Order in Council mentioned, marriage officers, for the purpose of solemnizing the marriages of persons professing the Jewish faith, and marriage officers for solemnizing the marriages of persons professing the Mohammedan faith: Provided that no marriage solemnized by any such marriage officer shall be invalidated or impeached by reason that neither of the married parties belonged or was reputed to belong to the class or denomination for which such marriage officer was appointed.

Marriage by special licence before magistrate, how solemnized.

5. Any marriage for the solemnization of which a special licence shall have been obtained, may, upon the production of such licence to any Resident Magistrate named therein, be solemnized and contracted before such Magistrate and witnesses, in manner and form as is in the schedule marked A annexed to this Act directed and enjoined: Provided that as often as a special licence shall be produced for authorizing the solemnization of any marriage it shall

not be necessary that notice of the intention to contract such marriage shall have been given or posted as in the said schedule provided, and such marriage may upon the production of such licence be solemnized forthwith.

No. 16—1860.

6. The provisions of the Act No. 12, 1856, entitled "An Act for better securing, in certain cases, the Inheritances of Minors," shall apply, *mutatis mutandis*, to all marriages solemnized after the taking effect of this Act by any Resident Magistrate, precisely as if the affixing of any notice of an intended marriage, as in the fourth clause of the said schedule marked A, were a publication of banns. Provided, however, that no such certificate as is in the said Act mentioned shall be issued.

Act 12, 1856, for securing inheritances of minors, to apply to all marriages under this Act.

7. It shall not be lawful for any Resident Magistrate to demand or receive any fee, gratuity, or reward, for or by reason of anything done or to be done by him under or in pursuance of this Act.

No fees to be charged under this Act.

8. This Act may be cited for any purpose as the "Marriage Act, 1860."

Short title of Act.

---

SCHEDULE (1) A.

Schedule A.

1. In every case in which any persons shall desire to contract a marriage before any Resident Magistrate, one of the parties shall give notice under his or her hand or his or her mark, witnessed by two witnesses, in the form marked No. 1 to this schedule annexed, or to the like effect, to the Resident Magistrate of the district within which the parties shall have dwelt for not less than fourteen days, and shall state therein the name and surname (if any) and the condition and occupation or calling of each one of the parties intending marriage, the dwelling-place of each of them, and the time, not being less than fourteen days, during which each has dwelt therein: Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

Notice of intention to marry before magistrate.

2. If the parties intending marriage, as in the last preceding section mentioned, dwell in different districts of Resident Magistrate, then one of the said parties shall give the like notice to the Resident Magistrate of each of the two districts.

How, if parties live in different districts.

3. Every Resident Magistrate receiving any such notice as aforesaid shall file and preserve the same in his office, and shall also forthwith enter a true and fair copy of every such notice in a book to be kept by him in his office for that purpose, and to be called "The Marriage Notice Book," which book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

Notice to be filed.

"Marriage Notice Book" to be kept.

4. Every Resident Magistrate receiving any such notice as aforesaid shall cause the same or a fair copy thereof to be affixed in some conspicuous place in or near his court-house or his office, and shall at the next ensuing Court of Resident Magistrate held at the stated and ordinary place for holding such Court read the same in open Court,

Notice to be affixed, and also to be read in open court.

---

<sup>1</sup> Printed as amended by Act 9, 1882,

No. 16—1860.

and the said notice shall be so read at not less than two other Courts so held as aforesaid: Provided that not less than three clear days shall elapse between each of the respective Courts in which such notice shall be read, and provided that such notice shall be read as aforesaid three times within twenty-one clear days next after the receipt of such notice.

Objections to intended marriages, how to be made.

5. Any person knowing any lawful impediment to the marriage of the persons named in any such notice as aforesaid may at any time during the twenty-one days aforesaid, by any writing under his hand addressed to the Resident Magistrate and bearing the true name and place of abode of the person who shall have subscribed the same, lodge an objection to such marriage, stating the ground of such objection.

Such objection may be made on the ground of a previous marriage according to Mohammedan custom.

6. It shall be competent for any woman to whom the man named in any such notice shall have been married according to the Mohammedan customs and usages, at any time before the taking effect of this Act, to lodge upon that ground an objection to the intended marriage.

Intended marriage on the part of minors may be forbidden by their guardians.

7. Any person whose consent is required by law to the marriage of any person under the age of twenty-one years named in any such notice as aforesaid as one of the parties intending marriage may, by any such writing as in the fifth clause of this schedule mentioned, forbid such marriage.

After due notice, marriage may be solemnized.

8. After the expiration of the twenty-one clear days aforesaid, then in case no objection shall have been lodged, it shall be lawful for the parties to contract marriage in the court-room or in the office of such Resident Magistrate, between the hours of nine and twelve in the forenoon, with open doors, and in the presence of such Magistrate and of two or more credible witnesses: or in case such Resident Magistrate shall think fit, at any dwelling-house within his district, and at any convenient hour of the day, in the presence of such witnesses as aforesaid: Provided that as often as any notice of an intended marriage shall have been published in more districts than one, neither of the Resident Magistrates shall permit the marriage in such notice mentioned to be so contracted until it shall have been certified to him by the other Magistrate that no objection has been lodged; and provided that it shall be lawful for the Resident Magistrate to put to both or either of the parties intending marriage all such questions as to him shall appear necessary for determining whether there be or be not any lawful impediment to such marriage and to refuse to permit such marriage to take place unless satisfactory answers shall be given.

How, if notice of intended marriage has been published in more districts than one.

Unless satisfactory answers to certain questions are given, marriage need not be permitted.

Declaration to be made by parties.

9. As often as any marriage shall be contracted in manner and form as in the last preceding section mentioned, each of the parties shall, in the presence of the Magistrate and bystanders, declare as follows: "I do solemnly declare that I do not know of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.," and each of the parties shall say to the other, "I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband);" or the said parties may, with leave of the Magistrate, in lieu and stead of the said forms, declare as follows: "I, A.B., do take thee, C.D., to be my lawful wife (or husband)." Provided that the words to be so spoken as aforesaid may, when the parties or either of them shall be wholly or partially ignorant of the



English language, be spoken in the Dutch language, or in any other language capable of being understood by the witnesses aforesaid.

No. 16—1860.

10. A register of every such marriage so solemnized and contracted in the presence of any Resident Magistrate and witnesses shall be filled up by such Magistrate, and shall be signed by him and by the parties married, and shall be attested by two witnesses, and shall be in the form marked No. 2 to this schedule annexed.

Register of marriage to be signed and attested.

11. After any marriage shall have been contracted in manner and form as in the eighth clause of this schedule mentioned, it shall not be necessary in support of such marriage, or in any action, suit, or proceeding in which the same may come into question, to give any proof of the actual residence of the parties married or of either of them before the marriage; nor that the notice of such marriage was duly or at all affixed or read; nor that such marriage was solemnized in the place or within the hours by this Act prescribed; nor shall any evidence be received to prove the contrary.

Evidence of certain matters not required in suits regarding validity of marriages

12. As soon as may be after any such marriage as last aforesaid shall have been solemnized, the Resident Magistrate shall cause such register to be copied into a book, to be kept for the purpose, and to be called "The Marriage Record Book," and shall, not later than one month after the solemnization of such marriage, transmit the said register to the Colonial Secretary aforesaid, and all such registers shall be preserved like and be as evidence of the same force as the duplicate original registers of marriage mentioned in the twenty-first section of the Order in Council of the 7th September, 1838.

"Marriage record book" to be kept.

13. Whenever any such marriage as aforesaid shall not be solemnized within three calendar months after the expiration of the twenty-one days aforesaid, then the notice aforesaid and all proceedings under it shall be totally void; and in case of the desire of the parties to contract such marriage after such three months, fresh notice shall be necessary, precisely as if no former notice had been given.

Register of every marriage to be sent to Colonial Secretary

Marriage cannot be solemnized after the lapse of three months from expiration of notice.

14. As often as any objection to any marriage shall be lodged as aforesaid with any Resident Magistrate, such Magistrate shall refer the same to the Resident Magistrate's Court of his district for consideration.

Objections to intended marriage to be referred to matrimonial court.

15. It shall be lawful for any Resident Magistrate's Court to which any such objection shall be referred, to summon before it any person capable, or supposed to be capable, of giving information relative to any fact involved in such objection and in dispute between the parties, and to examine such person upon oath, which oath the presiding member of such Court is hereby authorized to administer.

Matrimonial court may summon and swear witnesses.

16. The process of the Resident Magistrate's Court for summoning any witness to appear to give evidence before it shall be, *mutatis mutandis*, the same as the process of the Court of Resident Magistrate for summoning witnesses in civil cases, and shall be served in the same manner and have the same effect, and the fifty-second section of the Act No. 20, 1856, entitled "An Act to amend and consolidate the law relative to Courts of Resident Magistrates," shall apply to witnesses resident beyond the district of such Resident Magistrate's Court, precisely as if such Court were the Court of Resident Magistrate for such district.

Form of process, and how to be served.

17. As often as any question of law which the Resident Magistrate's Court shall not feel itself competent to decide shall arise in regard to

Opinion of counsel on questions of law.

No. 16--1880.

Attorney-General  
to give free advice in  
certain cases.

Proceedings of  
court when an ob-  
jection is lodged on  
the ground of a pre-  
vious Mohammedan  
marriage.

How, if objection  
be allowed.

Court may award  
costs.

Appeal from matri-  
monial court.

Judge or court to  
whom appeal is made  
may direct summary  
inquiry into the case.

any such objection it shall be lawful for such Resident Magistrate's Court to state a case for the opinion of counsel, and to require such of the parties to the matter in controversy, as such Court shall think fit, to obtain the opinion of counsel upon such case, and to lay such opinion before such Court at some future meeting thereof: Provided that as often as the parties are in poor and indigent circumstances, Her Majesty's Attorney-General for the Colony shall give his opinion upon all such cases free of charge.

18. In case any objection to any marriage shall be lodged as afore-said by any woman to whom the man who is desirous of having such marriage registered or solemnized, had previously and before the taking effect of this Act, been married according to Mohammedan customs and usages, the Resident Magistrate's Court, in considering and deciding upon such objection, shall have regard to the conduct and character of such woman since such Mohammedan marriage took place, and unless such Court shall be of opinion, upon proof made by the man, that the character and conduct of such woman since such marriage have been such that, had such marriage been in law a valid marriage, the man would have been entitled to claim from any competent Court either a dissolution of such marriage or a separation from bed and board, the Resident Magistrate's Court shall allow such objection, and thereupon such marriage shall not take place. And as often as any such lastmentioned objection shall be allowed, no future application by the same man for the registration or solemnization of any marriage (not being his marriage with the objecting party herself) shall, during the life of such objecting party, be capable of being entertained, except upon proof by the man that the objecting party had, since the decision come to upon her said objection, been guilty of what, had they been in law married people, would have been adultery.

19. It shall be competent for the Resident Magistrate's Court to award against such of the parties to any objection as such Court shall deem just and fitting the reasonable costs (if any) of the other parties to such objection, or any of them; and such costs, when certified by the Resident Magistrate's Court to the Court of Resident Magistrate of the same district, shall be recovered by process of such last-mentioned Court, precisely as if such costs had been costs awarded by such lastmentioned Court in a civil case therein pending.

20. Any person feeling himself aggrieved by the decision of any Resident Magistrate's Court upon any such objection may apply by petition to the Supreme Court in Chamber, or to any Judge of such Court or Circuit Court, stating the alleged grievance and praying relief: Provided that notice in writing of the intention to present such petition shall be given to the Resident Magistrate of the district in and for which such Resident Magistrate's Court exercises its functions, not later than seven days next after the day upon which the decision of the Resident Magistrate's Court objected to shall have been given.

21. It shall be lawful for the Court or Judge which shall receive any such petition to cause notice of such petition to be given by the party petitioning to such other persons as such Court or Judge shall think fit, and to inquire into the matter thereof, and to call upon the Resident Magistrate's Court whose decision is objected to for such explanations or information as such Court or Judge shall think neces-

sary; and if need be, such Court or Judge shall take further evidence, and in the most summary, effectual, and inexpensive manner determine the matter in controversy; and may make such order as to the costs of, or consequent upon, such petition, as such Court or Judge shall think fit.

No. 16—1860.

22. The Court or Judge aforesaid may if need be direct the parties concerned in the matter of any such petition to file pleadings, or may direct any question of law arising in any such case to be argued by counsel: Provided that if the parties to any such objection or any of them be in poor and indigent circumstances, the said Court or Judge shall assign them or him an attorney and advocate, who shall act free of charge.

Pleadings may be filed and questions at law argued by counsel.

23. If the said Court or Judge shall disallow any objection which the Resident Magistrate's Court shall have allowed, then the marriage which was objected to shall be proceeded with as if such objection had not been made; and if such Court or Judge shall allow any objection which the Resident Magistrate's Court shall have disallowed, then the registration or solemnization objected to shall not take place.

How, if decision of matrimonial court is set aside.

24. When any Resident Magistrate's Court shall have disallowed any objection to any marriage, such marriage shall not take place before the time at which it might have taken place in case no objection had been lodged, nor then, unless or until seven days shall have elapsed since the day upon which the decision of the Resident Magistrate's Court disallowing the objection was given, in order to afford time for lodging notice of petition: Provided that the lodging of such notice shall be a stay of all proceedings touching such marriage pending the decision upon such petition.

If objection be disallowed by matrimonial court, marriage not to take place within seven days from date of disallowance.

Lodging of notice to stay all proceedings.

25. Any person who shall lodge an objection to any marriage, which objection shall be by the Resident Magistrate's Court declared to be frivolous, shall be liable to an action for damages at the suit of the person whose marriage was objected to: Provided, however, that such person shall not recover any damages unless the Court in which the suit shall have been instituted shall find the objection to have been frivolous.

Persons lodging frivolous objections, liable to action for damages.

26. If any person shall transmit or cause to be transmitted to any Resident Magistrate any writing purporting to be the notice of an intended marriage, or shall lodge or cause to be lodged with any Resident Magistrate an objection to any intended marriage purporting to be lodged by or on behalf of some person objecting to such marriage, such person not having any authority from the person or persons named in such notice or objection to transmit or lodge the same, but wantonly and mischievously intending to subject the persons named in such notice or objection, or some of them, to ridicule or annoyance, shall upon conviction be liable to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any period not exceeding three months, or to both such fine and such imprisonment.

Penalty for lodging unauthorized or fictitious notices or objections.

27. Any person who shall transmit to any Resident Magistrate any notice of an intended marriage, or any objection to an intended marriage, containing any statement knowingly and wilfully false, shall upon conviction be liable to a fine not exceeding one hundred pounds or to be imprisoned with or without hard labour for any period not exceeding twelve months, or to both such fine and such imprisonment.

Penalty for notices or objections wilfully false.



No. 9—1882.]

[June 14, 1882.

## ACT

## To Regulate the Issue of Licences for the Solemnization of Marriages, and to abolish Matrimonial Courts.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The fourth and fifth sections of the Ordinance No. 89, promulgated on the sixth day of February, 1832, the fourth section of the Act No. 11, 1860, the Government Notice dated the sixteenth day of April, 1839, and so much of any other law or ordinance as may be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Repeal of repugnant laws.

2. The several powers and duties which are by certain clauses of the schedule marked A to the "Marriage Act, 1860," directed to be exercised and performed by the Matrimonial Court of any district shall be exercised and performed by the several Resident Magistrates within the limits of their respective districts, and the said schedule shall be read and construed as if the words "Resident Magistrate's Court" had been inserted in every clause wherein the words "Matrimonial Court" occur.

Courts of Resident Magistrates substituted for "Matrimonial Courts."

3. The Resident Magistrate of every district is hereby authorized, subject to the provisions of this Act, to grant special licences for the solemnization of marriage at any time and at any place within the Colony, and every such licence shall be duly stamped with stamps denoting the duty by law payable, and shall be as nearly as is material in the form contained in the first schedule.

Magistrates may grant marriage licences.

4. Unless a marriage shall be solemnized in pursuance of any licence obtained and issued under the provisions of this Act within three months after the grant of such licence, such licence shall be of no effect, and no marriage shall be solemnized in pursuance thereof; nor shall any person having taken out a marriage licence be entitled to a refund of the amount paid for such licence, in case the marriage shall not be solemnized.

Licence to be void after 3 months.

5. No such licence shall be granted by any Resident Magistrate unless or until the intended husband and intended wife shall have made before such Magistrate, or before some Justice of the Peace, solemn declarations, in the form and to the effect set forth in the second schedule, and all such declarations shall be preserved of record in the offices of the Resident Magistrates respectively.

Intending spouses to make declaration in schedule 2.

6. No such licence shall be granted by any Resident Magistrate for the marriage of any widower or widow having minor children of a former marriage unless such Resident Magistrate shall be satisfied that the inheritances which have devolved upon such minors have been settled by payment into the Guardian's Fund or secured by the customary bond or obligation commonly called a

Provisions in case of marriage of widowers and widows.

No. 9—1882.

“Kinderbewys” duly registered in the Deeds Registry, or unless it shall be made to appear to such Magistrate by the widower or widow as the case may be, that the value of the estate in question in such case was under one hundred pounds.

Consent of parents  
&c., in case of minors.

7. No licence shall be granted by any Resident Magistrate for the marriage of any person, not being a widower or widow, under the age of twenty-one years, unless and until there be produced to such Magistrate the written consent of the parents or guardians, or other person (if any) whose consent is required by law, or an order of the Chief Justice of the Colony, granted in terms of the seventeenth section of Her Majesty's Order in Council, dated the seventh day of September, 1838.

Questions may be  
put before granting  
licence.

8. Any Resident Magistrate to whom application shall be made for any such special licence as aforesaid, may put to both or either of the parties intending marriage all such questions as shall be relevant and necessary for determining whether there be or be not any lawful impediment to such marriage, and may refuse to grant such licence unless satisfactory answers shall be given.

Offences and penal-  
ties.

9. Whoever shall commit any of the following acts or offences, shall, upon conviction, be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding five years :

- (1) Make any declaration such as is referred to in the fifth section of this Act, for the purpose of obtaining a licence to marry, containing any wilfully false statement as to any fact therein alleged.
- (2) Make any wilfully false statement in answer to any question put by any Resident Magistrate under the provisions of the eighth section of this Act, as to any fact material to be ascertained.
- (3) Forge or fraudulently alter any consent or writing purporting to be a consent to the marriage of any person being a minor under the age of twenty-one years.
- (4) Forge or fraudulently alter any licence of marriage.

Short title.

10. This Act may be cited for all purposes as “The Marriage Licence Act, 1882.”

### THE FIRST SCHEDULE.

#### MARRIAGE LICENCE ACT, 1882.

It having been made to appear that there does not exist any legal impediment to A.B., of \_\_\_\_\_ in the district of \_\_\_\_\_ { Bachelor }  
and C.D., of \_\_\_\_\_ in the district of \_\_\_\_\_ { Widower }  
being joined in wedlock : Licence is hereby given to their being united in marriage by any minister of the Christian religion within the Colony, who could by virtue of the Order of Her { Spinster }  
{ Widow }

Majesty in Council bearing date the 7th day of September, 1838, have solemnized such marriage, in case banns thereof had been duly published, or by a Resident Magistrate, or any other duly constituted marriage officer; Provided that such marriage be celebrated within three months from the date hereof.

No. 9—1882.

Given under my hand at  
this                      day of                      , 18

Resident Magistrate  
of the District of

THE SECOND SCHEDULE.

I { John Smith } (usual place of residence and occupation)  
  { Mary Jones }  
do solemnly and sincerely declare as follows:—

(1.) That I am a { Bachelor or Widower } and am (under or above  
                          { Spinster or Widow }  
as the case may be) the age of twenty-one years.

(2.) That I have no knowledge of any just impediment or lawful objection by reason of any kindred relationship, or alliance of any former marriage, or the want of consent of parents or guardians, or any other lawful cause whatever, to my being married to { Mary Jones } of (usual place of residence), and in case of the bride, add: "daughter of John Jones, of

" (usual place of business and occupation), and I make this solemn declaration, conscientiously believing the same to be true, and with full knowledge that any wilfully false statement herein contained will render me liable to imprisonment with hard labour for a term not exceeding five years.

Declared at  
this                      day of

Before me,

No. 4—1848.—Sd. H. G. Smith.]                      [June 27, 1848.

Ordinance for rendering legal certain Marriages supposed to be invalid.

WHEREAS His Excellency Sir Henry George Wakelyn Smith, Baronet, G.C.B., &c., &c., &c., Her Majesty's High Commissioner for the settling and adjustment of the affairs of the territories of Southern Africa adjacent and contiguous to the Eastern and North-eastern frontier of the Colony of the Cape of Good Hope, did by his proclamation bearing date the 17th of May, 1848, of which a copy is set forth in the schedule hereunto annexed, make provision for rendering valid and effectual certain marriages or reputed marriages in the said proclamation described: And whereas it is expedient that the marriages so legalized by the

Preamble.

1586            MARRIAGES (CERTAIN) DECLARED LEGAL.

Ord. 4—1848.

Proclamation of  
17th May, 1848, given  
the force of law.

said High Commissioner in and for the certain territories in the said proclamation mentioned (being part and parcel of Her Majesty's dominions, but not part or parcel of this Colony) should likewise be rendered valid and effectual within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the provisions of the proclamation aforesaid and hereunto annexed shall within this Colony have the force and effect of law, and that the registration of marriages in and by the said proclamation provided shall for purposes civil or criminal have the same effect and none other within this Colony which under and by virtue of the said proclamation it is declared or intended to have within the territories aforesaid.

Certificate of marriage, evidence.

2. And be it enacted that the certificate in the fifteenth section of the said proclamation mentioned shall be good evidence of every such marriage as aforesaid before all Courts and Magistrates in this Colony.

Time of taking effect.

3. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

SCHEDULE.

*Proclamation.*

WHEREAS I did by a proclamation bearing date the 3rd of February, 1848, issued by me in my capacity as Her Majesty's High Commissioner for settling and adjusting the affairs of certain territories adjacent to the Colony of the Cape of Good Hope proclaim, declare, and make known the sovereignty of Her said Majesty over certain territories north of the Great Orange River in the said proclamation mentioned and described: And whereas at various times during the period for which Her Majesty's emigrant subjects have occupied parts or portions of the said territories many marriages have taken place amongst them which owing to the impossibility of obtaining the presence or aid of any minister of the gospel and of conforming to divers requirements of law have not as it is supposed been solemnized in such a manner as to render the same valid and effectual: And whereas the said marriages were so irregularly contracted by reason solely of the necessity under which the parties lay while deprived alike of religious teachers and of regular and established laws, and arose from no want of due reverence for the holy ordinance in question or for the spiritual sanctions with which amongst Christians it is customarily and fitly solemnized: And whereas taking these things into my consideration and being desirous to confer upon Her Majesty's said subjects the important advantage of having their children's legitimacy established and their said marriages legalized for all purposes of law, I have determined to exercise for that end the powers and authorities in me vested: Now therefore I do, as Her Majesty's High Commissioner as aforesaid, hereby proclaim, declare, and make known the several following provisions and regulations touching and concerning the marriages aforesaid, that is to say:



1st. The British Resident in the territories aforesaid is hereby authorized and required to frame and preserve a general register of all such marriages as shall under any of the provisions hereinafter contained be transmitted or reported to him for registration.

2nd. Such general register shall set forth or show the names and residence of the husband and of the wife, their respective ages and condition in life, the date of the marriage and any other particulars which the said British Resident may be instructed by the High Commissioner to record.

3rd. Every couple (except as hereinafter excepted) united together within the said territories as man and wife in the presence of witnesses by any form of words expressive of their mutual and solemn consent to become and be then and there and from thenceforth married people, married together, may have their said marriage registered. But no marriage or pretended marriage shall be registered in which the parties are connected with each other by consanguinity or affinity in such a degree that the Governor of the Colony of the Cape could not by law have granted to them if resident in the said Colony a valid dispensation or authority to marry, and that no valid marriage could by the laws of the said Colony be therein solemnized between them if domiciled in the said Colony; and if any marriage or pretended marriage hereby declared incapable of registration shall yet be registered such registration shall have or possess no force or effect. But no ground of objection arising from consanguinity or affinity which could in the said Colony have been dispensed with by the authority of the said Governor shall prevent registration or its consequences as hereinafter declared.

4th. Whenever any two spouses married as aforesaid shall together come before the British Resident or any Magistrate resident in the said territories and shall declare the fact of such marriage, the Resident or Magistrate (as the case may be) shall ascertain and record in writing the names of the said spouses, their residence, the date and place of their said marriage, and their respective conditions in life at the time of such marriage, whether they were previously married or not; and such record shall be signed or acknowledged by the said spouses in presence of the Resident or Magistrate. When any doubt shall appear to rest upon the fact or date of the alleged marriage, the Resident or Magistrate may call for the certificate in writing or the solemn declaration before himself of such credible witness or witnesses as were present at or cognizant of the said marriage. But when and as often as any such marriage shall have been contracted before and attested by any person or persons recognized at the time amongst Her Majesty's emigrant subjects as holding a public office or authority entitling him or them to attest marriage, any such attestation or a copy thereof shall upon the identity of the married people being ascertained be conclusive proof of the fact and date of the said marriage.

5th. In case it shall be inconvenient for both spouses to repair to the said Resident or to any Magistrate, the latter may ascertain from the husband alone the circumstances aforesaid, and from them prepare the record. But when the husband shall appear alone he will provide himself with a written certificate or statement signed by the wife, or acknowledged by her in the presence of two neighbours who shall witness the same, in which certificate or statement the wife shall set

Oru. 4--1848.

forth the date of the marriage between herself and her husband. And this certificate or statement shall be preserved together with the record signed by the husband. In case of any doubt as to the fact or date of the marriage, the Resident or Magistrate shall proceed as before in order to remove the same.

6th. Should either of the spouses have departed this life since contracting any such marriage as aforesaid, leaving the other of them still surviving, such survivor may appear before the British Resident or any Magistrate as aforesaid, and thereupon the record shall be prepared as if both spouses were living and present; except that the signature of the survivor alone shall be sufficient and that the record shall set forth the death of the deceased. In every such case, moreover, the Resident or Magistrate shall require clear evidence, whether oral or by certificate or affidavit as he shall judge necessary, of the fact and date of the marriage, and shall when it is practicable ascertain that the relatives or friends of the deceased concur in recognizing the said marriage.

7th. Should it happen in any instance in which any such marriage shall have been contracted before and attested by any such persons in office or authority as are hereinbefore referred to that either of the spouses shall refuse to join the other of them in obtaining the registration of the said marriage then the spouse desiring such registration shall be at liberty to appear before the Resident or Magistrate who shall upon proof of such refusal and production of such attestation as aforesaid or an authentic copy thereof, and upon such further inquiry or proof if any as the said Resident or Magistrate shall judge necessary, prepare the necessary record, to which the signature of the spouse applying shall be sufficient, and which shall set forth the refusal of the other spouse.

8th. It shall not be any ground for refusing to prepare a record of or to register any marriage that both or either of the parties to the same at the time of contracting the same were under age.

9th. When and as often as any such Magistrate as aforesaid shall have prepared any such record as aforesaid, he shall with all convenient speed transmit the same with all other writings or papers connected therewith to the British Resident, who shall register every such marriage; and in all cases in which the necessary records shall be prepared by such Resident himself, he shall from or by means of them register the marriage therein mentioned.

10th. Every such marriage as aforesaid when registered by the British Resident shall from and after such registration be a marriage as lawful for all objects and purposes as a lawful marriage within the Colony of the Cape of Good Hope, and shall for all purposes and objects of a civil nature be deemed and taken to have been a lawful marriage from and after the date of the contracting of the same; but whether the same shall from the date last mentioned be deemed and taken to have been a lawful marriage for the purpose of a prosecution for bigamy or polygamy, in case either party shall afterwards during the lifetime of the other party have contracted another marriage, shall be judged of and determined by the general principles of law and independently of any of the provisions of this proclamation.

11th. And whereas some ministers of the Dutch Reformed Church of the Cape Colony have heretofore proceeded to the said territories for the purpose of performing therein as generally as circumstances

would permit the rites and services of religion: And whereas certain of the emigrant subjects aforesaid have from time to time been married by such ministers, as also by the officiating minister in the Dutch Reformed Church at Pietermaritzburg in the district of Natal: And whereas there is reason to suppose that in all cases in which any such minister as aforesaid shall have solemnized any marriage between parties who had previously lived together as man and wife, by virtue of any such irregular marriage as is hereinbefore mentioned, the said minister has recorded as well the fact and date of such previous marriage as the marriage solemnized by himself: And whereas it is fit that full credit be given to all matters so vouched: It is hereby declared and directed that the British Resident shall receive all original marriage records made by any such minister or authentic copies thereof as evidence of the facts therein contained, and shall from or by means of them register the marriages therein mentioned, without requiring the presence of either spouse or any further proof; and that from and after such registration every such marriage shall be deemed and taken to have been a lawful marriage to all intents and purposes from the date of the solemnization thereof by such minister, and to have been for all purposes of a civil nature a lawful marriage from the date mentioned in the marriage record made by such minister as that on which the first or previous marriage if any was contracted. But if in any case the fact or date of such previous marriage shall not appear in or by such marriage record then the spouses or spouse desiring the registration of such first or previous marriage shall proceed in the same manner as is in that or the like behalf hereinbefore provided; but in every case, the marriage solemnized by such minister shall after the registration thereof be deemed to be a lawful marriage to all intents and purposes from the date of such solemnization.

12th. And whereas it is necessary to make temporary provision for the contracting of marriages within the territory aforesaid pending the opening of churches and the settlement of fixed ministers within the same, it is hereby declared and directed that all persons who shall hereafter be married by any minister belonging to the Dutch Reformed Church of the Cape Colony or person commissioned by the same to solemnize marriages within the said territories shall be deemed and taken to be lawfully married; and such marriage shall be registered by the British Resident aforesaid from or by means of the marriage records of such minister or person and no publication of banns shall be necessary.

13th. If it shall so happen that any persons desirous to marry shall be unable to obtain the services of a minister from whom their marriage might receive the solemn and becoming sanctions of religion such persons may apply to and come before the said British Resident or to the nearest Magistrate, and each of them shall in his presence solemnly declare that they know of no impediment to their marriage and that they desire him to witness that they take each other respectively to be husband and wife; and thereupon a record of the said marriage shall be prepared and the same shall be duly registered; and every such marriage shall be deemed to be as valid and effectual and of the same force and obligation as a lawful marriage solemnized within the Cape Colony.

Ord. 4—1848.

14th. If both or either of the intended spouses be under age the Resident or Magistrate (as the case may be) shall before permitting the marriage (unless in the case of a widow or widower) require proof of the consent of the parents or guardians, unless it shall be made to appear to him that there are none such living, or that they without sufficient reason refuse consent, or that owing to distance or other causes such consent could not possibly or without much inconvenience be obtained. But no marriage once permitted and recorded shall be impeached upon the ground that both or either of the spouses being under age were or was married without consent of parents or guardians.

15th. A certificate signed by the British Resident or officer acting as such stating the registered particulars of any marriage registered by him or in his office in pursuance of this proclamation shall be good evidence of such marriage before all Courts and Magistrates.

And, lastly, I do hereby proclaim, declare, and make known, that while, in my earnest desire to consult as much as in me lies the interests and feelings of all Her Majesty's subjects in the territories aforesaid and those of their wives and children, I have determined to take all measures necessary for establishing their marriages as aforesaid beyond dispute or controversy, nothing in this proclamation contained is to be construed so as to render invalid any marriage contracted in the said territories and not registered under this proclamation which marriage would otherwise by law be regarded as valid; it being my wish and intention not now to decide that any sort or description of marriage is illegal but to furnish an easy and convenient mode by which certain marriages now supposed to be illegal may have their legality placed beyond doubt.

No. 13—1857.]

[June 29, 1857.

## AN ACT

For Removing all Doubts regarding the Validity of the  
Marriages of certain Military Settlers.

Preamble.

WHEREAS certain of the men belonging to the British-German Legion, and about to emigrate to South Africa as military settlers, were married in England upon the eve of embarkation, whilst certain other members of the same force were married as soon as they had put out to sea: And whereas the said marriages were, all of them, entered into in good faith, and solemnized by chaplains of the said force, or by other ministers of religion; and it is just and expedient, for the sake of the said married people and their issue, to prevent any doubts or questions being raised, at any future time, in regard to the validity of such marriages, grounded upon the want, or supposed want, of certain formalities, with which, by reason of haste and other circumstances, it was impracticable to comply: And whereas it has been found impracticable to obtain, for the purpose of being embodied in this Act, a correct list of the marriages aforesaid: And whereas it is expedient that the

Governor of this Colony should be empowered, by any proclamation or proclamations, to be by him published in the *Government Gazette*, to proclaim the names of the married people whose marriages shall, by this Act, be declared valid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

No. 13—1857.

1. It shall be lawful for the Governor aforesaid, as soon as he shall have obtained a correct and authentic list of the marriages described in the preamble of this Act, to publish the same by proclamation or proclamations, in the *Government Gazette*, and the marriage of each husband and wife, whose names shall be set forth in any such proclamation, or in any schedule to any such proclamation, (1) as married people, married to each other, is hereby declared to have been, and to be, a legal, valid, and effectual marriage, to all intents and purposes, precisely as if such names had been inserted in this Act, and such marriage had been by this Act declared valid: Provided always, that nothing in this Act contained shall be construed so as to render valid any marriage which would, by reason of the consanguinity or affinity of the parties to such marriage, or a former and still subsisting marriage of either of them, be void, *ab initio*, by the law of England, notwithstanding that such marriage had been solemnized in manner and form, in every respect, as by the law of England prescribed and required.

Governor to proclaim the names of the married parties. Such marriages declared valid.

Unless illegally contracted.

No. 21—1875.]

[June 30, 1875.

### ACT

#### To Amend the Law relating to Antenuptial Contracts.

WHEREAS it is expedient that the sixth section of the Placaat of the Emperor Charles V., bearing date the fourth day of October, 1540, should be repealed, and that other provisions should be made relating to antenuptial contracts: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The sixth section of the Placaat aforesaid is hereby repealed, as also so much of any other law or usage as is repugnant to or inconsistent with any of the provisions of this Act.

Sixth section of Placaat of Charles V., 4th October, 1540, repealed.

2. No antenuptial contract executed after the taking effect of this Act shall be valid or effectual as against any creditor or creditors of either of the spouses unless the same shall be registered in the Deeds Registry Office of this Colony, in conformity with established law and custom, and unless a duplicate original or notarial copy of such contract shall, at the time of the registration of the

No antenuptial contract valid unless registered, and a copy filed in Deeds Registry.

<sup>1</sup> See Proclamations in *Gazette* 31st July, 1857, and 12th February, 1858.

No. 21—1875.

original, be deposited in the Deeds Registry aforesaid, there to remain for general information, and such duplicate or copy may be inspected by any person who shall, by payment of the fee for the time being payable for a search in the Debt Registry, be entitled to inspect the register of antenuptial contracts, and no separate or further fee shall be demandable, and no such antenuptial contract as aforesaid shall be registered until such duplicate or notarial copy as aforesaid shall have been deposited.

When settlement of property under antenuptial contract may be impeached by creditors.

3. No antenuptial contract executed after the taking effect of this Act, whereby one of the intended spouses shall settle upon or for the benefit of the other intended spouse, or the children of their marriage, or of the descendants of any such children, or upon or for the benefit of such other spouse and of such children and descendants, any property, movable or immovable, shall, in case of the sequestration of the estate of the spouse who settled any such property, within two years from the time of the execution of such contract, be of any force or effect against or in competition with any creditor or creditors upon the insolvent estate of such spouse, whose debts or demands existed at the date of the registration of such contract, if it shall be proved that the same was made by the insolvent with intent to defraud or delay his creditors in obtaining payment of their debts.

When covenant of antenuptial contract to pay sum of money or annuity to other spouse at death, or any other time may be impeached by creditors.

4. When by the terms of any antenuptial contract executed after the taking effect of this Act, one of the intended spouses shall covenant or agree for the payment out of his or her estate, at his or her death, or at any other time, of any sum of money or annuity, or for the making of any other provision for the benefit of the other spouse, or for any of the purposes in the third section of this Act specified, no payment, transfer, alienation, cession, delivery, mortgage, pledge, or other act, in order to carry out such covenant or agreement, shall, in case of the subsequent sequestration of the estate of such covenanting or agreeing spouse, be of any force or effect against or in competition with any creditor or creditors upon the insolvent estate of such spouse, whose debts or demands existed at the date of such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, if it be proved that such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, was made with intent to defeat or delay any creditor or creditors of such spouse in obtaining payment of his or her or their debts, and at a time when his liabilities, fairly calculated, exceeded his assets fairly valued: Provided, however, that no such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, shall be liable to be impeached or invalidated after five years from the making thereof: Provided, further, that nothing in this section contained shall extend to, impair, or affect the force or operation of any special conventional hypothecation granted by any spouse at the time of entering into such convention or agreement for securing the performance of the same.

5. Every antenuptial contract *bonâ fide* executed and duly registered before the taking effect of this Act, whereby any property shall have been settled for all or any of the purposes in that behalf in the third section of this Act specified, shall be valid and effectual according to its legal order of ranking against or in competition with all creditors upon the insolvent estate of the spouse who made such settlement save and except creditors whose debts or demands shall be in existence at the time of the taking effect of this Act, all which lastmentioned debts and demands must be satisfied in full before any claims upon or by virtue of such contract shall be capable of being set up.

No. 21—1875.  
Position of contracts executed before passing of this Act.

6. As often as by any antenuptial contract which, if executed before the taking effect of this Act, shall have been registered in conformity with established law and custom, and which, if executed after the taking effect of this Act, shall have been so registered, and shall also have had a duplicate or notarial copy thereof deposited as aforesaid, one of the intended spouses shall have covenanted and agreed for the benefit of the other spouse or for any other of the purposes in the third section of this Act specified, to effect a policy of assurance upon the life of either of the intended spouses, or to cede and assign over some such policy theretofore effected, and in either case to pay the annual premiums to become due upon such policy, then in case the estate of the spouse who so covenanted and agreed shall become sequestrated as insolvent, no payment of such premiums made by such spouse shall be deemed or taken to fall under or come within the eighty-third or eighty-fourth sections of the Ordinance No. 6 of 1843, commonly called the "Insolvent Ordinance."

Premiums on life policy of insolvent settled under antenuptial contract on spouse not to fall under 83rd or 84th section of Insolvent Ordinance.

7. Every antenuptial contract as hereinbefore mentioned which shall hereafter be executed in this Colony shall, as regards the period after the execution thereof within which the same must be tendered for registration, be deemed and taken to fall under or come within the provisions of the Ordinance No. 27 of 1846, intituled "Ordinance for Amending the Law relative to Conventional Hypothecations."

Registration of antenuptial contracts to fall under provisions of Ordinance 27 of 1846.

8. Besides the registration required by this Act in the Deeds Registry of this Colony of antenuptial contracts executed after the passing of this Act, if either of the spouses shall at the time of the execution of any such contract be resident in that part of this Colony to which the Deeds Registry of British Kaffraria applies, such contract shall also be registered, and a duplicate or copy thereof deposited, as in the second section of this Act mentioned, in the Deeds Registry of British Kaffraria.

Residents in British Kaffraria to register contracts under this Act there also.

9. No antenuptial contract executed in this Colony shall be capable of being registered in the Deeds Registry Office unless the same shall have been executed before a notary public, but any such contract if executed elsewhere than within this Colony shall, whether notarial or not, be capable of being so registered, and

No contract except notarial contracts to be registered unless executed beyond the Colony.

No. 21—1875.

shall, if registered, and if a duplicate original, or a copy thereof, attested by a notary public entitled to practise as such in this Colony, be deposited as aforesaid, have in this Colony the same force and effect in regard to creditors in insolvency as if it had been executed before a notary public in this Colony.

Act not to affect position of women married in partial community.

10. Nothing in this Act contained shall be construed so as to relieve any woman married under an antenuptial contract, not wholly excluding community of property and community of profit and loss, from liability to any creditor to whom she and her property, and the provision made for her benefit by such contract, would have been liable, by reason of the partial community subsisting between her and her husband in case this Act had not been passed; nor shall anything in this Act contained be construed so as to deprive any woman of any right of tacit hypothec or other privilege which she would otherwise by law possess upon her husband's estate in security for her property, owned by her before and at the time of her marriage, and kept by her out of community, which right shall be judged of as if this Act had not been passed.

Not to affect contracts fraudulently made.

11. Nothing in this Act contained shall extend to protect or make effectual any antenuptial contract or any provision in any antenuptial contract which would, by reason of some fraud thereby perpetrated or attempted, have been void or voidable by law in case this Act had not been passed.

Interpretation of terms.

12. The term "creditors" shall in the construction of this Act include and embrace persons to whom any insolvent spouse shall, together with any co-partner or other person, be jointly indebted, as well as persons to whom such spouse shall singly and alone be indebted; provided, however, that nothing herein contained shall extend to alter or affect the ranking as between themselves of the creditors upon joint estates and separate estates as the same is provided for in the 34th and 36th sections of the said "Insolvent Ordinance;" provided, also, that as often as the separate estate of any such spouse as aforesaid, and the estate of any company or co-partnership of which such spouse is a partner, shall be concurrently under administration as insolvent, and the trustee of the separate estate and the trustee of the joint estate shall not agree between themselves as to which of them shall institute such legal proceedings as may have become necessary in reference to any such antenuptial contract as aforesaid, it shall be lawful for the Supreme Court, and (in regard to any such estates situate within the districts over which the Court of the Eastern Districts has jurisdiction) for the Court of the Eastern Districts, to decide upon motion which of the two trustees shall institute such proceedings.

Short title.

13. This Act may be cited for all purposes as "The Antenuptial Contracts Law Amendment Act, 1875."



MASTERS AND SERVANTS.

- 1. Act 15—1856.
- 2. „ 18—1873.
- 3. „ 28—1874.

- 4. Act 7—1875.
- 5. „ 35—1886, (Employers' Liability).

No. 15—1856.]

[June 4, 1856.

AN ACT

To Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices.

WHEREAS it is expedient to amend and consolidate the laws regulating the relative rights and duties of masters, servants, and apprentices: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. From and after the commencement and taking effect of this Act, the Ordinance entitled “An Ordinance for amending and consolidating the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices,” enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council thereof, and bearing date the 1st of March, 1841, and all Orders in Council confirming or continuing the said Ordinance (except in so far as the said Ordinance, or any of the said orders, repeals any former law or usage), the Act No. 4, 1855, entitled “An Act for encouraging the importation of European Labourers into this Colony,” and all other laws and regulations repugnant to any of the provisions of this Act, shall be repealed, and the same are hereby repealed accordingly.

Repugnant laws repealed.

2. For the purposes and within the meaning of this Act, unless it be otherwise specially provided, or there be something in the subject or in the context repugnant to such construction,—1st, The word “Governor” shall mean the officer lawfully administering the Government of this Colony; 2nd, The word “servant” shall be construed and understood to comprise any person employed for hire, wages, or other remuneration, to perform any handicraft or other bodily labour in agriculture or manufactures, or in domestic service, or as a boatman, porter, or other occupation of a like nature; 3rd, The word “apprentice” shall be construed and understood to comprise any person indentured or bound by any contract of apprenticeship made according to law, as apprentice to any other person; 4th, The word “master” shall be construed and understood to comprise any person, whether male or female, employing for hire, wages, or other remuneration, any person falling within the beforementioned definition of the word “servant,” or to whom any person falling within the beforementioned definition of the word “apprentice” shall have been indentured or

Interpretation clause.

No. 15—1856.

bound by any contract of apprenticeship, made according to law; 5th, The words "contract of service" and "contract of apprenticeship" shall respectively be construed and understood to comprise any agreement, whether oral or written, whether expressed or implied, which any person falling within the beforementioned definitions of the word "servant" or "apprentice" shall respectively have entered into or made, according to law, with any person falling within the beforementioned definition of the word "master," for the performance of any work or labour of any kind hereinbefore mentioned; 6th, The words "Magistrate" and "Magistrates" shall be construed and understood to comprise the Resident Magistrates duly appointed for the different districts of this Colony; 7th, The words "this Colony" shall be construed and understood to comprise all islands, and other territories whatsoever, which are dependent on the Colony of the Cape of Good Hope, and subject to the Government thereof; 8th, The word "month" shall be construed and understood to comprise the period of one calendar month; 9th, The words "father," "parent," "relative," "husband," and "wife," shall be respectively construed and understood to comprise reputed fathers, parents, relatives, husbands, or wives, as well as actual parents and relatives, and lawful husbands and wives; 10th, The words "officer" and "proper officer," when used with reference to the attestation or making of contracts of service of apprenticeship, or to the transfer and assignment of apprentices, shall be construed and understood to comprise every person who shall have been appointed by the Governor to attest or make such contracts; 11th, All words in this Act, and in the various rules and regulations hereinafter enacted, importing the singular number or the masculine gender only, shall be construed and understood to include several persons as well as one person, and females as well as males.

---

## CHAPTER I.

In cases not provided for, the law of bi-lateral contracts in general to prevail.

1. Notwithstanding the repeal, by the Ordinance aforesaid, of the laws thereby repealed, the Courts of this Colony, in all cases which are now or shall be hereafter depending before the same, arising out of or respecting the formation or dissolution of contracts of service or apprenticeship, or touching or concerning any rights, duties, obligations, powers, liabilities, or other matters or things arising out of or proceeding from any contracts of service or apprenticeship, or any of the mutual relations subsisting between masters and servants or apprentices, shall respectively try, judge, and determine the said causes according to the law of this Colony, respecting and applicable to bi-lateral contracts in general, except when other provisions touching and concerning any such matter and thing as aforesaid shall have been made in this Act, or by any other law not repealed by the Ordinance aforesaid.

2. The beforementioned repeal shall not annul or affect any contracts of service or apprenticeship entered into previously to the time when this Act shall take effect, and which, under and by virtue of, and according to any laws in force within this Colony on the day previously to the taking effect of this Act, were then subsisting legal and valid contracts.

No. 15—1856.  
Repeal aforesaid not to annul contracts entered into previously to the taking effect of this Act.

3. Nevertheless any such lastmentioned contract of service or apprenticeship, to be performed within this Colony, shall be liable to be set aside by any Magistrate having jurisdiction over the parties, or any competent Court, upon reasonable proof being made to the satisfaction of such Magistrate or Court, that either of the parties to such contract was induced to enter into the same by any fraud, misrepresentation, or concealment.

Contracts liable to be set aside on account of fraud, &c.

## CHAPTER II.

### *On the formation of Contracts of Service.*

1. No contract of service made elsewhere than within the limits of this Colony shall be of force or effect within this Colony, except the same shall have been made in writing, and be duly certified by the British Consul, or other similar officer, at the place where the same was made, or if there be no such officer, then by such Magistrate of such place, or other proper authority; but contracts not so certified shall, notwithstanding, have force and effect in this Colony, upon other proof of such contract, to the satisfaction of the Magistrate before whom the same shall come in question.

Contracts entered into out of the colony, how to be certified.

2. Every contract of service, whether oral or written, the term of endurance of which shall not have been expressly specified and limited by such contract, shall, in the absence of sufficient proof to the contrary, be deemed and taken to be for the term of one month from the commencement thereof; save and except contracts for service in any trade or handicraft, whereby it shall not have been stipulated that the servant shall, during the term thereof, reside in the house of or on the premises of the master, which shall be deemed and taken to endure only until the night of Saturday of the week on any day of which it shall have been stipulated that the service shall commence; and contracts for executing any particular piece of work specified in the contract which shall expire so soon as the work is finished, and when the work is not finished within a reasonable time, may be put an end to by the master, after the lapse of a period of time reasonably sufficient for finishing such work.

Every contract shall be deemed to be entered into for one month, unless otherwise specified: except the servant be non-resident, or shall work by the piece.

3. No oral contract of service shall be valid or binding for any longer term than one year from the period fixed for the commencement of the service stipulated for by such contract; and no such oral contract shall be valid or binding in any case, unless it be stipulated in such contract that the service, thereby stipulated for,

No oral contract to be binding for more than one year, and not valid unless the time to be entered upon shall be stipulated.

No. 15—1856. shall be entered upon by the servant within one month from the date of the contract.

4. [Repealed by § 1 Act 18 of 1873].

No contract to be valid or binding for a longer period than five years.

5. No such contract so entered into before a Magistrate or other proper officer, shall be valid or binding for a longer period than five years from the date thereof, if entered into within this Colony; and no such contract shall endure longer than five years from the day of the commencement of the service, when such contract shall be entered into elsewhere than in this Colony.

Form of contract of service.

6. All contracts of service entered into before a Magistrate or other proper officer, within the limits of this Colony, shall be drawn up as nearly as possible in the following terms :

Be it remembered,—that on this             day of             in the year of our Lord             , A. B., of             , and C. D., of             , appeared before me, E. F. (Resident Magistrate, or officer specially appointed by the Governor to attest contracts of service for the district, as the case may be, with his usual description), and in my presence, signed their names (or made their marks, as the case may be) to the following contract of service: The said A. B., agrees to hire the service of the said C. D., and the said C. D. agrees to render to the said A. B. his service at all fair and reasonable times, and in the capacity of             for commencing on the day of             instant, and terminating on the day of             , in the year             . And it is further agreed that the said A. B. shall pay to the said C. D., as such servant as aforesaid, wages after the rate of             by the day (week, month, or year, as the case may be), and that such wages shall be paid on the             day of each week (or month, as the case may be).

(Here add any special agreement compatible with the law, and not adverted to in this form).

(Signed)     A. B.  
              C. D.

The preceding agreement was signed by the abovenamed parties, in my presence, on the day and year above written, voluntarily, the same being, as far as I am able to judge, understood by them respectively.

(Signed)     E. F.,

Resident Magistrate (or officer specially appointed by the Governor to attest contracts of service for the district).

In the absence of special agreement, one month's notice is required, before a contract shall be deemed to have expired.

7. No contract of service for a month or any longer period shall be deemed and taken to have expired until at least one month's notice, calculated from, and inclusive of, the day of giving such notice, shall have been given by either of the parties to the other

party, unless it shall have been expressly stipulated that no such notice shall be necessary; and when the service shall be a weekly one, a week's notice shall be necessary: Provided that nothing herein contained shall be construed so as to enable any party to any contract of service to determine the same without the consent of the other party, before the expiration of the term of service originally agreed upon

No. 15—1856.

8. When any such notice as is hereinbefore mentioned shall have been given by either of the parties to the other, and the master shall suffer the servant to remain, or the servant shall remain in his service after the day on which according to the notice given the contract of service should expire, such notice shall be deemed and taken to have been withdrawn and passed from, and the contract of service shall continue to endure as long, and in like manner, as if no such notice had been given unless it shall have been otherwise expressly and specially agreed between the parties.

How such notice may be waived.

9. In all contracts, whether oral or written, by which it is stipulated that the servant shall reside on the premises of his master, and wherein it shall not be expressly provided that the master is not to supply food and lodging, the master shall be deemed and taken to have engaged to provide such servant, and such of his family (if any) as shall have been included in the contract, in manner hereinafter mentioned, in section twelve of this chapter, with lodging and sufficient food of good and wholesome quality, during the continuance of the contract.

Servants hired to reside on the premises to be supplied with food and lodging, unless otherwise agreed upon.

10. In case of any action for non-payment of wages, due and payable by virtue of any contract of service, being brought before any Magistrate, or other competent Court by any servant, and when the rate of wages at which such contract was made shall not be proved to the satisfaction of such Magistrate or Court, such Magistrate or Court is hereby required to fix the rate of wages at that usually paid in the district or place in which the service for which the wages are claimed was performed, reference being had to the skill and ability of the servant, and to give decree accordingly.

When rate of wages not specified, the magistrate to fix such rate by custom.

11. When any servant shall, in consequence of any sickness or accident, which shall not have been occasioned by his own fault, be rendered incapable of performing his master's service, he shall, in the absence of any special provision in the contract to the contrary, be entitled to receive his full wages during the first month of such incapacity, and every other benefit, privilege, or advantage, whether for himself or his family, stipulated for in the contract of service during the whole period of such incapacity, unless the stipulated term of service shall sooner expire, or unless the period of such incapacity shall extend to a longer period than two months; in which latter case the master shall be entitled, if he shall so think fit, at the expiration of such two months, or at any time afterwards

Provision in case of sickness.

No. 15—1856.

during which such incapacity shall uninterruptedly continue, to treat and consider the contract of service as rescinded and determined, to all intents and purposes whatsoever, he, the said master, being however bound, before being so entitled to consider the said contract as determined, to make good all stipulations therein mentioned and agreed upon, up to and for the day on which he shall declare his intention to treat and consider the said contract as rescinded, with, however, the limitation as to wages, hereinbefore provided: Provided, however, that if the master shall not think fit, at or after the expiration of such two months as aforesaid, to treat the contract of service as determined and rescinded, but shall permit the servant to remain in his service, such servant shall not be entitled to claim any portion of the wages beyond wages for the first month as aforesaid, or any other benefit or advantage stipulated for in the contract of service (save and except such food and lodging for himself and family as by the contract of service the master had engaged, or shall be deemed and taken to have engaged, to provide him with), for any period subsequent to such two months during which such incapacity as aforesaid shall continue: And provided, always, that no servant hired by any contract expressly to perform service in any trade or handicraft, shall be entitled to receive the wages, or any other benefit or advantage stipulated in the contract of service, for any part of the time during which he shall have been rendered incapable of performing his master's work by any such sickness or accident as aforesaid, save and except such food and lodging for himself or family as by the contract of service his master has engaged to provide him with, such food and lodging to be provided during such incapacity as aforesaid, unless the contract of service shall sooner expire, or unless such incapacity shall extend to a period longer than one month, in which latter case the master shall be entitled, if he shall so think fit, under the same powers and conditions in every respect as in this section before set forth, to treat and consider such last-mentioned contract of service as absolutely, and, to all intents and purposes, determined and rescinded.

Contracts for the services of husband, wife, and children, how to be entered into.

12. All contracts of service stipulating for the services of the wife of any servant, together with those of her husband, shall be made or executed by her in like manner as the same shall be made and executed by her said husband: And it shall be lawful for the father, or, in the event of his death or absence, then for the mother, of any child under the age of 16 years, to contract for the service of such child together with his own, in like manner as such person may contract for his own services; and when such contract shall be in writing, the name and age of every such child shall be clearly set forth and specified in the contract: Provided always, that nothing herein contained shall give to the master of any such parent any claim on the services of any such child beyond the period for which the parent shall be engaged, nor beyond the

period when such child shall attain the age of 16; nor to the services of any other child of the contracting parent, whether under colour of such lastmentioned child having been fed or clothed by the master, or having been born while the parent of such child was in the said master's service, or under any other pretence whatsoever.

One month after the death of the husband, contract to be null and void with regard to the services of the wife and children.

13. On the death of any person being at the time, together with his wife and any child, under contract as aforesaid, the contract shall become null and void, in respect to such wife and children, at the expiration of one month after the death of such person.

14. It shall not be lawful for any person entering into any contract of service by which it is stipulated that the servant shall himself reside on the premises of the master, to keep his wife and children on the premises of his master, unless when the master shall have also stipulated in such contract that this shall and may be done; Provided that, when the master shall have so stipulated, it shall not be lawful for him to claim the services of any such wife or child by reason merely of their residence on his premises.

Wife and children of the servant not to reside on the premises of the master, unless stipulated in the contract, nor the master to claim their services by reason merely of their residence on the premises.

15. When, in times of public commotion or invasion of the Colony, the Governor shall deem it expedient to call out for service any portion of the burgher force of any division of the Colony, under the Act No. 16, of 1855, (1) every person under contract of service under this Act, as an agricultural labourer or herdsman, for any period not less than one month, to any master residing in such division, shall, if the period of service contracted for should expire during the persistence of such commotion or invasion, notwithstanding such expiration, be bound to continue in the service of his employer, on the terms of the contract under which he had been serving, until the cessation of such commotion or invasion, and until the services of the burghers of such division shall be dispensed with for the occasion: Provided that, if any such servant shall at any time be called out for burgher service under the said Act No. 16, 1855, (1) the master of such servant shall, during the absence of such servant on such duty, be bound to permit the family and property of such servant to remain upon his premises, and to provide for the same, in the same manner as he would have been bound to do by the contract of service, if such servant had not proceeded to the performance of such duty.

An agricultural laborer or herdsman to remain in his master's service during public commotion or invasion of the colony, or if called out for burgher service, the master to provide for his family.

### CHAPTER III.

#### *On the Apprenticeship of Children.*(2)

1. No contract of apprenticeship shall be valid unless, at the time of its being entered into, it shall have been reduced into writing, and signed with the name, or, in case of illiterate persons, with the mark, of the master and parent, or guardian, as the case may be, of the apprentice, and also of the apprentice if of the full age of 16 years.

Contracts to be in writing.

<sup>1</sup> Act 16 of 1855 is repealed by Act 7 of 1878 (Defence).

<sup>2</sup> See also § 4, Act 7 of 1879 (Resident Magistrates).

No. 15—1856.

Children under 16 years to be apprenticed to agricultural labor only till that age.

Children, not destitute, above 10 and under 16 years, may be apprenticed till 21

Persons of 16 years and upwards may, by their own consent, be apprenticed for five years.

Resident magistrate to be the guardian, *ex officio*, of minors who have no parents or guardians

Destitute children, how to be treated in the first instance.

2. No contract of apprenticeship by which any child under 16 years, if a female, and 18 years if a male, may be apprenticed as an agricultural or domestic servant, shall be valid for any longer period than until such child shall have attained the full age of 16 years, if a female, and 18 years, if a male.

3. Children not being in a state of destitution, above the age of 10, and under the age of 16 years, may be apprenticed by their fathers, or, in the case of fatherless children, by their mothers, or, in case of orphans, having guardians, by their guardians, until they shall have attained their 21st year, or for any shorter period, and due provision for the maintenance, clothing, and instruction of every such apprentice shall be made in the contract of apprenticeship: Provided always, that every contract of apprenticeship, whereby any child under the age of 10 years, not being in a state of destitution, shall be apprenticed, or attempted so to be, shall be null and void to all intents and purposes whatsoever; save and except a contract of apprenticeship executed by the parent or guardian, and the master, in the presence of a Resident Magistrate and attested by such Magistrate to be a contract which appears to him to be for the benefit of the child.

4. Any minor of the full age of 16 years or upwards may, by his own consent, be apprenticed for any term not exceeding five years to any trade, in the practice of which any peculiar art or skill is required, but not otherwise; Provided always, that in the case of such minor or minors being females, they may, with such consent, be apprenticed to domestic service for any such period as last aforesaid.

5. The Resident Magistrates of the Colony shall be, *ex-officio* the guardians, within their respective districts, of all such minors as in the last preceding section mentioned, which minors have no parents or guardians within the Colony, or none discoverable, and such Resident Magistrates may lawfully indenture such minors.

6. When any parent or parents shall abandon or desert, or by death shall leave, in a state of destitution any child under the age of 16 years, the person with whom such child shall have been so left, or by whom such child shall be found in such state of destitution, shall, with all convenient speed, give notice thereof to the nearest Field-cornet, or directly to the Magistrate, in order that means may be taken for providing for the maintenance and education of such child, by apprenticeship, in manner herein-after mentioned; and if any person shall be duly convicted by any Magistrate or other competent Court of detaining in his possession or employment any such destitute child as aforesaid for a longer period than one month without giving such notice, every such person shall forfeit and pay, at a rate not exceeding twenty, nor less than five shillings for each month that such child shall have been detained; and every such sum so forfeited shall be paid into the Public Treasury; and all reasonable expense incurred in giving



such notice, and for the maintenance of such child until removed by the proper authority, shall be paid from the said treasury.

No. 15—1856.

7. The Field-cornet or Resident Magistrate shall, upon receiving such notice as aforesaid, cause the child to be removed to the residence of such Magistrate, and the said Magistrate shall, unless when it shall be made to appear to him that the child is actually not in a state of destitution, or is able to earn his own livelihood (in either of which events he shall decline to act in the case), cause such child to be lodged and provided for at the public cost, until he shall have sufficiently ascertained by inquiry, which he is hereby required to cause to be made, whether such child have any relative, fit, proper, and willing to maintain and take care of him, and if he shall discover any such relative or relatives, he shall apprentice such child, either to the sole relative, or to that one among the several relatives of whom it shall appear most for the interest of such child to become the apprentice; and if no such fit and proper relative be found, he shall apprentice him, as soon as a suitable opportunity can be found, to some fit and proper person, until he shall have attained his eighteenth year, or in the case of females, until their sixteenth year, or for any shorter period that may be deemed advisable. And every such Magistrate shall give public notice in the *Government Gazette* of the name of every such apprentice and of the person to whom he shall have been apprenticed.

Destitute children,  
how to be appren-  
ticed.

8. Due provision for the maintenance, clothing, and instruction of every destitute child so apprenticed shall be made in every such contract of apprenticeship, and suitable wages shall also be therein stipulated for, whenever such Magistrate or other proper officer shall deem that the child's service in any part thereof will be worth wages; and in apprenticing every such child, either to a relative or stranger, it shall be the duty of such Magistrate or officer to make the best terms he can for such child.

Maintenance and  
wages to be stipulat-  
ed on behalf of such  
destitute children  
when apprenticed.

9. All such contracts for the apprenticeship of destitute children as aforesaid shall be drawn up as near as possible in the following terms:

Form of contract  
in apprenticing des-  
titute children.

District of

This contract of apprenticeship of A. B. (here insert the designation of A. B. as accurately as possible), a destitute child, witnesseth that C. D. (here describe C. D. as the Resident Magistrate, or as the officer specially appointed by the Governor to attest such contracts of apprenticeship for the district, as the case may be), pursuant to the Act No. , in that case made and provided, does by these presents apprentice the said A.B., aged years, or thereabouts, to E. F. (here insert the designation of E. F. as accurately as possible), with him to dwell and serve as an apprentice until (or for, as the case may be—here insert the age at which the apprenticeship is to determine, or the term for which it is to endure), during all which time

No. 15—1856.

the said apprentice shall faithfully and honestly serve and obey his master; and the said E. F. for himself, his heirs, and executors, does hereby covenant and agree with the said C. D., for and on behalf of the said A. B., that he, the said E. F., shall teach and instruct, or cause to be taught and instructed, the said A. B., in the (here insert the particular trade or occupation), in the best manner that he can, during the said term, and shall also duly provide, or cause due provision to be made, for the education and religious instruction of the said A. B., to the best of his ability, and shall, during the said term, provide the said apprentice with suitable and sufficient food, washing, lodging, and all other things necessary and fit for such apprentice, and shall also pay, as wages, to the said apprentice, the sum of (here insert the terms at which the wages stipulated are to be payable); and also, the said E. F. shall not assign or transfer the said apprentice to any other person during the said term, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer having power and authority to give such consent.

In witness whereof, we, the said C. D. and E. F., have set our hands at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

(Here insert the signatures or marks of the parties.)

In presence of (here shall be inserted the signatures of at least two witnesses, who have witnessed the execution of the contract).

Covenants in such contracts to endure to successor in office of the magistrate in whose favour they are made.

10. In case the Magistrate or other proper officer by whom the contract for the apprenticeship of any such destitute child as aforesaid shall have been entered into as aforesaid shall, by death or otherwise, cease to act as such Magistrate or officer, then, and in that case, all the provisions and covenants in such contract of apprenticeship contained shall endure in favour of the successor of such Magistrate or officer, duly appointed, and such successor shall and may sue upon and take all other benefit and advantage whatsoever of such provisions and covenants, in like manner as if such successor had been himself the person by whom such contract as aforesaid was originally made.

Such contracts of apprenticeship shall be in three parts,—one to be given to the master, one to the apprentice, and the third to be filed in the office of the magistrate.

11. Every such last-mentioned contract of apprenticeship shall be made and signed as aforesaid in three parts, one of which parts shall be given to the master, and one to the apprentice, and the third shall be filed and registered in the office of the Magistrate by whom it is attested; or where it shall have been attested by any other officer specially appointed as aforesaid, an entry of it shall be made in a book to be kept by him for that purpose, and the said third part shall be transmitted by him to the Magistrate of the district in which the master by whom such contract has been made usually resides, to be filed and registered in his office.

12. No master shall or may assign or transfer any apprentice, having been apprenticed as aforesaid by any Magistrate or other proper officer as aforesaid, to any other person, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer of the district in which such master resides; and in case such apprentice shall be of the age of sixteen years, or upwards, without the consent of such apprentice himself.

No. 15—1856.

Apprentice not to be assigned without consent of magistrate, or when apprentice shall be 16 years, without his own consent.

#### CHAPTER IV.

*Respecting the effects of the Death, Insolvency, and change of Residence of the Master; and other circumstances dissolving Contracts of Service without notice.*

1. In the event of the death or insolvency of the master, the contract of service shall, except as hereafter excepted, cease and determine after one month from the date of such death or insolvency, in case the stipulated term of service shall not sooner expire; and up to the period of such determination of such contract, such servant shall be entitled to claim his full wages and every other remuneration specified in such contract, and shall be bound, if required, to perform his service for the person legally representing the deceased or insolvent master.

Effect of death or insolvency of master upon the contract of service.

2. In the event of the death or insolvency of the master of any apprentice, or in the event of the apprentice being prevented, in the manner hereinafter in the 6th section of this chapter particularly mentioned, from performing his service or fulfilling his engagement at the place where the same ought to be performed or fulfilled, such death, insolvency or prevention shall be a complete discharge of the contract of apprenticeship, and if any sum shall have been really and *bonâ fide* paid by or on behalf of such apprentice as aforesaid, it shall be lawful for any Magistrate having jurisdiction, or other competent Court, upon proof of such payment, to order, in a summary manner, any sum which to the said Magistrate or Court shall seem reasonable to be paid to or for the use of such apprentice as aforesaid, by any such master as aforesaid, or his legal representative; regard being had, however, in estimating such sum, to the amount of the sum originally paid by or on behalf of such apprentice, and to the time during which, such apprentice continued in the service of such master as aforesaid; Provided always, that every such apprentice shall be entitled to his full wages, or other remuneration, which may have become due previous to such dissolution of the contract of apprenticeship.

Effect of death or insolvency of master upon the contract of apprenticeship.

3. In the event of the death or insolvency of the master of any child, who having been in a state of destitution, shall have been apprenticed by a Magistrate or other proper officer in the manner hereinbefore set forth, it shall be the duty of such Magistrate or other proper officer, in case such apprentice shall, at the time of the death or insolvency of his former master, be under the age of

Effect of death or insolvency of master where apprentice is under or of the age of 16.

No. 15—1856.

16 years, and unable to support himself, to retake the charge and care of such child; and if it shall be deemed expedient, to apprentice again the said child for any term within the limits prescribed by this Bill for the duration of apprenticeship to such fit and proper person as such Magistrate or other proper officer and such child, if of the age of 16 years or upwards, shall mutually approve of and agree upon; Provided that when such child has not attained the said age of 16 years, his consent shall not be necessary in any case.

Widow of deceased master may adopt the contract of service.

4. The wife of the deceased master of every servant or apprentice, hired or contracted to perform service as a domestic or agricultural servant, is entitled, if she shall so think fit, to claim the service of such servant or apprentice during the full period of the stipulated term of service, provided she shall consent to perform, and shall perform, all the stipulations of the contract in favour of the servant or apprentice which the master was bound to perform.

On death of servant or apprentice, wages to be paid up to period of death.

5. In the event of a servant or apprentice dying during the currency of the stipulated term of service, his heirs, executors, or other legal representatives, are entitled to claim from the master the full wages and other remuneration due to such servant or apprentice for the period which he had served previously to his death, and no more.

Effect of change of residence of master upon the contract of service or apprenticeship.

6. No servant or apprentice (save as hereafter provided as to persons apprenticed as destitute children), hired or contracted to perform service at the residence of, or at any particular place of trade or business, occupied by his master, is, in the event of his master's removing his residence, or place of trade or business, out of the town, or (where such place is not in any town) from the place in which by the contract such servant or apprentice was bound to perform his service, to any greater distance than two miles from such town or place where, by the stipulations of the contract, such servant or apprentice is not bound to reside in the house or on the premises of his master, or out of the district of such town or place where such servant or apprentice is bound to reside in the house or on the premises of his master,—bound to perform his service at the place to which his master shall have removed his residence or place of trade or business, without the consent of such servant, or of the parents or guardians of such apprentice;—but such consent shall in all cases be deemed and taken to have been given whenever it shall be proved that such servant or apprentice, being one not bound to reside in the house or on the premises of his master, has performed, or in the case of an apprentice, been knowingly permitted and allowed by his parent or guardian to perform, at the new residence or place of trade or business of his master, any service to his master of any kind which he was bound by the contract to perform,—or being one bound to reside in his master's house or premises, has gone to

and remained, and in the case of an apprentice, been permitted and allowed by his parent or guardian to go to and remain in such house or on such premises, for one week after his master's removal thereto.

No. 15—1856.

7. The master of any apprentice who has been apprenticed to him in manner hereinbefore provided as a destitute child is entitled, without limitation or restraint, to remove such apprentice to and to exact the performance of the service stipulated in the contract wherever such master may have removed his residence or place of trade or business within this Colony, upon giving notice of his intention so to do before his departure to the Magistrate of the district which he is going to leave, and the Magistrate, upon receiving such notice, shall endorse the same on the third part of the contract of apprenticeship registered and filed by him; and on such removal taking place, forthwith transmit such third part to the Magistrate of the district to which such an apprentice shall be removed, to be by him duly registered and filed in manner hereinbefore provided.

The master of an apprentice, who shall have been a destitute child, may remove such apprentice, with permission of magistrate.

8. No servant or apprentice, hired or contracted to perform domestic service, may lawfully refuse to accompany his master, or any of his family, by desire of his master, on any journey within this Colony, or in the course of such journey to perform every such service as, by reason of his contract of service or apprenticeship, he would be bound to perform in his master's house or on his premises; and no servant or apprentice may lawfully refuse to go on any journey within this Colony on which his master shall order him to go, or in charge of, or to drive, herd, tend, or take care of any carriage, horse, or any kind of cattle, the property or in the lawful possession of or under the lawful control of his master, which such servant or apprentice would, by reason of his contract of service or apprenticeship, be bound to ride, drive, herd, tend or take care of, or charge of, at his master's residence or on his premises: Provided always, that there shall be reasonable ground for believing that such journey may and will be performed before the expiration of the stipulated term of the service of such servant or apprentice; and that such master shall be bound to provide such servant or apprentice with food and every other thing which may be necessary and proper to enable such servant or apprentice to perform such journey, and to return to the residence or premises of his master before the expiration of the term of service.

Certain servants and apprentices bound to make certain journeys, if required.

9. No servant or apprentice shall be bound to accompany his master or to go out of this Colony, without the special agreement or consent of such servant, or of the parent or guardian of such apprentice, or when such apprentice is of the full age of sixteen years, without, also, the consent of such apprentice.

No servant or apprentice shall be bound to accompany his master or go out of the colony without special agreement or consent.

10. When any servant not being bound or obliged to accompany his master, or go to any place to which the master shall

Where servant not bound to accompany his master to new

No. 15—1856.  
residence, contract  
dissolved by master's  
removal.

remove his residence or place of trade or business, or to which the master shall order such servant to go, shall decline or refuse so to do, the contract of service shall, from the date on which the servant shall be prevented from performing his stipulated service at the place where the same was to have been performed, stand dissolved, and such servant shall be entitled to claim from the master such wages or other remuneration, at the rate specified in the contract of service, as shall have been earned up to the time of the refusal beforementioned, together with wages and remuneration after the rate aforesaid for the period of one month additional, or until the expiration of the contract of service, in case it shall expire within one month from the time of such refusal: Provided always, that when notice of his intention to remove as aforesaid, or to send such servant as aforesaid, shall have been given by such master, such additional wages and remuneration shall not in any case be due or payable for any period longer than one month from the date of such notice.

Any special agree-  
ment touching  
change of residence  
to be good.

11. Nothing herein contained shall annul or affect any special agreement or stipulation, made in any contract of service or apprenticeship, whereby the servant or apprentice shall be bound to accompany his master, or to go to any place, to which the master shall remove his residence or place of trade or business, or order such servant or apprentice to go, and there perform the service stipulated in such contract.

Effect of marriage  
of female servant or  
apprentice, as to  
right of husband.

12. When any female servant or apprentice shall be lawfully married during the currency of her stipulated term of service, her husband may at any time subsequent to such marriage dissolve the contract of service or apprenticeship, and remove his wife from her master's service, if he shall think fit so to do, and shall be entitled to claim the wages and other remuneration which may have become due to her, for services previously to such removal, but shall be liable to her master for all damage which her master may sustain by such removal. But such damages shall in no case exceed the amount of the wages which she would have earned between the time of her marriage, and the time of the expiration of her service, had she continued in such service until such expiration.

Effect of marriage  
or pregnancy of  
female servant or  
apprentice, as to the  
rights of master.

13. The master of any female servant or apprentice, who, during the currency of her stipulated term of service, shall marry or enter into any state which in this Colony is or shall be reputed to be the marriage state, shall, where such servant or apprentice is, by her contract of service or apprenticeship, bound to reside or to perform domestic service in the house or on the premises of her master, be entitled, at any time subsequent to such marriage or reputed marriage, to dissolve such contract and dismiss such servant or apprentice, and when such servant or apprentice is not by such contract bound to reside or to perform domestic service, in the house of the premises of her master, he shall be entitled to

dissolve such contract, and dismiss such servant or apprentice from his service, whenever she shall, by reason of her pregnancy or delivery of a child, become disabled from performing the service which, by such contract she is bound to perform; but any such servant or apprentice so dismissed on account of her marriage, or entering into a state so reputed as aforesaid to be the marriage state, or of pregnancy or delivery of child, shall be entitled to claim from her master the wages and every other remuneration which shall have become due to her for her services previously to the date of such dismissal; and the master, before being entitled to dismiss such servant or apprentice, shall be bound to pay and satisfy the same.

No. 15—1856.

## CHAPTER V.

*Of the Jurisdiction of the Resident Magistrates in cases between Masters and Servants and Apprentices.*

1. The Resident Magistrates within the Colony have jurisdiction in all cases arising in their respective districts between masters and their servants and apprentices, and with reference to their relative rights and duties, or to any matter or thing, or offence, as to which provision is made by this bill.

Jurisdiction of resident magistrates in cases between masters and their servants and apprentices.

2. Every Resident Magistrate has jurisdiction in any such case as aforesaid, brought before him against any person being at the time within his district, whether the grounds of such case arose within the district or not, or whether the person against whom the case is brought has his usual residence or place of abode in that district or not; but the Magistrate shall, whenever it shall appear to him that any such case can be more conveniently tried or determined by the Resident Magistrate of any other district, dismiss such case, and, in the event of his doing so, when the servant or apprentice is accused of desertion, and when he shall have probable cause shown to him, by oath or affidavit, of any credible person, for believing this to be the fact, such Magistrate may, if he think fit, issue a warrant for the conveyance, under sure custody, of such servant or apprentice to the town or place where the Court of such other Magistrate is held; Provided the master shall undertake to pay the expense of such conveyance, and the Magistrate by whom the cause shall be ultimately tried and decided shall adjudge by which of the parties the said expenses shall be paid.

Resident magistrates have jurisdiction over all persons within their respective districts.

3. [§§ 3-9 repealed by § 21, Act 18 of 1873.]

10. If any servant or apprentice, whose contract of service or apprenticeship still subsists, shall, upon being discharged from prison after undergoing imprisonment under this Act, refuse or neglect, upon his master's request, to resume his service under his contract, he shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, and so on for successive periods, not any of them exceeding one month, until he

Definition of punishment for servant refusing to resume his service after undergoing imprisonment.

No. 15—1856.

shall consent to resume, and shall resume, his service under his contract; and every such period of imprisonment, or so much thereof as the convicting Magistrate shall adjudge, may be with solitary confinement with or without spare diet, or with spare diet with or without solitary confinement: Provided, however, that no servant or apprentice shall, under this Act be imprisoned continuously, and without any intermediate resumption of service, under his contract, for longer than six months in all.

Period of imprisonment of servant to be added to the term of service stipulated in the contract.

11. When any period of imprisonment shall be undergone by any servant or apprentice for any offence under this Act, a like period shall be added to the term of service stipulated for in the contract of service or apprenticeship, as it subsisted when such imprisonment was commenced, so that such servant or apprentice shall be obliged to serve a further period equal to the period of his imprisonment, in addition to the term of service originally stipulated.

Period during which any servant shall have absented himself from the service of his master to be added to the term of service originally stipulated.

12. When the offence of which any servant or apprentice shall be convicted under this Act, shall be the offence of absenting himself from, or of departing from, the service of his master, then the period of his absence shall be added to the term of service originally stipulated, in like manner as in the last preceding section directed in regard to the period of imprisonment therein mentioned; and it shall be the duty of the Magistrate convicting such servant or apprentice, to ascertain, at the trial, the period of absence, and to certify the same by some writing under his hand, to be delivered to the master, and the period mentioned in such writing shall, by all Courts and in all places, be deemed to be added to the original term of service.

Compensation by servant for loss of or damage to property of master.

13. As often as any property of the master shall be lost or damaged by means of any act or omission of his servant or apprentice, which act or omission is by this Act declared to be an offence, it shall be lawful for the Magistrate, should he so think fit, and the master shall thereto agree, to ascertain whether such servant or apprentice is able to make compensation for such loss or damage, and if so, to fix the amount of such compensation, and make such order as to the payment thereof, either at once or by instalments out of wages to be yet earned, or otherwise, as shall seem reasonable and just, and in the meantime, and until default made in such payment, or in the payment of such some instalment, to defer passing sentence upon the party offending; but such Magistrate shall preserve on record the evidence in the case, and, upon application of the master, and proof given, upon oath, of some such default as aforesaid, shall issue his warrant for the apprehension of such servant or apprentice, and shall pronounce upon him such sentence as, regard being had to the circumstances of the original offence, and to the degree in which such servant or apprentice has made, or failed to make, the compensation ordered, shall appear equitable and just.



14. As often as the master of any servant or apprentice, who shall be convicted of any offence under this Act, shall desire the cancellation of the contract of service or apprenticeship, the Magistrate, should he so think fit, may order the cancellation of the same, and the same shall be cancelled accordingly; Provided that such cancellation shall not prevent the execution of any sentence which the Magistrate may pronounce or may have pronounced upon the offender for his offence.

No. 15—1856.  
Cancellation of contract for misconduct of servant.

15. As often as the master shall have caused any servant or apprentice to be brought before the Magistrate to answer any charge preferred against him by such master, and such master shall fail in obtaining the conviction of such servant or apprentice, then the Magistrate, should he so think fit, may, at the desire of such servant or apprentice, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

Cancellation of contract on groundless accusation by the master.

16. [§§ 16-20 repealed by Act 18 of 1873.]

21. (1) *The Magistrates of this Colony have jurisdiction in any civil case instituted by any servant or apprentice, to compel the delivery of any of his cattle, sheep, goats, or other animals, lawfully running or being upon his master's land, and which his master shall, either before or after the expiration of the contract of service or apprenticeship, upon demand made, and without lawful cause, have refused to deliver or permit to be taken away; and in case it shall be made to appear that the master had no reasonable and probable cause for believing that the animals in question were lawfully detained, the Magistrate shall, besides giving judgment for the delivery of such animals, and for costs, impose, at the same time, upon the master, a fine not exceeding one pound for every animal so unlawfully detained: Provided, however, that the total amount of the fine so payable shall not exceed the sum of five pounds altogether; such fine to be recoverable in like manner as the said costs, but, when recovered, to be applied as by this Act directed, in regard to fines in criminal cases: Provided that neither the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired, nor the fact that money is due or alleged to be due by such servant or apprentice to the master, shall be deemed or taken to be, of itself, reasonable and probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.*

Actions by servants to compel delivery of property detained.

22. [§§ 22 and 23 repealed by Act 18 of 1873.]

24. As often as any master shall be convicted of wrongfully and unlawfully assaulting his servant or apprentice, the convicting Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

Contract may be cancelled if the master has wrongfully assaulted his servant or apprentice.

<sup>1</sup> This section is repealed by Act 18 of 1873, but is reprinted in view of the provisions of § 3 Act 14 of 1870 (Cattle Removal.) See, however, § 15 Act 18 of 1873.

No. 15—1856.

Detaining a child  
under 16 years of age.

25. [§§ 25 and 26 repealed by Act 18 of 1873.]

27. If any child under the age of sixteen years shall be wrongfully detained by any person as a servant or inmate, the Resident Magistrate of the district in which it shall be so detained, shall have jurisdiction to order the restoration of such child to such of its parents as would, under this Act, be entitled to apprentice such child, if then about to be apprenticed: Provided, however, that should it be made to appear, upon the hearing of any such case, that the person complained against originally obtained the said child in a lawful manner, and when an infant under the age of five years, and that the parent claiming the same has so acted in reference to the said child, and to the person bringing it up, as to make it a breach of good faith on the part of such parent to seek to take it away, as he or she now seeks to do,—and that from the character of the said parent, the purpose for which he or she appears to desire to obtain possession of the said child, or other circumstances, it will be for the manifest benefit of the said child to remain with the person with whom it is residing, rather than to be delivered to the parent applying, then the Magistrate shall refuse to order the delivery of the said child, leaving it to the parent applying for the same to take such other proceedings, if any, as he or she may be advised; and such Magistrate may, in the meantime, authorize the person rearing up such child to retain possession thereof.

Attorney-General  
and the clerks of the  
peace to act for ser-  
vants, respondent,  
in cases of appeal to  
Supreme or circuit  
court.

28. In any case between a master and his servant, or apprentice, in which the Resident Magistrate shall have given judgment in favour of such servant or apprentice, and such master shall appeal from such judgment, or apply to have the same reviewed, it shall be the duty of the Attorney-General, in case such appeal or application shall be brought before the Supreme Court, and of the Clerk of the Peace for the district in which such judgment was made, in case such appeal or application shall be brought before the Circuit Court (provided the said Attorney-General or such Clerk of the Peace shall be called on so to do), to appear for and conduct the case of such servant or apprentice, free of all charge or expense whatever,—and the Judge of the Circuit Court is hereby empowered, upon the motion of any such Clerk of the Peace, to assign counsel to act gratuitously for such servant or apprentice whenever such Judge shall be of opinion that it is fit and proper so to do.

---

## CHAPTER VI.

### *Respecting Characters given by Masters to Servants or Apprentices.*

No master is bound  
to give a character of  
a servant.

1. No master is bound to give a character to any servant or apprentice, who is or has been in his service, or to assign any reason for refusing to give it.

2. Every master who shall knowingly have given any false character to any servant or apprentice is liable to make compensation for any loss or damages which any third party, who, by reason of such character so given, has been induced to take such servant or apprentice into his service, has sustained by the misconduct of such servant or apprentice in any respect, or with reference to any matter to which such character so given was false.

No. 15--1856.  
Consequences of knowingly giving a false character.

3. Every person who, for the purpose of giving a character to any servant or apprentice, or other person intending to offer himself to be hired as a servant, shall forge or counterfeit and utter any certificate of such servant's or apprentice's character, or shall falsely personate any other person, and as such, either personally or by writing, give any false, forged, or counterfeit character, or certificate of character, of any such servant, apprentice, or other person offering or intending to offer to hire himself as a servant; and every person who shall offer to hire as a servant, asserting or pretending that he has served in any service in which he has not actually served, or with a false, forged, or counterfeit certificate of character, or shall in any wise add to or alter, by effacing, or erasing, or inserting any word or date, in any certificate given to him by his present or any former master, or by any other person duly authorized by any such master to give the same, and shall use, or attempt to use, the same, as an inducement to hire him, shall, on conviction thereof, incur and be liable to a fine not exceeding £50, nor less than £10, or to be imprisoned for any period not exceeding one year, nor less than one month, or to both such fine and imprisonment.

Penalties for counterfeit certificates of character and false representations.

## CHAPTER VII.

### *Respecting the Constraints of Masters, Servants, and Apprentices.*

1. Any person who shall by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force or endeavour to force any servant or apprentice to depart from his service or work, or to return his work to his master before the same shall be finished, or to prevent or endeavour to prevent any servant or other person, not being hired or employed, from hiring himself to, or accepting service or work from any person, or force or induce, or endeavour to force or induce, any such servant or apprentice, or other such person, to belong to any club or association, or to contribute to any common fund, or shall use or employ violence to the property of another, or threats or intimidation, or shall molest or in any way obstruct another on account of his not belonging to any particular club or association, or not having contributed, or having refused to contribute, to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions, and regulations, made

Definition and punishment of unlawful interference with servants or apprentices, in order to prevent them from entering into or completing contract of service or apprenticeship.

No. 15—1856.

to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, business, work, or labour, or the management thereof; or who, by any such violence, threats, intimidation, molestation, or obstruction, shall force, or endeavour to force, any manufacturer, or person carrying on any trade, business, work, or labour, or engaged in agriculture, to make any alteration in his mode of regulating, managing, conducting, or carrying on the same, or to increase or limit the number of his apprentices or servants, shall on conviction thereof before any Resident Magistrate, or other competent Court, be imprisoned with or without hard labour, for any period not exceeding three months.

Definition and protection of lawful acts and associations.

2. Provided always that nothing herein contained shall extend to subject to punishment any persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at that meeting, or any of them respectively, shall require or demand for his or their service or work, or shall pay his or their servants or apprentices for their service or work, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which rate of wages or prices the persons entering into such agreement, or any of them, shall require or demand for his or their service or work, or pay to his or their servants or apprentices for their service or work, or of fixing the number of hours of work which he or they will work, or will require his or their servants or apprentices to work in any manufacture, trade, business, labour, or agriculture, and that no such persons so meeting together, or entering into any such agreement as aforesaid, shall be liable to any penalty or prosecution for so doing.

No. 18—1873.]

[June 26, 1873.]

## AN ACT

To Amend Act No. 15, 1856, intituled “An Act to Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices.”

Preamble.

WHEREAS it is expedient to amend the Act No. 15 of 1856, intituled “An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices:” Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Fourth section of chapter 2 of Act 15 of 1856 repealed.

1. The fourth section of chapter two of Act No. 15 of 1856, intituled “An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices,” shall be and

the same is hereby repealed; and from and after the promulgation of this Act no written contract of service entered into in this Colony shall be valid or binding for a longer period than one year from the date thereof, nor shall any contract for service in writing be valid or binding in any case on any servant, unless the service so contracted for shall be stipulated to commence within the period of one month from the date of the contract, except the contract be signed with the name, or, in case of illiterate persons, with the mark, of the contracting parties, in the presence of a Magistrate, or other proper officer, described in the second section of Act No. 15 of 1856, who shall satisfy himself by inquiry of the servant or apprentice that the contract was entered into by the parties voluntarily, and with a clear understanding of its meaning and effect, and shall then, and not till then, subscribe such written contract in attestation of that fact.

No. 18—1873.  
Written contract of service not valid for more than one year except on certain conditions.

2. (1) Any servant or apprentice may be fined any sum not exceeding one pound sterling, and in default of payment of the same may be imprisoned, with or without hard labour, for any period not exceeding one month, in case he shall be convicted of any of the following acts or instances of misconduct, that is to say:

Definition of punishment for certain acts of misconduct committed by servants or apprentices.

1. If he shall, after having entered into a contract, fail or refuse, without lawful cause, to commence the service at the stipulated time.
2. If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work.
3. If he shall, during working hours, unfit himself for the proper performance of his work by becoming or being intoxicated.
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which from its nature, it was his duty, under his contract, to have performed carefully and properly.
5. If he shall, without leave and for his own purposes, make use of any horse, vehicle, or other property belonging to his master.
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey.
7. If he shall make any brawl or disturbance in or at his master's dwelling-house, or on his master's farm, and after being by his master or any other person placed by his master in authority over him, desired to desist, shall, notwithstanding, continue making such brawl or disturbance.

<sup>1</sup> Special J.P. has jurisdiction to try offences against this section. See § 22, Act 40, 1882 (Administration of Justice).

No. 18—1873.

Definition of punishment under either the next ensuing section or the last preceding section in case of a second or further conviction.

8. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

3. In case of a second conviction under the last preceding section, or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding three pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding six weeks, and shall be liable during such imprisonment (or so much thereof as the convicting Magistrate shall adjudge) to be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter is mentioned, and upon a conviction under the next ensuing section of this Act followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment, as if both convictions have been had under the last preceding section.

Definition of punishment for acts of misconduct of a more serious nature committed by servants or apprentices.

4. Any servant or apprentice may be fined any sum not exceeding three pounds sterling, and in default of payment, may be imprisoned, with or without hard labour, for any period not exceeding two months, or may be imprisoned without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding two months, and during such imprisonment as in this section is mentioned, may be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter in the nineteenth section is mentioned, in case he shall be convicted in any of the following acts or instances of misconduct, that is to say :

1. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
2. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, refuse or omit to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
3. If being employed as a herdsman, he shall fail to report to his master the death or loss of any animals placed in his charge, which he shall allege to have died or been lost, on the earliest opportunity for so doing after he shall have discovered or in the course of duty was bound

to have discovered, such death or loss, or if he shall fail to preserve for his master's use or inspection any part or parts of any such animal as he shall allege to have died which part or parts he shall by his master have been directed to preserve, unless such herdsman shall prove to the satisfaction of the Court the death of such animals, or if it shall be made by his master to appear that any such animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost, could not, under the circumstances of the case, have become irrecoverably lost without his act or default.

4. If, being employed in any capacity other than that of a herdsman, he shall allege the loss of any property placed in his charge by or for his master, and it shall be made by his master to appear that the property in question could not have been lost without his act or default.

5. [Repealed by § 4, Act 7, 1875.]

6. (1) If he shall, without lawful cause, depart from his master's service, with intent not to return thereto.

5. In case of a second conviction under the last preceding section, or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding five pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding three months, or may be imprisoned, without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding three months, and shall be liable during such imprisonment as in this section is mentioned, or so much thereof as the convicting Magistrate shall adjudge, to be kept in solitary confinement, with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter mentioned; and upon a conviction under the second section of this Act, followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment as if both convictions had been had under the last preceding section.

Definition of punishment under either the last preceding section or the second section in cases of a second or further conviction.

6. No fine paid or period of imprisonment undergone under this Act by a servant or apprentice shall have the effect of cancelling the contract of service or apprenticeship.

No fine or imprisonment shall have the effect of cancelling a contract.

7. (2) Nothing in any of the preceding sections from second to sixth, both inclusive, nor in section nine, shall extend or apply to servants or apprentices under the age of sixteen years, or to servants or apprentices other than those engaged in agriculture or employed to work on farms: Provided, however, that any servant

Certain exception from the second to sixth section, inclusive, and the ninth section.

Provision for the punishment of servants and appren-

<sup>1</sup> See § 2, Act 7, 1875, *infra*.

<sup>2</sup> See note to § 2.

No. 18—1873. or apprentice other than those engaged in agriculture or employed to work on farms as last mentioned, not being under sixteen years of age may :

tices other than those engaged in agriculture or employed to work on farms.

1. If he shall, after having entered into a contract, fail or refuse without lawful cause to commence the service at the stipulated time :
2. If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work :
3. If he shall, during working hours, unfit himself for the proper performance of his work by becoming or being intoxicated :
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which from its nature it was his duty, under his contract, to have performed carefully and properly :
5. If he shall, without leave or for his own purposes, make use of any horse, vehicle, or other property belonging to his master :
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey :
7. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master :
8. If he shall by wilful breach of duty, or by neglect of duty or through drunkenness refuse or omit to do any lawful act proper and requisite to be done by him for forwarding in safety any property placed by his master in his charge for delivery to or on account of his master :
9. <sup>(1)</sup> If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace :

be fined any sum not exceeding two pounds, and in default of payment be sentenced to be imprisoned for any period not exceeding one month ; but if it shall appear that such servant or apprentice is able to pay the damage caused by such act or default as in this section aforesaid, it shall be competent for the Magistrate, whether the master shall agree thereto or not, to proceed under section thirteen, chapter five, of Act No. 15, 1856.

Complaints under foregoing sections to be lodged within one month.

8. No servant or apprentice shall be convicted under any of the foregoing sections of this Act unless the master shall lodge his

<sup>1</sup> 9th paragraph added by Act 7 of 1875.



complaint within one month next after the day on which he became cognizant of the offence or alleged offence.

No. 18—1873.

9. In order to save time and expense, the master of any servant or apprentice alleging matter of complaint against such servant or apprentice may warn and order such servant or apprentice to appear before the Magistrate of the district, on some day and hour to be named by such master, there to answer some certain charge, of the nature of which such complainant shall inform such defendant; and should the defendant fail to attend, in pursuance of such warning, the Magistrate, upon the application of the complainant, and upon proof by affidavit that such defendant received such warning, and received the same a reasonable time before the time fixed for his appearance, and that to the best of the deponent's knowledge and belief, such defendant has no lawful cause for not appearing, may issue his warrant for the apprehension of such defendant, in order to the trial of the complaint; and on such trial, and if the servant or apprentice shall be convicted of the offence with which he shall be charged, the Magistrate may (if he shall be satisfied that the defendant had no good and sufficient cause for failing to attend), in addition to the punishment to which the defendant may be sentenced, adjudge the said defendant to pay to his master such reasonable costs and expenses, not being more than those allowed in criminal cases, to which his master may have been put in consequence of the defendant having failed to attend as aforesaid: Provided, always, that on issuing such warrant as aforesaid, the defendant shall be warned by summons to answer the charges brought against him, and to show cause why he shall not be adjudged to pay such expenses as aforesaid in consequence of his default in attendance.

Servant to appear before a magistrate on order of master, and failing to appear to be liable to expenses on conviction.

10. Should any complainant who shall have warned any such defendant as aforesaid to appear as aforesaid himself fail to appear at the time fixed by him for the appearance of such defendant then and there to prosecute his complaint, the Magistrate, upon proof by affidavit that such defendant was warned by such complainant to appear at the said time to answer a charge of a certain nature, shall, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain the distance which such defendant shall have travelled, and the distance which any person or persons shall have travelled whom such defendant shall have brought with him as witnesses, and shall, upon being satisfied that such witnesses would or might have been necessary for his defence, make an order in writing against such complainant for the payment of the expenses of such defendant and his witnesses, if any, at and after the same rate as if each of the said persons had been a witness summoned at the instance of the public prosecutor, and attending to give evidence in the Court of such Magistrate upon a criminal case; and if such complainant shall, upon presentation to him of such

Master having warned and ordered his servant to appear before a magistrate, upon failing to appear himself to be liable to expenses, and to penalties on failure to pay them.

No. 18—1873.

order by the person or persons in whose favour the same shall have been made, refuse or neglect to comply therewith, he shall incur and be liable to a fine not exceeding five pounds sterling, and in default of payment of the same, to imprisonment, with or without hard labour, for any period not exceeding one month: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or separate orders may be delivered to one or more of such persons, as may be most convenient.

Servant or apprentice having complained against his master, failing to appear at time fixed to be liable to expenses, and to penalties on failure to pay them.

11. Should any servant or apprentice who shall have complained against his master for or on account of any offence against any of the provisions of this Act fail to appear at the time fixed by the Magistrate for the appearance of the defendant, then and there to prosecute his complaint, the Magistrate may, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain in the manner in the last preceding section mentioned the expenses and costs which the defendant has reasonably incurred in appearing to answer such complaint, and he shall in the manner in the last preceding section mentioned order the payment by the complainant of such costs and expenses; and if, on the presentation to him of the order therein mentioned by the person in whose favour it is made, such complainant shall refuse or neglect to comply therewith, he shall incur and be liable to the same fine, and in default of payment thereof to the same punishment, as is fixed in the last preceding section: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or separate orders may be delivered to one or more of such persons, as may be most convenient.

Servant or apprentice may leave his place of service to lodge complaint.

12. No servant or apprentice who shall leave the place of his service for the purpose merely of lodging any complaint which he may have against his master, after leave for that purpose shall have been unreasonably refused, shall by reason only of his so leaving be deemed to have deserted his master's service, or to have in any wise contravened this Act.

Servant or apprentice summoned under the second section may be found guilty under the fourth section and *vice versa*.

13. A servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the second section of this Act, should the proof given in the case show that he is guilty of contravening not the second but the fourth section of this Act, may be convicted and sentenced according to the evidence; and, in like manner, a servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the fourth section aforesaid, should the proof given show that he is guilty of contravening not the fourth but the said second section, may be convicted and sentenced according to the evidence: Provided, however, that the punishment to be awarded upon a conviction in either of these cases shall not exceed the punishment provided by the said second section: Provided, also,

that the servant or apprentice shall have had in every case sufficient notice of the nature of the charge which he was called upon to answer.

No. 18—1873.

14. As often as the master of any servant or apprentice shall be convicted of the offence of withholding the wages of such servant or apprentice (without reasonable and probable cause for believing that the wages so withheld were not really due) he shall be fined any sum not exceeding five pounds sterling, and in default of payment shall be imprisoned, for any period not exceeding one month; and the convicting Magistrate shall, besides passing the said sentence, give judgment for the amount of the wages so wrongfully withheld, and for the costs of the proceedings, which costs shall be the same as in a civil case before the said Court; and the said wages and costs shall, if not paid, be levied of the movable property of the master, under and by virtue of a warrant under the hand of the said Magistrate, together with the cost of such levy: Provided, however, that when and as often as the Magistrate shall acquit the master of the aforesaid offence, but shall yet find that wages are due by such master to such servant or apprentice which have been retained by such master, it shall be lawful for such Magistrate, and he is hereby required, forthwith to give judgment for the amount of wages which he shall find to be due to such servant, and make such order as to the payment of costs, should he award any, by the master, as shall seem to such Magistrate to be in accordance with real and substantial justice.

Definition of punishment for withholding wages by master.

Judgment may be given for wages alone with or without costs.

15. (1) As often as the master of any servant or apprentice shall be convicted of the offence of having, either before or after the expiration of the contract of service of apprenticeship, upon demand made and without lawful cause, refused to deliver or permit to be taken away any of such servant's or apprentice's cattle, sheep, goats, or other animals, lawfully remaining or being upon such master's land without reasonable and probable cause for believing that the animals in question were lawfully detained, such master shall be fined any sum not exceeding one pound sterling for every animal so unlawfully detained; provided, however, that the total amount of a fine so payable shall not exceed the sum of five pounds sterling altogether; and in default of payment, shall be imprisoned for any period not exceeding one month; and the convicting Magistrate shall, besides passing the said sentence, give judgment for the delivery of the said animals, and for costs, as in a civil action before the said Court, which costs, if not paid, shall be levied in the same manner as in the fourteenth section directed; but the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired shall not be deemed or taken to be of itself reasonable or probable cause for such detention: Provided, however, that nothing herein contained

Definition of punishment for refusing to deliver servant's property.

Penalty for default of payment of fine.

<sup>1</sup> See also Act 14, 1870 (Cattle Removal).

No. 18—1873.

shall impair the effect of any express contract of a lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

Definition of punishment for master failing to supply articles stipulated for in contract.

16. As often as the master of any servant or apprentice shall be convicted of the offence of failing, upon demand, to supply or deliver to such servant or apprentice the food, bedding, or other articles stipulated for in any written contract of service or apprenticeship, or of supplying or delivering food, bedding, or other articles not conformable to the said contract, he shall be liable to be fined any sum not exceeding five pounds sterling, and in default of payment to imprisonment for any period not exceeding one month.

Contract may be cancelled if the master has not faithfully performed his part thereof.

17. As often as it shall be made to appear to the Magistrate, in any case instituted by any servant or apprentice against his master, that the master has not fairly and faithfully performed his part of the contract of service or apprenticeship, the Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of such contract of service or apprenticeship, and the same shall be cancelled accordingly.

Costs for compelling parties accused under this Act, and their witnesses, to attend the magistrate's court to be paid at the public charge under certain exceptions.

18. As often as any master shall complain against his servant or apprentice, or any servant or apprentice shall complain against his master, for or on account of any offence against the provisions of this Act, the process of the Court of the Resident Magistrate for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of Court: Provided always, that if at the trial the charge shall appear to have been brought without reasonable or probable cause, the party complaining shall be liable to a fine not exceeding five pounds, and also to defray the costs of process and of the witnesses in the case; and in default of payment of such fine and costs, shall be liable to be imprisoned for any period not exceeding one month: Provided, also, that such fine may be imposed upon the occasion of such trial, and without any fresh action or proceeding for the recovery thereof.

Penalties for bringing charge without reasonable cause.

Regulations as to spare diet and solitary confinement.

19. In regard to the infliction of spare diet and solitary confinement under this Act, the Resident Magistrate shall observe and conform to such regulations and restrictions as shall have been or shall from time to time be issued by the Governor under the Act No. 20 of 1856.

Fines to be paid into Treasury.

20. All fines under this Act shall, when recovered, be paid into the Public Treasury.

Certain sections of Act 15 of 1856 repealed.

21. Sections 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 of the fifth chapter, and so much of any other portion of Act No. 15 of 1856, as is inconsistent with or repugnant to any of the provisions of this Act, shall be and the same are hereby repealed.

Short title.

22. This Act may be cited for all purposes as the "Masters and Servants Law Amendment Act, 1873."

No. 28—1874.]

[July 31, 1874.]

## ACT

To Amalgamate the Laws relating to Masters, Servants,  
and Apprentices.

WHEREAS in several parts of the Act No. 15 of 1856, intituled  
“An Act to amend the Laws regulating the relative Rights and  
Duties of Masters, Servants, and Apprentices,” reference is made  
to other parts of the said Act, and whereas many of these references  
have become inapplicable by reason of the repeal of the said Act by  
the “Masters and Servants Law Amendment Act, 1873,” and it  
is desirable that the said two Acts should be read together: Be it  
enacted by the Governor of the Cape of Good Hope, with the  
advice and consent of the Legislative Council and the House of  
Assembly thereof, as follows:—

Preamble.

1. The said “Masters and Servants Law Amendment Act, 1873,”  
shall be construed with and as part of the said Act No. 15 of  
1856.

Act No. 18 of 1873  
to be construed with  
Act No. 15 of 1856.

2. This Act may be cited for all purposes as the “Masters and  
Servants Law Amalgamation Act, 1874,” and the said Act No.  
15 of 1856 may for all purposes be cited as the “Masters and  
Servants Law Act, 1856.”

Short title.

No. 7—1875.]

[June 30, 1875.]

## ACT

To Amend the Law relating to Masters, Servants, and  
Apprentices.

WHEREAS it is expedient to amend the law relating to Masters,  
Servants, and Apprentices: Be it enacted by the Governor of  
the Cape of Good Hope, with the advice and consent of  
the Legislative Council and House of Assembly thereof, as  
follows:—

Preamble.

1. If the master of any servant or apprentice alleging matter of  
complaint against such servant or apprentice for any offence  
punishable under the “Masters and Servants Law Act, 1856,”  
or the “Masters and Servants Law Amendment Act, 1873,” shall  
make deposition on oath before a Resident Magistrate, or Justice  
of the Peace, that he believes (stating the grounds of his belief)  
that in order to secure the appearance of such servant or apprentice  
before the Resident Magistrate having jurisdiction to try the case,  
that the apprehension of such servant or apprentice is necessary,  
it shall be lawful for such Resident Magistrate or Justice of the  
Peace to issue his warrant for the apprehension of such servant or

Servant or appren-  
tice may be appre-  
hended summarily  
on deposition of mas-  
ter.

No. 7—1875.  
Penalty for malicious depositions.

apprentice without any previous warning or summons : Provided, however, that if the master of any servant or apprentice shall make such deposition maliciously and without reasonable and probable ground for believing the same to be true, such master shall be liable to be fined any sum not exceeding five pounds, and in default of payment thereof to be imprisoned for any period not exceeding one month.

May be apprehended summarily for desertion.

2. If any servant or apprentice is charged under either of the aforesaid Acts with having, without lawful cause, departed from his master's service with intent not to return thereto, it shall be lawful for any Resident Magistrate or Justice of the Peace to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons.

Punishment for abusive language.

3. There shall be considered as inserted in the seventh section of the said "Masters and Servants Law Amendment Act, 1873," after the paragraph of the said section numbered eight, the following as a ninth paragraph :

9. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

Paragraph 5, section 4 Act 18, 1873, repealed.

4. The paragraph numbered five of the fourth section of the said last mentioned Act is hereby repealed.

Accused competent to give evidence.

5. On the trial of any case in any Court of Resident Magistrate wherein any master, servant, or apprentice is charged with having contravened any of the provisions of the said Masters and Servants Acts, such master, servant, or apprentice, as the case may be, and his or her wife or husband, shall be competent, but not compellable, to give evidence on his or her own behalf, or on the behalf of the complainant in the said case.

Accused not compellable to enter the dock, but may be detained in custody.

6. No master, servant, or apprentice charged with having contravened any of the provisions of the said Masters and Servants Acts, and who is not immediately before the hearing of such charge in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the Court, or shall be otherwise treated as under arrest, during the hearing of such charge : Provided that if, in the opinion of the Magistrate before whom the charge is heard it shall be necessary, in order to secure the attendance of such master, servant, or apprentice, that he should be placed in custody, it shall be lawful for such Magistrate to cause such person to be arrested and detained in custody.

Officer in charge of any public work may prosecute.

7. In case it may be necessary to prosecute or proceed against any person employed on any of the public works of this Colony for contravening any of the provisions of the said Masters and Servants Acts, such prosecution or proceeding may be carried on by and in the name of any of the officers in charge of the work upon which such servant is employed at the time of such contravention.

8. This Act may be cited for all purposes as the "Masters and Servants Act, 1875," and shall be construed as one with the Masters and Servants Act, 1856, and the Act of 1873, amending the same; and the said Acts, the Master and Servants Law Amalgamation Act, 1874, and this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1875."

No. 35—1886.  
Short title.

No. 35 of 1886.]

[July 6, 1886.

ACT

To Extend and Regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service.

WHEREAS the law relating to the Liability of Employers to make Compensation for Injuries suffered by Workmen in their service is at present vague and uncertain, and it is desirable to amend the same, and to extend and regulate such liability: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Whenever, after the taking effect of this Act, personal injury is caused to a workman:

In what cases compensation to be made to injured workmen.

- (1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with, or used, in the business of the employer; or
- (2) By reason of the negligence of the employer, or any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (3) By reason of the negligence of the employer, or any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, when such injury resulted from his having so conformed; or
- (4) By reason of the act or omission of the employer, or any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of the employer, or any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, train upon a railway, or any machinery or hauling gear in or about any mine, the workman or, in case the injury results in death, the legal personal representatives of the

1626 MASTERS AND SERVANTS (EMPLOYERS' LIABILITY).

No. 35—1886.

workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Exceptions to the provisions of the above Section.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,—

(1) Under sub-section one of section one of this Act, unless the defect therein mentioned arose from, or had not been, or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition.

(2) Under sub-section four of section one of this Act unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned: Provided always that in case any such rule or by-law shall have been submitted to the Governor, and approved of by him by notification in the *Gazette*, or in case such rule or by-law shall be made under the provisions of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Limit of sum recoverable as compensation.

3. The amount of compensation under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

No compensation recoverable under any other law as well as under this Act.

4. No workman, or representative of a workman, shall be entitled to recover compensation for any injury done to him under any other existing law in addition to the compensation to which he may be entitled under this Act.

Limit of time within which actions must be brought.

5. All actions under this Act shall be commenced within six months after the occurrence of the injury for which compensation is sought.

Definitions.

6. For the purposes of this Act, unless the context otherwise requires,—

The expression “person who has superintendence entrusted



to him ” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

No. 12—1864.

The expression “ employer ” includes a body of persons corporate or unincorporate.

7. This Act shall take effect only within such mining areas as the Governor may from time to time declare by proclamation to be published in the *Gazette*, and may be cited as the “ Employers’ Liability Act, 1886.”

Where Act to be in force, and Short title.

No. 12—1864.]

[July 26, 1864.

## AN ACT

To Amend the Law relating to the Fraudulent Marking of Merchandize.

WHEREAS it is expedient to assimilate the law relating to the fraudulent marking of merchandize, and to the sale of merchandize falsely marked for the purpose of fraud, to the law of the United Kingdom, as the same is contained in the Act 25 and 26 of Her Majesty, chapter eighty-eight: Be it enacted by the Governor of this Colony, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. In the construction of this Act, the word “ person ” shall include any person, whether a subject of Her Majesty or not, and any body corporate, or body of the like nature, whether constituted according to the law of this Colony or of any of Her Majesty’s dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether the members thereof be subjects of Her Majesty or not, or some of such persons subjects of Her Majesty, and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established to carry on business within Her Majesty’s dominions or elsewhere, or partly within Her Majesty’s dominions and partly elsewhere; the word “ mark ” shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description; and the expression “ trade mark ” shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid, lawfully used by any person to denote any article of trade, manufacture, or merchandize to be an article or thing of the manufacture, workmanship, production, or merchandize of such person, or to be an article or thing of any peculiar or particular description made or sold by such person, and shall also include any name, signature, word, letter, number, figure, mark, or sign which, in pursuance of any statute or statutes for

Interpretation of terms used in this Act.

No. 12—1864.

the time being in force in the United Kingdom relating to registered designs, is to be put or placed upon or attached to any article during the existence or continuance of any copyright or other sole right acquired under the provisions of such statutes or any of them.

Forging or falsely applying a trade mark, with intent to defraud, an offence.

2. Every person who, with intent to defraud, or to enable another to defraud any person, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any trade mark, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any article not being the manufacture, workmanship, production, or merchandize of any person denoted or intended to be denoted by such trade mark, or denoted or intended to be denoted by such forged or counterfeited trade mark, or not being the manufacture, workmanship, production, or merchandize of any person whose trade mark shall be so forged or counterfeited, or shall apply, or cause or procure to be applied, any trade mark or any forged or counterfeited trade mark to any article not being the particular or peculiar description of manufacture, workmanship, production, or merchandize, denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark, shall be guilty of the offence of contravening this section of this Act; and every person so committing such offence shall also forfeit to Her Majesty every article belonging to such person to which he shall have so unlawfully applied, or caused or procured to be applied, any such trade mark, or forged or counterfeited trade mark, as aforesaid; and every instrument in the possession or power of such person, and by means of which any such trade mark or forged or counterfeited trade mark as aforesaid shall have been so applied, and every instrument in the possession or power of such person for applying any such trade mark or forged or counterfeited trade mark as aforesaid, shall be forfeited to Her Majesty; and the Court before which any such offence shall be tried may order such forfeited articles as aforesaid to be destroyed, or otherwise disposed of as such Court shall think fit.

Applying a forged trade mark to any vessel, case, wrapper, &c., in or with which any article is sold, or intended to be sold, an offence.

3. Every person who, with intent to defraud or enable another to defraud any person, shall apply, or cause to procure to be applied, any trade mark, or any forged or counterfeited trade mark, to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, in, on, or with which any article shall be intended to be sold, or shall be sold or uttered or exposed for sale, or intended for any purpose of trade or manufacture, or shall enclose or place any article, or cause or procure any article to be enclosed or placed, in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall apply or attach, or cause or procure to be applied or attached, to any article, any case,

cover, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeited trade mark shall have been applied, or shall enclose, place, or attach, any article, or cause or procure any article to be enclosed, placed, or attached, in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, having thereon any trade mark of any other person, shall be guilty of the offence of contravening this section of this Act; and every person so committing such offence shall also forfeit to Her Majesty every such article, and also every such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, in the possession or power of such person; and every other similar cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing made to be used in like manner as aforesaid; and every instrument in the possession or power of such person for applying any such trade mark, or forged or counterfeited trade mark, as aforesaid, shall be forfeited to Her Majesty; and the Court before which any such offence shall be tried may order such forfeited articles as aforesaid to be destroyed, or otherwise disposed of as such Court shall think fit.

4. Every person who, after the first day of January, 1865, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any article, together with any forged or counterfeited trade mark, which he shall know to be forged or counterfeited, or together with the trade mark of any other person applied or used falsely or wrongfully or without lawful authority or excuse, knowing such trade mark of another person to have been so applied or used as aforesaid, and that whether any such trade mark or forged or counterfeited trade mark as aforesaid, together with which any such article shall be sold, uttered, or exposed for sale or other purpose as aforesaid, shall be in, upon, about, or with such article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum of money equal to the value of the article so sold, uttered, offered or exposed for sale or other purpose as aforesaid, together with a further sum not exceeding five pounds and not less than ten shillings.

5. Every addition to, and every alteration of, and also every imitation of any trade mark which shall be made, applied, or used with intent to defraud, or to enable any other person to defraud, or which shall cause a trade mark with such alteration or addition, or shall cause such imitation of a trade mark, to resemble any genuine trade mark so or in such manner as to be calculated or likely to deceive, shall be and be deemed to be a false, forged, and

Selling articles with forged or false trade marks after 1st January, 1865, penalty equal to value of article sold, and fine not exceeding £5 nor less than 10s.

Additions and alterations to trade marks made with intent to defraud to be deemed forgeries.

No. 12—1864.

counterfeited trade mark within the meaning of this Act; and every act of making, applying, or otherwise using any such addition to or alteration of a trade mark, or any such imitation of a trade mark as aforesaid, done by any person with intent to defraud, or to enable any other person to defraud, shall be and be deemed to be forging and counterfeiting a trade mark within the meaning of this Act.

Any person selling an article having a false trade mark to be bound to give information where he procured it.

6. Where any person who, at any time after the first day of January, 1865, shall have sold, uttered, or exposed, for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered or exposed for sale or other purpose as aforesaid, any article, together with any forged or counterfeited trade mark, or together with the trade mark of any other person used without lawful authority or excuse as aforesaid, and that whether any such trade mark or such forged or counterfeited trade mark as aforesaid be in, upon, about, or with such article, or in, upon, about, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing in, upon, about, or with which such article shall have been sold or exposed for sale, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling house, or at the place of sale or exposure for sale, by or on the behalf of any person whose trade mark shall have been so forged or counterfeited, or used without lawful authority or excuse as aforesaid, to give the person requiring the same, or his attorney or agent, within forty-eight hours after such demand, full information, in writing, of the name and address of the person from whom he shall have purchased or obtained such article, and of the time when he obtained the same; and it shall be lawful for any Resident Magistrate, on information on oath of such demand and refusal, to summon before him the party refusing, and on being satisfied that such demand ought to be complied with, to order such information to be given within a certain time to be appointed by him; and any such party who shall refuse or neglect to comply with such order shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined the sum of five pounds; and such refusal or neglect shall be *prima facie* evidence that the person so refusing or neglecting had full knowledge that the trade mark, together with which such article was sold, uttered or exposed for sale or other purpose as aforesaid, at the time of such selling, uttering, or exposing, was a forged, counterfeited, and false trade mark or was the trade mark of a person which had been used without lawful authority or excuse, as the case may be.

Power of resident magistrate to summon parties refusing to give information.

Penalty for refusal, £5.

Marking any false indication of quantity, &c., upon an article with intent to defraud, penalty equal to value of article, and fine not exceeding £5 nor less than 10s.

7. Every person who, with intent to defraud, or to enable another to defraud, shall put, or cause or procure to be put, upon any article, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which any article shall be intended to be or shall be sold or

uttered or exposed for sale, or for any purpose of trade or manufacture, or upon any case, frame, or other thing in or by means of which any article shall be intended to be or shall be exposed for sale, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such article, or any part thereof, or of the place or country in which such article shall have been made, manufactured, or produced, or shall put, or cause to procure to be put, upon any such article, cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing as aforesaid, any word, letter, figure, signature, or mark, for the purpose of falsely indicating such article, or the mode of manufacturing or producing the same, or the ornamentation, shape, or configuration thereof, to be the subject of any existing patent, privilege, or copyright, either in this Colony or elsewhere, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum of money equal to the value of the article so sold or uttered or exposed for sale, together with a further sum not exceeding five pounds and not less than ten shillings.

8. Every person who, after the first day of January, 1865, shall sell, utter, or expose for sale or for any purpose of trade or manufacture, or shall cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid, any article upon which shall have been, to his knowledge, put or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing together with which such article shall be sold or uttered or exposed for sale or other purpose as aforesaid, shall have been so put or upon any case, frame, or other thing used or employed to expose or exhibit such article for sale shall have been so put, any false description, statement, or other indication of or respecting the number, quantity, measure, or weight of such article or any part thereof, or the place or country in which such article shall have been made, manufactured, or produced, shall be guilty of the offence of contravening this section of this Act, and shall, for every such offence, be fined a sum not exceeding five pounds and not less than five shillings.

9. Provided, always, that the provisions of this Act shall not be construed so as to make it any offence for any person to apply to any article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing with which such article shall be sold or intended to be sold, any name, word, or expression generally used for indicating such article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter, or offer or expose for sale, any article to which, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing sold therewith, any such generally used name, word, or expression as aforesaid shall have been applied.

Selling or exposing for sale articles with false statements of quantities, &c., penalty.

Application of names or words known to be used for indicating particular classes of manufactures not to be an offence within meaning of this Act.

No. 12—1864.

Description of trade marks and forged trade marks in indictments, &c.

10. In every indictment, plaint, summons, pleading, proceeding and document whatsoever in which any trade mark shall be intended to be mentioned, it shall be sufficient to mention or state the same to be a trade mark, without further or otherwise describing such trade mark, or setting forth any copy or fac-simile thereof; and in every indictment, plaint, summons, pleading, proceeding, and document whatsoever in which it shall be intended to mention any forged or counterfeit trade mark, it shall be sufficient to mention or state the same to be a forged or counterfeit trade mark, without further or otherwise describing such forged or counterfeit trademark, or setting forth any copy or fac-simile thereof.

Conviction not to affect any right or civil remedy.

11. The provisions in this Act contained of or concerning any Act, or any proceeding, judgment, or conviction for any act hereby declared to be an offence, shall not, nor shall any of them, take away, diminish, or prejudicially affect any civil suit, process, proceeding, right, or remedy which any person aggrieved by such act may by law be entitled to, and shall not, nor shall any of them, exempt or excuse any person from answering or making discovery, upon examination as a witness, or upon interrogatories or otherwise, in any civil proceeding: Provided, always, that no evidence, statement, or discovery which any person shall be compelled to give or make shall be admissible in evidence against such person in support of any indictment or plaint for an offence under this Act, or otherwise.

Intent to defraud, &c., any particular person need not be alleged in any indictment, &c., or proved.

12. In every indictment, plaint, summons, conviction, pleading, and proceeding against any person for any offence against any of the provisions of this Act, in which it shall be necessary to allege or mention an intent to defraud, or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of having done any act which is hereby made an offence did such act with intent to defraud, or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person; and on the trial of any such indictment or plaint for any such offence, it shall not be necessary to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove, with respect to every such offence, that the person accused did the act charged with intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Person aiding to be considered as accessory.

13. Every person who shall aid, abet, counsel, or procure the commission of any offence under this Act shall be guilty of the offence of being an accessory to the offence committed.

Punishment for offences under sections 2 and 3 of this Act.

14. Every person who shall be convicted or found guilty of the offence of contravening the second or the third section of this Act shall be liable to be imprisoned for any period not exceeding two years, or to be fined at the discretion of the Court, or to be both fined and imprisoned, and if fined, to be imprisoned until such fine

be paid: Provided that any imprisonment adjudged against any such offender may be either with or without hard labour, as the Court shall direct.

No. 12—1864.

15. All offences against any of the provisions of this Act shall be capable of being tried in the Supreme Court, or in any Circuit Court to which any such case as aforesaid may be removed by the Supreme Court, or in any Circuit Court held for the division in which the offence shall have been committed, but (except as hereinafter excepted) not in any other Court: Provided that it shall be competent for the public prosecutor, upon considering the preparatory examination in any such case as aforesaid, to remit the same for trial to the Court of the Resident Magistrate of the district in which the offence shall have been committed, which Court shall be competent to sentence any person convicted of contravening the second or the third section of this Act to pay a fine not exceeding ten pounds sterling, or to be imprisoned, with or without hard labour, for any period not exceeding three months, or to both such fine and such imprisonment; and such Court of Resident Magistrate shall also be competent to deal with the articles which are by the said second and third sections, or either of them, declared to be forfeited to Her Majesty, in manner and form as by the said sections authorized: Provided that all offenders against any of the sections of this Act, other than the second or third sections thereof, who shall be convicted by any of the Courts of Resident Magistrates, shall be punished in manner and form as authorized by the section contravened, save and except that no fine imposed by such Court for the contravention of any such section shall exceed, in all, the sum of ten pounds sterling; and provided that the provisions of the forty-seventh section of the Act No. 20, 1856, as amended by the second section of the Act No. 9, 1857, shall apply to all sentences pronounced, under and by virtue of this Act, by any Court of Resident Magistrate.

Courts competent to try offences under this Act.

16. Any person aggrieved by the act constituting an offence against any of the provisions of this Act shall have the same right of prosecution which any private person has by law with regard to any offence committed against his property, and no other right; Provided that every person in this Colony lawfully vending or exposing for sale in this Colony any article bearing a true and genuine trade mark or other description, shall be deemed to be a person aggrieved by any act done in contravention of any of the sections of this Act, and relating to the same article, or an article purporting or pretending to be the same article, as that so lawfully vended or exposed for sale as aforesaid; and provided that the mandatory or agent of any person not within this Colony, which person, if within the Colony, would have been, for the purposes of this section, a person aggrieved, shall, as such mandatory or agent, be deemed and taken to be a person aggrieved: Provided, also, that if there shall, in any case, be more persons than one entitled

Person aggrieved to have right of prosecution.

Who shall be deemed a person aggrieved

Where more persons than one are entitled to prosecute,

No. 12—1864.

Attorney-General to select prosecutor.

Definition of "person aggrieved" to apply only to this section.

On conviction, prosecutor entitled to costs.

Costs may be levied under warrant of distress.

Court may withhold costs.

Public officer prosecuting not entitled to retain any fee or remuneration.

Limitation of prosecution.

After 1st January, 1865, vendor of any article with trade mark to be deemed to contract that the mark is genuine.

and desirous to be and act as the private prosecutor in such case, the Attorney-General shall select as private prosecutor the person whom he deems most fit and proper for the office : Provided, lastly, that the description or definition of "person aggrieved" given in this section shall not be taken to describe or define the said term for the purpose of any other section of this Act, which term shall, in every such other section, be judged of as if this section did not exist.

17. In every case in which any person shall be convicted, by or before any Court within this Colony, of an offence against any of the provisions of this Act, the prosecutor, whether public or private, shall (except as hereinafter excepted) be entitled to his costs of suit, which costs shall be the same, and be recoverable by the same process, as if the said suit had been a civil suit and not a criminal suit : Provided that as often as any fine imposed upon any such offender shall be levied by warrant of distress and sale of the movables of the offender, then the costs awarded against such offender shall be levied by and under the same warrant : Provided, however, that every such Court as aforesaid shall have, in regard to such costs, the same discretionary power which it may now by law possess in regard to withholding costs from the successful party in any civil suit tried by or before such Court ; and provided, also, that the Attorney-General shall not, nor shall any Clerk of the Peace, nor shall any other person in the Civil Service of the Colony, prosecuting at the public instance any offender against any of the provisions of this Act, be entitled to retain for his own use any fee or remuneration which may be included in such costs as aforesaid for or on account of his services, but every such fee or remuneration shall, when recovered or received, be paid into the Colonial Treasury.

18. No prosecution for any offence under this Act shall be commenced after the expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the prosecutor.

19. In every case in which, at any time after the first day of January, 1865, any person shall sell or contract to sell (whether by writing or not) to any other person any article with any trade mark thereon, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such article shall be sold or contracted to be sold, the sale or contract to sell shall, except as in the next succeeding section as excepted, in every such case, be deemed to have been made with a warranty or contract by the vendor to or with the vendee that every trade mark upon such article, or upon any such cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing as aforesaid, was genuine and true, and not forged or counterfeit, and not wrongfully used, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee.



20. In every case in which at any time after the first day of January, 1865, any person shall sell or contract to sell (whether by writing or not) to any other person, any article upon which, or upon any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such article shall be sold, or contracted to be sold, any description, statement, or other indication of or respecting the number, quantity, measure or weight of such article, or the place or country in which such article shall have been made, manufactured, or produced, the sale or contract to sell shall, except as hereinafter excepted, in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee that no such description, statement or other indication was in any material respect false or untrue, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee: Provided, always, that no auctioneer selling goods by public sale shall be deemed to have given the warranty mentioned in this or in the last preceding section, in case he shall, in and by conditions of sale duly read by him, have stipulated that he shall not be considered as giving such warranty: Provided, however, that in every case in which any auctioneer shall, in manner aforesaid, be freed from such warranty, the person by whom such auctioneer was employed to sell the goods in question shall be deemed to have given the said warranty, unless the contrary be expressed in the conditions of sale.

No. 12—1864.

After 1st January, 1865, vendor of an article with description on it of its quantity to be deemed to contract that the description was true.

Exception in case of sales by auction where stipulation to that effect is inserted in conditions of sale.

Where auctioneer is freed from warranty, person for whose account the goods are sold to be held liable.

21. In every case in which any civil action or proceeding shall be had or taken against any person for forging or counterfeiting any trade mark, or for fraudulently applying any trade mark to any article, or for selling, exposing for sale, or uttering any article with any trade mark falsely or wrongfully applied thereto, or for preventing the repetition or continuance of any such wrongful act, or the committal of any similar act, in which the plaintiff, shall obtain a judgment, decree, or interdict against the defendant, the Court shall have the power to direct every such article to be destroyed or otherwise disposed of; and in every such action or proceeding it shall be lawful for the Court, or a Judge thereof, to make such order as such Court or Judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such forged or counterfeit trade mark, or any such trade mark as aforesaid, shall be alleged to be used or applied as aforesaid, and of every or any article and thing in the possession or power of the defendant alleged to have thereon or in any way attached thereto any forged or counterfeit trade mark, or any trade mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any forged or counterfeit trade mark, or trade mark alleged to be forged or counterfeit, or for falsely or wrongfully

In actions against persons for forging or fraudulently using trade marks, court may order articles to be destroyed, and may give order for inspection of articles, &c., in possession of defendant.

No. 12—1864.

applying any trade mark; and any person who shall refuse or neglect to obey any such order shall be guilty of a contempt of Court.

Damages may be recovered from offenders.

22. In every case in which any person shall do or cause to be done any of the wrongful acts following (that is to say), shall forge or counterfeit any trade mark, or for the purpose of sale, or for the purpose of any manufacture or trade shall apply any forged or counterfeit trade mark to any article or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or thing in or with which any article shall be intended to be sold, or shall be sold, or uttered or exposed for sale or for any purpose of trade or manufacture, or shall inclose or place any article in, upon, under, or with any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied, or shall apply or attach to any article any case, cover, reel, wrapper, band, ticket, label, or other thing to which any trade mark shall have been falsely applied, or to which any forged or counterfeit trade mark shall have been applied, or shall inclose, place, or attach any article in, upon, under, with, or to any cask, bottle, stopper, vessel, case, cover, reel, wrapper, band, ticket, label, or other thing having thereon any trade mark of any other person, every person aggrieved by any such wrongful act shall be entitled to maintain an action or proceeding for damages in respect thereof against the person who shall be guilty of having done such act, or causing or procuring the same to be done, and for preventing the repetition or continuance of the wrongful act and the committal of any similar act.

Short title.

23. The expression "The Merchandize Marks Act, 1864," shall be a sufficient description of this Act.

---

## MERCHANT SHIPPING.

---

1. Act 13—1855, (Merchant Shipping).  
 2. „ 3—1863, do.  
 3. „ 13—1874, do.

4. Act 3—1858, (Light House Dues).  
 5. „ 18—1861, do.

No. 13—1855.]

[June 8, 1855.

### AN ACT

For the Appointment of Shipping Masters, and for other purposes relating to the "Merchant Shipping Act, 1854."

Preamble.

WHEREAS, by an Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," it is among other things enacted, that "If the Governor-General of India in Council, or the

respective Legislative authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall, in respect of the ships and persons to which the same are applied, be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed :” And whereas it is expedient to apply and adapt to this Colony certain provisions of the third part of the said Act to British ships registered at or being within the limits of this Colony, and to the owners, masters, mates, and crews of such ships : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Governor may establish a shipping office, or shipping offices, at any port or ports in this Colony, and may, for that purpose, appoint, and from time to time remove and re-appoint, superintendents of such offices, to be called shipping masters, with any necessary deputies, clerks, and servants ; and every act done by or before any deputy, duly appointed, shall have the same effect as if done by or before a shipping master ; and such shipping masters shall perform in this Colony the duties and exercise the powers conferred upon such shipping masters by the aforesaid Act, in so far as may be applicable in this respect to this Colony, in regard to British ships registered at or being within the limits of this Colony.

Governor may establish shipping offices, and appoint shipping masters.

2. It shall be lawful for the Governor to grant to such shipping masters, deputies, clerks, and servants, appointed as aforesaid such salaries or other allowances out of the fees to be received under this Act, for the labour and responsibility in executing the duties of their respective offices or employments, as the Governor shall deem to be reasonable and necessary.

Governor may grant to shipping masters, and other officers, reasonable salaries.

3. It shall be the general business of shipping masters, appointed as aforesaid, to afford facilities for engaging seamen by keeping registries of their names and characters ; to superintend and facilitate their engagement and discharge in manner provided in the aforesaid Act ; to provide means for securing the presence on board, at the proper times, of men who are so engaged ; to facilitate the making of apprenticeships to the sea service ; and to perform such other duties relating to merchant seamen and merchants ships as are now or may hereafter be legally committed to them.

Duties of shipping masters.

4. Such fees, not exceeding the sums specified in the table marked A in the schedule hereto annexed, as shall from time to

What fees to be payable at shipping offices.

No. 13—1855.

time be fixed by the Governor, shall be payable upon all engagements and discharges effected before shipping masters; and the Governor shall cause scales of the fees payable for the time being to be prepared, and to be conspicuously placed in the shipping offices; and all shipping masters, their deputies, clerks, and servants, may refuse to proceed with any engagement or discharge, unless the fees payable thereon are first paid.

By whom certain fees are to be paid in the first instance, and how those parties are to be reimbursed.

5. Every owner or master of a ship engaging or discharging any seamen or seaman in a shipping office, or before a shipping master, shall pay to the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct, in respect of each such engagement or discharge, from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding the sums specified in that behalf in the table marked B in the schedule hereto annexed: Provided that if in any case the sums which the owners so entitled to deduct exceed the amount of the fees payable by him, such excess shall be paid by him to the shipping master, in addition to such fee.

The receiving of anything, except lawful fees, an offence.

6. Any shipping master, deputy shipping master, or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, excepting the lawful fees payable under this Act, shall for every such offence, incur a penalty not exceeding twenty pounds, and shall also be liable to be dismissed from his office.

Fees to be paid into the colonial treasury.

7. The whole of the fees received by the shipping masters under this Act shall be paid by them into the Colonial Treasury, at such times and in such manner as the Governor shall direct.

Shipping masters to keep correct accounts of fees.

8. The shipping masters shall keep true and correct accounts of all such fees, and shall render accounts of the receipts and payments of the same, duly vouched, in such manner and form, and at such periods as the Governor shall direct.

Shipping masters may be required to give security.

9. All shipping masters, deputies, clerks, and servants so appointed as aforesaid, shall, before entering upon their duties, give such security (if any) for the due performance thereof as the Governor may require.

No person, under a penalty of £20, to interfere with or perform any of the duties of shipping masters.

10. Any person interfering with or taking upon him to perform any of the duties and powers of any shipping master, in this Colony, by engaging seamen, or otherwise dealing with any matter within the province of such shipping master, shall incur a penalty not exceeding twenty pounds: Provided, however, that nothing herein contained shall be construed so as to prevent any owner, master, or mate, from entering into any agreement with any seaman, such agreement to be perfected according to the provisions of this Act, before a shipping master at the shipping office.

Governor may dispense with the ministration of shipping

11. The Governor may from time to time, dispense with the transaction before a shipping master, or in a shipping office, of any

matters required by this Act to be so transacted, and thereupon such matters shall, if otherwise duly transacted as required by law, be as valid as if transacted before a shipping master, or in a shipping office.

No. 13—1855.  
masters in regard to matters by this Act required to be transacted before shipping masters.

12. In the case of all British registered ships, the agreements entered into in this Colony between the masters of such ships and their crews shall be dated and signed, and shall contain all the particulars, as far as applicable, as are set forth in the 149th and 150th sections of the aforesaid Act, and in the second schedule to this Act annexed.

The agreements mentioned in the 149th and 150th sections of the "Merchant Shipping Act, 1854," to be conformed to.

13. If, in any case, a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master or owner of the ship shall, for each such offence, incur a penalty not exceeding five pounds.

Penalty for carrying seamen to sea without an agreement executed.

14. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew, which both parties agree, in writing, to submit to him; and every award so made by him shall be in writing, and shall be binding on both parties, and shall, in any legal proceeding which may be taken in the matter before any Court of Justice, be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *prima facie* evidence thereof. And every shipping master shall receive from the parties such fee, not exceeding one pound sterling, upon each arbitration, as the said shipping master shall fix and determine.

Shipping masters to arbitrate in disputes between masters and seamen.

Fee for so arbitrating.

15. And whereas it is further enacted in the Act aforesaid, that "Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs shall, if there is at the place where such seaman is engaged any official shipping master or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such shipping master, and if there is no such shipping master or officer, then before some officer of customs; and the same rules, qualifications, and penalties as are hereinbefore specified, with respect to the engagement of seamen before shipping masters in the United Kingdom shall apply to such engagements in a British possession; and upon every such engagement such shipping master or officer as aforesaid shall endorse upon the agreement an attestation, to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if, in any case, such attestation is not made, the burthen of proving that the seaman was duly engaged as hereby required, shall lie upon the master:" And whereas it is expedient to extend and apply in this Colony the provisions of the Act above recited to all British registered

How seamen to be engaged to serve on board British ships registered and being within this colony

No. 13—1855.

The 244th, 247th, and 248th sections of the "Merchant Shipping Act, 1854," to apply to all British ships registered and being within this colony.

What tribunals or persons to perform in this colony certain duties mentioned in the 242nd section of the "Merchant Shipping Act, 1854."

The 518th, 520th, and 521st sections of the "Merchant Shipping Act, 1854," extended to this colony

How penalties under this Act to be applied.

This Act, how to be cited.

vessels registered in this Colony: Be it further enacted, that such provisions shall extend and apply to all British vessels registered in this Colony, which shall be within the limits of this Colony.

16. The provisions contained in the 243rd, the 244th, the 247th, and 248th sections of the aforesaid Act, and in the second schedule to this Act annexed, relating to punishments for offences committed by seamen or apprentices to the sea service, are hereby extended and applied to all crews of all British ships, registered in this Colony, which shall be within the limits of this Colony.

17. (1) Whereas it is enacted by the 242nd section of the aforesaid Act, and in the second schedule to this Act annexed, that the Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate, in certain cases, one of which cases, set forth in paragraph 5 of the said section, is as follows:—"If upon any investigation made by any Court or Tribunal, authorized or hereafter to be authorized, by the Legislative authority, in any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession:" And whereas it is expedient to authorize Courts or Tribunals in this Colony, for the purposes stated in the said recited section: Be it hereby further enacted, that any of the Courts of Resident Magistrate in this Colony shall be authorized to make the inquiries into all the matters, and for the purposes set forth in the said section; and, further, that it shall be lawful for the Governor, upon any occasion which he may see fit, to nominate and appoint any other person or persons whatever to be a Court or Tribunal duly authorized to make inquiry into the several matters and things set forth in the aforesaid recited section.

18. The provisions contained in the 518th, the 520th, and 521st sections of the aforesaid Act, and in the second schedule to this Act annexed, relating to legal procedure, to the punishment of offences, to the recovery of penalties, and to jurisdiction, shall be held to extend, as far as applicable, to this Colony.

19. All penalties recovered under this Act shall be applied in the same manner, and upon the same principles, as are set forth in the 524th section of the aforesaid Act, and in the second schedule to this Act annexed.

20. This may be cited, for all purposes, as the "Local Merchant Seaman's Act, 1855."

<sup>1</sup> As to circumstances under which Colonial Tribunal may hold enquiry. See 45 and 46 Vict. Chap. 76.

21. In the construction of this Act, the word "Governor" shall signify the person who, for the time being, shall be lawfully administering the Government of this Colony, and the words "master," "seaman," and "ship," shall respectively have the meaning given to them in and by the Imperial Act aforesaid: and words importing the singular number shall include the plural number, and words importing the plural number shall import the singular number, unless, in any such case, there shall be something in the subject or context repugnant to such construction.

No. 13—1855.

Construction of terms.

22. This Act shall commence and take effect from and after the promulgation thereof.

Act, when to commence.

SCHEDULE TO WHICH THIS ACT REFERS.

Table A. (1) (See Section 4.)

Fees to be charged for matters transacted at Shipping Offices.

1. <i>Engagement of Crews.</i>			3. <i>Discharge of Crews.</i>		
	£	s. d.		£	s. d.
In ships under 60 tons	0	4 0	In ships under 60 tons	0	4 0
" 60 to 100 "	0	7 0	" 60 to 100 "	0	7 0
" 100 to 200 "	0	15 0	" 100 to 200 "	0	15 0
" 200 to 300 "	1	0 0	" 200 to 300 "	1	0 0
" 300 to 400 "	1	5 0	" 300 to 400 "	1	5 0
" 400 to 500 "	1	10 0	" 400 to 500 "	1	10 0
" 500 to 600 "	1	15 0	" 500 to 600 "	1	15 0
" 600 to 700 "	2	0 0	" 600 to 700 "	2	0 0
" 700 to 800 "	2	5 0	" 700 to 800 "	2	5 0
" 800 to 900 "	2	10 0	" 800 to 900 "	2	10 0
" 900 to 1000 "	2	15 0	" 900 to 1000 "	2	15 0
Above 1000 "	3	0 0	Above 1000 "	3	0 0

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

2. *Engagement of Seamen separately.*  
Two shillings for each.

4. *Discharge of Seamen separately.*  
Two shillings for each.

Table B. (See Section 5.)

Sums to be deducted from wages by way of partial repayment of fees in Table A.

1. In respect of engagements and discharges of crews, upon each engagement and each discharge.	All others except apprentices . . . . .	1s.
From wages of any mate, purser, engineer, surgeon, carpenter, or steward . . . . .	2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge . . . . .	1s.
.. 1s. 6d.		

<sup>1</sup> Repealed in regard to the Port of Cape Town by § 2, Act 13, 1860. (Cape Town Water Police under "Police.")

No. 13—1855.

SCHEDULE OF QUOTATIONS FROM THE IMPERIAL MERCHANT SHIPPING ACT, 1854, REFERRED TO IN THE LOCAL MERCHANT SEAMAN'S ACT, 1855.

149. The master of every ship, except ships of less than eighty tons, registered tonnage, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom, as one of his crew, in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars, as terms thereof, that is to say:

- (1.) The nature and, as far as practicable, the duration of the intended voyage or engagement. <sup>(1)</sup>
- (2.) The number and description of the crew, specifying how many are engaged as sailors.
- (3.) The time at which each seaman is to be on board, or to begin work.
- (4.) The capacity in which each seaman is to serve.
- (5.) The amount of wages which each seaman is to receive.
- (6.) A scale of the provisions which are to be furnished to each seaman.
- (7.) And regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: Provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements, that is to say:

- (1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master.
- (2.) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it and shall attest each signature.
- (3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the

<sup>1</sup> See § 3, Act 13, 1874.



shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes, or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

- (4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

242. (1) The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate (2) in the following cases, that is to say:

- (1.) If upon any investigation made, in pursuance of the last preceding section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.
- (2.) If upon any investigation, conducted under the provisions contained in the eighth part of this Act, or upon any investigation made by a Naval Court, constituted as hereinafter mentioned, it is reported, that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.
- (3.) If he is superseded by the order of any Admiralty Court, or of any Naval Court, constituted as hereinafter mentioned.
- (4.) If he is shown to have been convicted of any offence.
- (5.) If, upon any investigation made by any Court or Tribunal authorized, or hereafter to be authorized, by the Legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters and mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default, [and such report is confirmed by the Governor or person administering the Government of such possession]. (3)

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default, shall for each offence incur a penalty not exceeding fifty pounds;

<sup>1</sup> Powers of cancelling or suspending certificates vested in Colonial Tribunals by § 1, Act 3, 1863.

<sup>2</sup> Or Engineer. § 4, Act 13, 1874.

<sup>3</sup> Words in brackets repealed by § 7, 45 and 46, Vict. c. 76, and therefore not applicable to vessels registered in United Kingdom.

No. 13—1855.

and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same, or of any lower grade.

243. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service commits any of the following offences, he shall be liable to be punished summarily as follows, that is to say:

- (1.) For desertion, he shall be liable [to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also] <sup>(1)</sup> to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.
- (2.) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable [to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also] <sup>(1)</sup> at the discretion of the Court, to forfeit, out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses, which have been properly incurred in hiring a substitute.
- (3.) For quitting the ship without leave after her arrival at her port of delivery, and before she is placed in security, he shall be liable to forfeit out of his wages, a sum not exceeding one month's pay.
- (4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay.
- (5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit, for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.
- (6.) For assaulting any master or mate, he shall be liable to

<sup>1</sup> Words in brackets repealed as regards the United Kingdom by §12, 43 & 44, Vict. c. 16.

imprisonment for any period not exceeding twelve weeks, with or without hard labour.

- (7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.
- (8.) For wilfully damaging the ship, or embezzling, or wilfully damaging any of her stores or cargo, he shall be liable to forfeit, out of his wages, a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.
- (9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole, or a proportionate part, of his wages may be retained, in satisfaction or on account of such liability, without prejudice to any further remedy.

244. Upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master, and also by the mate or one of the crew: and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry, or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceedings, the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof, the Court hearing the case may, at its discretion, refuse to receive evidence of the offence.

247. Whenever any seaman or apprentice is brought before any Court, on the ground of his having neglected or refused to join, or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner, or his agent, so requires, [instead of committing the offender to prison] <sup>(1)</sup> cause him to be conveyed on board, for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may, in such case, order any costs and expenses properly incurred by or on behalf of the master or owner, by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which, by virtue of his then existing engagement, he may afterwards earn.

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship

<sup>1</sup> The words in brackets and the next section (248) repealed as regards United Kingdom by § 12, 43 and 44 Vict. c. 16.

No. 13—1855.

in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if, during such imprisonment, and before his engagement is at an end, his services are required on board his ship, any Justice may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship, for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship, or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

518. In all places within Her Majesty's dominions, except Scotland the offences hereinafter mentioned shall be punished, and penalties recovered in manner following, that is to say :

- (1.) Every offence by this Act declared to be a misdemeanour, shall be punishable by fine or imprisonment, with or without hard labour ; and the Court before which such offence is tried may, in England, make the same allowances, and order payment of the same costs and expenses as if such misdemeanour had been enumerated in the Act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose ; and may in any other part of Her Majesty's dominions make such allowances, and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanour, under any existing Act or Ordinance, or as may be payable or allowable under any Act or Law, for the time being, in force therein.
- (2.) Every offence, declared by this Act to be a misdemeanour, shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner, instead of being prosecuted as a misdemeanour.
- (3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall, in England and Ireland, be prosecuted summarily before any two or more Justices, as to England, in the manner directed by the Act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, and as to Ireland, in the manner directed by the Act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes : And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences, in respect of which the same are instituted were hereby stated to be offences in respect of which two or more Justices have power to convict summarily, or to make a summary order.

- (4.) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction, may appeal to the next Court of General or Quarter Sessions, which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried; provided that such persons shall give to the complainant a notice, in writing, of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties, before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice, before whom the same shall be entered into, shall liberate such person, if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment.
- (5.) All offences under this Act shall, in any British possession be punishable in any Court, or by any Justice of the Peace, or Magistrate, in which or by whom offences of a like character are ordinarily punishable or in such other manner or by such other Courts, Justices, or Magistrates as may, from time to time, be determined by any Act or Ordinance duly made in such possession, in such manner as Acts and Ordinances in such possession are required to be made, in order to have the force of law.

520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

521. In all cases where any district within which any Court or Justice of the Peace, or other Magistrate has jurisdiction, either under this Act, or under any other Act, or at common law for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such Court, Justice of the Peace, or Magistrate shall have jurisdiction over any ship or boat being on, or lying, or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship,

No. 13—1855.

boat, or person were within the limits of the original jurisdiction of such Court, Justice, or Magistrate.

524. Any Court, Justice, or Magistrate imposing any penalty under this Act for which no specific application is herein provided, may, if it or he think fit, direct the whole or every part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's exchequer, in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

No. 3—1863.]

[July 28, 1863.

## ACT

To Amend the Act No. 13 of 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854.'"

Preamble.

WHEREAS the provisions of the Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," as contained in the two hundred and forty-second section thereof, have, in certain respects, been altered and amended; and whereas it is expedient to amend the Act of the Colonial Parliament, to wit, the Act No. 13, 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" so that the same shall correspond with the alterations and amendments in the Imperial Act above mentioned: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Powers of cancelling or suspending certificates of masters or mates vested in local courts.

1. The powers of cancelling or suspending the certificate of a master or mate by the two hundred and forty-second section of the Act of the Imperial Parliament, entitled the "Merchant Shipping Act, 1854," conferred on the Board of Trade, shall vest in and be exercised by the Court or Tribunal duly authorized by the seventeenth section of the Act No. 13, 1855, of the Colonial Parliament, entitled an "Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854'" to make enquiry into the several matters and things recited in the said last-mentioned section of the said Act of the Colonial Parliament.

2. (1) Every such Court or Tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open Court, the decision to which it may have come, and shall, with all convenient dispatch, transmit the proceedings in such inquiry, together with their decision, to the Governor; and no such decision shall take effect unless it be confirmed by the Governor, who may, if he shall think fit, direct such Court or Tribunal to take further evidence, or to reconsider such decision (2); and such Court or Tribunal shall, in all cases, send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if it determine to cancel or suspend any certificate, forward such certificate, or any directions it may have given in reference thereto, to the Board of Trade, with their report, so that the said board may exercise the powers conferred by paragraph four, section twenty-three, of 25th and 26th Victoria, chapter sixty-three.

No. 3—1863.  
Sentence of suspension or cancellation of certificate and proceedings thereupon.

Power of Governor to direct reconsideration of decision.

Report to be made to Board of Trade.

3. No certificate shall be cancelled or suspended unless a copy of the report, or statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate at least twenty-four hours before the commencement of the investigation.

Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of inquiry.

4. Every master or mate whose certificate is or is to be suspended or cancelled in pursuance of this Act, shall, upon demand, deliver his certificate to such Court or Tribunal by which the case is investigated or tried, or, if not demanded by such Court or Tribunal, to the Board of Trade, or as such Court or Tribunal may direct, in writing, and in default shall, for each offence, incur a penalty not exceeding fifty pounds.

Certificate to be delivered to the court.

Penalty for default.

5. This Act may be cited as the "Local Merchant Seaman's Amendment Act, 1863," and shall be construed with and as part of the "Local Merchant Seamen's Act, 1855."

Short title of Act.

No. 13—1874.]

[July 29, 1874.

ACT

To Amend the Law relating to Merchant Shipping.

WHEREAS in an Act of the Imperial Parliament, to wit, the Merchant Shipping Act, 1873, certain provisions are contained respecting unseaworthy ships, and it is desirable to apply and adapt the said provisions to certain ships in this Colony, and to amend in certain respects the Local Merchant Seaman's Acts 1855 and 1863, and the Act 16 of 1857, intituled "An Act to consolidate the Laws relating to Quarantine and Port Regulations:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

<sup>1</sup> Printed as amended by § 5, Act 13, 1874.

<sup>2</sup> But see note (3) to § 242, sched. to Act 13, 1855, *supra*.

No. 13—1874.

Governor may exercise powers vested in Board of Trade by twelfth and thirteenth sections of Imperial Merchant Shipping Act, as to certain ships.

1. The powers and authorities vested in the Board of Trade by the twelfth and thirteenth sections of the said Merchant Shipping Act, 1873, may, as to all British ships registered at or being within the limits of this Colony, be exercised by the Governor of this Colony; and the said sections shall, as to all such ships, be read and understood as if the Governor was referred to and mentioned instead of the Board of Trade.

Owner of any ship surveyed under previous section may, if dissatisfied, apply to Supreme or Eastern Districts Court.

2. If the owner of any ship surveyed under the last preceding section is dissatisfied with any order made upon such survey, he may apply to the Supreme Court; or, in case the ship is in any port within the jurisdiction of the Eastern Districts Court, to that Court. The Court may, upon such application, if they think fit, appoint one or more competent persons to survey the ship anew, and any surveyor so appointed shall have all the powers of the person by whom the original survey was made. Such survey anew shall, if so required by the Governor or the shipowner, be made in the presence of any person or persons appointed by them respectively to attend at the survey. The Court to which such application is made may make such order as to the detention or release of the ship, as to the payment of any costs and damages which may have been occasioned by her detention, as to the payment of the expenses of the original survey, and of the survey anew, and otherwise as to the payment of any costs of and incident to the application, as to the Court may seem just.

Powers of Court so applied to.

Agreement with seamen in this Colony may be for a certain period, instead of for voyage.

3. Any agreement made in this Colony with a seaman may, instead of stating the nature and direction of the intended voyage or engagement as by the one hundred and forty-ninth section of the Imperial Merchant Shipping Act, 1854, required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Powers of suspending certificates of masters or mates extended to engineers.

4. The Court or Tribunal in this Colony by law vested with the power of cancelling or suspending the certificate of a master or mate is also hereby vested with the like power of cancelling or suspending the certificates of engineers of steamships in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout after "master" or "masters" in the two hundred and forty-second section of the Imperial "Merchant Shipping Act, 1854," and in the "Local Merchant Seaman's Amendment Act, 1863."

Second section of Merchant Seamen's Amendment Act, 1863, amended.

5. The second section of the "Local Merchant Seaman's Amendment Act, 1863," shall be read and construed as if the words "with respect to cancelling or suspending certificates" in the commencement thereof were omitted.

Twenty-first section of Act No. 16 of 1857 repealed, and other provision made instead.

6. The twenty-first section of the said Act No. 16 of 1857 <sup>(1)</sup> is hereby repealed, and the following shall be read and substituted in its place, that is to say:—The respective Port Captains of the

<sup>1</sup> For text of this Act see "Harbours."



ports of Cape Town, Port Elizabeth, Simon's Town, Port Alfred, East London, and such other ports in this Colony as may from time to time be appointed for that purpose by Proclamation of His Excellency the Governor, to be published in the *Government Gazette*, shall, upon the arrival of any vessel in the said ports between sunrise and sunset, board her immediately, and, if practicable, previous to her coming to anchor, in order that he may point out to the master of the vessel a proper berth; and in case he should be prevented from so boarding, in consequence of the quarantine regulations, he shall point out a berth for such vessel arriving under such circumstances, and after having pointed out any such berth as aforesaid it shall be lawful for the Port Captain, if it shall appear to him necessary so to do, to order any vessel to shift or change her berth to any other berth to be pointed out, and any master of a vessel disobeying any order of a Port Captain under this section shall be liable to a penalty not exceeding £50.

No. 13—1874.  
Vessels arriving at certain ports to be boarded, and have berths assigned to them.

Penalty on vessels changing berths.

7. The first section of this Act shall not apply to ships engaged exclusively in the coasting trade of this Colony, as such coasting trade is defined by the second section of the Act No. 26 of 1872 (1) intituled "An Act for Regulating the Coasting Trade of the Colony of the Cape of Good Hope."

First section of this Act not to apply to coasting vessels under Act No. 26 of 1872.

8. This Act may for all purposes be cited as the "Local Merchant Shipping Act, 1874."

Short title.

No. 3—1858.]

[June 5, 1858.]

AN ACT

To Declare the Consent of the Parliament of the Cape of Good Hope to the Erection of certain Light-houses in the said Colony, and to the Collection of Dues in respect of such Light-houses, as well as of certain other Light-houses already erected.

WHEREAS, by the "Merchant Shipping Act Amendment Act, 1855," it is enacted that in any case in which any light-house has been, or is hereafter erected on or near the coasts of any British possessions, by or with the consent of the Legislative authority of such possession, Her Majesty may, by Order in Council, fix such dues in respect thereof, to be paid by the owner or master of every ship which passes the same, or derives benefit therefrom, as Her Majesty may deem reasonable, and may, in like manner, from time to time, increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished, the same shall be leviable throughout Her Majesty's dominions in manner in the said Act mentioned; and that no such dues shall be levied in any Colony unless and

Preamble.

<sup>1</sup> For this Act see "Customs."

No. 3—1858.

until the Legislative authority in such Colony has, either by address to the Crown or by an Act or Ordinance duly passed, signified its opinion that the same ought to be levied in such Colony: And whereas heretofore, from time to time, the following light-houses have been erected upon or near the coast of this Colony, namely, the light-house at Cape Agulhas, the light-house at Cape Receife, the light-house on Bird Island, the light-house on Green Point, and the light-house on Mouille Point, which light-houses still subsist: And whereas a light-house is now about to be erected upon South Point and another light-house upon the Roman Rock: And whereas it is expedient that the Parliament of this Colony should declare, by an Act thereof, its consent to the erection of the two lastmentioned light-houses, and its opinion that such dues as Her Majesty may, by any Order in Council, to be issued in pursuance of the "Merchant Shipping Act Amendment Act, 1855," fix in respect of all and singular the various light-houses aforesaid, or of any of them, ought to be levied in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Light-houses on South Point and Roman Rock consented to.

1. The assent and consent of the Legislature of the Colony of the Cape of Good Hope to the erection of the proposed light-houses upon South Point and upon the Roman Rock are hereby attested and declared.

Light-house dues to be levied on ships touching at ports in this colony.

2. The said Legislature hereby signifies its opinion that any dues which may hereafter be fixed by Her Majesty, by Order in Council, in respect of either of the two light-houses in the last preceding section mentioned, respectively, or in respect of the light-houses at Cape Agulhas, at Cape Receife, on Bird Island, on Green Point, and on Mouille Point respectively, ought to be levied in the Colony in the manner provided by the "Merchant Shipping Act Amendment Act, 1855," on all ships arriving or touching at any port or place in this Colony, which ship shall, by the said Act, be liable to the payment of such dues as shall, by any such Order in Council, be fixed in respect of any such light-houses.

No. 18—1861.]

[August 14, 1861.

## ACT

To Declare the Consent of the Parliament of the Cape of Good Hope to the Erection of a Light-house upon Robben Island, and to the Collection of Dues in respect of such Light-house.

Preamble.

WHEREAS by the Merchant Shipping Act Amendment Act, 1855, it is enacted that in any case in which any light-house has been or is hereafter erected on or near the coasts of any British

possessions by or with the consent of the Legislative authority of such possession, Her Majesty may, by Order in Council, fix such dues in respect thereof to be paid by the owner or master of every ship which passes the same or derives benefit therefrom as Her Majesty may deem reasonable, and may in like manner from time to time increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished the same shall be leviable throughout Her Majesty's dominions in manner in the said Act mentioned, and that no such dues shall be levied in any Colony unless and until the Legislative authority in such Colony has either by an address to the Crown or by an Act or Ordinance duly passed signified its opinion that the same ought to be levied in such Colony: And whereas a light-house is about to be erected upon Robben Island: And whereas it is expedient that the Parliament of this Colony should declare by an Act thereof its consent to the erection of said light-house, and its opinion that such dues as Her Majesty may by any Order in Council to be issued in pursuance of the Merchant Shipping Act Amendment Act, 1855, fix in respect of the said light-house should be levied in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 18—1861.

1. The assent and consent of the Legislature of the Colony of the Cape of Good Hope to the erection of the proposed light-house upon Robben Island are hereby testified and declared.

Consent to erection of light-house on Robben Island.

2. The said Legislature hereby signifies its opinion that any dues which may hereafter be fixed by Her Majesty by Order in Council in respect of the said light-house ought to be levied in the Colony in the manner provided by the Merchant Shipping Act Amendment Act, 1855, on all ships arriving or touching at any port or place in this Colony, which ships shall by the said Act be liable to the payment of such dues as shall by any such Order in Council be fixed in respect of such light-house.

Dues to be levied.

No. 1—1870.]

[May 5, 1870.]

## ACT

To Regulate the Apprehension within this Colony of Deserters from Her Majesty's Land Forces.

WHEREAS it is expedient that better provision be made for the apprehension of soldiers deserting from Her Majesty's land forces within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance No. 98 of the year 1833, intituled "An Ordinance for facilitating the Apprehension and regulating the mode

Ordinance No. 98 1833, repealed.

No. 1—1870.

of Conveyance of Deserters from His Majesty's Land Forces within this Colony to their respective Corps, and for the more prompt payment of Rewards and Expenses consequent thereupon," shall be and the same is hereby repealed.

Authority for apprehending suspected deserters.

2. It shall be lawful, upon reasonable cause of suspicion that a person is a deserter from Her Majesty's land forces, for any peace officer or constable, or, in the absence of such peace officer or constable, for any officer or soldier in Her Majesty's service or other person to apprehend or cause to be apprehended such suspected person and forthwith to bring him or cause him to be brought before any Resident Magistrate or Justice of the Peace living in or near the place where he may be so apprehended; and such Magistrate or Justice shall inquire whether such suspected person is a deserter, and may from time to time defer the said inquiry and may remand the said person in manner prescribed for preliminary examinations in the case of persons accused of crimes: And if it shall appear to the satisfaction of such Magistrate or Justice, by the testimony of one or more witnesses, or by the confession of such suspected person, confirmed by some corroborative evidence, or by the knowledge of such Magistrate or Justice, that such suspected person is a deserter from Her Majesty's land forces, such Magistrate or Justice shall forthwith cause him to be conveyed to and delivered into custody at some military post, if at a reasonable distance, or otherwise to some public prison; and such Magistrate or Justice shall in every such case forthwith transmit to the officer commanding Her Majesty's forces in this Colony a descriptive return in the form prescribed in the schedule to this Act annexed, to the end that such person may in due course and with all reasonable speed be removed by order of such officer and proceeded against according to law. And such descriptive return shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters stated therein, and such Magistrate or Justice shall also and at the same time send to the said officer a report stating the name or names of the person or persons by whom or by whose means the deserter was apprehended and secured; and the said officer shall thereupon cause to be transmitted to the said Magistrate or Justice an order for the payment to such person or persons of such sum, not exceeding two pounds sterling, as such officer shall be satisfied he or they is or are entitled to according to the intent and meaning of the Mutiny Act in force for the time being, and of this Act; and any medical practitioner who, in the absence of a military medical officer, may have been required to examine such suspected person and to give a certificate of such examination, shall be entitled to a fee of five shillings upon his notifying the fact to such officer.

Proceedings of magistrate or justice of the peace before whom suspected person is brought.

Reward for apprehension of deserter.

Fee for medical inspection of suspected person.

Gaoler required to receive deserter, or suspected deserter.

3. Every gaoler, or keeper of any gaol or other public place of confinement, is hereby required to receive and confine therein every person suspected of being or being a deserter who shall be delivered

into his custody in the course of his transmission under the second section of this Act upon production of the warrant of the Magistrate or Justice before whom such person shall have been taken, or of some order of the officer commanding Her Majesty's forces in the Colony, which order shall continue in force until such suspected deserter shall have arrived at his destination; and every such gaoler or keeper shall be entitled to such subsistence money for the maintenance of such person as shall be directed by Her Majesty's regulations.

No. 1—1870.

4. Every Resident Magistrate or Justice of the Peace before whom any suspected deserter shall be brought shall investigate the circumstances attending his apprehension, in order to ascertain whether or not there is reason to suspect the existence of collusion between such suspected deserter and the person by or through whose means he shall have been apprehended, or whether such apprehension has been made in good faith; and such Magistrate or Justice shall briefly set forth such circumstances in the return in the second section hereof mentioned.

Inquiry to be made to prevent collusion between suspected deserter and person apprehending.

SCHEDULE.

No. —.

Description Return of ———, who was apprehended (or surrendered himself, as the case may be) on the — day of —, and was committed to confinement at ———, on the — day of —, as a Deserter (or suspected Deserter, as the case may be) from (insert Regiment or Corps).

Age .. .. .	
Height .. .. .	feet inches.
Complexion .. .. .	
Hair .. .. .	
Eyes .. .. .	
Marks .. .. .	
Probable date of enlistment, and where.. .. .	
Probable date of desertion, and from what place .. .. .	

No. 1—1870.

Name and occupation and address of the person by whom, or through whose means the Deserter or suspected Deserter (as the case be) was apprehended and secured .. .. .	
* Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what ground .. .. .	

\* It is important for the Public Service, and for the interest of the Deserter (or suspected Deserter, as the case may be), that this part of the Return should be accurately filled up, and the details should be inserted by the Magistrate or Justice, in his own handwriting, or under his direction by his clerk.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and that he has declared in my presence that he \* a Deserter from the abovementioned Corps.

\_\_\_\_\_  
Signature and address of the Magistrate or Justice.

\_\_\_\_\_  
Signature of the prisoner.

\_\_\_\_\_  
Signature of informant.

\* Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner and consider him\* for military service.

\_\_\_\_\_  
Signature of the military medical officer, or of † private medical practitioner.

\* Insert "fit" or "unfit," as the case may be; and if unfit, state the cause of unfitness.

† No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it shall be shown that his services were not available.

## MINES AND MINERALS.

1. Act 12—1865, (Mining Leases, Namaqualand).	4. Act 19—1883, (Alluvial Diggings and Mines).
2. „ 9—1877, (do. Crown Lands).	5. „ 22—1885, do.
3. „ 15—1883, do.	6. „ 18—1886, do.

No. 12—1865.]

[Oct. 10, 1865.

## ACT

For Fixing the Terms upon which Mineral Lands in Namaqualand, the Property of the Crown, may be leased and worked.

WHEREAS it is expedient to fix by law the terms upon which Mineral Lands in Namaqualand, the property of the Crown, may be leased and worked: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. All Crown lands in Namaqualand, containing or supposed to contain mineral deposits, may be let on lease for mining purposes for a term of thirty-one years, neither more nor less.

Preamble.  
Mineral lands, how to be leased.

2. The extent of land to be included in any lease shall not exceed forty morgen.

Extent of land leased limited.

3. All such leases shall be executed by the Surveyor-General of the Colony, on behalf of the Colonial Government, of the one part, and by the lessee of the other part.

Leases, by whom to be executed.

4. Every lessee shall be bound to pay an annual ground rent of five shillings per morgen for every morgen of land comprised in his lease, and shall also be bound to pay the sum of ten shillings upon or for every ton of ore raised from the land comprised in his lease, or of copper of whatever purity, smelted from such ore, and shipped at any port or place in Namaqualand, whether for exportation beyond seas direct or for transport coastwise to some other port or place in this Colony: Provided that, for the purpose of this Act, a ton shall be taken to mean 2,352 lbs weight.

Terms of lease.

What shall be taken to be a ton.

5. The payment aforesaid of ten shillings per ton shall be made at the port or place in Namaqualand at which the ore shall be shipped, and shall be payable to the principal officer of Customs at such port or place, or to such other person there as the Governor shall from time to time, by notice in the *Government Gazette* nominate and appoint.

Place where and officer to whom tonnage charge shall be payable.

6. Nothing in this Act contained shall extend to impose any charge or duty upon any ore raised from mineral lands being the property of any private person, or of any joint-stock company.

Private mines exempted from preceding charges.

7. As often as any ore such as is in the last preceding section mentioned shall be about to be shipped, then the owner of such ore or his accredited agent, or, in case such ore shall be the property

Declaration to be made on shipment of ore raised from private mines.

No. 12—1865.

of a joint-stock company, the local manager of such company, or his accredited agent, shall, before shipping the same, or any part thereof, make before the officer or person to whom the tonnage payment in the fourth section mentioned would have been payable in case such ore had been raised from Crown land, a solemn declaration which shall be, in substance, as follows, that is to say :

Form of declaration

I, A.B., do solemnly and sincerely declare that the —— (state supposed number) bags of ore now lying at —— and about to be shipped on board the ——, bound for ——, contain ore raised from the mine at ——, the property of ——, and that none of the said bags, containing in all —— tons of ore, or thereabouts, contain any ore raised from any Crown land, leased under the Mineral Leases Act of 1865; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

(Signed) A. B.

Declared before me at —— day of —— 186—.

(Signed) C. D., Sub-Collector.

(or otherwise as the case may be.)

Declaration to have effect as if made before resident magistrate.

8. Every such declaration shall be of the same force and effect as if made before a Resident Magistrate duly authorized by the said Ordinance, No. 6, 1846, to attest the same.

How if declaration be not made.

9. All ore which shall at any time after the taking effect of this Act be shipped, or be about to be shipped in regard to which such a solemn declaration as aforesaid shall not have been made, shall be deemed and taken to be ore raised from Crown land, and shall be liable to the certain tonnage payment in the fourth section of this Act mentioned.

Notice of intention to ship ore raised from Crown lands required.

10. No person shall ship at any port or place in Namaqualand any ore raised from any Crown land occupied under any lease granted under this Act, until he shall have given notice, in writing, to the officer or person at such port or place to whom the tonnage payment in the fourth section mentioned shall be payable, of his intention to ship the same, which notice shall be, in substance, as follows :

Form of notice.

To the Principal Officer of Customs at —— (or if any other person shall have been appointed describe him.)

I beg to inform you that I am about to ship on board the ——, bound for ——, a quantity of ore raised from —— (describe the leasehold land), held by



—— (name the lessee) under lease from the Colonial Government.

No. 12—1865.

The weight of the ore is —— tons, or thereabouts.

Dated at —— this —— day of —— 18—.

(Signed) A. B.

11. If any person shall ship, or cause to be shipped, any ore subject to such tonnage payment as in the fourth section mentioned without having given, before such shipment, the notice in the last preceding section mentioned, he shall be liable to pay, for every ton of ore so shipped, in lieu and stead of ten shillings, the sum of twenty shillings.

Penalty for shipping without previous notice.

12. Every lessee in any such lease as aforesaid may, with the consent of the Governor, signified by any writing under the hand of the Surveyor-General, assign his lease, or sublet the land contained therein.

Leases may be assigned or sublet.

13. If at the expiration of the first and of each succeeding term of three years during the continuance of any such lease as aforesaid, there shall not have been raised from the land comprised in such lease, and shipped as aforesaid, during the three years which shall have last expired, a quantity of ore not less than fifty tons, the Government shall have the right, should it appear to the Governor fit and proper to do so, to cancel the said lease, and resume the land comprised in it: Provided that it shall not be competent for the Government to claim such resumption later than three months next after the expiration of the term of three years during which term the quantity of ore raised and shipped as aforesaid shall not have been fifty tons: Provided, also, that as often as the lessee shall satisfy the Governor that the land comprised in his lease has been, is being, or is about to be worked in a fair *bonâ fide* manner, then such land shall not be resumed by the Government under the provisions of this section.

Government may cancel lease and resume ground.

Right of such resumption limited.

14. All persons holding, or being entitled to, existing leases or rights of occupation of Crown lands in Namaqualand, for mining purposes, may, upon the taking effect of this Act, surrender such leases or rights, and thereupon obtain leases under this Act, to commence from the date of such leases.

Existing leases may be cancelled, and fresh leases obtained.

15. No lessee shall be entitled to carry any mine or excavation, either above ground or under ground, made in or at the land comprised in his lease, beyond the limits of the said land; and the Civil Commissioner of Namaqualand, and any person authorized by him in writing, shall be at all times entitled to visit the land comprised in any lease granted under this Act, and to inspect the works there carried on.

Extent of mine or excavation limited.

16. No lease granted under this Act shall convey to the lessee any right or title to any gold, silver, or platinum which may be found in the land comprised in his lease.

Gold, silver, and platinum excepted.

17. This Act may be cited for all purposes as "The Mining Leases Act, 1865."

Short title.

No. 9—1877.]

[August 8, 1877.

## ACT

To Authorize the Leasing of Crown Lands supposed to contain certain Minerals. <sup>(1)</sup>

Preamble.	WHEREAS in order to encourage the search for minerals in Crown lands it is advisable that power should be given to lease the same upon certain terms as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
Repugnant laws repealed.	1. So much of the Act No. 2 of 1860, intituled “An Act for regulating the manner in which Crown Land at the Cape of Good Hope shall be disposed of,” and the schedule thereto; of the “Crown Land Act, 1864,” and of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.
Leases not to exceed thirty-one years.	2. All Crown land containing, or supposed to contain, mineral deposits, may be let on lease for mining purposes for such term as the Governor may prescribe. <sup>(2)</sup>
How to be executed	3. [Repealed by Act 15, 1883.] 4. All such leases shall be executed by the Surveyor-General on behalf of the Government of the one part, and by the lessee of the other part.
Rent.	5. Every lessee of any such land shall be bound to pay an annual ground rent of five shillings per morgen for every morgen of land comprised in his lease, and shall also be bound to pay a sum to be fixed by the Governor with the advice of the Executive Council, of which notice shall be given in the <i>Government Gazette</i> , not exceeding ten shillings upon or for every ton of ore raised from the land comprised in his lease; and for the purpose of this Act, a ton shall be taken to mean 2,352 lb. weight.
To whom rent to be paid.	6. The payments aforesaid shall be made to the Civil Commissioner of the division in which the land is situated, or to such other person as the Governor shall from time to time nominate and appoint.
Lessee to keep certain books.	7. Every lessee under this Act shall be bound to keep a book or books in which shall be daily entered the true quantity of ore raised from the land leased under this Act; and all such books shall be open to inspection by the Civil Commissioner of the division, or any person authorized by him in writing to inspect the same, at all reasonable times: and if any such lessee as aforesaid shall not keep or cause to be kept such a book or books as aforesaid, or shall fail to enter or cause to be entered therein daily

<sup>1</sup> See also Act 19, 1883, *infra*.<sup>2</sup> Printed as amended by Act 15, 1883, § 1. See also § 32, Act 19, 1883.

the quantity of ore raised as aforesaid, or shall refuse to allow inspection of any such book or books as aforesaid, he shall be liable to a penalty of not exceeding £100, or to be imprisoned with or without hard labour for not exceeding six months.

No. 9—1877.  
Penalty.

8. Every lessee under this Act shall be bound, within fourteen days after the expiration of each year of his lease to make, before a Resident Magistrate or Justice of the Peace, a solemn declaration in the form as near as may be in the schedule hereunto annexed, stating the true quantity of ore raised from the land comprised in his lease during the then expired year of his lease; and every person who shall make such a declaration, knowing the same to be untrue in any material particular shall be deemed to be guilty of the crime of contravening this section, and shall upon conviction thereof be liable to be imprisoned with or without hard labour for not exceeding twelve months, or to a fine of not exceeding £100.

Lessee to make certain declaration every year.

Penalty.

9. Every lessee under this Act may, with the consent of the Governor signified by any writing under the hand of the Surveyor-General, but not otherwise, assign his lease or sublet the land contained therein.

Lessee may sub-let with Governor's consent.

10. If at the expiration of the first and of each succeeding term of three years during the continuance of any such lease as aforesaid there shall not have been raised from the land comprised in such lease during the three years which shall have last expired, a quantity of ore of not less than fifty tons, the Governor shall have the right, should it appear fit and proper to do so, with the advice of the Executive Council, to cancel the said lease, and resume the land comprised in it: Provided that it shall not be competent for the Governor to claim such redemption later than three months next after the expiration of the term of three years during which term the quantity of ore raised as aforesaid shall not have been fifty tons: Provided also that as often as the lessee shall satisfy the Governor that the land comprised in his lease has been, is being, or is about to be worked in a fair *bonâ fide* manner, then such land shall not be resumed under the provisions of this section.

Lease may be cancelled by Governor under certain circumstances.

11. All persons holding, or being entitled to, existing leases or rights of occupation of Crown lands for mining purposes, may, upon the taking effect of this Act, surrender such leases or rights, and thereupon obtain leases under this Act, to commence from the date of such leases.

Holders of existing leases may obtain fresh leases under this Act.

12. No lessee shall be entitled to carry any mine or excavation, either above ground or under ground, made in or at the land comprised in his lease, beyond the limits of the said land; and the Civil Commissioner of the division, and any person authorized by him in writing, shall be at all times entitled to visit the land comprised in any lease granted under this Act, and to inspect the works there carried on.

Lessee not to mine or excavate beyond the limits of his land.

13. No lease granted under this Act shall convey to the lessee any right or title to any gold, silver, or platinum, or to any

Reservation in lease

- No. 9—1877. precious stones, which may be found in or on the land comprised in his lease.
- Short title. 14. This Act may be cited for all purposes as the “Mineral Lands Leasing Act, 1877.”

---

SCHEDULE.

- Schedule. I, A. B., do solemnly and sincerely declare that the quantity of ore raised from the land situate at \_\_\_\_\_, leased by me under the “Mineral Lands Leasing Act, 1877,” during the year of my lease recently expired, is \_\_\_\_\_ tons and no more; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the eighth section of the said “Mineral Lands Leasing Act, 1877.”
- (Signed) A. B.
- Declared before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 187—
- (Signed) C. D., Resident Magistrate or Justice of the Peace.

---

No. 15—1883.]

[September 27, 1883.

ACT

To Amend the “Mineral Lands Leasing Act, 1877.”

- Preamble. WHEREAS it is expedient to amend the Act No. 9 of 1877, entitled the “Mineral Lands Leasing Act, 1877:” Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Repealing certain words in sec. 2, Act No. 9 of 1877, and inserting other words therein. 1. The second section of the said Act No. 9 of 1877 shall be read as if the words “for a term not exceeding thirty-one years” therein appearing were omitted therefrom, and the words “for such term as the Governor may prescribe” inserted in lieu of the words so omitted.
- Repealing sec. 3, Act No. 9 of 1877. 2. The third section of the said Act No. 9 of 1877 is hereby repealed.
- Short title. 3. This Act may be cited as the “Mineral Lands Leasing Amendment Act, 1883.”

---

No. 19—1883.]

[September 27, 1883.

ACT

For the Establishment, Working and Management of Alluvial Digging and Mines of Precious Stones and Minerals.

- Preamble. WHEREAS it is expedient to amend and consolidate the laws relating to alluvial diggings and mines within this Colony: Be it

enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

No. 19—1883.

1. The several Ordinances, Proclamations, Resolutions of the Legislative Council of Griqualand West, and Government Notices, specified in the first Schedule to this Act, and all and singular the provisions of any other Act, Ordinance, Proclamation, Regulation, Notice, or Order of whatever nature, which may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Repeal of repugnant Ordinances and Acts.

#### DIVISION I.

2. Any person, save as hereinafter excepted, shall be at liberty to take out, at the office of the Civil Commissioner for the division within which the prospecting licence hereinafter referred to shall be applied for, a licence to prospect or search for precious stones or minerals on Crown lands or on lands the title to which is subject to a reservation to the Crown of precious stones and minerals within such division; which licence shall be in the form in the second schedule to this Act, and shall bear a stamp of the value of one pound sterling for each month.

Application for prospecting licence.

3. A prospecting licence shall give the right to prospect and search for precious stones and minerals on Crown lands, or lands subject to a reservation to the Crown of precious stones and minerals on the land specified in such licence, and on the spot to be selected by such prospector as hereinafter provided, and for the period mentioned, without the consent of the owner or proprietor of such lands as aforesaid; and no one shall be allowed to prospect or search for precious stones or minerals on Crown lands, or lands subject to a reservation of precious stones and minerals to the Crown, without obtaining such licence.

Extent of licence.

4. Every holder of a prospecting licence shall have the right of grazing for six horses or mules, or for sixteen oxen, and of taking wood and water for his domestic use, on payment to the proprietor or occupier of the land where such licence is exercised, of ten shillings per diem.

Grazing right secured to holder of licence.

5. Every person taking out a prospecting licence shall enter into a bond for the sum of two hundred pounds, with sureties to be approved of by the Civil Commissioner in the sum of one hundred pounds each, for the due and proper repair of any surface damage done by him on any land of right occupied by any quitrent tenant or lessee.

Bond to be entered into by holder of licence.

6. Any person applying for a prospecting licence shall be bound to specify the farm and as near as may be the place where he is desirous of searching for precious stones or minerals; and the Civil Commissioner shall immediately on his granting a prospecting licence to such applicant as aforesaid, cause a written notice of the granting of such licence to be sent and delivered to the owner or occupier of the farm or place where such licence is to be exercised,

Notice of issue of licence to be served on owner of property

No. 19—1883.

or to be left at his last known place of residence, and shall also cause a written notice of the granting of such licence to be posted outside the office of such Civil Commissioner.

List of persons desirous of subscribing their names below that of the licensed prospector to be opened at the Civil Commissioner's Office.

7. After the posting of such notice the Civil Commissioner shall cause to be opened, at his office, a list of such persons as may wish to subscribe their names under the name of the licensed prospector aforesaid, in manner hereinafter provided. And any person shall, on personal application, at the office of the Civil Commissioner aforesaid, at all reasonable times, between the time of the posting of such notice as aforesaid and the proclaiming of the place subject to such prospecting licence as aforesaid, either as an alluvial digging or mine as hereinafter provided, and, on payment of a fee of two shillings and sixpence, be entitled to subscribe his name on the list aforesaid below the name of the licensed prospector and the name of the last subscriber, if any, in a book to be kept at the office of the Civil Commissioner for the purpose aforesaid, and such list shall be headed with the name of the prospector and the farm or place where he shall be entitled to prospect.

Declaration to be made by successful prospector.

8. It shall be the duty of any person who shall find any precious stones or minerals whilst prospecting under such licence, forthwith to make a solemn declaration of the finding of the same, and to lodge such declaration with the Civil Commissioner of the division, and any person who shall fail to do so shall be liable, upon conviction thereof before any Magistrate, to forfeit his licence, and to pay a fine not exceeding fifty pounds sterling; and in default of payment to be imprisoned with or without hard labour for any period not exceeding six months.

Successful prospector entitled to privilege of selecting claims.

9. Any holder of a prospecting licence under the provisions of this Act who shall prove to the satisfaction of the Civil Commissioner that he has found any precious stones or minerals under such licence, shall be entitled to select twenty claims at the place where such precious stones or minerals shall have been found, and shall receive a certificate from the Civil Commissioner that he is so entitled: Provided, however, in no case shall more than one certificate be granted for any one such place as aforesaid.

Limit of area under prospecting licence.

10. No person shall be entitled under a prospecting licence to dig or search for minerals or precious stones within five hundred yards of the place where any person shall be at the time digging or searching for minerals or precious stones under and by virtue of a prospecting licence without his consent, and any person contravening this section 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 six months.

Licence to prospect to be produced to the owner of property, whenever called for.

11. Every person searching for precious stones or minerals by virtue of a prospecting licence shall exhibit such licence on being required to do so by the owner or occupier of the farm or place on which he is so searching, and on his failure or refusal so to do he may be treated by such owner or occupier as an ordinary trespasser;

and no person shall be entitled under such prospecting licence as aforesaid to dig or search for precious stones or minerals within two hundred yards of any house or building occupied or used by the owner or occupier of the property, nor upon any land under cultivation or required for the purposes of irrigation, without the consent in writing of such owner or occupier, nor upon any diggings which have been duly declared abandoned as hereinafter provided.

No. 19—1883.

12. So soon as a prospector has lodged a declaration of the finding of precious stones or minerals, the Civil Commissioner shall, with all convenient speed, cause a notice of such declaration to be posted outside his office, which notice shall clearly describe the place where the precious stones or minerals have been found and the name of the declarant, and thereupon the prospector's right to prevent any one from searching for precious stones or minerals within a radius of five hundred yards, as hereinbefore provided, shall cease and determine.

Notice of finding precious stones, &c., to be made by Civil Commissioner and securing prospector's right.

13. The Governor after the lodging of such declaration as aforesaid may take such steps as he may deem fit for the purpose of testing the character and the payable qualities of the place on which precious stones or minerals have been declared to have been found, and for this purpose may appoint such duly qualified person on such salary or allowance as he may think fit, and may authorize the expenditure of such sums of money as shall be deemed necessary for the purposes of such testing as aforesaid.

Governor to take steps to test value of any site.

14. Any person who shall make such declaration as aforesaid whilst prospecting or otherwise, well knowing that the precious stones or minerals 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 or stuff dug out, or removed from the spot in which such declarant was prospecting, or where the discovery of such precious stones or minerals is declared as aforesaid to have been made, and were not naturally situated in or on the spot or in the soil or stuff where they were declared to have been found or discovered, or well knowing that the said precious stones or minerals were not found or discovered in or on 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.

15. Any person who shall wilfully place or deposit, or be accessory to the wilfully placing or depositing of any precious stones or minerals in any spot or place for the purpose of inducing any person to make such solemn declaration as aforesaid, or for the purpose of misleading the Governor as to the payable nature of a spot or place where precious stones or minerals have been declared to have been found, and previous to such spot being proclaimed an alluvial digging or mine, or being let out on a lease as hereinafter provided, shall be guilty of the crime of contravening the provisions

The placing of minerals, &c., on places where not naturally found, punishable as fraud.

No. 19—1883.

of this Act, and shall upon conviction thereof suffer such punishment as shall be by law provided for the crime of fraud.

Persons so chargeable with fraud shall be deemed guilty unless the contrary be proved.

16. 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 stone or mineral in any place where the 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 Governor, he shall be taken to have so placed or deposited such precious stone or mineral in contravention of the last preceding section, unless he shall produce satisfactory evidence to the contrary.

## DIVISION II. (1)

Definition of alluvial digging or mine.

17. Every place shall be deemed and taken to be an alluvial digging or mine, as the case may be, which has been or shall be duly declared as such respectively.

Governor's power to declare an area an alluvial digging or mine.

18. Whenever precious stones or minerals shall be discovered in or upon Crown lands, or upon property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, and the Governor shall be satisfied that precious stones or minerals do exist in payable quantities, it shall be lawful for the Governor to declare that such area as shall be described, shall be an alluvial digging or mine as the case may be, and the Governor shall be empowered to make all such rules, orders, regulations or bye-laws as he may deem necessary or expedient for the proper laying out, surveying, enlargement or contraction of any mining areas and depositing floors in connection with such alluvial digging or mine, as also for the expropriation of and compensation for cultivated lands or buildings which may be included in any area so proclaimed, and generally all matters and things connected with the proper and efficient working of such digging or mine.

Appointment of inspectors, &c.

19. At every alluvial digging or mine the Governor may appoint such inspectors, registrars, or other officers, as may be deemed requisite, who shall receive such salaries or allowances out of the public funds as may be deemed necessary, and whose duties and authorities shall be fixed and determined from time to time by the Governor.

Certificates of registration to be issued.

20. Every claimholder not holding a title under the provisions of Griqualand West Ordinance No. 6 of 1880, shall receive a certificate of registration in the form contained in the third schedule to this Act: Provided that no firm or joint-stock company shall be entitled to be registered as holding claims except in the name or names of not more than two persons resident at the alluvial digging or mine in which such claims shall be situated as the duly accredited agent or agents of such firm or joint-stock

<sup>1</sup> See §§ 1 *et seq.* Act 18, 1886.



company, and such agent or agents shall be responsible for all matters connected with the claim or claims for which he or they shall be so registered, exactly as if such claim or claims were registered in his or their own name or names as his or their property: And provided further that no claimholder in any alluvial digging shall be bound to accept a title under the provisions of the Griqualand West Ordinance No. 6 of 1880, aforesaid, in place of the certificate of registration hereinafter provided for.

No. 19—1883.

21. Every certificate of the registration of a claim or portion of a claim, in any alluvial digging, shall be written on or covered by a stamp of not exceeding ten shillings, and in every mine the certificate of such registration shall be covered by a stamp of ten shillings for each month for which each claim or portion of a claim is registered, payable in advance. <sup>(1)</sup>

Stamp chargeable for certificate of registration.

22. Any claimholder desirous of hypothecating his holding in any alluvial digging or mine may effect such hypothecation at the office of the Registrar of Claims, and the same shall be duly entered in a book to be kept for that purpose, and a certificate of hypothecation shall be granted in the form contained in the fourth schedule to this Act.

Hypothecation of claims.

23. Every certificate of hypothecation shall bear a stamp of two shillings and sixpence for every claim or portion of a claim hypothecated in any alluvial digging or mine.

Stamp chargeable for such hypothecation.

24. Every certificate of transfer of a claim or portion of a claim in any digging or mine, shall bear a stamp of not less than two shillings and six pence, but if the sum for which such claim is sold shall be more than fifty pounds, then the certificate shall bear stamps, being for transfer duty, at the rate of ten shillings for every hundred pounds or portion of one hundred pounds of the purchase money, but in no case shall transfer dues exceed the sum of fifty pounds in respect of any one claim or portion of a claim.

Stamp chargeable for certificate of transfer.

25. No transfer of any claim shall be made until the same shall have been registered by the proper officer duly appointed in that behalf, and no such registration shall be made until all rates, liens, licence moneys, royalties or rents due and payable in respect of the property to be transferred shall have been paid.

Conditions under which transfer shall be made.

26. In all cases where two or more claimholders in any alluvial digging shall amalgamate their respective claims, the certificate of the transfer effected for the purpose of carrying out such amalgamation shall bear stamps at the rate of ten shillings for every hundred pounds or portion of one hundred pounds of the assessed value, or if there shall be no assessment, of the declared value of the claims so amalgamated: Provided that the amount of stamps shall in no case exceed the sum of twenty-five pounds.

Stamps of 10s. per £100 chargeable for certificate of transfer when claim is held by two or more persons.

27. In all cases where two or more claimholders in any mine shall amalgamate their respective claims, the provisions herein-

Stamp of 5s. per £100 chargeable in certain cases.

<sup>1</sup> See § 4, Act 18, 1886.

No. 19 - 1883.

before enacted in the last preceding section, with respect to similar cases at an alluvial digging, shall apply *mutatis mutandis* to such mine; save and except that in any such case the certificate, or deed of transfer granted under the provisions of Griqualand West Ordinance No. 6, 1880, shall bear stamps at the rate of five shillings for every hundred pounds of the assessed or declared value, and that the stamps aforesaid or transfer duty shall in no case exceed the sum of two hundred pounds.

Inspector to receive  
licence moneys or  
dues.

28. The inspector of any alluvial digging or other officer duly appointed in that behalf, is hereby empowered to ask, demand, sue for, recover and receive all licence moneys, royalties, rents or transfer dues in respect of any claims in such digging; and to declare as abandoned any claims in respect whereof any such licence moneys, royalties or rents shall be in arrear for a space of thirty days.

Release of liability  
of claimholder in case  
of floods.

29. In the event of any claim in an alluvial digging situate on Crown lands, or upon property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, becoming submerged in consequence of the rising of any river near to which or on the bed of which such claim is situated, and in the event of such claim by reason thereof becoming practically unworkable, the registered owner of such claim shall, if such claim be practically unworkable on the day when the monthly licence money, royalty, or rent is due and payable, be relieved from the payment of the ordinary monthly licence money as aforesaid in respect of such claim for the next ensuing month; and in lieu thereof the inspector shall grant him a certificate of reservation, bearing a stamp of one shilling for the next ensuing calendar month, and in like manner from month to month; which certificate shall entitle him to be registered for each month, so long as the said claim shall continue to be so submerged.

Claims declared as  
abandoned.

30. Any alluvial digging or mine situate on Crown lands, or on private property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, in which digging or mining operations shall not be and shall not have been for a period of twelve weeks carried on in five claims in all in such digging or mine, to the satisfaction of the inspector and in respect of which the licences on not less than one-tenth of all the claims in such digging or mine shall not have been paid for a period of two months, may be proclaimed abandoned; and shall forthwith on such proclamation be closed: but such digging or mine may at any time, under and subject to the provisions of this Act, be again proclaimed an alluvial digging or mine, as the case may be.

Governor may grant  
lease of abandoned  
claims.

31. It shall at all times be lawful for the Governor to grant a lease of any abandoned alluvial digging or mine or any portion thereof when the same is situate on Crown lands or property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, after the same has been declared

abandoned, and to frame regulations for the granting of such leases, and in any lease so granted the following terms and conditions shall, amongst others, be inserted :

No. 19—1883.

- (a) The lease shall be for a term of five years, with a right of renewal from time to time at the option of the lessee.
- (b) The rent reserved shall be a royalty of not less than one pound per centum on the gross amount realized by the sale of precious stones or minerals yielded by the property leased, to be paid from time to time as the same are sold and payment of a sum at the rate of not less than four pounds per month per morgen or portion of a morgen so leased, which latter amount shall be payable half-yearly in advance.
- (c) The lease shall be granted solely for the purpose of digging or mining operations.
- (d) The lessee shall be bound during the term of his lease, to carry on digging or mining operations, to the satisfaction of the inspector, due regard being had to the special circumstances of each case.
- (e) The lessee shall have power to sub-let subject to the approval of the Governor, and any such sub-lease shall be registered under the provisions of the Griqualand West Ordinance, No. 16 of 1880.

Provided that in the case of any abandoned mine being situate on property the title to which is subject to a reservation of minerals and precious stones in favour of the Crown, the lessee as aforesaid shall be entitled to occupy a sufficient area for depositing floors and sites for reef-tipping or other mining purposes beyond the margin of the mine proper, and the proprietor of such property shall be entitled to receive from the lessee by way of compensation for the ground required or leased with such abandoned mine as aforesaid, such sum as may be determined by mutual agreement or by arbitration.

32. Whenever it shall be shown to the satisfaction of the Governor, that precious stones or minerals occur in any tract or area of alluvial deposit upon Crown land or on property the title to which is subject to a reservation of precious stones or minerals in favour of the Crown, and if, after due publication of the application for the lease of such tract or area, there shall not have been received by the Inspector of Claims for the district, before a time specified in the notice, applications from ten or more duly qualified miners for mining claims in such tract or area, it shall be lawful for the Governor to grant a lease of such tract or area, and also of sufficient ground adjoining thereto as shall be deemed necessary for the working of the same to the person making application therefor, upon similar terms and conditions as those in the last preceding section set forth.

Governor may grant lease of crown lands in which minerals, &c., exist.

No. 19—1883.

Compensation to owners of property where crown reservation exists.

33. The owner of any property the title to which is subject to a reservation to the Crown of precious stones or minerals, and on which any alluvial digging is declared, or any abandoned alluvial digging or mine, or tract or area as aforesaid is leased for digging operations, shall <sup>(1)</sup> be entitled to demand and receive from the Public Treasury as full compensation for any surface damage he may sustain or may have sustained by the declaring and opening of such digging half of the licence moneys, rents or royalties collected by the Government in respect of such digging, or leases, as aforesaid: And the persons appointed in that behalf shall be bound to keep books showing the amount of all such moneys, and shall account for and pay over to such owner at the end of every half year all sums of money due to such owner as aforesaid, and shall afford to such owner, at all reasonable times, inspection of such books.

Surveys of mines.

34. For the purpose of working any mine situated on Crown land or on private property the title to which is subject to a reservation of precious stones or minerals in favour of the Crown, the Commissioner shall be and hereby is empowered to cause the claims in such mine to be surveyed by some duly qualified person, as also a sufficient area around such mine, for the purpose of depositing floors, tipping sites and all other matters and things connected with the proper and efficient working of the mine; and to frame a plan of the said survey, which plan shall lie at the office of the Civil Commissioner of the division in which such mine is situate, and shall be open for public inspection at all reasonable times. The area so surveyed may from time to time be altered and enlarged at the discretion of the said Commissioner as the necessities of the mine may require.

Depositing areas.

35. To every licensed claim in any mine which may hereafter be established under the provisions of this Act there shall be attached the right to use and occupy one acre of ground hereinafter called a depositing site, in the neighbourhood of or in proximity to such mine (but so as not to encroach on a reserve of two hundred yards around the margin of such mine) for the purpose of depositing soil, reef or shaly ground, and for the purpose of sinking wells, laying tramways or doing and performing other works, matters and things in connection with mining operations; and in respect of every such depositing site the owner of the soil shall be entitled to charge a sum not exceeding one pound per month, payable in advance.

Governor to make rules for Diggers' Committees.

36. It shall at all times be lawful for the Governor to make such rules and regulations for the election of diggers' committees at all alluvial diggings 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' committees, and to make rules for the guidance of the same.

<sup>1</sup> Printed as amended by Act 18, 1886, § 9.

37. The 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.

No. 19—1883.  
Governor to direct mode of election of such Committees.

38. The Governor may at any time direct that any diggers' committee shall be abolished or dissolved.

Governor may abolish Committee.

### DIVISION III.

39. Whenever a mine shall be or shall have been declared as such it shall be lawful for the Commissioner to order the election of a mining board, and (subject to the provisions hereinafter contained) to frame all such rules and regulations as he may deem expedient for the more efficient management and control of such mine and of mining areas by such mining board, and each mining board shall elect a chairman and frame rules for its own guidance in its proceedings, and bye-laws for the management of the mine and mining area of the mine for which it is elected, and for the payment of the chairman and officers of the board, which rules and bye-laws shall have legal force and effect on being promulgated in the *Government Gazette*, with the approval of the Governor and Executive Council, and shall remain in full force and effect, and shall govern every mining board or any body for the time being invested with the powers of a mining board, and the mine for which they are passed, until cancelled, altered, or amended, by any mining board, or representative body having proper authority so to cancel, alter, or amend the same. The Governor may from time to time fix and determine the number and mode of election of members of any such mining board. The following persons shall be qualified as members of mining boards, to wit :

Mining Boards, election and qualification of.

- (a) Claimholders, in the mine for which such board is to be elected.
- (b) Directors or nominees of companies holding claims as aforesaid.
- (c) Registered accredited agents of holders of claims as aforesaid.
- (d) Resident nominees of companies having their head office beyond the boundaries of any portion of the Colony in which this Act shall be in force.

40. Save as hereinafter excepted every *bonâ fide* holder of rateable claim property in the mine, and every duly authorized representative of such *bonâ fide* holder, or of any company *bonâ fide* holding rateable claim property in the mine, shall be entitled to vote for candidates to be elected for the mining board in manner hereinafter provided. The assessed value of rateable claim property in any mine at the time of election, whether such assessment has been made under any Act, Ordinance, or legal enactment in force previous to the framing of this Act, or whether the same has been made under the provisions of this Act, shall be divided by the number of claims registered in such mine, and the amount

Who qualified to vote for members of Mining Board.

No. 19 -1883.

so arrived at shall be the unit voting power and unit value, and shall carry one vote. Any voter possessing either individually or in his representative character, claim property assessed as aforesaid at double the value of such unit voting power, shall be entitled to two votes; if possessing property aforesaid of treble such unit value, he shall be entitled to three votes, and so on in like proportion.

Holders of property may unite to acquire property qualification to vote.

41. Any person holding or representing property in the mine which is assessed at a value below the unit value or voting power aforesaid, may unite with any other person or persons in a like position, and such united or amalgamated value shall carry a right to vote to the number of unit values or voting powers made up by such amalgamation. No vote shall be given in respect of any property in a mine the rates upon which shall be in arrear and unpaid for a period of six calendar months; or which shall be held or owned by any person who shall be insolvent, or shall have assigned his estate for the benefit of his creditors. Any member of a mining board deriving his qualification from any such property, shall, *ipso facto*, cease to be qualified or to hold office as a member of such mining board.

Conditions for voting.

42. All voting for candidates may be cumulative, and each voter shall be entitled to multiply the number of votes he is entitled to, according to the number of unit values as aforesaid, by the number of members to be elected, and may distribute such votes amongst the candidates as he may think fit.

Assessment of claims

43. As soon as possible after the taking effect of this Act, an assessment of the claims in every mine shall take place, and thereafter in the same month of each year a fresh assessment shall be made. In case any assessment of any mine exists at the time of the passing and promulgation of this Act, such assessment shall remain in full force and effect, until an assessment of such mine under the provisions of this Act shall have been made.

Existing bye-laws, &c., to be retained until altered under this Act.

44. All existing resolutions, rules, regulations, or bye-laws having the force of law at any mine at the time of the passing and promulgation of this Act shall, in so far as they are not inconsistent with or repugnant to any of the provisions of this Act, continue in full force and effect, until cancelled, altered, or amended by any resolution, rule, regulation, or bye-law, made or passed, respectively, under the provisions of this Act.

Mode of assessment of value of claim property.

45. For the purpose of assessing the value of claim property in a mine for rating purposes, two competent persons shall be appointed as assessors, one by the mining board and the other by the Commissioner, and the said assessors as soon as they shall have been so appointed, and shall have accepted office, and before proceeding to their duties as assessors shall choose a referee. There shall be a fresh election or appointment of assessors, and a referee under the provisions of this Act for each assessment to be made; provided that the same assessors or assessor or referee may

be appointed in manner herein provided for any subsequent assessment.

No. 19—1883.

46. In the event of there being no mining board in existence at any mine, and no assessment of the rateable claim property in such mine upon which the election of a mining board can proceed, it shall be lawful for the Commissioner to appoint a person or persons for the purpose of making such assessment.

Under certain circumstances Commissioner may appoint assessor.

47. In the event of the assessors so appointed as aforesaid, failing or refusing to appoint a referee, within one week after the acceptance of such appointment, the Commissioner shall have power to appoint a referee. Every referee shall, if the assessors fail or refuse to assess the value of the claim property in any mine for which they may be appointed, or any portion of such property, proceed to assess the value of such property or portion thereof.

Referee, power of Commissioner to appoint.

48. The assessors, or assessor, or referee, as the case may be, shall have power to summon witnesses and take evidence upon oath, the decision of the assessors, or in case of dispute, of the referee, or in case there be only one assessor as hereinbefore provided, then of such assessor, as to the assessment of any claim property in any mine, shall be final, subject only to the powers of appeal granted by the eleventh section of Act No. 40 of 1882, and which said section is hereby incorporated with this Act.

Power to take evidence by assessor.

49. All assessments made under the provisions of this Act for any mine shall remain in full force and effect until another and fresh assessment shall have been made for such mine.

Duration of assessment.

50. The expenses incurred in connection with the assessment of any mine shall be borne by the mining board of such mine, or if there be no mining board by the owners of claim property in such mine *pro rata*, according to the assessed value of the claims in such mine. As soon as any assessment or valuation as aforesaid shall have been completed, an assessment roll embodying the same shall be compiled and placed in the office of the mining board, or in case there be no mining board, then outside the office of the Resident Magistrate for the district in which such mine is situated, for the inspection of any owners of property in the mine at all lawful and reasonable times, and a day or days fixed by the assessors to hear and consider objections thereto.

Defrayment of expenses of assessment

51. Every mining board shall be empowered to levy from time to time rates for the general purposes of the mine upon the claims in the mine, and to fix tariffs for the removal of reef and water from the mine or the margin thereof, and the rates so levied, and the tariffs so fixed, shall be passed as bye-laws: Provided that reasonable notice, to the satisfaction of the Commissioner, shall in all cases be given of the intention of any mining board to submit any such bye-laws to the Governor for his approval.

Rates may be levied by mining boards or claims.

52. Every mining board shall be empowered to levy from time to time rates upon all property in the mining areas, used or

Rates may be levied on property in mining areas.

No. 19—1883.

Notice of rate to be made public.

Regulations under Act to have force of law on publication in *Government Gazette*.

Exemption from divisional or municipal rates.

Power of Governor to dissolve mining board.

Voting at mining boards.

Dissolution of mining board and appointment of a board by Governor.

When greater part of mine becomes private property mining board to be dissolved

Settlement of claims against mining boards.

held to be used for mining purposes, and all moneys so received by rates shall be applied to the general purposes of the mine.

53. When any rate is duly levied, the mining board shall give reasonable public notice of the day on which the same shall become due and payable, and all persons liable to pay the same shall do so on or before the day fixed in the said notice.

54. All rules, regulations, bye-laws framed under the provisions of this Act shall, on due promulgation in the *Gazette*, have the full force and effect of law: Provided that the same may be at all times repealed, altered, or amended by means of other rules, regulations, or bye-laws framed and promulgated as aforesaid.

55. All claim property in any mine shall be exempted from the payment of any Divisional Council or Municipal rate.

56. The Governor may upon petition from the majority of voters for the mining board, representing not less than half of the assessed property in the mine, dissolve the mining board, and may, by notice in the *Gazette*, direct the election of a new mining board for such mine, or appoint a board in terms of the provisions of the fifty-eighth section of this Act.

57. No resolutions of any mining board shall have any force or effect unless a quorum to be fixed by bye-laws approved by the Governor be present and assisting at the passing thereof, and in every case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

58. If any mining board shall not for a period of two months have a sufficient quorum for the transaction of business, or shall not for the same period meet for the transaction of business, or shall for a like period fail, neglect, or refuse to deal with the requirements of the inspector, or to submit the same to arbitration as hereinafter provided, such mining board shall *ipso facto* be dissolved, and in case of such dissolution, or in case there shall not be for other reasons any mining board in existence, it shall be lawful for the Governor to appoint a board of three persons, of whom the inspector shall *ex-officio* be a member and chairman, and who shall have all the power and exercise all the duties of a mining board, and shall do all things necessary for the working of the mine until such time as the Governor may direct that a mining board or another mining board shall be elected, and such board so elected shall have taken office.

59. In the event of nine-tenths in assessed value of any mine becoming the property of one person, or firm, or partnership, or company, the mining board then existing shall be dissolved, and no fresh mining board, whilst the mine is so held, shall be elected or appointed.

60. In case any mining board shall cease to exist or shall have ceased to exist, or shall be dissolved under the provisions of either of the two last preceding sections and until the election of a fresh mining board, it shall be lawful for any person having any claim



against such board to continue any action already instituted or to commence legal proceedings against the members of the outgoing or last subsisting mining board, as representing such board, and to proceed with such proceedings to the final end and determination of the same just as if such mining board had not ceased to exist or been dissolved, and such person shall have the same remedies at law as if such mining board were duly constituted under the provisions of this Act. And in the event of the election of a fresh mining board or the appointment of a board in terms of the fifty-eighth section, such mining board shall stand and be in the same position as regards outstanding liabilities as the outgoing mining board, and all actions previously instituted shall be continued and carried on against such fresh mining board, or board appointed as aforesaid, without interruption of any kind.

61. Every mining board shall be and hereby is empowered to borrow from time to time such sum or sums of money as may be required for the purpose of liquidating debts incurred or for the due and efficient working of the mine under its control, on debentures, or otherwise, upon security of special rates to be levied upon the claims under its control and on such terms and conditions as may be agreed on: Provided that the sanction and approval of the same by registered holders of claims in such mine representing not less than three-fifths of the assessed value of such mine, shall previously have been obtained by the mining board at a meeting of claimholders to be specially called for that purpose by public notice of not less than fourteen days in the *Gazette* and local newspapers (if any), or in such other manner as the Governor may from time to time order and direct.

Borrowing powers  
of mining boards.

62. In the event of proceedings being taken under the "Public Bodies Debts Act," 1867, upon any judgment obtained against any diggers' committee, mining board, or board appointed under the provisions of this Act, in respect of any debt or liability contracted for any loan or moneys raised or any other debt lawfully incurred, either before or (1) after the passing of this Act by such committee or board, the third section of the said "Public Bodies Debts Act" shall be read and construed as if both the provisos therein contained were omitted therefrom.

Proceedings against  
mining board under  
"Public Bodies  
Debts Act."

63. Any duly elected mining board at any mine which shall be in office at the time of the taking effect of this Act shall remain in office and exercise all powers and perform all duties by this Act provided to be exercised and performed by a mining board elected under the provisions of this Act, until such time as a mining board shall be elected and take office under the provisions of this Act: Provided that the Governor shall forthwith order that any mine for which there is a mining board existing at the time of the passing of this Act, shall proceed to elect a fresh mining board under the provisions of this Act: And as soon as such mining

Mining Boards al-  
ready in existence  
not affected by Act  
until re-elected un-  
der its provisions.

<sup>1</sup> Printed as amended by Acts No. 22, 1885, and 18 of 1886.

No. 19—1883.

board shall be duly elected, he shall proclaim some day, being not less than ten clear days from the date of election of such fresh mining board, when such mining board shall take office, and the original or existing mining board shall cease to exist, and such fresh mining board shall hold office until the thirty-first December in this year, and thereafter the term of office of each successive mining board, shall be until the thirty-first December in the year for which it may be elected: Provided that every mining board shall retain office until its successor has been duly elected, and shall exercise the same duties and powers as theretofore.

Purchase of claims at execution sales by boards.

64. In the event of any mining board, body or officer for the time being representing the claimholders of any mine recovering judgment in any competent Court against any defaulting claimholder for liens registered or for arrear rates, and the claim property in respect of which liens shall be registered or rates shall be so in arrear, shall be attached in execution of the judgment aforesaid, the said board shall be empowered to buy in such claims at the execution sale for any sum not exceeding the amount of liens or arrear rates and taxed costs under levy.

Definition of abandoned claims.

65. From and after the promulgation of this Act, a claim in any mine shall be considered as abandoned whenever the same shall have been abandoned in accordance with any rule, regulation, ordinance, or law heretofore in force, or when the registered and rightful owner of the same shall give notice in writing to the inspector, or if held under the provisions of Griqualand West Ordinance No. 6 of 1880, to the Registrar of Deeds, of his intention to abandon the same.

Power of boards, &c., to dispose of claims, or otherwise, for benefit of mine.

66. Any claim legally abandoned or purchased in terms of the sixty-fourth section shall be the property of the mining board, body, or officer for the time being representing the claimholders at the mine where such abandoned claim is situate, and such board, body, or officer shall, saving all lawful demands of any creditor holding a lien against such claim, and subject to the provisions of the last preceding section, be entitled to dispose of, hold, or otherwise deal with the same, as he or they may deem expedient for the benefit of the mine generally, but shall not be liable for any registration fees, taxes or charges in respect of such claim, nor to work down or make safe the same, unless the bye-laws of any mine shall determine otherwise: Provided that any neighbouring claimholder shall be entitled to work down and make safe any claim so purchased or abandoned at his own expense should he desire to do so on being served with a notice by the inspector or other officer appointed in that behalf that such claim is dangerous to life or limb, and shall be entitled to register a lien for the value of the work so done according to the tariff fixed by the mining board as hereinbefore provided against such claim.

Granting of certificates to persons entitled to register a lien against claim.

67. Any person entitled under the provisions of this Act, or of any ordinance, rule, regulation or bye-law now in force, or which

may hereafter be promulgated to register a lien against any claim or claims in any mine shall apply to and obtain a warrant in that behalf from the inspector of the mine in which such claim or claims shall be situated, which warrant shall be filed in the office of the Registrar of Claims; and the registrar or other officer duly appointed in that behalf, shall grant to such person a certificate in the form contained in the fifth schedule to this Act, and every such certificate shall bear a stamp of ten shillings.

68. All existing liens and all liens which shall be registered hereafter against any claim or property in any mine, shall entitle the persons in whose favour such liens are registered to recover the amount thereof by action in any competent Court from the owner or registered holder of such claim or property: Provided, however, that no greater sum shall be recoverable under or by virtue of any lien than the amount which may be realized by the sale of the claim or property against which the same is registered, and such claim or property shall alone be liable to be taken or sold in execution of any judgment given in any such action aforesaid.

69. In the event of its being discovered at any depth from the surface of any mine, that the soil containing precious stones or minerals shall expand or diverge in any direction, the registered claimholders in such mine shall be entitled to follow such soil in all its dips, angles, and variations, and the soil containing precious stones or minerals lying outside of the actual declared boundaries of claims at the time of the discovery of such expansion or divergence shall be held to be the common property of the then registered claimholders in such mine, and shall be worked at the expense and for the benefit of such claimholders in *pro rata* shares and proportions according to the assessed value of the several holdings in such mine; provided that the then registered claimholders in such mine shall pay to the Government, or person in whom the reservation of precious stones and minerals is vested, an amount equal to two and a half per centum on the gross returns of all precious stones or minerals found in such additional area of soil as aforesaid: provided, always, that in case of any mine under the control of any mining board, body, officer, or company, it shall be the duty of any person who shall make the discovery of the mine expanding or diverging beyond the known or declared boundaries, to notify the same to the Registrar of Claims or other officer charged with the duty of registering claims within seven days from such discovery, and the registrar shall thereupon post a certificate of such information on the office door of the Registrar of Claims, and shall forward written notice thereof to the mining board, body, officer, or company, who shall be, and hereby is, empowered to test the alleged discovery, and should the same be verified, shall forthwith convene a meeting of claimholders for the purpose of considering in what manner such divergence or expansion of additional area shall be worked or dealt with, claimholders voting on the

No. 19—1883.

Liens, existing or registered, to be recoverable in any competent court.

Provisions in event of expansion or divergence of mineral soil; registered claimholders to pay to Government  $2\frac{1}{2}$  per cent. on the gross returns.

No. 19—1883.

Penalty for neglect to notify any divergence or expansion of mine.

basis of the provisions of the fortieth section of this Act: provided, further, that the person so discovering the divergence or expansion of additional area aforesaid shall be entitled to claim from the mining board, body, officer, or company, a refund of all reasonable costs, charges and expenses to which he may be put in sinking shafts, tunnels, or works necessary for the purpose of reporting the nature of the mine at such greater depth; and should such person neglect or refuse to notify the discovery by him of any divergence or expansion of the mine within the time limited as aforesaid, he shall not be entitled to claim any refund of moneys laid out by him as aforesaid, and shall, in addition, be liable to a penalty not exceeding five hundred pounds sterling, to be recovered by the mining board, body, officer, or company in any competent Court; and provided, lastly, that any claimholder shall be at liberty at the meeting called by the mining board, body, officer, or company on the notification of the Registrar of Mines or other officer as aforesaid, to decline forthwith to share in the expenses or profits derived for the working and development of any such divergence or expansion of additional areas so discovered; and such claimholder so electing not to share as aforesaid, shall not be entitled to take part or vote at such meeting or in any further proceedings connected with such additional area.

Order of preference for amounts due on any claim.

70. The following order of preference for amounts which may now be due and owing or may hereafter become due and owing upon or in respect of any claim in any digging or mine, is hereby established, viz. :—

1. Claim licences,
2. Rates and dues lawfully imposed in respect of such claim or claims,
3. Expenses of work done by any diggers' committee or mining board by order of the inspector,
4. Liens for work done to or on claims by virtue of this Act or any bye-law,
5. Conventional hypothecations,
6. Fines or penalties recovered in any Court in respect of such claim or claims.

Governor may proclaim regulations, &c., for working of claims and machinery.

71. It shall be lawful for the Governor from time to time to proclaim rules and regulations concerning the granting of miners' certificates, entitling persons to hold and work claims in any alluvial digging or mine, and to fix the fees to be charged for such certificates, and concerning the manner of working claims and machinery at any digging or mine, and for the regulation of all works within the mining area, in so far as the protection of life and limb is concerned, and generally for the proper management of all diggings and mines, and to fix the penalties for the breach of such rules and regulations not exceeding those in the next succeeding section mentioned, and such rules and regulations shall on being proclaimed, have the force and effect of law at the digging

or mine referred to in such proclamation as aforesaid, until the same are cancelled, altered or amended by any subsequent proclamation made under and by virtue of the provisions of this section.

No. 19—1883.

72. Any person mining or digging for precious stones or minerals without a prospecting licence, or without a claim licence, on Crown land or on private property containing a reservation of minerals in favour of the Crown, 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 Act 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.

Penalty for mining or digging without prospecting licence.

73. The transfer dues payable under the provisions of the Griqualand West Ordinance No. 6 of 1880 shall in no case exceed the transfer dues payable under the provisions of this Act, anything in any Ordinance, Act, Proclamation or legal enactment to the contrary notwithstanding.

Transfer dues, limit of.

74. All fines and penalties imposed under the provisions of this Act or of any rules, regulations or bye-laws to be framed and proclaimed in manner hereinbefore provided shall be recoverable in the Court of the Resident Magistrate for the district in which such digging or mine is situate.

Recovery of fines, &c., by law.

75. All actions brought by or against a diggers' committee or mining board shall be brought by or against the chairman of such committee or board.

By or against whom actions are to be brought.

#### DIVISION IV.

76. Whenever any alluvial digging or mine shall have been already opened or shall be opened to the extent hereinafter defined upon any land the property of any private owner, the title to which land is not subject to any express reservation of precious stones or minerals in favour of the Crown, or whenever any precious stones and minerals shall be discovered upon any land as aforesaid and the owner of such land shall desire to establish an alluvial digging or mine on such property, and shall have sold or let or given licence to work mining or digging claims on such property exceeding in number twenty-four such claims, or to search for precious stones or minerals on such property over a surface or surfaces to an extent of twenty thousand square feet in all or upwards, such claims or licences in each case to be worked by any number of persons exceeding seventy in all, or whenever in the vicinity of any claims worked on such private property as aforesaid a population shall be settled for the time being of upwards of one hundred persons, the place where such claims or such licences shall be

Alluvial diggings or mines upon private properties where there is no express reservation in favour of the Crown.

No. 19—1883.

worked, or shall lie to be worked, shall be deemed to be an alluvial digging or mine, and may be proclaimed and defined as such in like manner as if the same were situate on Crown land, save that the amount of licence money, rent, or royalty to be paid for each claim shall be fixed by the owner of such property as aforesaid.

Contribution by private proprietors on which diggings or mines are proclaimed.

77. The proprietor of any private property the title to which is not subject to any reservation of precious stones or minerals in favour of the Crown, and on which any alluvial digging or mine may under the provisions of this Act be proclaimed, shall contribute ten per cent. of any licence moneys, rents, or royalties received by him in respect of such digging or mine for the purpose of defraying the public expenditure necessary for the maintenance of order and good government, and the protection of life and limb, within the defined limits of such digging or mine or mining area, and shall keep proper books, showing the amount of all such moneys received by him as aforesaid; and in case no such books are kept by such proprietor or such books are irregularly kept, then and in that event such proprietor shall pay such sums as may be necessary to defray the public expenditure as aforesaid, whether such proprietor has received out of the licence moneys, rents or royalties payable in respect of claims sufficient to defray such expenditure or not; provided that nothing in this Act shall be taken to interfere with or affect any existing agreement entered into between the Government and any owner of such private property as aforesaid respecting the amount to be paid by such owner for the purpose of defraying the expenditure necessary for the maintenance of order and good government at any alluvial digging or mine situate on such property as aforesaid.

Provision in regard to abandoned claims in such mines.

78. Every abandoned claim in any mine, situate upon land the title to which is not subject to any reservation of minerals or precious stones in favour of the Crown shall become the property of the mining board, body, or officer mentioned in the sixty-sixth section of this Act, under and by virtue of the provisions of the said section, unless the owner of such land shall, within thirty days after he shall have received written notice from any officer duly appointed in that behalf of the fact that such claim has been abandoned, signify to such officer in writing his willingness to take upon himself all the liabilities and responsibilities of an ordinary claimholder in respect of such claim. In the event of his so signifying his willingness as aforesaid, he shall thereupon become and be subject to all the laws, rules, and regulations applicable to other claimholders in such mine in respect of such claim.

Act to apply to mines on lands not subject to reservation of minerals.

79. Save as hereinbefore stated, all the provisions of this Act relating to mines and diggings upon Crown land, or land the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, shall be held applicable to all duly proclaimed mines and diggings situate upon land the title to which is not subject to such reservation as aforesaid.

## DIVISION V.

No. 19—1883.

80. The provisions of this Act shall apply only to the territory of Griqualand West and such other districts as may be from time to time proclaimed mining districts within this Colony.

Application of provisions of Act.

81. In the interpretation of this Act unless repugnant to the context the following words and expressions shall have the meaning following :

Construction and interpretation.

The word "claimholder" shall be taken to include partnerships and joint-stock companies.

Save all existing rights, the word "claim" shall be taken to mean any portion of ground assigned for mining purposes of a size to be from time to time proclaimed by the Governor.

The words "reef or shaly ground" shall be taken to apply to the shale rock or soil outside and around diamondiferous claims, and shall not include what is commonly known as "floating shale," or shale and rock in or covering the actual claims.

The word "minerals" shall be held to mean gold, silver, or platinum.

The word "Commissioner" shall mean the Commissioner of Crown Lands and Public Works.

82. This Act may be cited for all purposes as "The Precious Stones and Minerals Mining Act, 1883."

Short title.

## THE FIRST SCHEDULE.

Enactment.	Title.	Extent of Repeal.
Proclamation by Governor Sir H. Barkly, No. 71, dated October 27, 1871.	Establishing Diamond Diggings, Office of Inspector of Claims, Diggers' Committees, and their duties and powers.	The whole.
Griqualand West Ordinance No. 10, 1874.	Ordinance to provide more effectually for the working of Diggings and Mines in the Province of Griqualand West.	The whole.
Griqualand West Ordinance No. 14, 1874.	Ordinance to regulate and define the manner of voting for the election of Members of Mining Boards under the provisions of the sixth section of Ordinance No. 10 of 1874.	The whole.

THE FIRST SCHEDULE—(*continued.*)

Enactment.	Title.	Extent of Repeal.
Government Notice by the Commissioners administering the Government of Griqualand West, No. 62, 28th November, 1871.	Giving Inspectors and Sub-Inspectors of Mines powers to grant interdicts.	The whole.
Griqualand West Government Notice No. 332, 9th December, 1876.	Publishing Resolution of Legislative Council cancelling Clause 2, Section V, and Clause 1, Section VI, of Schedule to Ordinance No. 10 of 1874.	The whole.
Griqualand West Government Notice No. 156, September 6th, 1877.	Publishing Resolution of Legislative Council repealing Clause 9, Section VI, of Schedule to Ordinance No. 10 of 1874, and Government Notice No. 182 of 1876.	The whole.
Griqualand West Ordinance No. 12 of 1876.	Ordinance to repeal the 18th Clause of Section 1 of the Schedule to Ordinance No. 10 of 1874.	The whole.
Griqualand West Ordinance No. 15 of 1879.	Ordinance to declare the applicability to the Du Toit's Pan Mine and Bultfontein Digging of a certain portion of the Rules and Regulations contained in the Schedule to Ordinance No. 10 of 1874, from the date of the promulgation of the said Ordinance, and to continue the same in force.	The whole.
Griqualand West Proclamation No. 8, dated September 30th, 1880.	Promulgating Amended Schedule to Ordinance No. 10 of 1874.	The whole.
Griqualand West Ordinance No. 6, 1880.	Ordinance to provide fixity of Tenure in certain Mines and Diggings in the Province.	Section V.
Griqualand West Government Notice No. 86, 7th May, 1877.	Publishing Resolution of Legislative Council enacting addition of Clause 9 to Section V, of the Schedule to Ordinance No. 10 of 1874.	The whole.



## SECOND SCHEDULE.

No. 19—1883.

*Prospecting Licence.*

Civil Commissioner's Office,

18 .

Whereas A. B. has duly complied with the provisions of Section No. \_\_\_\_\_ of Act No. \_\_\_\_\_, of 188\_\_\_\_, licence is hereby granted to him to search and prospect for precious stones and minerals on the farm \_\_\_\_\_ within the Division of \_\_\_\_\_ for the period of \_\_\_\_\_ months from \_\_\_\_\_ to \_\_\_\_\_

*Note*.—This licence does not give any right to prospect on private property where there is no reservation of precious stones or minerals in favour of the Crown, without the consent of the owner of such private property; nor within five hundred yards of any person already prospecting and searching for minerals or precious stones under or by virtue of a prospecting licence, without his consent; nor within two hundred yards of any house or building occupied or used by the owner or occupier of the property; nor upon any land under cultivation, without the written consent of such owner or occupier; nor upon any duly declared abandoned digging.

## THIRD SCHEDULE.

*Form of Recognizance.*

Before me \_\_\_\_\_ Distributor of Stamps for \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, A.B., residing at \_\_\_\_\_ acknowledges himself to be indebted to our Sovereign Lady the Queen in the sum of Two hundred pounds, and C.D. and E.F. severally acknowledge themselves to be indebted to our said Sovereign Lady the Queen in the sum of one hundred pounds, to be levied upon their and each of their goods and lands, upon condition that if the said A.B. shall make due and proper repair of any surface damage done by him on any land upon which he shall have obtained a licence to prospect for precious stones or minerals, of right occupied by any quitrent tenant or lessee, then this recognizance shall be void, or else to remain in full force.

## FOURTH SCHEDULE.

*Certificate of Registration.*

This is to certify that \_\_\_\_\_ of \_\_\_\_\_ is the registered holder of Claim No. \_\_\_\_\_ alluvial digging (*or mine as the case may be*), and that the licence money for the same has been paid in advance up to the \_\_\_\_\_, 18 .

Office of the Registrar of Claims of  
Alluvial Digging (*or mine, as the case may be.*)

Registrar.

## FIFTH SCHEDULE.

*Certificate of Hypothecation.*

This is to certify that Claim No. \_\_\_\_\_ in the  
 Alluvial Digging (or mine, as the case may be), has this day been  
 hypothecated by \_\_\_\_\_ the registered holder of such  
 claim to \_\_\_\_\_ of \_\_\_\_\_ for the sum  
 of £ \_\_\_\_\_

Office of the Registrar of Claims of  
 Alluvial Digging (or mine, as the case may be.)

Registrar.

## SIXTH SCHEDULE.

*Certificate of Lien.*

This is to certify that \_\_\_\_\_ of \_\_\_\_\_ is the  
 registered holder of a lien against Claim No. \_\_\_\_\_ situated  
 in \_\_\_\_\_ Mine in the  
 sum of £ \_\_\_\_\_

Office of the Registrar of Claims of  
 18 \_\_\_\_\_

Mine,

Registrar.

No. 22—1885.]

[August 11, 1885.

## ACT

To Amend in a certain respect "The Precious Stones and  
 Minerals Mining Act, 1883."

Preamble.

WHEREAS in and by the sixty-first section of the Act No. 19 of 1883, known as "The Precious Stones and Minerals Mining Act, 1883," provision was made to enable mining boards to borrow such moneys as might be required for the purpose of liquidating debts incurred, or for the due and efficient working of the mines under their control in manner in said section set forth: and whereas by the sixty-second section of said Act further provision was made for the event of legal proceedings being taken under the Public Bodies Debts Act of 1867, against any diggers' committee, mining board, or board appointed under the provisions of the said Act 19 of 1883, in respect of any debt or liability contracted for any loan or moneys received after the passing of said Act by such committee or board: And whereas the provision so made in and by the said two sections has been found to be insufficient for the purpose of enabling mining boards to liquidate debts incurred for the due and efficient working of the mines under their control, and it is therefore expedient and necessary to extend the provisions of the

said sixty-second section so as to meet cases of loans of money raised for such purpose or other debts lawfully incurred before as well as after the passing of the said Act:

No. 22—1885.

Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The sixty-second section of Act No. 19 of 1883 shall be read and construed as if the words “or any other debt lawfully incurred, either before or” were inserted after the word “raised” where it first appears in the said section.

Section 62 Act 19 of 1883 amended.

2. The proviso of the said sixty-second section is hereby expunged. <sup>(1)</sup>

Proviso thereof expunged.

3. This Act may be cited as “The Precious Stones and Minerals Mining Act Amendment Act, 1885.”

Short title.

No. 18 of 1886.]

[July 6, 1886.

### ACT

To Amend Act No. 19 of 1883 and Act No. 22 of 1885.

WHEREAS it is expedient to amend Act No. 19 of 1883, and the second section of the “Precious Stones and Minerals Mining Act Amendment Act, 1885”: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. To every registered claim in any alluvial digging which may have been already proclaimed, or which may hereafter be established, there shall be attached the right to use and occupy without extra payment, a piece of ground within the proclaimed area of such digging for the purpose of a residence for the holder of such claim. The said piece of ground shall be marked out for each claimholder by the inspector of the digging, and shall not be more than fifty feet square in extent.

Right of claimholder to piece of ground as residence.

2. Any person who has taken out a claim in any alluvial digging may give notice to the inspector of the digging that he intends to sink a shaft in the said claim to a depth of more than fifteen feet; and, if his said claim be situated at a distance of more than two hundred yards from all the other claims in the said digging which are actually being worked, he shall immediately upon the giving of such notice be entitled to mark out for himself ten claims adjoining his said claim; and thereafter, so long as he shall continue to sink the said shaft to the satisfaction of the inspector, no other person shall have the right to dig or search for precious stones or minerals in any of the ten claims so marked out as aforesaid. Any person who shall in contravention of this section dig or search for precious stones or minerals in any claim so marked out as aforesaid, shall be liable upon conviction to a penalty of fifty

Provisions for claimholder in alluvial diggings desiring to sink a shaft.

<sup>1</sup> Printed as amended by Act 18, 1886, § 10.

No. 18—1886.

Finds below fifteen feet to be reported to Inspector.

pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months.

3. If any such person as aforesaid shall find any precious stones or minerals in his claim at a depth of more than fifteen feet, it shall be his duty within a period of three days after finding the same to make a report thereof to the inspector of the digging, and any such person who shall fail to make such report as aforesaid shall be liable upon conviction thereof to a penalty not exceeding fifty pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months; and he shall further forfeit all right or claim to the ten claims which he may have marked out as aforesaid.

On proof thereof finder entitled to registration of claims.

4. So soon as any person shall prove to the satisfaction of the inspector that he has found any precious stones or minerals in his claim at a depth of more than fifteen feet, he shall be entitled to receive certificates of registration of the ten claims so marked out by him as aforesaid, upon payment of the fees provided for by the twenty-first section of Act 19 of 1883.

On failure to get registration claim to be considered as abandoned.

5. Any person save as in the two preceding sections mentioned marking out a claim in any alluvial digging who shall fail to take out a certificate of registration of the said claim within a period of six days, shall be deemed to have abandoned the same, and the inspector of the digging shall thereupon declare the same to be abandoned.

How disputes between claimholders to be settled.

6. All disputes between claimholders in any alluvial digging as to the ownership of any claim, or as to the boundaries of their respective claims, shall be dealt with and decided by the inspector of the digging and to assessors to be nominated by the said inspector: and for this purpose the inspector and assessors aforesaid shall and may examine witnesses on oath and take down their evidence in writing, and shall do all things which they may deem necessary in order to arrive at a proper decision in the case: and the inspector shall have authority to summon all defendants and witnesses to appear before him, and in default of their appearing he may issue warrants for their being brought before him, and for non-attendance he may fine them any sum not exceeding five pounds sterling.

Service of summons on defendant or witness.

7. The service of any summons on any defendant or witness in any case to be heard and decided as aforesaid, shall be performed by any person appointed for that purpose by the inspector, and the said person shall also have authority to execute the warrant mentioned in the last preceding section.

Magistrate of district to have jurisdiction as to offences, fines, &c.

8. All offences created by this Act and all fines and penalties which may be imposed under the provisions of this Act may be prosecuted for and imposed by any Resident Magistrate of any district in which the offence was committed.

Section 33 of Act 19 of 1883 amended.

9. The thirty-third section of the aforesaid Act No. 19 of 1883, relating to compensation for surface damage, shall be read and

construed as if the words within parenthesis in the said section, viz. : 'unless when a lease has been granted as aforesaid, such owner be himself the lessee or joint lessee' were expunged therefrom and formed no part of said section.

No. 18-1896.

10. The second section of Act No. 22 of 1885 shall be read as if the words after the word 'expunged' had not been inserted therein.

Section 2 of Act 22 of 1885 amended.

11. In regard to the Kimberley Mining Board debt due at the time of the passing of this Act, the Court shall levy such rate from time to time as it may in its discretion think proper to fully satisfy such debt with interest at the rate of six per cent. per annum; calculated from the time of the filing of the claims with the Master, and all costs properly incurred in respect thereof, within a period not exceeding four years from the date of the promulgation of this Act, and no set-off shall be allowed to ratepayers in respect of debts due to them by the said mining board exceeding three-fourths of the amount of rates levied.

Provision for payment of Mining Board Debt.

12. This Act may be cited as the "Precious Stones and Minerals Act Further Amendment Act, 1886."

Short title.

---

## MUNICIPALITIES.

A. GENERAL.		18. Act No. 2—1871, (Graham's Town)	
1. Act No. 45—1882, (Law Consolidated).		19. "	12—1878, do.
2. Ord. No. 9—1836, (Creation of Municipalities).		20. "	10—1885, do.
3. Ord. No. 3—1843, (Municipal Taxation of Government Property).		21. "	21—1886, do.
4. " 2—1844, (Amending No. 9, 1836).		22. "	14—1859, (Green and Sea Point).
5. " 8—1848, (Municipal Common Lands.)		23. "	36—1877, (Hanover).
6. " 5—1852, (Purchase of Land for Municipal Purposes).		24. "	42—1882, do.
7. Act No. 15—1860, (Ord. 9, 1836, made perpetual).		25. "	23—1876, (Heidelberg).
8. " 13—1864, (Amending No. 9 1836).		26. "	35—1877, do.
9. " 9—1885, (Amending Ord. 9, 1836).		27. "	11—1883, (Kimberley).
		28. "	30—1884, do.
		29. "	10—1886, do.
		30. "	14—1883, do.
		31. "	17—1869, (King William's Town).
		32. "	21—1881, do.
		33. "	7—1876, (Mossel Bay).
		34. "	6—1878, do.
		35. "	19—1882, do.
		36. "	7—1885, do.
		37. "	16—1885, (Oudtshoorn).
		38. "	8—1869, (Paarl).
		39. "	17—1879, do.
		40. "	6—1881, do.
		41. "	14—1868, (Port Elizabeth).
		42. "	25—1873, do.
		43. "	8—1881, do.
		44. "	31—1877, do.
		45. "	15—1886, do.
		46. "	39—1879, (Queen's Town).
		47. "	19—1885, do.
		48. "	2—1882, (Stellenbosch).
		49. "	13—1872, (Swellendam).
		50. "	30—1877, (Uitenhage).
		51. "	12—1883, do.
		52. "	3—1867, do.
		53. "	27—1874, do.
		54. "	14—1876, do.
		55. "	23—1873, (Worcester).
		56. "	34—1877, do.

## B. SPECIAL.

1. Act No. 18—1880, (Aliwal North).	
2. " 4—1866-'67, (Beaufort West).	
3. " 5—1869, do.	
4. " 20—1875, do.	
5. " 15—1881, do.	
6. " 44—1882, (Cape Town).	
7. " 28—1885, do.	
8. " 29—1877, do.	
9. " 23—1882, do.	
10. " 23—1880, (East London).	
11. " 12—1881, do.	
12. " 15—1882, do.	
13. " 19—1863, (George Town).	
14. " 16—1875, (Graaff-Reinet).	
15. " 34—1886, do.	
16. " 10—1880, do.	
17. " 23—1869, (Graham's Town).	

No. 45—1882.]

[June 30, 1882.

## ACT

To Consolidate and Amend the Law relating to Municipalities.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to municipalities, and to provide more effectually for the Government of Municipalities: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

## PRELIMINARY.

Application of the Act.

1. This Act shall apply to every municipality hereafter constituted, and to every existing municipality which shall in the manner by this Act provided be brought under the operation of this Act.

2. From and after the commencement of this Act the several laws mentioned in the first schedule shall be and the same are hereby repealed, except as to property vested acts and things done or commenced, rights, privileges, and protection acquired, liabilities incurred, offences committed, and proceedings taken, and except as in the fourth section is excepted.

No. 45—1882.  
Repeal of Laws in Schedule.

3. In case any municipality incorporated by any Ordinance or Act of the Legislature shall, in pursuance of the provisions of this Act, come under the operation of this Act, it shall be lawful for the Governor, by proclamation, to repeal any such Ordinance or Act incorporating such municipality, but notwithstanding such repeal, the provisions of the several sub-sections numbered (1) to (6) respectively of the next succeeding section shall apply.

Governor may repeal special Acts incorporating Municipalities coming under provisions of this Act.

4. Notwithstanding the repeal of the laws hereby repealed, the said several laws shall be and continue in force and applicable to every municipality already established as if this Act had not been passed until such municipality shall come under the operation of this Act, and as often as any existing municipality shall come under the operation of this Act, the following provisions shall apply:

Existing Municipal Laws to continue until Municipality comes under this Act

- (1) All creditors of such municipality shall have the same rights and remedies as if this Act had not been passed.
- (2) All municipal regulations then in force in such municipality shall (unless repugnant to the provisions of this Act) continue in force, until altered or amended under this Act.
- (3) The councillors or commissioners, as the case may be, then in office, shall continue in office until the election and first meeting of councillors under the provisions of this Act.
- (4) All rates due or payable to or recoverable by such municipality shall be vested in and recoverable by the municipality newly constituted under this Act, and the valuation or assessment roll in use at such time, shall continue to be used until a new one shall be completed under the provisions of this Act.
- (5) All works and undertakings authorized 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 newly constituted; and no such action, suit, or proceeding shall abate or be discontinued or prejudicially affected by such constitution.
- (6) All property, movable and immovable, and all moneys of or vested in any such municipality, shall be vested in and belong to the municipality newly constituted.

Provisions to apply to Municipalities coming under this Act.

No. 45—1882.

## THE CONSTITUTION OF MUNICIPALITIES.

Incorporation of Municipalities.

5. The inhabitants of every city, town, or village for the time being subject to the provisions of this Act shall, under such name or designation as the 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 other acts and things as bodies corporate may by law do and perform subject to the provisions of this Act.

Mayor or Chairman, and Councillors to be the governing body.

6. Every municipality subject to the provisions of this Act shall be governed by a council composed of a Mayor or chairman, and councillors; and all acts of the council shall be deemed to be acts of the municipality.

Not less than 6 nor more than 24 Councillors, 3 to each Ward.

7. Whenever the number of councillors for any municipality is determined under the provisions of this Act, such number shall be not less than six nor more than twenty-four, and in case such municipality is divided into wards, the number produced by the return of three councillors for each ward.

Powers of Governor in regard to proclaiming Municipalities, &amp;c.

8. Subject to the provisions of this Act, the Governor may from time to time exercise all or any of the powers following:

- (1) Declare any city, town, or village to be a municipality, constituted under the provisions of this Act.
- (2) Assign a name to such municipality.
- (3) Describe the boundaries thereof.
- (4) Unite any two or more villages, which form one continuous area, so as to form one municipality.
- (5) Subdivide or re-subdivide any municipality into any number of wards not exceeding eight.
- (6) Alter the boundaries of or abolish the subdivisions existing in any municipality.
- (7) Determine and alter, within the limits of this Act, the number of councillors assigned to any municipality.
- (8) Alter and adjust the boundaries of adjoining municipalities and determine any questions arising out of such alteration and adjustment.
- (9) 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 of which the portion severed formed one continuous area; and from time to time make any apportionment 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.

9. The Governor may exercise any of the powers by this Act conferred after the presentation of a petition, in pursuance of the



provisions of this Act for the exercise thereof, and after the publication of the substance and prayer of such petition, in the *Government Gazette*, and in some newspaper (if any) circulating in the neighbourhood referred to thereby, at least once a week during three weeks; and it shall be in the discretion of the Governor to refuse the prayer of any such petition, or to grant the whole or any part thereof: Provided always that the Governor shall not exercise, in respect to any existing municipality, constituted by special Ordinances or by any Act of Parliament, 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 *Government Gazette*, another petition signed by not less than one-half of the ratepayers, registered within such municipality, praying him not to exercise such powers.

No. 45—1882.

10. Every petition for the constitution of a municipality shall—

How petitions to be signed.

- (1) In the case of an existing municipality, be signed by not less than three-fourths of the councillors or commissioners (as the case may be) of such municipality.
- (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 Parliament resident within the proposed municipality.

11. Every petition shall state precisely what exercise of the powers by this Act conferred on the 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.

12. It shall be competent for any persons interested to present to the 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.

13. It shall be lawful for the Governor, from time to time, to exercise any of the powers conferred by this Act 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 *Government Gazette*, and in a newspaper (if any) circulating in the neighbourhood, stating the intention of the 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 Governor to exercise such power: Provided, however, that the powers conferred by this section shall not apply to the case of any city, town, or village having a municipality constituted by a special Ordinance or Act of Parliament.

Notice to be given of Governor's intention to exercise powers of his own accord.

In case no cause shown.

Powers not to be exercised in cases of specially established Municipalities.

No. 45—1882.

Resident Magistrate and others to investigate matter of petitions.

14. It shall be lawful for the 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 Governor referred to such Resident Magistrate and other persons for report, in relation to such petitions. The Resident Magistrate and other persons aforesaid shall report within such time as may by the Governor be named in that behalf.

## MUNICIPAL COUNCIL.

Qualification of Councillors.

15. Every male person of full age liable to be rated in respect of immovable property within the municipality of the yearly value of not less than twenty pounds owned or occupied by him (or of different properties of not less than such yearly value owned or occupied in immediate succession) for a period not less than six months next before such election, and in regard to which property no municipal rate made three months or more before the date of such election shall then be due and in arrear, 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.

Disqualifications.

16. No person having his affairs under liquidation, under assignment, or by arrangement with his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalized, no person convicted of treason, murder, rape, theft, perjury, or other infamous crime, and who shall not have received a free pardon, no person of unsound mind, and no person who is not qualified or who is disqualified by this Act, shall be capable of being elected or of continuing a councillor of any municipality.

Further disqualifications.

17. No person holding any office or place of profit under Government, or under or in the gift of the council of any municipality, or concerned in, or participating in the profit of, any contract with any municipality, or concerned in or in the profit of any work to be done under the authority of any such council, shall be capable of being or continuing a councillor of such municipality: Provided that nothing in this section contained shall extend or apply to any contract entered into by any company, partnership, or association consisting of more than twenty persons, or any incorporated company, when such contract is entered into for the general benefit of such company, partnership, or association: and provided that it shall be lawful for any councillor to purchase at public sale any property or right which the board of which he is a member shall offer to sell by public competition.

Proceedings of Council to be valid though defect existed in mode of election.

18. All proceedings of the council of a municipality, or of any person acting as Mayor, chairman, councillor, auditor, or Municipal Clerk, as the case may be, shall, notwithstanding that it be afterwards discovered that there was some defect in the election or appointment of any such councillor, officer, or person as aforesaid,

or any disqualification, be as valid and effectual as if every such councillor, officer, or person had been duly elected and qualified.

No. 45-1882.

#### RETIREMENT AND VACANCIES IN COUNCIL.

19. At the conclusion of the election to be held on the first Wednesday in August next after any first election of councillors who shall have been elected by voters registered for the election of members of Parliament as provided in the twenty-sixth section of this Act, the whole number of councillors shall go out of office.

When whole number of Councillors to go out of office.

20. At the conclusion of the annual election in every year, except as in the last preceding section is provided, one-third part of the councillors of every municipality shall go out of office by rotation, and the councillors who shall go out of office shall be the councillors who have been the longest time in office without re-election. If by reason of two or more councillors having become councillors at the same time, it shall not be apparent which of such councillors ought to go out of office, then such councillors as to whom it shall not be apparent as aforesaid shall go out of office in the order of the number of votes obtained by each at his election, commencing with the lowest number and proceeding upwards. And in case of an equal number of votes being given for such councillors, or in case such councillors shall have been elected without a poll, the councillors to go out of office shall be determined by lot, and in default of being so determined, or not otherwise determined or capable of being determined, the Governor shall for such occasion determine in what order and which of such councillors shall go out of office: provided that in case of any subdivided municipality, where one-third of the whole number of councillors are to go out of office, one of the number of councillors of each ward shall go out of office.

Retirement of Councillors by rotation regulated.

21. Any person elected or appointed to any office under this Act may resign such office by any writing addressed to the Municipal Clerk, and the resignation shall be complete from the time of its being received by such clerk.

Officers under this Act may resign.

22. (1) The office of Mayor or chairman, or councillor, shall become vacant, and every such vacancy shall be deemed to be an extraordinary vacancy within the meaning of this Act, in case such Mayor, chairman, or councillor shall

When offices shall become vacant.

- (1) Die; or
- (2) Resign his office; or
- (3) Be declared incapacitated from holding office by any competent Court; or
- (4) During the time for which he is elected cease to be qualified; or
- (5) Be absent from four consecutive ordinary meetings of the council, without leave of the council; or

<sup>1</sup> See Act 9 of 1885, *infra*. This section to apply to Municipalities which have not yet come under the operation of this Act.

No. 45—1882.

(6) Be convicted and sentenced to imprisonment for any offence.

How to determine date at which officers must retire.

23. For the purpose of determining the time of his retirement, every Mayor or chairman, and every councillor elected to supply an extraordinary vacancy shall be deemed to have been elected at the same time, and in the same manner, and in the case of a councillor to have received the same number of votes (if any) as the last holder of the seat he was elected to fill who was elected otherwise than to fill an extraordinary vacancy.

Interim between retirement and election of new Councillors.

24. Every councillor going out of office at the conclusion of any annual election shall retain office until the councillors elected at such election are declared duly elected, and shall thereupon, unless he be one of such councillors, go out of office.

Mayor, &c., vacating office may be re-elected.

25. Any person vacating office as Mayor, or chairman, or as a councillor, may be re-elected to such office if for the time being he is eligible under the provisions of this Act of being or continuing a Mayor, or chairman, or councillor.

#### ELECTORS.

Who to vote before voters' list under this Act is prepared.

26. At any election held in any municipality before a Voters' Roll shall have been prepared for such municipality in the manner by this Act provided, the Resident Magistrate shall, from the list of registered voters for the election of members of Parliament, frame a list of all such voters as shall be resident within the limits of the municipality, or the wards thereof respectively if the municipality be subdivided, and such voters shall be and be deemed to be the voters of such municipality, or the respective wards thereof as the case may be, for the purposes of such election.

#### PERSONS ENTITLED TO BE ENROLLED.

After voters' roll completed.

27. From and after the completion of a Voters' Roll for any municipality under the provisions of this Act, the persons whose names are inserted in such roll shall be the voters of the municipality, and shall be entitled to the number of votes for which they are respectively enrolled.

Qualification of voters.

28. Every person of full age, not disqualified under the provisions of this Act, who on the first day of June in any year is the owner or occupier of any immovable property in any municipality, and who shall have paid all sums if any then payable by such person in respect of any rates made three months or more before such day, shall be entitled to be enrolled on the Voters' Roll for such municipality according to the following scale :

- (1) If the property liable to be rated be of the annual value of, or exceeding, ten pounds, and less than fifty pounds, he shall have one vote.
- (2) If such value amount to fifty pounds and be less than one hundred pounds, he shall have two votes.

- (3) And if such value amount to or exceed one hundred pounds, he shall have three votes.

No. 45—1882.

And in case any municipality is subdivided, every person entitled to be enrolled under this section shall be so entitled for only one ward wherein any rateable property in respect of which he is so entitled is situated, such ward to be selected by such person.

29. Where more persons than one are jointly liable to be rated in respect of any property, each of such persons, not exceeding three in all, shall for the purposes of the last preceding section, be deemed to be liable to be rated, in respect of rateable property, equal to that of the whole of such first mentioned property divided by the number of persons so rated not exceeding three. In case more than three persons are liable to be rated in respect of any property the persons to be deemed liable and qualified to vote shall be any three whom the remaining or other persons so liable shall nominate in writing, and failing such nomination, those three whose names stand first in order upon the rate book in use, or if no rate book has been made, upon the valuation roll: Provided that in any such case the annual value of the property liable to be rated shall be of an amount which when divided by the number of persons jointly liable to be rated, not exceeding three, shall give a sum of not less than ten pounds for each such person.

Provisions in cases of joint owners of property.

30. The following persons shall not be qualified to vote at any elections held under the provisions of this Act:

Disqualifications.

- (1) Persons who have not paid all sums due from them in respect of any rates made or levied three months or more before the day of voting.
- (2) Persons convicted of treason, murder, rape, theft, perjury or of bribery, or receiving a bribe, or of any other corrupt practice at any election, or any infamous crime, and who shall not have received a free pardon.
- (3) Persons whose names do not appear upon the Voters' Roll for the time being.

#### MAKING OF ROLL.

31. The clerk of every municipality shall, before the first day of June in every year, make out a list to be called the "Voters' Roll," containing the names of all persons qualified to vote under the provisions of this Act, which list shall shew—

Roll of voters to be made annually.

- (1) The names in full of the voters, arranged according to the alphabetical order of surnames.
- (2) Description of property giving title to vote.
- (3) Whether the voter be owner or occupier.
- (4) The annual value of such property.
- (5) Number of votes.

32. The Municipal Clerk shall, immediately after making out the said list, notify by advertisement in some newspaper generally circulating in the neighbourhood, and in such other manner as the

Notification that lists are ready for inspection.

No. 45—1882.

council shall from time to time direct, that a copy of such list is ready for inspection at the municipal office, and if the council shall so direct, at such other place as may be appointed, and a copy of such list shall be open to inspection at the municipal office, and at each appointed place as aforesaid, during office hours for a period of seven days; the said advertisement shall also intimate that on a certain day and hour, and at a place to be therein set forth, claims to be inserted in, or objections to, the said list will be heard and determined as hereinafter in the next succeeding section is provided.

Court to hear objections.

33. The Mayor or chairman and two councillors elected for that purpose by the council shall, on the day so notified, in open court hear all such claims and objections and determine thereon, and may adjourn the sitting of such court from time to time as may be necessary.

Directions for guidance of such Courts

34. The said Mayor or chairman and councillors shall, in revising the Voters' Roll, be guided by this Act, and the following directions and provisions: that is to say, they shall

- (1) Insert the name of every person who shall prove to their satisfaction that he is entitled to be inserted in the Voters' Roll for one or more votes according to the provisions of this Act.
- (2) Except in the case of death, retain on the list the names of all persons to whom no objection has been made.
- (3) Retain on the list the name of every person objected to, and the number of votes set against the same, unless the person objecting appears by himself, or some one on his behalf, in support of such objection, and establishes the same by satisfactory proof.
- (4) In case any objection is made and satisfactorily proved, expunge the name of the person objected to from the Voters' Roll, or alter and correct the number of votes set against the same (as the case may be).
- (5) Expunge from the Voters' Roll the name of any person inserted therein who is proved to be dead.
- (6) Correct any mistake or supply any omission which may appear to have been made in the Voters' Roll.

Revised roll to be in force till new one framed.

35. The revised roll certified by the Mayor or chairman of the municipality, shall be the Voters' Roll for the municipality, and shall continue in force, and shall not be added to or otherwise altered until a new roll has been made for the municipality and revised under the provisions of this Act, whether the same be duly made at the time appointed or afterwards.

Printed copies signed by Mayor to be evidence.

36. Any printed or written copy purporting to be a copy of the Voters' Roll of any municipality or of any ward or subdivision of a municipality, signed by the Mayor or chairman of such municipality, shall be *prima facie* evidence of such roll and of the contents thereof.

37. No omission to make any notification by advertisement or otherwise, with regard to any list, or to exhibit, or keep any list for inspection, shall be deemed to prevent, invalidate, or render imperfect any of the proceedings by this Act prescribed with regard to the compilation or completion of any list or roll, or to invalidate any such list or roll.

No. 45—1882.

Omission of certain prior formalities not to invalidate roll

38. If from any cause the revision of any list awaiting revision under this Act has not been made or completed within the proper time appointed or allowed for that purpose, the Governor may appoint a day for holding a Court for revising such list, and such day shall as to all such acts and proceedings as then remain to be done or had with respect to such list, be deemed to be for all intents and purposes the day appointed for such revision, and all further proceedings shall be had and taken accordingly.

In case list not revised within required time.

39. If from any cause the preparation or revision of the Voters' List has been omitted or not completed, the Governor may at the request of the council of the municipality direct the same to be done within such time as may be prescribed by the order in council authorizing it, and upon the publication of such order in the *Government Gazette*, such omission or non-completion shall be rectified, and such list validated in accordance with the terms of such order.

In case list not prepared in time.

## ELECTION OF COUNCILLORS.

40. A first election of councillors in any municipality shall be held on such day within three months after the constitution thereof, as the Resident Magistrate of the district may appoint.

When first election to take place.

41. At every first election of councillors in any municipality the whole number of councillors assigned to the municipality shall be elected, and in case of a subdivided municipality they shall be elected in equal numbers for every ward.

All Councillors to be elected at first election.

42. In every municipality an annual election of councillors shall be held on the first Wednesday in August in every year.

And annually thereafter.

43. At the annual election (except as in the nineteenth section is excepted) one-third of the whole number of councillors shall be elected, and in case of a sub-divided municipality they shall be elected in equal numbers for every ward.

Proportion of Councillors to be annually elected.

44. On the occurrence of any extraordinary vacancy in the office of councillor of any municipality, an election to fill such vacancy shall be held on such day not being more than thirty days after the occurrence of such vacancy as the Mayor or chairman of the municipality may appoint, and in default of such appointment on the thirtieth day after the occurrence of such vacancy.

In cases of extraordinary vacancies.

45. In case any extraordinary vacancy occur in the office of councillor within one month before any annual election, and the councillor vacating office would have gone out of office at such election, or was one of several councillors who might have gone out of office by rotation at such election, such vacancy shall not be

Exceptions.

- No. 45—1882. filled up, and the person vacating office shall be reckoned one of the councillors going out of office at such election.
- Proceedings when there are, or are not, wards. 46. In the case of a municipality which is not subdivided into wards, the proceedings of every election shall be taken and had for the whole municipality, and in the case of a municipality which is subdivided the like proceedings shall be taken and had for and in every ward.
- Returning Officer. 47. Every municipal election shall be held before the Mayor or chairman of the municipality, or in case there is no Mayor or chairman, or the Mayor or chairman as the case may be is absent or incapable of acting before such person as the council of the municipality, or, in case there is no council, the Governor, may appoint. And such Mayor or chairman or other person shall be the returning officer at such election.
- Returning officer not to be a candidate 48. No person specially appointed to act as returning officer as aforesaid shall be or become a candidate for office at such election.

#### NOMINATION OF CANDIDATES.

- Notice of election. 49. Not less than twenty-one days before the day appointed for the first election the Resident Magistrate, and thereafter at any election, the Mayor or chairman of the municipality, shall give public notice of such election, and by such notice shall specify a day, not being more than fourteen days from the date of giving such notice, as the day of nomination, and shall require all candidates at such elections to be nominated at some place within the municipality, to be named in such notice in manner after-mentioned.
- Mode of nomination. 50. No person may become, or shall be deemed, a candidate at any election unless he shall be nominated in manner following: Before four o'clock in the afternoon of the day before the day of nomination there shall be delivered at the place appointed, a nomination paper in the form in the second schedule, or to the like effect, stating the christian name and surname of such candidate, together with the other particulars required in and by the said schedule, and such nomination paper shall be signed by not less than five persons whose names appear on the Voters' Roll.
- Lists of nominated persons to be posted. 51. The council shall cause the names of all persons who have been nominated as candidates for election to be posted, and kept posted outside the place named as aforesaid for the delivery of nomination papers.
- If no more nominations than number of Councillors required election complete. 52. If at the expiration of the time appointed for the nomination of candidates, the number of persons who have become candidates as aforesaid does not exceed the number of councillors then to be elected, the returning officer shall, at or after noon on the day of nomination at the place named as aforesaid for the delivery of nomination papers, publicly declare such candidates to be duly elected, and they shall be deemed duly elected accordingly.



53. If at the expiration of the time appointed for the nomination of candidates, the number of persons who have become candidates shall be less than the number of councillors then to be elected, the persons nominated shall be declared to be duly elected in the manner provided in the last preceding section, and the like proceedings shall be taken to supply any vacancy arising from failure to nominate as in the case of an extraordinary vacancy.

No. 45—1882.  
In case candidates less than number required.

54. If at the expiration of the time appointed for the nomination of candidates, the number of candidates exceeds the number of councillors to be elected, then the returning officer shall, at noon on the day of nomination, at the place appointed for the delivery of nomination papers, publicly announce the names of the persons who have become candidates, and the places at which a poll will be taken, and shall also forthwith give public notice by advertisement, stating the names of the persons nominated, and that a poll will be taken for the election of councillors on the day appointed for holding the election under the provisions of this Act, and naming such day and the polling places. And the poll shall take place accordingly, and shall commence at nine o'clock in the forenoon and close at five o'clock in the afternoon.

In case greater number, returning officer to give notice of poll.

#### POLLING PLACES AND POLLING.

55. If any candidates shall, in any municipality divided into wards, be elected for more wards than one, such candidate shall declare within twenty-four hours after being called upon in writing so to do, for which ward he elects to be a councillor, and upon such election the seat of such person for any other ward for which he was elected shall become vacant, and in case such person shall fail to elect as aforesaid then all the seats for which such person was elected shall become vacant.

Candidate to declare for which Ward he elects to be a Councillor.

56. For the purposes of every election, the returning officer shall and may from time to time appoint and abolish the polling places, but no polling place shall be appointed or abolished later than three days after the day of nomination.

Returning Officer may appoint and change polling places

57. At every election the returning officer shall appoint such polling officers and polling clerks as may be required for taking the poll, and if, in case of illness or other sufficient cause, the returning officer or any polling officer shall be prevented from attending, or shall refuse to attend, the Municipal Clerk shall by writing under his hand appoint a substitute, who shall have all the power and authority of the person for whom he was substituted.

Appointment of polling officers, &c.

58. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from his candidature, he may not later than three days before the day of polling, sign, and deliver to the Municipal Clerk a notice of his retirement; and the returning officer 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 on the day

In case candidate desires to retire from contest.

No. 45—1882.

appointed for the election, declare the remaining candidates to be 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.

Scrutineers.

59. Every candidate may appoint one scrutineer to attend at the place of polling on his behalf, and see that the votes are fairly taken and recorded.

Questions to electors

60. At any election the polling officer shall, if he see fit, or if required so to do by any candidate or scrutineer, put to the person tendering his vote any of the questions following :

- (1) Are you the person whose name appears on the Voters' Roll now in use for this municipality (or ward, as the case may be), being enrolled therein in respect of property described to be situated (specify the street or other place described in the roll) ?
- (2) Have you already voted at this election (for this ward) ?
- (3) Have all sums due and payable by you in respect of rates made or levied three months or more before this date been paid ?

And no person who shall refuse to answer any such question, or who shall not answer the first and third of such questions absolutely in the affirmative, and the second of such questions absolutely in the negative, shall be permitted to vote.

Penalty for false answers.

61. Every person who shall wilfully make a false answer to any of the questions aforesaid, or who shall poll or attempt or offer to poll at the same election more than once, or more than the number of votes which such person is entitled to poll at such election, in case such person is entitled to vote for more candidates than one, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months.

When polling officer may reject vote tendered.

62. No voter shall at any election be required to answer any questions except as aforesaid ; and no person claiming to vote at any election shall be excluded from voting except by reason of its appearing to the polling officer upon putting any such question allowed as aforesaid that he is not the person whose name appears on the roll, or that he has previously voted at the same election, or that such sums as aforesaid due for rates are unpaid, or except by reason of such person refusing to answer any of the said questions.

Bribery.

63. All the acts enumerated as acts of bribery and corruption, or undue influence, in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall, *mutatis mutandis*, be deemed to be acts of bribery, corruption, or undue influence with reference to all elections under this Act. And every person committing any act forbidden or made punishable, by any such Act relating to elections of members of Parliament, in reference to any elections under this Act, shall upon conviction incur and be liable to such penalty or punishment as is by such Act provided.

64. The manner of voting shall in substance and as nearly as is material, be as follows :

No. 45—1882.  
Manner of voting.

- (1) The polling officer, shall ascertain that the person coming to vote is a voter entered upon the Voters' Roll, and having ascertained that such person is so entered, shall ask for whom he votes.
- (2) When the voter has named the candidate for whom he intends to vote, such officer shall lay before the voter a page of paper having at the top the name of that candidate, and the voter shall, if able and willing to do so, write in the presence of such officer his name where such officer shall direct.
- (3) Should the voter be unable or unwilling to write, the polling officer shall at the request and in the presence of the voter write the christian and surname of the voter, and attest the fact by his own signature.
- (4) In case the voter shall be entitled to vote for more than one candidate to be elected at such election, there shall be laid before the voter so many papers bearing the names of candidates not exceeding the number to be elected, as the voter shall have named as the candidates for whom he votes.

65. Every returning officer shall, at the close of the poll and as soon as possible after he shall have received the voting lists or papers taken by the polling officers in the presence of such candidates and scrutineers as may attend, cast up, examine, and count the number of votes given for each candidate at the several polling places, and the returning officer shall, as soon as the results are ascertained, publicly announce the state of the poll, and at the same time declare the name or names of the person or persons elected. And in the event of the number of votes being found to be equal for any two or more candidates, he shall by lot determine which shall be elected.

Result of poll to be stated.

In case of ties.

66. The returning officer shall immediately after the declaration of the poll, enclose in one packet all the voting papers aforesaid, and shall seal up such packet and endorse thereon a description of the contents thereof, and sign such endorsements with his name. The said sealed packet, together with a certificate stating the names of the councillors declared to be elected, shall be delivered to the Municipal Clerk, who shall safely keep such sealed packet for six months after the receipt thereof, and after the expiration of six months such papers may be destroyed in the presence of two councillors, unless the council shall otherwise direct.

Voting papers to be sealed up and kept for 6 months.

67. No such sealed packet of voting papers shall be opened during the said period of six months, unless by order and in presence of the council, or by order of some competent Court. And if any person shall, contrary to the provisions hereof, wilfully

Such packets not to be opened except by competent authority

No. 45—1882.

break the seal of or open any such packet, he shall, upon conviction, be liable to a penalty not exceeding twenty pounds.

In case of riot, poll may be adjourned, &c.

68. When the proceedings at any election are interrupted or obstructed at any polling-place by any riot or open violence, the polling officer shall not finally close the poll, but shall adjourn the taking of the poll at such polling-place to the day following, and if necessary, such polling officer shall further adjourn such poll until such interruption or obstruction has ceased, when he shall again proceed with the taking of the poll at the place at which the same shall have been so interrupted or obstructed.

In other cases of non-election on polling day.

69. If from any cause, not being such as mentioned in the last preceding section, after a poll has been appointed for any election, no election takes place on the day appointed, the election shall stand adjourned until the same day of the following week, and the polling officer shall give not less than three days' notice thereof by advertisement or by placards affixed in public places in the municipality. And in all such cases as in this and the last preceding section mentioned, the councillors (if any) who would on the day appointed for the election have retired from office by rotation, shall continue in office until the day to which such election or polling for the same has been adjourned.

"Wards" included in foregoing provisions.

70. In any subdivided municipality the provisions of this Act relating to elections shall extend and apply to every ward in which an election shall take place, as well as, or instead of, to the whole municipality, as circumstances may require.

Elections not to be impeached for want of title of polling officer.

71. No election under the provisions of this Act shall be liable to be set aside by reason only of any defect in or want of title of the officer or person by or before whom such elections, or any polling for the same, has been held: provided that such person has been acting in the office giving the right to preside at such election.

Actions by or against Council not affected by mode of election.

72. The invalidity of any election under this Act shall not affect any action, suit, or other proceeding by or against any council, but every such action, suit, or other proceeding shall be tried and determined as if no such objection existed.

In cases where there is no Mayor or other officer in this Act mentioned.

73. If at any time there shall be no Mayor or chairman, or Municipal Clerk, or any Mayor, chairman, or clerk shall refuse to act or be incapable of acting as by this Act provided, all acts and things which may or are required to be done by such Mayor, chairman or clerk, as the case may be, may lawfully be done and performed by such one of the councillors as the council of the municipality may appoint for that purpose, and failing such appointment by the council, by such person as the Governor may so appoint.

#### ELECTION AND PRIVILEGES OF CHAIRMAN.

Election of chairman.

74. At the first meeting of the council of any newly-constituted municipality, or at some adjournment thereof, and thereafter at the first meeting of the council after every annual election of coun-

cillors, or at some adjournment thereof, the councillors shall elect some one of their own number to be chairman of the municipality.

No. 45—1882.

75. In case any vacancy shall occur in the office of chairman, such vacancy shall forthwith be filled at an ordinary or special meeting of the council.

In case of vacancy.

76. Such chairman shall be styled and designated "the Mayor" or "the Chairman," as the council shall by regulation or bye-law from time to time determine, and shall be entitled to hold office until the conclusion and completion of the next annual election.

"Mayor" or  
"Chairman."

77. The chairman shall preside at all meetings of the council at which he is present, and in his absence the councillors present shall elect a chairman to preside at such meeting.

To preside.

78. The chairman of every municipality shall during his tenure of office be a Justice of the Peace for the district in which the municipality is situated: provided that any such chairman may at any time be removed from being a Justice of the Peace by the Governor, and from the date of notification in the *Government Gazette* of such removal the powers of such chairman to act as a Justice of the Peace shall cease and determine.

Chairman to be ex-  
office Justice of the  
Peace.

#### AUDITORS.

79. Two auditors shall be elected at the same time as the first election of councillors, and thereafter annually for every municipality, at the same time as the annual election of councillors, and, notwithstanding any subdivision into wards, such auditors shall be elected for the whole municipality, and save as aforesaid every election of auditors shall be conducted in the same manner and subject to the same conditions and provisions as an election of councillors.

Two auditors to be  
chosen annually.

80. Upon the occurrence of any vacancy in the office of auditor for any municipality by death, removal, resignation or otherwise, the like proceedings shall be taken to supply such vacancy as upon an extraordinary vacancy in the office of councillor.

Vacancy by death  
or other cause.

81. The Governor may at any time remove any auditor elected for a municipality upon petition of the council thereof.

Power of Governor  
to remove.

82. The auditors shall be paid out of the municipal funds such remuneration as the council may from time to time determine.

Payment of Audi-  
tors.

#### PROCEEDINGS OF THE COUNCIL.

83. The council of every newly constituted municipality shall hold their first meeting on the first Wednesday after the first election of councillors; and in case of failure, on such day and at such hour as the Resident Magistrate of the district shall appoint for that purpose.

When first meeting  
of Councillors to be  
held.

84. The council of every municipality shall hold ordinary meetings for the transaction of business not less than once every month, on such days and at such hours as the council shall from time to time appoint, and when such appointment is made the Municipal Clerk shall give notice thereof to each of the councillors,

Ordinary meetings.

- No. 45—1882. and they shall afterwards, until the time of such ordinary meeting is changed, and notice of the change given to the councillors, be required to attend such ordinary meetings without notice.
- Meetings of Council to be public. 85. All meetings of the council shall be open to the public, and, save when it is otherwise provided, all the councillors present at any meeting shall vote, and all questions shall be decided by a majority of the councillors present. In case of an equality of votes the chairman presiding shall, in addition to his vote as councillor, have a casting vote.
- Quorum. 86. All powers vested in the council by this Act may be exercised at any duly convened meeting thereof at which not less than one-third of the members thereof, exclusive of the chairman or in the absence of the chairman an additional member, shall be present.
- Councillor not to vote where interested pecuniarily. 87. No councillor shall vote upon or take part in the discussion of any matter in or before the council in which he has directly or indirectly by himself or his partners any pecuniary interest. And any councillor contravening the provisions of this section shall, for every offence, be liable to a penalty not exceeding fifty pounds.
- Adjournment of meetings. 88. The councillors 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 be not present to exercise the powers vested in the council, the councillors present, or the major part of them or any one councillor, if one only be present, may adjourn such meeting.
- Resolutions not to be revoked except upon notice. 89. No resolution at any meeting of the council shall be revoked or altered at any subsequent meeting unless notice of the intention to propose such revocation or alteration be given to each of the councillors two days at least before holding the meeting, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the councillors present at such subsequent meeting, if the number of councillors present at such subsequent meeting be not greater than the number present when such resolution was come to or by a majority if the number of councillors present at such subsequent meeting be greater than the number present at such former meeting.
- Notices of special or adjourned meetings. 90. All notices of any special meeting or adjourned meeting of the council shall be in writing, and shall be delivered or sent by post or otherwise to the usual place of business (if any) within the municipality, or to the place of abode of each of the councillors twelve hours at least previous to such meeting, and every such notice shall specify the time of meeting, and in case of a special meeting, shall specify the object thereof, and no business shall be transacted at any special meeting except such as is stated in the notice thereof.
- Occasional and standing Committees 91. The council may from time to time, as they may see fit, appoint occasional or standing committees, either of a general or a special nature, and may delegate to any committee any inquiry or

power to do any act which they may think fit, and may fix the quorum of every such committee, and every such committee may from time to time appoint one of the members to be chairman thereof, and the council may from time to time continue, alter, or discontinue such committee, and every such committee shall report to the council.

No. 45-1882.

92. Every committee so appointed may meet from time to time and may adjourn from place to place, as they may think proper, but 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 be not present one of the members present shall be appointed chairman, and all questions shall be determined by a majority of the 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.

Committees may adjourn.

Quorum.

93. No proceeding of the council or of any committee shall be invalidated or be illegal in consequence only of there being any vacancy in the number of councillors at the time of such proceeding.

Vacancy in Council not to affect validity of proceedings.

94. The council shall cause entries of all the proceedings of the council and of every committee appointed by them with the names of the councillors who attend at each meeting, and of the names of all councillors voting upon any question for the decision of which a division is called, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the Municipal Clerk under the superintendence of the council. And every such entry shall be signed by the chairman at the meeting next succeeding the meeting at which such proceeding has taken place. And every entry purporting to be such entry as aforesaid and to be so signed, or a copy of or an extract from such entry, attested by the corporate seal and the signatures of the chairman and Municipal Clerk, shall be received as evidence in all Courts, without proof of the meeting to which the same shall refer having been duly convened or held, or of the persons attending such meeting having been or being councillors or members of committee respectively, or of the signature of the chairman or of the fact of his having been chairman, all which last-mentioned matters shall be presumed until the contrary is proved.

Minutes to be kept of all proceedings.

To be signed by Chairman and received in evidence.

95. Such book shall at all reasonable times be open to the inspection of any of the councillors and of any ratepayer or creditor, of the municipality, any of whom may at all reasonable times, without fee make any copy of or take any extract therefrom.

Minute Books open to inspection.

#### ACCOUNTS AND AUDIT.

96. The council shall cause books to be provided and true and regular accounts to be entered therein of all sums of money received

Proper accounts of moneys received and paid to be kept.

No. 45—1882.

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, which books shall at all reasonable times be open to the inspection of any councillor, ratepayer, or creditor of the municipality. And any such person may take copies of or extracts from the said books without paying anything for the same.

Books to be balanced half-yearly and audited.

97. The council shall in each year, not later than the thirty-first day of January and the thirty-first day of July, cause the accounts of the municipality to be balanced to the thirty-first day of December and the thirtieth day of June immediately preceding such firstmentioned dates respectively, and after each such balancing the auditors shall audit the said accounts as soon as conveniently may be. And the council shall, by the Municipal Clerk, produce and lay before the auditors the accounts so balanced as aforesaid, with all vouchers in support of the same, and all books, papers and writings in their custody or power relating thereto; and if the auditors after due inquiry shall be satisfied that all moneys received have been duly accounted for, and that all payments charged have been duly authorized and made, they shall sign the said accounts, in token of their allowance thereof, but if they think there is just cause to disapprove of any part of the said accounts they may disallow any parts of the said accounts so disapproved of.

Accounts may be inspected and objected to.

98. Any person interested in the said accounts, either as a creditor of the municipality, or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection in writing, signed by such person or his agent, to any part of such accounts.

Half-yearly financial statements to be laid before Council.

99. Half-yearly statements showing the financial position of the municipality to the end of December and June respectively shall be prepared and laid before the council at their first ordinary meeting in the months of February and August respectively. Such statements shall be audited by the auditors and shall contain an account of all moneys paid by the council during the preceding half-year and a statement of all rates made and contracts entered into during such half-year, and of all assets and liabilities of the municipality.

Statements to be open to inspection.

100. The council shall cause every such audited statement to remain for inspection at the office of the council, and any creditor or ratepayer of the municipality, or any person acting on his behalf, may at all reasonable times inspect such statement and compare the same with the books and documents relating thereto in the possession of the council.

How accounts to be finally settled.

101. The accounts of the council so balanced as aforesaid and audited, and either allowed or disallowed by the auditors as aforesaid, together with the said statement, shall be produced at the last-mentioned meetings of the said council, or at some adjournment thereof, at which meetings all creditors, ratepayers, and other persons interested as aforesaid may be present, and the accounts



shall then be finally examined and settled by the council, and if the same be found just and true they shall be allowed by the council and certified accordingly, under the hand of the chairman of such meeting. And a copy of such abstract shall be kept by the Municipal Clerk at the office of the council, and shall be open to be inspected by any creditor or ratepayer during office hours.

No. 45—1882.

102. The Governor may from time to time appoint some person to examine the accounts of any municipality. And the council of such municipality shall by the Municipal Clerk produce and lay before the person so appointed all books and accounts of the municipality for the preceding twelve months, with all vouchers in support of the same, and all books, papers, and writings in their power relating thereto: Provided that seven days' notice in writing shall be given to the chairman and Municipal Clerk of any such intended examination.

Governor may appoint person to examine accounts.

103. For the purpose of every 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 upon oath or affirmation, or to take such oath or affirmation, or having taken such oath or affirmation, to answer such questions as shall be put to him, shall incur and be liable to a penalty not exceeding ten 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.

Powers given to such examiners of accounts.

## CONTRACTS.

104. The council may in the name and on behalf of the municipality enter into contracts for the purposes of this Act, and all such contracts lawfully made shall be effectual and binding on the municipality and all the other parties thereto, their successors, heirs, executors, or administrators, as the case may be. Every contract shall be deemed to be duly executed by or on behalf of the municipality if signed by the chairman, or if signed by any one or more councillors thereto authorized by resolution of the council.

Council may make contracts.

105. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the

Tenders for contracts to be called.

No. 45—1882.

amount of fifty pounds or upwards is entered into by the council, fourteen clear days' notice at the least shall be given in some newspaper, generally circulating in the neighbourhood, expressing the purpose of such contract, and inviting any person willing to undertake the same to make proposals for that purpose to the council. And 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 or accept any such proposal.

## OFFICERS.

Officers to be appointed.

106. The council shall from time to time appoint a Municipal Clerk, and such other officers to assist in the execution of this Act, as may be necessary and may pay such salaries and allowances to such officers respectively as the council may determine: And unless it shall be otherwise stipulated in the contract with, or appointment of, any such clerk or other officer the council may at any time remove any such clerk or officer upon a notice of not less than three months, or in case of misconduct without notice.

Officers may be suspended and dismissed.

107. The chairman may at any time suspend from office any officer of the council who may in his opinion be guilty of misconduct or neglect, and if necessary temporarily appoint another officer in his place: Provided that at the next meeting of the council after such suspension the chairman shall report the matter to the council, and if the officer so suspended be dismissed by the council, no salary or wages shall be due or paid to him from and after the date of his suspension, and every officer so temporarily appointed shall hold office and receive remuneration (which shall in no case exceed that paid to the officer or servant so suspended) only until the council shall decide whether the person suspended shall be reinstated or be dismissed, and a successor appointed in his stead.

Officers to take no fees or rewards beyond salary.

108. Every officer employed by the council who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this Act any fee or reward whatsoever other than the salary or allowance by way of salary allowed by the council, or who shall be in anywise concerned or interested in any bargain or contract made by the council, shall be incapable of being afterwards employed by the council.

## BYE-LAWS OR REGULATIONS.

Power to make by-laws and regulations.

109. The council of any municipality may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes:

- (1) Regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings.

- (2) For preventing and extinguishing fires and compensating the owners of buildings removed to prevent the spread of fire.
- (3) For establishing and regulating public markets and market dues and regulating public sales.
- (4) For suppressing nuisances, houses of ill-fame, and gaming houses.
- (5) For restraining noisome and offensive trades, and compelling residents to keep their premises free from offensive or unwholesome matters.
- (6) For regulating the supply and distribution of any water under the control or management of the council.
- (7) For regulating sewerage or drainage.
- (8) For regulating lighting with gas, electricity or otherwise.
- (9) For preserving public decency.
- (10) For preventing the spread of contagious or infectious diseases, and for preserving the public health.
- (11) For regulating and licensing boatmen, porters, public carriers, carters, cabs, and vehicles plying for hire.
- (12) For regulating the killing of cattle and sale of butchers' meat, and the establishment and locality of slaughter houses.
- (13) For regulating the removal of night soil, stable litter, filth, and refuse from private premises, and from all streets, roads and public places.
- (14) For preventing the dangerous use of gunpowder, fireworks, or other combustibles, and for regulating the storage or removal of petroleum, gunpowder, dynamite, or other explosive material.
- (15) For imposing a tax upon the keeping of dogs.
- (16) For preventing the pollution of any water which the inhabitants have a right to use.
- (17) For establishing and maintaining cemeteries.
- (18) For planting and preserving trees and shrubs.
- (19) For regulating the width, curbing, paving, guttering, gravelling, and cleansing of roads and streets.
- (20) For establishing, maintaining and controlling any ferry, pontoon, or bridge, and levying and collecting tolls and dues thereon.
- (21) For granting licences or permits for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting firewood, brushwood, or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same.
- (22) To establish and provide for the management of pounds and appointment of poundmasters, subject to the provisions hereinafter in this Act contained.
- (23) To provide for the management and protection of all

No. 45—1882.

common pasture or other municipal lands, and to fix the number and description of livestock any inhabitant shall be allowed to keep and depasture thereon on any part thereof. But no such provision shall interfere with or derogate from any existing rights which may be possessed or enjoyed by any person over such common pasture or other municipal lands either by virtue of any valid title deed or of any lawfully constituted servitude.

- (24) To grant temporary grazing rights over the said lands to carriers and others frequenting or passing through the municipality or attending the markets thereof, or to travellers, and to charge such reasonable dues as herein-before mentioned in consideration of the same.
- (25) For establishing, maintaining, and regulating public libraries, museums, botanical gardens, parks, public baths, and washhouses, and public places of recreation.
- (26) For regulating traffic and processions.
- (27) Generally maintaining the good rule and government of the municipality.

But no such bye-law or regulation shall be contrary to the provisions of this Act or of any other law in force in this Colony.

Proposed by-laws open to inspection.

110. After any resolution for passing any bye-law or regulation has been agreed to by the council and not less than seven days before the same is confirmed, a copy of such bye-law or regulation shall be deposited at the office of the council, and shall be there open to the inspection of any person, at all reasonable times, and a notice shall be published in some newspaper generally circulating in the neighbourhood, setting forth the general purport of the proposed bye-law or regulation, and stating that a copy is open to inspection as aforesaid.

Governor's approval required.

111. After any bye-law or regulation has been passed by the council it shall be submitted for the approval of the Governor and if approved shall be published in the *Government Gazette*, and thereupon such bye-law shall have the force of law in the municipality.

Governor's power of repeal.

112. Every bye-law or regulation in force in any municipality hereafter constituted or brought under the operation of this Act may be repealed by the Governor.

Power to impose penalties in by-laws.

113. Any bye-law or regulation made under this Act may impose a penalty for any breach thereof, and may also impose different penalties in case of successive breaches, but no penalty shall exceed twenty pounds. And any such bye-law or regulation

Limit.

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.

114. A copy of the *Government Gazette* containing any bye-law or regulation of any municipality shall be evidence of the due making of such bye-law or regulation, and of the contents thereof.

No. 45—1882.

Evidence of by-laws.

## RATEABLE PROPERTY.

115. All land within any municipality shall be rateable property within the meaning of this Act, save as hereinafter excepted that is to say,

Land rateable with exceptions.

- (1) Land the property of Her Majesty or of the Colonial Government which is unoccupied or used for public purposes.
- (2) Land in the occupation of Government, or of any person or public body, and used for public purposes.
- (3) Places used exclusively for public worship, or for public worship and educational purposes, or for public schools, libraries, museums, or cemeteries.
- (4) Land used exclusively for hospitals, lunatic asylums, benevolent asylums, or orphanages.
- (5) Land set apart for any mine or mining area.

## MAKING OF VALUATIONS.

116. The council of every municipality shall from time to time, but not less than once in five years, cause to be made for such municipality a valuation of all rateable property within the municipality by a competent person or competent persons as valuers, and the rates made by the council for the purposes of this Act shall be made upon such valuation.

Fresh valuations

117. It shall be lawful for the council at any time to direct that a valuation be made of any property discovered to have been omitted from the valuation roll, and of any property subdivided or any buildings erected between any two valuations, and to appoint a valuer or valuers for that purpose.

Valuation of property omitted to be valued.

118. The annual value of any property valued under the provisions of this Act shall, for the purpose of framing any Voters' Roll, or for the purpose of making any rates (in case the council shall determine to assess rates upon the annual value) be deemed to be a sum equal to six per cent. upon the capital sum for which such property has been valued.

How annual value of property to be calculated.

119. 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 to be made by valuer.

“I ———, do solemnly and sincerely declare that I will to the best of my skill and knowledge, and without fear, favour or prejudice, truly and impartially appraise and value all such property as I shall be required to value in the municipality of ———, for the purpose of assessment, and that I shall conscientiously value the same at and for the full and fair price or sum which such property would, in my judgment, be likely to realize if brought at the

No. 45—1882.

time of valuation to voluntary sale, and sold upon the usual terms and conditions. And I make this solemn declaration conscientiously intending to fulfil the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled 'An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.'

"Declared at ———, this ——— day of ———.

"Before me ———."

And every such declaration shall be lodged with and preserved by the municipality to which it relates.

Valuer's power of entry.

120. Every valuer shall, for the purpose of making the valuation as aforesaid, have power to enter at all reasonable hours in the day time, into and upon any rateable property within the municipal district without being liable to any action or other proceeding on account thereof.

Questions which valuer may put.

121. It shall be lawful for any valuer to put to any person in occupation or charge, or being the owner of any rateable property which such valuer shall have been authorized under the provisions of this Act to value, questions upon all such matters as may be necessary to enable such valuer correctly to value such property, and to state the names of the owner and occupier thereof, and such other particulars as may be necessary to be stated in his valuation with regard to the premises. And if after being informed by such valuer of his purpose in putting such questions, and of his authority under this Act to put the same, any such person in occupation or charge, or any such owner, shall refuse or wilfully omit to answer the same to the best of his knowledge and belief, or shall wilfully make any false answer or statement in reply to such questions, such person shall, for every such offence, be liable to a penalty not exceeding ten pounds.

Penalty for refusing to answer such questions.

Valuation Roll to be open for inspection.

122. As soon as any valuation as aforesaid shall be completed, the roll shall lie in the office of the municipality for the inspection of every owner or occupier of any property included therein who may, upon all lawful days, and at reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice announce, for general information, that upon some day and at some hour and place to be fixed by such notice, a court will be held at which at least a quorum of members shall be present, for the purpose of hearing and determining objections to such valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court.

Court to hear objections.

123. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation, by any owner or occupier, or other person on his behalf, and shall inquire into the merits of

such objections, and shall confirm, alter, or reduce any valuation objected to : Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

No. 45—1882.

124. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, 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 in which such property shall be situated, and such Court shall inquire into such valuation, and the decision of such Court 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 council or party objecting to record such question of law for decision by some superior 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, or by the Court of the Eastern Districts or High Court of Griqualand, in case any such question shall arise within the limits of the jurisdiction of such last-mentioned Courts respectively, and the Court adjudicating upon any such special case may make such order as to costs as to the Court shall seem fit.

Power of appeal.

#### MAKING OF RATES.

125. The council of every municipality shall once at least in every year, and may from time to time as they may see fit, make and levy rates upon all rateable property within the municipality And such rates may be :

What rates may be levied.

- (1) A landlords' or owners' rate assessed upon the value of the rateable property.
- (2) A tenants' rate assessed upon the annual value of such property.

Or either or both of such rates.

Provided that no rate exceeding twopence in the pound on the value, or eightpence in the pound on the annual value, of any rateable property, and no such special rate as in the next succeeding section mentioned, shall be levied unless notice of the intention to levy such rate or special rate as the case may be, shall be published by the council for not less than seven days ; and any twenty ratepayers may, within seven days after the last publication of such notice, demand that the question whether such rate or special rate shall be levied or not shall be submitted to the election of, and be determined by, the ratepayers in the manner by this Act provided for determining whether or not a loan shall be incurred.

No. 45—1882.

Special rates for works in special localities.

126. Where it appears to the council that any work, improvement, or undertaking which the council is authorized to do or execute is for the special benefit of any particular portion of the municipality, the council may for defraying the expenses incurred in doing or executing such work, improvement, or undertaking by resolution distinctly defining such portion, make and levy a rate to be called a "special rate" equally on all rateable property situated within such portion.

## RECOVERY OF RATES.

When rates payable.

127. Every rate assessed by the council of any municipality shall become due and payable upon a day to be fixed by the council, of which day, and the amount of the said rate, the council shall give at least thirty days' notice by advertisement in a newspaper (if any) circulating in such municipality and in such other mode as the council shall by resolution direct.

Proceedings in default of payment of rates.

128. Whenever the council shall have given such notice as aforesaid of the day on which any rate will become due and payable, it shall be the duty of all persons liable for such rate to pay the amount thereof to the municipal clerk or any collector duly authorized by the council to collect and receive the same, failing which defaulters will be liable to legal proceedings for the recovery of the amounts due by them respectively.

How defaulters to be sued.

129. If after the expiration of the time fixed for the payment of any such rate as aforesaid, any person fail to pay any rates due by him it shall be competent for the council to cause a demand in writing to be made upon such person, requiring 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 any 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 lawful for the chairman of the council to issue his warrant directed to the messenger of the Court of the Resident Magistrate of the district requiring such messenger to levy and raise the amount stated therein by sale of the goods and chattels found on the premises in respect of which such rate shall be due, and continuing to be occupied by the person on whom such notice shall have been served. And every such messenger receiving any such warrant shall execute the same as if a warrant issued out of the Court of the Resident Magistrate of the district, and shall conform to such rules and make such charges in respect of the execution of such warrant as are for the time being applicable to warrants of such Court as aforesaid.

Actions for rates in Magistrate's Court

130. Notwithstanding the provisions of the last preceding section the council may at their discretion after the expiration of the time fixed for the payment of any rate as aforesaid, recover from any person in default (without further notice or demand) the amount



of rates due by such person by action in the Court of Resident Magistrate, as hereinafter in this Act is provided.

No. 45—1882.

131. Any rates assessed as aforesaid and unpaid after the expiration of such notice as aforesaid shall in case the amount thereof do not exceed fifty pounds, be recoverable at the suit of the council of the municipality or their collector thereto appointed in writing, by action in the Court of the Resident Magistrate of the district in which such municipality is situated, or in case the person liable for such rate shall not reside within such district, then either in the Court of the Resident Magistrate of such district or in the Court of Resident Magistrate of the district in which such person shall reside: Provided that as often as any such person not resident in the district in which the municipality is situated shall be proceeded against in the Court of Resident Magistrate of such district the summons directed to such person may be served upon the person, if any, in occupation of the property in regard to which the rate alleged to be due is claimed, or upon the person summoned by the messenger of the Court of any Resident Magistrate in which such person shall be found.

Jurisdiction in regard to rates.

132. In any proceeding to levy or recover rates or consequent on the levying or recovering of any rate under the provisions of this Act the valuation rolls and rate books of the council, and all entries purporting to be made therein in manner by this Act required, extracts or certified copies thereof signed by the chairman and sealed with the seal of the municipality, shall upon production thereof alone be *prima facie* evidence of such rate, and of the contents thereof without any evidence that the notices required by or other requirements of this Act, have been complied with: Provided that it shall be competent for any person proceeded against to offer evidence to prove the contrary.

Evidence in suits for recovery of rates.

133. When the occupier or owner who is rated to any rate ceases to be the occupier or owner of the property in respect whereof he is rated before the end of the period in respect of which such rate was made, such occupier or owner shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be the occupier or owner, and any person who shall be the occupier or owner of the property during the remainder of the period, shall be liable to pay a portion of such rate in proportion to the time during which he is such occupier or owner, and the same shall be recovered from him in the same manner as if he had been originally rated for such property.

In cases where owner or occupier ceases to be such before period for which rates due.

134. When the occupier of any rateable property is rated in respect thereof, and the rate remains unpaid for three months, the council or their collector, notwithstanding any judgment or order of any Court for the recovery of such rate from any other person, may, at any time within twelve months after the making of the rate by notice served as aforesaid, or published in the *Government*

When owners may be sued for default of occupier.

No. 45—1882.

*Gazette* and in some newspaper circulating in the neighbourhood, demand the amount of such rate or any part thereof from the owner for the time being of such rateable property, and on non-payment thereof after one month from the service or publication of such demand may recover the same from such owner before any Court of competent jurisdiction; and subject to any agreement previously made between the owner and occupier, the owner may recover the sums so paid, if not paid on demand, from such occupier as arrears of rent could be recovered from such occupier by such owner.

When owner in default, demand against occupier.

135. When the owner of any rateable property has been rated in respect thereof, and the rate remains unpaid for three months the council, or their collector as aforesaid, may, at any time within twelve months after the making of the rate, demand the amount of such rate or any part thereof from the 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 in like manner as rates may be recovered from any occupier liable to be rated. And every such occupier shall be entitled, subject to any agreement to the contrary, to deduct from any rent payable by him to such owner 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 occupier shall, subject as aforesaid, be a good and sufficient discharge for the amount so paid or recovered as payment of rent to the owner.

When occupier refuses to disclose name of owner.

136. If on the request of the council or any collector of rates duly authorized by them as such, the occupier of any property refuses or wilfully omits to disclose, or wilfully misstates to the council or collector making such request, the name of the owner of such property, or of the person receiving or authorized to receive the rents of the same, such occupier shall be liable to a penalty not exceeding five pounds.

When interest to run on rates in default.

137. In case any rates made or levied under the provisions of this Act shall remain unpaid after three months from the date fixed by the council for the payment thereof, interest upon such rates shall be chargeable and recoverable by such council at the rate of six per centum per annum, reckoned from the date upon which such period of three months shall expire.

When property rated may be seized and leased.

138. Where any rateable property in any municipality is unoccupied, and the rates thereon accrued and due at the time such municipality shall come under the operation of this Act, or any rates thereon accrued under this Act shall have been unpaid for five years, the council may, in the name of the municipality, take possession of such property and grant leases of the same subject to the provisions of this Act.

For what term.

139. Every such lease shall be for such term, not exceeding five years, as the council may deem fit, and shall be granted for the best rent which may be reasonably had for such property, and

subject to such covenants and conditions as the council may determine.

No. 45—1882.

140. The council shall not take possession of any such property until three months after a notice in writing setting forth that rates in respect of such property are unpaid, and demanding payment thereof, and stating that in default of payment the council will take possession of such property under the provisions of this Act has been served upon the owner of such property, if within this Colony, and whose name and address is known to the council or if there is no such owner within this Colony, or no such owner whose name and address is so known, until such notice has been affixed to some conspicuous place on such property and published in the *Government Gazette* at least once a month during three months; and every such notice shall contain a sufficient description of the property to identify the same; but every lease granted by the council otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with the provisions of this section, unless all arrear rates and interest thereon are paid within twelve months after the council shall have taken possession.

Notice before the seizure.

141. Within three months after demand by the owner of any property taken possession of by any council as aforesaid, made within thirty years after the date of taking possession, and after payment of all arrears of rates due in respect thereof and interest upon such arrears at the rate of six per centum per annum, such owner shall be entitled to resume possession of such land, subject to the terms of any lease theretofore lawfully granted by such council under the provisions of this Act.

How owner may regain possession.

142. All rent and other moneys payable under any such lease shall until the payment of all arrears and interest as aforesaid by the owner, or the expiration of thirty years from the date of taking possession of such property by the council, whichever shall first happen, be received by the council and shall be applicable

Application of rents accruing under the leases.

- (1) In defraying the expenses of and incidental to the giving of the notices as aforesaid and the execution of such lease and the collection of the rents.
- (2) In payment to the council of all arrears of rates and other payments due in respect of such property, together with interest on all arrears of rates at the rate of six per centum per annum, from the time when interest upon such rates shall accrue respectively, and in payment of all rates and other payments becoming due thereon.

And the residue of such money shall belong to such person as would have been entitled to receive the rents or profits of such property if this Act had not been passed.

143. Unless some person entitled to resume possession of any property of which the council of any municipality has taken possession as aforesaid shall within thirty years after the date of

After prescriptive possession of 30 years property seized to vest in Council.

No. 45—1892.

taking possession pay all arrears of rates, interest, and incidental expenses properly chargeable under this Act, such property, and all accumulations of rent and other moneys received in respect of such property shall vest absolutely in such municipality.

## LOANS.

Borrowing power for works.

144. Subject to the provisions of this Act, the council of every municipality may borrow money for permanent works or undertakings, or to liquidate the principal moneys owing by the municipality on account of any previous loan.

Plans and specifications of works to be prepared.

145. Before proceeding to borrow any money for the construction of permanent works and undertakings, the council of every municipality shall cause to be prepared plans and specifications, and an estimate of the cost thereof, and also a statement showing the proposed expenditure of the money to be borrowed, and such statement shall be open to the inspection of the ratepayers, for one month after the publication of the notice next hereinafter mentioned at all reasonable times.

Notice to be given of intention to borrow.

146. No proposition for borrowing money for any of the purposes aforesaid shall be adopted by the council, unless a notice thereof has been published in the *Government Gazette* and also twice in some newspaper generally circulating in the neighbourhood, not less than one month nor more than three months before such proposition is adopted, stating the amount of the moneys proposed to be borrowed, and the purposes for which the loan is to be applied, and in case such loan is to be expended in the purchase of any land, works, or undertakings, specifying such land, works, or undertakings, and in case the loan is to be expended in the construction of works or undertakings, stating that the plans and specifications and estimate of such works, and the statement hereinbefore mentioned, are open for inspection at the office of the council.

When proposal to borrow, must be submitted to ratepayers.

147. Within one month after the last publication of such notice as aforesaid, of any proposition to borrow money, not being a proposition to borrow money to liquidate any loan lawfully incurred, any twenty ratepayers may by writing under their hands delivered to the chairman or clerk of the municipality, demand that the question whether or not such loan shall be incurred, be submitted to the election of the ratepayers.

Proceedings on demand for such submission.

148. When any such demand has been made, the votes of the ratepayers shall be taken upon such questions on a day to be fixed by the council of which day not less than fourteen days' notice shall be given and on such day a poll shall be taken in the manner by this Act prescribed for holding elections of all ratepayers who desire to prohibit the council from proceeding further with such loan.

Scrutineers.

149. One scrutineer shall be appointed by the council and the persons demanding a poll may by writing under the hands of a

majority or the whole of them also appoint one scrutineer to be present at every polling place.

No. 45—1892.

150. Immediately after the close of the poll, the number of votes recorded thereat shall be ascertained in the manner provided for ascertaining the number of votes at elections, and the returning officers shall, as soon as conveniently may be on or after the day of the poll, give notice to the council of the number of votes recorded, and the council shall be prohibited from proceeding further with such loan if the number of votes recorded against the loan exceeds one-half of the total number of votes for which voters are recorded on the Voters' Roll of the municipality.

How result of poll to be ascertained.

151. If no such demand is made as aforesaid, that the question whether or not such loan be incurred be submitted to the election of the ratepayers, or if on such demand being made the ratepayers fail to prohibit the council from proceeding further with the loan, the council may at any time not more than six months after the last publication of such notice as aforesaid pass a resolution for borrowing money for the purposes mentioned in the notice.

In case proposal to borrow be not opposed, or fail to be prohibited.

152. No resolution for borrowing money shall be adopted by the council, unless at the meeting of the council at which the resolution is confirmed as herein required, the resolution for confirmation is carried by a majority of the whole number of members of the council: Nor shall any such resolution be adopted if the sum proposed to be borrowed, together with any sums previously borrowed and not repaid, would exceed a sum equal to ten times the then annual revenue of the municipality.

Majority necessary to support proposal to borrow.

153. The council of every municipality shall cause a separate account to be kept in some bank, for every loan incurred by them, and all money forming part of such loan shall be paid into such account, and shall be applied solely to the purposes for which the same was borrowed.

Separate accounts to be kept of borrowed money.

154. For the temporary accommodation of councils of municipalities, it shall be lawful for such councils to obtain advances from banks, by overdraft of the current account upon the credit of the municipality. But no such overdraft or accommodation shall at any time, under any circumstances exceed the prior year's income.

Advances from Banks.

155. If after the commencement of this Act, the council of any municipality borrow any money, as on the credit of the municipality which the municipality is not legally bound to pay, all councillors who have consented to the borrowing of such money shall be jointly and severally liable to repay the same and all interest thereon to the persons from whom the same was borrowed, and the same may be recovered from such councillors or any of them, as money lent by such persons to such councillors in any Court of competent jurisdiction, but in no case shall such money be recoverable from the municipality.

When Councillors personally liable for loans.

No. 45—1882.

## POWERS AND DUTIES OF THE COUNCIL.

Powers and duties  
of Council.

156. The council shall have power and authority to do all or any of the following things :

To make, construct, alter, keep clean and in repair the roads, streets, dams, furrows, sewers, drains, culverts and bridges within the limits of the municipality.

To excavate, construct, and lay down within the limits of the municipality, watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells, and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes or to execute any other like works.

To lease, or purchase any land, and to erect, lease, or purchase, maintain and keep in repair, any building or buildings for any municipal requirement or purpose.

To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper ; and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now or hereafter be in force for this purpose.

Police, street keep-  
ers and other officers.

157. The council of any municipality may appoint and employ such number of street-keepers, policemen, and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night ; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition and weapons, and appoint to them such duties and hours or time of duty, and to make such rules, orders, and regulations, relative to such street-keepers, policemen, or special constables and their duties, as shall be deemed fit. All such street-keepers and policemen shall act as constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures as constables or policemen are invested with, or shall or may have or enjoy or are or may be subject to or liable to by law : provided that nothing in this section contained shall be taken to alter or affect any existing law regulating the number of police required to be provided by or in any municipality.

Power to take lands  
&c.

158. The council of every municipality may, within the municipality and with the consent of the Governor, take land with or without buildings for the purpose of executing any work

or undertaking authorized by this Act, and the council shall make full compensation to the owners and occupiers of any lands so taken.

No. 45—1882.

#### MUNICIPAL LANDS.

159. The property of and in all lands, streets, roads, and buildings to which the inhabitants of any municipality shall at any time have or acquire a common right, shall be vested in the council of such municipality for the time being.

Common lands, &c., of inhabitants vested in Council.

160. When and as often as the council shall at any meeting duly convened for that purpose, resolve that it is expedient to dispose of or alienate or permit to be built upon, enclosed, or cultivated, any part or portion of the common pasture lands of the municipality, or any other lands which shall be vested in the said council, it shall and may be lawful for the council to apply in writing for the consent of the Governor to the proposed sale, lease or other arrangement for the occupation or enclosure of any part or portion of such lands, and upon obtaining such consent, but not otherwise, to execute or carry into effect such sale, lease or other arrangement.

As to disposing of, enclosing, &c., such lands.

161. No such application shall be made to the Governor aforesaid until a notice in writing of such intended application shall have been posted for general information at some conspicuous place within the municipality for a period of not less than fourteen days, and published for a like period in a newspaper (if any) published or circulating within such municipality, which notice shall in some part thereof describe the part or portion of land proposed to be sold, leased, or otherwise permitted to be occupied or intended to be enclosed, and the object, terms and conditions of the proposed sale, lease or other right of occupation or enclosure, and shall require any person objecting to the proposed proceeding to lodge with the council, within fourteen days from and after the date of the posting of such notice, his objections thereto in writing.

Notice of application for such dealing with lands to be given.

162. In every case in which any such council as aforesaid shall apply to the Governor for such consent as aforesaid, they shall transmit, together with such application, a copy of the notice posted as aforesaid, and of all objections which shall have been lodged in pursuance thereof, with such observations, if any, upon such objections as they shall deem necessary or fitting.

Copy of notice and of objections to be sent to Governor.

163. When and as soon as the Governor shall have signified his assent to such application as aforesaid, all contracts, leases, or other instruments necessary to effect the object of such application may be signed or executed.

Contract of sale, &c., to be completed when Governor's assent given.

#### MISCELLANEOUS.

164. The provisions of the Ordinance No. 16, 1847, commonly called the "Pound Ordinance," and of all Acts amending the said Ordinance, shall *mutatis mutandis*, extend and apply to every

Pound Ordinance 16 of 1847 to apply.

- No. 45—1882. municipality hereafter constituted or brought under the operation of this Act : Provided that the council of every such municipality shall, in regard to every pound established therein, have and exercise all the powers now had and exercised by the Civil Commissioner and Divisional Council in regard to pounds not within municipalities.
- Newspapers for Notices. 165. In all cases in which any matter or thing is by this Act required to be published, advertised or inserted in a newspaper generally circulated in the municipality or neighbourhood, the said newspaper shall be such newspaper as the council shall for the time being appoint in that behalf.
- Power of entry. 166. The council shall for the purposes of this Act have power, by themselves or their officers, to enter at all reasonable hours in the daytime into and upon any building or land within the municipal district for the purpose of executing any work or making any inspection authorized to be executed or made by them under this Act without being liable to any legal proceedings on account thereof.
- Service of process. 167. Any summons or notice, or any writ or other proceeding at law requiring to be served upon any municipality may be served by being given personally to the chairman or Municipal Clerk, or left at the municipal office.
- Authentication of documents. 168. Every order, notice, or other document requiring authentication by the council may be sufficiently authenticated without the common seal of the municipality if signed by two councillors or by the Municipal Clerk.
- Penalties for obstructing officers. 169. Every person who shall at any time obstruct the council, or any person employed by them, or any person appointed by the Governor in the performance of anything which they are respectively empowered or required to do by this or any other Act, shall be liable to a penalty not exceeding five pounds.
- Legal proceedings and expenses. 170. The council may order proceedings to be taken for recovery of any penalties and for the punishment of any person offending against the provisions of this Act, or of any bye-law made thereunder, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.
- What shall constitute offences against this Act. 171. Where any matter or thing is by this Act or by any order or notice made and published under the authority hereof directed or forbidden to be done, or where any authority is given by this Act 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 Act.
- Penalties. 172. Every person guilty of an offence against this Act or any bye-law in force in any municipality, shall for every such offence



be liable to the penalty expressly imposed by this Act, or by the bye-law, and if no other penalty be imposed to a penalty not exceeding ten pounds.

No. 45—1882.

173. All penalties or other moneys payable in respect of any offence against this Act, or any bye-law made thereunder, may be recovered before the Court of the Resident Magistrate of the district.

Recoverable in Resident Magistrate's Court.

174. All offences against any bye-law or regulation in force in any municipality shall be deemed to be offences against this Act, 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 or offending against a bye-law or regulation in force in the municipality, without describing the bye-law or regulation by number or otherwise, and alleging the act complained of.

Offences against bye-laws.

175. Whenever any penalty shall have been imposed under the provisions of this Act or of any bye-law made thereunder, and the person convicted shall not forthwith pay the same, the Court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds, or not exceeding three months if the penalty be above five pounds, and such person shall be detained and kept to hard labour accordingly unless he shall sooner pay the penalty.

Punishment if penalties not paid.

176. All penalties recovered for offences against the bye-laws of any municipality, or for offences against this Act committed in any municipality, or in any way in respect of the municipality, shall be paid into the municipal fund of such municipality.

Application of penalties paid.

177. For the purposes of any land taken, or any arbitration under the provisions of this Act, the provisions of the "Lands and Arbitration Clauses Act, 1882," are hereby incorporated.

"Lands and Arbitration Clauses Act, 1882," to apply.

178. Notwithstanding anything in this Act contained it shall be lawful for the Governor from time to time, by proclamation to be published in the *Government Gazette*, to alter the boundaries of any existing municipality, not being a municipality incorporated by any Ordinance or Act, or to repeal any municipal regulations now in force in any municipality whether incorporated or not.

Boundaries of Municipality may be altered by Proclamation and Regulations repealed.

179. For the purpose of assizing weights and measures, the provisions of "The Weights and Measures Act, 1876," are hereby incorporated.

"Weights and Measures Act, 1876," to apply.

180. This Act may be cited as the "Municipal Act, 1882."

Short title.

(For Schedule see next page.)

## FIRST SCHEDULE.

## ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance No. 9, 1836	Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.	So much as has not been already repealed.
Ordinance No. 2, 1844	Ordinance for amending the Ordinance No. 9, 1836, entitled "An Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded."	The whole.
Ordinance No. 8, 1848	Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality.	The whole.
Ordinance No. 5, 1852	Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9, 1836, to purchase or hire immovable property for Municipal purposes.	The whole.
Act No. 15, 1860.	For continuing the Ordinance No. 9, 1836, intitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded," as also the Ordinance No. 2, 1844, intitled "Ordinance for amending the Ordinance No. 9, 1836, intitled 'Ordinance for the Creation of Municipal Boards, in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.'"	The whole.
Act No. 13, 1864.	To amend the Ordinance No. 9 of 1836, intitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded."	The whole.

## SECOND SCHEDULE.

No. 45—1882.

## FORM OF NOMINATION.

Municipality of \_\_\_\_\_.

We, the undersigned voters of the municipality of \_\_\_\_\_ (or if the municipality be divided into wards, for the Ward No. --- of the municipality of \_\_\_\_\_), do hereby nominate (*state christian and surname*) as a candidate for the office of councillor (or auditor as the case may be) of the said municipality at the election to be held for the said municipality (or ward as the case may be) on the — day of \_\_\_\_\_ 18—.

(Here are to follow the Signatures.)

No. 9.—Sd. B. D'Urban.] [August 15, 1836.

Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded. <sup>(1)</sup>

WHEREAS it is expedient that due provision should be made for the better regulation of certain matters and things of a local nature within the several districts, towns, and villages in this Colony, and that municipal boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the first day of October next it shall and may be lawful for any Resident Magistrate or Justice of the Peace within the limits of his jurisdiction, and he is hereby required upon a requisition made to him in writing to that effect by any number of resident householders, <sup>(2)</sup> not less than twenty-five, and severally paying taxes to an amount exceeding six shillings sterling per annum, and resident respectively within one mile of any one central place which shall be specified in the said requisition, to call a meeting of householders paying such amount of taxes as aforesaid and resident within the limits aforesaid to determine whether municipal regulations shall be adopted for the town, village, or place intended to be erected into a municipality. <sup>(3)</sup>

2. And be it further enacted that three weeks' notice at the least of the time and place of holding such meeting shall be given by

<sup>1</sup> This Ordinance and Ord. 2, 1844, Ord. 8, 1848, Ord. 5, 1852, Act 15, 1860, and Act 13, 1864, are repealed by Act 45, 1882, *supra*, but they are reprinted in view of the provisions of § 4 of that Act.

This Ordinance, with Ord. 2, 1844, revived by Ord. 3, 1853, and made perpetual by Act 15, 1860.

<sup>2</sup> As to qualification of Householders, see § 6, Ord. 2, 1844 and § 7, Act 13, 1864.

<sup>3</sup> See § 2, Ord. 2, 1844.

Ord. 9—1836.

the Resident Magistrate or Justice of the Peace calling the same by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

Majority of votes at meeting to decide.

3. And be it further enacted that the chairman who shall preside at any meeting assembled as hereinbefore directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require such resident householders as aforesaid assembled thereat to determine by majority of votes whether municipal regulations shall or shall not be adopted and acted upon within the said intended municipality.

Meeting of householders for choosing committee.

4. And be it further enacted that if at any such meeting it shall be determined by a majority of votes that municipal regulations shall be adopted then and in such case any such Resident Magistrate or Justice of the Peace as aforesaid to whom such determination shall be notified by the chairman of such meeting shall forthwith call another meeting of such resident householders as aforesaid to be holden within seven days thereafter, in order to elect and appoint a committee of so many of such resident householders as aforesaid as the said meeting shall deem expedient to frame and draw up municipal regulations.

Committees for framing regulations.

5. And be it further enacted that the committee so to be elected and appointed shall be chosen by such resident householders assembled at such meeting by majority of votes.

Preparation of regulations.

6. And be it further enacted that the committee so chosen as aforesaid shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same when prepared to a meeting of such resident householders as aforesaid to be called by the said committee upon seven days' notice to be given in manner aforesaid: Provided, always, that such committee shall submit such regulations to such meeting as aforesaid within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall then and in every such case be chosen in manner and for the purpose aforesaid, at a meeting to be called by any such Resident Magistrate or Justice of the Peace as aforesaid to whom such dissolution of the committee shall have been notified.

What shall be embraced by the regulations.

7. And be it further enacted that in such regulations it shall be the duty of such committee to fix the limits<sup>(1)</sup> of the municipality and to divide the municipality into wards if necessary, and to fix the number of commissioners and wardmasters for the municipality or the several wards thereof, and to make rules for the classification and valuation of the immovable property therein, and to frame all other regulations which shall be necessary to enable the said commissioners to carry into effect the provisions of this Ordinance or such of them as the said committee shall think expedient and necessary for the municipality.

<sup>1</sup> See Ord. 2, 1844, § 2.

8. And be it further enacted that at the meeting to which such regulations as aforesaid shall be submitted by such committee any Resident Magistrate or Justice of the Peace residing at or near such proposed municipality shall preside as chairman: Provided however, that such Magistrate or Justice shall not be a member of the said committee; and when there shall not be any such Resident Magistrate or Justice of the Peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid not being a member of such committee present at such meeting may be elected to preside as chairman at such meeting.

Ord. 9—1886.  
Chairman of meeting of householders.

9. And be it further enacted that at such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee *seriatim*, and afterwards on the whole of the regulations jointly; and a majority of votes shall decide whether such clause or the whole of the regulations jointly as the case may be shall or shall not be adopted.

How questions to be put to meeting.

10. And be it further enacted that the regulations adopted at such meeting shall forthwith be transmitted to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the *Government Gazette*, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein; and in the event of the said regulations being amended by the said Governor by and with the advice of the Executive Council, the regulations so amended shall be forthwith transmitted to the chairman of such meeting as last aforesaid, and in his absence to any Resident Magistrate or Justice of the Peace residing in or near the said intended municipality who shall forthwith upon a notice of not less than seven days call a meeting of such resident householders as aforesaid, and who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not; and if the regulations be adopted, the chairman of such meeting shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation and cause the same to be published in the *Government Gazette*, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein.

Approval of regulations by Governor.

11. (1) And be it further enacted it shall be lawful for the commissioners of any municipality, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than twenty-five to call a meeting of such resident householders as

Alteration of regulations from time to time.

<sup>1</sup> Printed as amended by Ord. 2, 1844, § 5.

Ord. 9—1836.

aforesaid upon seven days' notice to be given in manner aforesaid for the purpose of adding to, amending, or repealing the existing regulations or any of them by a majority of persons present and entitled to vote at such meeting; and the said regulations after being so reformed shall be forthwith transmitted by the said commissioners to the Governor for the approval or disallowance thereof or of any part thereof of the said Governor by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the *Government Gazette* forthwith; and proclamation of such approval shall be made, and the said reformed regulations so approved of as aforesaid shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void: Provided, always, that nothing in any municipal regulations contained shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this Ordinance.

Election of commissioners.

12. And be it further enacted that so soon as such original regulations as aforesaid shall have appeared in the *Government Gazette* the Resident Magistrate of the district shall and he is hereby required, by a notice of not less than ten days in manner hereinbefore provided, to call a meeting of such resident householders as aforesaid residing within the limits of such municipality, to be holden for the election and choice of so many commissioners as shall have been specified in the said regulations to carry the same into effect; and the said commissioners for the municipality or the wards thereof respectively shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting; and any such Resident Magistrate or Justice of the Peace shall preside as chairman at such meeting.

Qualification of commissioners.

13. <sup>(1)</sup> And be it further enacted that any person residing within the municipality and being the proprietor of a house situate within the same and who shall pay annually a sum of not less than one pound sterling in taxes shall be eligible to be elected a commissioner for the purposes of this Ordinance, and shall be proposed at the said meeting by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Triennial retirement of commissioners.

14. And be it further enacted that every person who shall be elected a commissioner in any municipality in manner aforesaid shall go out of office at the end of the third year from the said first election; and in place of such commissioners so going out of office a like number of other commissioners to be elected as hereinafter provided shall come into office, and remain in office for three years; and at the expiration of such last-mentioned term of three years shall in like manner go out of office and be succeeded by other commissioners, who shall remain in office for a like term of

<sup>1</sup> Amended by § 7, Ord. 2, 1844.

three years, and so on for ever : Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Ord. 9—1836.

15. And be it further enacted that on the Monday immediately preceding the day on which any such term of three years shall expire a meeting shall be holden at such hour and place as shall be duly notified by the said commissioners for the election of commissioners for the three years next succeeding; and such election shall proceed in such manner as is hereinbefore provided for the election of the first commissioners under this Ordinance.

Election to supply triennial vacancies in commissionership.

16. <sup>(1)</sup> And be it further enacted that any commissioner who shall cease to possess any of the qualifications in the thirteenth section required for the eligibility of commissioners, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, shall *ipso facto* vacate his office; and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting commissioners to any such Resident Magistrate or Justice of the Peace as aforesaid, who shall forthwith in the manner hereinbefore directed by this Ordinance call a meeting of such resident householders as aforesaid for the purpose of filling up such vacancy or vacancies.

Vacating of office by commissioners.

17. And be it further enacted that the said commissioners shall meet at such times as are specified in the municipal regulations respectively at some convenient place or office previously publicly notified; and at such meetings it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Ordinance or the municipal regulations.

Regular meeting of commissioners.

18. And be it further enacted that such commissioners shall meet at all other times and so often as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner when three commissioners only shall have been appointed, and in all other cases for any two commissioners, by writing under his or their hands to summon, upon at least forty-eight hours' notice, the commissioners for any special purpose therein named; and that at all meetings of such commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then not less than two commissioners, shall constitute a quorum for transacting business.

Occasional meeting of commissioners.

<sup>1</sup> Amended by Act 13, 1864, § 4, and Act 9, 1885, § 2, *infra*.

Ord. 9—1836.

Treasurer and other officers. 19. And be it further enacted that it shall be lawful for the said commissioners elected in any municipality for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorized and required to appoint during pleasure such Treasurer and other officers as shall be specified in any such regulations and to remove and displace the same.

Security by treasurer.

20. And be it further enacted that it shall be lawful for the said commissioners or any two or more of them and they are hereby required to take security from the Treasurer to be appointed by virtue of this Ordinance, before he enters on the duties of his office for the due execution of his office of Treasurer, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any such Treasurer shall neglect or refuse for the space of one week next after his appointment to give such security to the satisfaction of the said commissioners, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall within three weeks then next assemble and appoint some other fit and proper person to the office of Treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Account to be kept by treasurer.

21. And be it further enacted that every such Treasurer and other officer appointed by virtue of this Ordinance shall under his hand and at such time or times and in such manner as the said commissioners shall direct, deliver to the said commissioners or such person as they shall appoint true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Ordinance, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this Ordinance, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the Treasurer for the time being or to such person or persons as the said commissioners shall appoint to receive the same; and if any such Treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners or to such person or persons as they shall appoint to receive the same within three days after being thereunto required by the said commissioners by notice in writing under the hands of any two or more of the said commissioners, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Ordinance, or to give satisfaction to the said commissioners or such other person or persons as aforesaid respecting the same, then



and in every such case upon complaint made by the said commissioners or by such person or persons as they shall appoint for that purpose of any such refusal or wilful neglect as aforesaid to the Resident Magistrate of the district within which such Treasurer or other officer resides, such Resident Magistrate may and he is hereby authorized and required to summon the officer so refusing or neglecting to appear before him ; and if it shall appear to the said Magistrate upon the hearing of the case that any moneys remain due from such officer, or if it shall appear to such Magistrate that such officer had refused or wilfully neglected to render and give such account or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Ordinance remained in the hands or in the custody or power of such officer and he refused or wilfully neglected to deliver or give satisfaction respecting the same, as aforesaid, then and in every such case such Magistrate shall and he is hereby required to commit such offender to the common gaol or house of correction for such district, there to remain without bail until he shall have given a true and perfect account as aforesaid or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said commissioners or to such other person or persons as aforesaid ; but no such offender shall be kept or detained in such common gaol or house of correction under such commitment as aforesaid for any longer space of time than three calendar months.

Ord. 9—1886.

22. And be it further enacted that no prosecution or commitment under the provisions of this Ordinance of any Treasurer or other officer or person to be appointed under the powers of this Ordinance shall acquit or discharge any surety or security that shall or may have been taken by or given to the commissioners for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Inprisonment of treasurer, effect as to his sureties.

23. And be it further enacted that no person elected and appointed under and by virtue of this Ordinance a commissioner for the purpose of carrying into effect the provisions thereof shall have or receive or be entitled to have or receive any salary, or shall exact, take, or accept any fee or reward whatsoever for or on account of anything done or to be done by him by virtue of this Ordinance or on any account whatsoever relative to putting this Ordinance into execution.

Office of commissioner gratuitous.

24. And be it further enacted that in any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Ordinance, or for or in respect of any property movable or immovable vested in the said commissioners, or for any other matter or thing relating to this Ordinance by or against the said commissioners, it shall and may

Actions by and against commissioners.

Ord. 9—1836.

be lawful for the said commissioners to sue or be sued by the style or description of “the commissioners for the municipality of ————”: Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be reimbursed and paid out of the moneys to arise by virtue of this Ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same or any part thereof, unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

Minute book of commissioners.

25. And be it further enacted that all acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings upon any appeal, or trial, or information, or any proceeding civil or criminal, and in any court or courts of law or equity whatsoever.

Books of account of commissioners.

26. And be it further enacted that the said commissioners shall and they are hereby required from time to time to order and direct a book or books to be provided and kept in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Ordinance and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said commissioners and of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them shall or may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, such commissioner shall forfeit and pay any sum of money not exceeding five pounds for each default.

Annual account on oath by commissioners.

27. And be it further enacted that in the month of September in every year a true account shall be made in writing of all moneys received and paid by virtue of this Ordinance during the preceding year ending on the 31st day of August in every year; and a copy

or duplicate of such account, verified on oath before any Justice of the Peace by the said commissioners, or any two of them, shall be deposited with the said commissioners and shall be open to the inspection of all parties interested.

Ord. 9—1836.

28. (1) And be it further enacted that it shall and may be lawful for the said commissioners when they shall see fit, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid, not less than twenty-five, to call a meeting of such resident householders as aforesaid, upon seven days' notice to be given in manner aforesaid, for the purpose of assessing any such rate or rates on the immovable property situate within the municipality, and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Ordinance.

Meeting for assessing rates.

29. And be it further enacted that after the rates to be levied by virtue of this Ordinance shall have been assessed in manner aforesaid it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed by the proprietors thereof; and the said collector is hereby authorized to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided also that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Collection of rates.

30. And be it further enacted that the said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the Treasurer to be appointed in the said municipality under this Ordinance within forty days from the delivery of such order to the said collector; and at the time of making any payment to the said Treasurer the said collector shall deliver to him a note in writing signed by him, specifying the amount so paid, which note shall be kept by the Treasurer as a voucher for his receipt of that particular amount; and the receipt of the said Treasurer specifying the amount paid to him by the collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with his municipality.

Payments by collector to treasurer.

31. (2) And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid are hereby empowered from time to time to appoint and employ such number of able-bodied watch-house keepers, sergeants of the night, watchmen, patrols, street-keepers, and other persons as shall be

Police and watchmen.

<sup>1</sup> Printed as amended by Act 13, 1864, § 12. See also §§ 10 and 11 of that Act.

<sup>2</sup> See also Act 15, 1857 (Police).

Ord. 9—1886.

sufficient for the proper protection of the inhabitants, houses and property, streets and other places within the limits of the municipality, by day and by night, and provide all such watchmen, watch-house keepers, sergeants of the night, patrols, and persons as aforesaid with such clothing, arms, ammunition, and weapons, and shall assign to them such beat and rounds and duties, and appoint such hours for them to be on duty, and also make such rules, orders, and regulations relative to such watch-house keepers, sergeants of the night, watchmen, patrol, street-keepers, and other persons, and their duties, as shall be deemed fit.

Powers of police.

32. And be it further enacted that all watchmen, sergeants of the night, and patrols shall act as constables while in execution of the powers and authorities of this Ordinance, and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with or shall or may have and enjoy, or is or are or shall be subject or liable to by law.

Fire-engines.

33. And be it further enacted that it shall be lawful for the said commissioners acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and keep up fire-engines, with pipes and other utensils proper for the same, for the use of the respective municipalities.

Lighting.

34. And be it further enacted that it shall be lawful for the said commissioners acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to cause such lamp-irons or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or inclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner within all or any of the said roads, streets, and places within the limits of the respective municipalities as shall be deemed proper, and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil or otherwise during such hours as shall be necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as shall be necessary for watching all or any of the streets, roads, and places within the limits of the municipality.

Supply of water.

35. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and to carry and lay any pipe or pipes for the conveyance of water to which the inhabitants of the municipality shall at any time have or acquire a common right from any reservoir, river, or

spring to any house, building, or other place within the limits of the municipality, and the said commissioners shall, acting in pursuance of any such regulations as aforesaid, and they are hereby authorized from time to time to make such regulations touching the quantity of water to be supplied to the inhabitants and the time or times at which such supply is to be received as shall be proper and necessary.

Ord. 9—1836.

36. And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid, shall and they are hereby empowered to cause to be made, provided, erected, and built such bridges, sluices, dams, reservoirs, watercourses, pumps, wells, fountains, drains, and ditches as shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair.

Drains, &c.

37. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered to cause the public streets, roads, and places within the limits of the municipality to be at all times kept in good and sufficient repair, and as occasion shall require to cause such new streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair.

Making and repairing of streets, &c.

38. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time as occasion may require to establish within the limits of the respective municipalities a market or markets for the sale of cattle, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or other buildings to be built and erected for the convenience of persons attending such market or markets and to cause the same to be kept in good and sufficient repair; and also to enforce such municipal regulations as shall be made and recover such fines as shall be imposed thereby for ensuring order and cleanliness on the part of the persons attending such market.

Markets, establishment of.

39. (1) And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to enforce all municipal regulations which shall be made for the due and proper care of the common pasture lands the property of any municipality, and which regulations shall specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also to recover fines which shall be imposed by the said regulations on any person contravening the same: Provided, always, that the said commissioners shall not be authorized or permitted to dispose of, alienate, (1) build upon, inclose, or

Common pasture lands, protection of.

<sup>1</sup> See however Ord. 8, 1848, § 2.

Ord. 9-1836.

cultivate any such common pasture lands, nor suffer any other person to build upon, inclose, or cultivate the same; and any such alienation by sale, gift, or otherwise shall be and is hereby declared to be null and void.

Miscellaneous regulations.

40. And be it further enacted that it shall and may be lawful for the said commissioners and they are hereby authorized to enforce all such regulations as aforesaid which shall be framed relative to the assizing and examining of weights and measures, the time when and the places where cattle may be slaughtered or driven to be slaughtered, and the state and condition of the slaughter-houses, the registration, rates of charge, and conduct of coolies, the registration and improper driving or loading of carts and carriages, the undue obstruction of the streets by carriages, repairing of houses or otherwise, the confining or killing of dogs, and to recover all fines imposed by the said regulations for contravening the same.

Municipal property, protection of.

41. And be it further enacted that if any person shall wilfully break, throw down, spoil, or damage any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this Ordinance vested in the said commissioners, or shall wilfully break or damage any public watercourse, bridge, sluice, dam, reservoir, pump, well, fountain, drain, or ditch, or shall wilfully waste any public water within the limits of any municipality, it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this Ordinance and without any warrant to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the Resident Magistrate of the district within which any such offence shall have been committed or any Justice of the Peace having jurisdiction; and if the party accused shall be convicted of any such offence by such Resident Magistrate, he, she, or they shall forfeit severally any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby.

Nuisances, protection against.

42. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby authorized to remove, put down, and abate all nuisances of a public nature within any such municipality as aforesaid, and which may tend either to injure the health, destroy the comfort, or in any way affect the rights of the inhabitants at large, and if need be to proceed at law against any person or persons so committing any such nuisance for the abatement thereof and for damages; and further that the said

commissioners shall and they are hereby required to cause all streets, watercourses, drains, roads, and places within any such municipality to be kept clean and free from dirt or rubbish; and any person convicted upon the complaint made by the said commissioners of throwing dirt or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding two pounds; and such forfeiture shall be paid into the Colonial Treasury.

Ord. 9—1836.  
Streets, &c., cleansing of.

43. (1) And be it further enacted that it shall and may be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to enter into any contract with any person or company whatsoever for any work to be done and performed or for any materials to be furnished to and for the said commissioners for the purposes of this Ordinance; which contract shall specify the work to be done and the price to be paid for the same and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by two or more of the said commissioners and also by the person or persons contracting; which contract or a copy thereof shall be entered in a book to be kept for that purpose; but no contract above the value of ten pounds shall be entered into unless eight days' notice be previously given and affixed to some conspicuous place within the municipality expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if the said commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper.

Contracts, power to enter into.

44. [Repealed by Ord. 5, 1852.]

45. And be it further enacted that the property of and in all lands, streets, roads, and buildings to which the inhabitants of any municipality shall at any time have or acquire a common right shall be vested in the commissioners of such municipality for the time being.

Property of lands, &c., in whom vested.

46. And be it further enacted that the property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, pumps, wells, fountains, sewers, drains, watercourses, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said streets and places within the limits of the respective municipalities, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners) shall

Property of lamps, &c., in whom vested

<sup>1</sup> See Act 13, 1864, § 9.

- Ord. 9—1836. be vested in the said commissioners, and may be sold and disposed of by them from time to time as they shall be permitted or required to do in pursuance of any such regulations as aforesaid; and the said commissioners are hereby authorized and empowered to bring or cause to be brought any criminal action in manner as hereinbefore is provided against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things the property in which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or ordinance which may hereafter be created or then be in force in that behalf; and in all such actions it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on account of which such action shall be brought is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.
- Criminal actions for protection of.
- Offences, before whom to be prosecuted. 47. And be it further enacted that all offences committed in contravention of this Ordinance or of any municipal regulation may lawfully be prosecuted in the Court of the Resident Magistrate for the district within which the same shall have been committed; and if any person shall be duly convicted of any such offence and shall not pay or satisfy the amount of the fine imposed upon him it shall be lawful for the Resident Magistrate before whom the case was tried to sentence such offender to any period of imprisonment not exceeding three months; and the amount of all such fines then recovered shall be paid into the Colonial Treasury <sup>(1)</sup>: Provided, always, that it shall be lawful for the Governor of this Colony in each particular case to determine, award, and direct what share if any of the amount of any fine imposed in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.
- Fines.
- Householders, who to be considered. 48. *And be it further enacted that every person who is the occupier of any dwelling-house either as proprietor or renter of the yearly value or rent of not less than ten pounds sterling shall be and be deemed and taken to be a resident householder within the meaning of this Ordinance; and that at the several meetings of such resident*
- Votes of householders. *householders as aforesaid hereinbefore appointed or authorized to be holden every such householder who shall be personally present shall have and be entitled to one vote and no more* <sup>(2)</sup>
- Meeting of householders, chairman of 49. And be it it further enacted that, unless where provision has been hereinbefore made to the contrary at any of the meetings hereinbefore mentioned and appointed or authorized to be holden, such person as may be elected by the majority of persons present entitled to vote shall preside as chairman and shall have and be entitled to a casting vote, and shall determine in the first instance

<sup>1</sup> Into Treasury of Municipality, Act 13, 1864, § 15.

<sup>2</sup> See § 7, Act 13, 1864, *infra*.



upon the qualification or right of voting of any person claiming to vote and eligibility of any candidate proposed at any such meeting: Provided, always that no person shall be deemed competent to vote at any meeting appointed or authorized to be held under the provisions of this Ordinance who shall fail to produce (whenever required thereto by the chairman at any such meeting) proof of the payment of his or her taxes due and payable for the year last past.

Ord. 9—1836.  
Qualification for votes at.

50. And be it further enacted that nothing herein contained shall extend or be construed to extend to injure or impair the rights which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Ordinance or of any municipal regulation by which the right of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally or any of their goods and chattels (other than such as may be invested in them in pursuance of this Ordinance) liable to the payment of any sum of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Saving of rights.

Liabilities of commissioners.

51. And be it further enacted that all the necessary costs, charges, and expenses attending the carrying the provisions of this Ordinance into effect shall be paid out of the money authorized to be received by the commissioners under the provisions of this Ordinance.

Expenses how to be provided.

52. And be it further enacted that no inhabitant of any municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceedings to be had, made, prosecuted, or carried on under the authority of this Ordinance.

Witnesses, competency of householders to be.

53. And be it further enacted that nothing herein contained shall extend or be construed to extend to Cape Town and the district thereof.

Cape Town, ordinance not to extend to.

No. 3—Sd. George Napier.] [May 4, 1843.

Ordinance for repealing the Ordinance No. 4 of 1842, entitled an Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation. (1)

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony bearing date the 26th day of March, 1842, and numbered 4, 1842, and entitled "An Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation : " And whereas it is expedient to repeal the said Ordinance : Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that the said Ordinance No. 4, 1842, shall be repealed and the same is hereby repealed accordingly.

Ord. 4 of 1842 repealed.

No. 2.—Sd. George Napier.] [Jan. 30, 1844.

Ordinance for amending the Ordinance No. 9, 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded." (2)

Preamble.

WHEREAS doubts are entertained in regard to the limits which according to the provisions of the Ordinance No. 9, 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded," may lawfully be assigned to any municipality constituted and established under and by virtue of the said Ordinance : And whereas it is expedient to remove the said doubts and to amend the said Ordinance in other respects : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every matter or thing in the said Ordinance contained repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Laws repealed.

Limits of municipality, how to be fixed.

2. And be it enacted that it shall and may be lawful for the committee in the said Ordinance mentioned in framing and drawing up the municipal regulations for framing and drawing which such committee has been elected and appointed to fix the limits of the municipality at and by such convenient boundaries,

<sup>1</sup> See also § 115, Act 45, 1882, *supra*.

<sup>2</sup> See note to Ord. 9, 1836, *supra*.

whether beyond or within the extent in any direction of one mile from the certain central place in the first section of the said Ordinance mentioned as the said committee shall choose and determine.

Ord. 2—1844.

3. And be it enacted that no limits fixed for any municipality in and by any municipal regulations duly published before the promulgation of this Ordinance shall be deemed or taken to be illegal or invalid by reason that the said limits go beyond or fall short in any direction of the extent of one mile from the certain central place in the first section of the said Ordinance mentioned.

Limits already fixed.

4. And be it enacted that the meeting of resident householders in the eighth section of the said Ordinance mentioned to which the municipal regulations framed and drawn up by the committee or any amendment of such regulations made under and by virtue of the tenth section of the said Ordinance by the Governor of the Colony for the time being by and with the advice of the Executive Council shall be submitted, shall be a meeting of householders resident within the limits fixed by the said committee, and every other meeting of resident householders directed or contemplated by any succeeding section of the said Ordinance, shall be convened and composed of the resident householders within the limits fixed for the municipality by the municipal regulations for the time being.

What householders entitled to fix regulations.

5. And be it enacted that so much of the eleventh section of the said Ordinance as is comprised in the words following, that is to say, "that at any time within one month after the expiration of each and every year from the publication of any such regulations as aforesaid," be repealed, and the same is hereby repealed accordingly.

Section 11 of Ordinance 9 of 1836 repealed in part.

6. (1) And be it enacted that the paying of taxes to the amount of six shillings sterling per annum or any other amount shall from and after the promulgation of this Ordinance cease to be a qualification of the resident householders in the first section of the said Ordinance mentioned, and that in lieu and stead of such qualification the qualification in the forty-eighth section of the said Ordinance mentioned shall be substituted as if the same were in the said first section set forth and described.

Qualification as householder.

7. And be it enacted that the being proprietor of a house within the municipality and the paying annually a sum of not less than one pound sterling in taxes shall from and after the promulgation of this Ordinance cease to be a qualification to be elected a commissioner for the purposes of the said Ordinance, and that henceforth any person being the proprietor of immovable property situated within such municipality of the value of not less than three hundred pounds and no other shall be qualified and eligible to be elected a commissioner for the purpose of the said Ordinance.

Qualification as commissioner.

8. And be it enacted that no commissioner heretofore elected in any municipality for the purposes of the said Ordinance shall be

Elections of commissioners already made.

<sup>1</sup> But see § 7, Act 13, 1864, *infra*.

Ord. 2--1844.

deemed or taken to have been illegally or improperly elected by reason merely that he did not possess either the qualification in the forty-eighth section of the said Ordinance mentioned or the qualification by the last preceding section of this Ordinance substituted in its stead.

No. 8.—Sd. H. G. Smith.]

[July 4, 1848.]

Ordinance for enlarging in certain respects the Powers of  
Municipal Commissioners in regard to the Common  
Pasture Lands of the Municipality. <sup>(1)</sup>

Preamble.

WHEREAS by the thirty-ninth section of the Ordinance No. 9, 1836, entitled "Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded," it is provided in regard to the common pasture lands the property of any municipality erected under or by virtue of the said Ordinance that the commissioners of such municipality shall not be authorized or permitted to dispose of, alienate, build upon, enclose, or cultivate any such common pasture lands nor suffer any other person to build upon, enclose, or cultivate the same; and that any such alienation by sale, gift, or otherwise shall be null and void: And whereas in certain of the municipalities established under and by virtue of the Ordinance aforesaid it has become necessary to provide for locating in an orderly and proper manner such Fingoes and other as are now to be found irregularly squatting or living upon such common pasture lands to the serious detriment of the pasturage thereof: And whereas the nature and extent of such common pasture lands are in some places such that portions thereof may be appropriated for the purpose aforesaid and for other purposes useful to the public and profitable to the municipality without prejudicing or interfering with any of the objects for which such common pasture lands were originally reserved: And whereas it is expedient to authorize and empower the commissioners of the several municipalities aforesaid under certain limitations and conditions to carry into effect any such plan or purpose as aforesaid which shall appear to them as necessary or desirable: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance aforesaid No. 9, 1836, as is repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant parts of Ordinance No. 9, 1836.

Application by commissioners to Governor for consent to alienation of common pasture lands.

2. And be it enacted that when and as often as any board of commissioners appointed under or by virtue of the Ordinance aforesaid shall at any meeting thereof duly convened in pursuance

<sup>1</sup> See note to Ord. 9, 1836, also § 14, Act 13, 1864, *infra*.

of the said Ordinance or of the municipal regulations for the time being determine that it is expedient for or on account of any such object or purpose as is in the preamble of this Ordinance mentioned to dispose of or alienate or permit to be built upon, enclosed, or cultivated any part or portion of the common pasture lands of the municipality to which such board of commissioners belongs or any other lands of which the property shall be vested in such board, it shall and may be lawful for such board to apply in writing for the consent of the Governor of this Colony for the time being, with the advice of the Executive Council, to the proposed sale, lease, or other arrangement for the occupation or enclosure of any part or portion of such lands, and upon obtaining such consent but not otherwise to execute or carry into effect such sale, lease, or other arrangement. (1) Provided, always, that no such application shall be made to the Governor aforesaid until a notice in writing of such intended application shall have been posted for general information at some conspicuous place of public resort within the the municipality for a period of not less than fourteen days, which notice shall in some part thereof describe the part or portion of land proposed to be sold, leased, or otherwise permitted to be occupied or intended to be enclosed, and the object, terms, and conditions of the proposed sale, lease, or other right of occupation or enclosure, and shall require any person objecting to the proposed proceeding to lodge with the commissioners within fourteen days from and after the date of the posting of such notice his objections thereto in writing.

Ord. 8—1848.

Posting of notice of intended application.

3. And be it enacted that in every case in which any such board as aforesaid shall apply to the Governor for such consent as aforesaid they shall transmit together with such application a copy of the notice posted as aforesaid and of all objections which shall have been lodged in pursuance thereof, with such observations if any upon such objections as they shall deem necessary or fitting.

Transmission of notice and objections to Governor.

4. And be it enacted that when and as soon as the Governor aforesaid shall have signified his consent to the object of any such application as aforesaid all contracts, leases, or other instruments necessary to effect the said object may be signed or executed by any two or more of the said commissioners on behalf of the rest of them in case they do not all join; and every such contract, lease, or other instrument shall thereupon be deemed and taken to be binding upon the municipality and the said commissioners and their successors in office; and it shall and may be lawful for any person lawfully claiming under any such contract, lease, or other instrument to build upon, enclose, or cultivate such part or portion of common pasture land or other land in manner and form as he shall by such contract, lease, or other instrument be authorized to build, enclose, or cultivate: Provided, always, that nothing herein contained shall be deemed or taken to deprive any such commis-

Execution of instrument of alienation, &amp;c., on consent of Governor.

<sup>1</sup> See § 14, Act 13, 1864, *infra*.

Ord. 8—1848.

sioner as aforesaid of the right or power to carry into effect any plan for locating Fingoes or others upon the common pasture or any other lands, or any other plan involving the building upon, enclosure, or cultivation of any part or portion of the said lands by means of municipal regulations duly made and published.

Moneys payable to commissioners as part of municipal funds.

5. And be it enacted that all moneys arising from the sale or occupation of any part or portion of any such lands as aforesaid shall be payable to the commissioners of the municipality for the time being as part and portion of the municipal funds of such municipality.

Prohibition of purchase, &c., by municipal officers under penalties.

6. And be it enacted that no person holding any office in or under any board of commissioners for any municipality shall purchase or hire from or acquire any right of occupation under the board of commissioners in or under which such person holds office. And if any such person shall directly or indirectly so purchase or hire or acquire any such right of occupation he shall thereby forfeit a sum not exceeding five hundred and not less than one hundred pounds: Provided, always, that nothing herein contained shall extend or be construed to extend so as to prevent any such person from being chosen to fill any such office as aforesaid at any time after the expiration of twelve months from the completion of any such sale or lease or the acquisition of any such right of occupation as aforesaid; but no such person shall be eligible to be so chosen before the expiration of such twelve months.

Time of taking effect.

7. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 5.—Sd. George Cathcart.] [April 3, 1852.

Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9, 1836, to purchase or hire Immovable Property for Municipal Purposes.<sup>(1)</sup>

Preamble.

WHEREAS the forty-fourth section of the Ordinance No. 9, 1836, entitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony on which the local Regulations of each shall be founded," has recently been adjudged to be so worded as to render its meaning and operation doubtful, for which reason it is necessary to repeal the said section and to make other provisions in its room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said forty-fourth section of the said Ordinance shall be repealed and the same is hereby repealed accordingly.

Repeal of 44th section of Ordinance No. 9, 1836.

Power to commissioners to purchase or hire houses, &c.

2. And be it enacted that the commissioners appointed under and by virtue of the Ordinance No. 9, 1836, for any municipality

<sup>1</sup> See note to Ord 9, 1836, *supra*.

may and they are hereby authorized and empowered to treat with the owner or owners or occupier or occupiers of any houses, buildings, lands, grounds, or other fixed property required for the purposes of the municipality, and to purchase the same for such sum of money or hire the same for such rent as to the said commissioners shall appear reasonable, which purchase-money or rent (as the case may be) shall be respectively paid out of the municipal revenue arising from the said Ordinance: Provided, always, that the said commissioners shall not purchase or hire any such fixed property as aforesaid without the consent first had and obtained of a majority of the wardmasters (if any) of the municipality present at a meeting of the wardmasters (if any) of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire (as the case may be); and provided, also, that in case the purchase money proposed to be paid shall exceed one hundred and fifty pounds or the rent proposed to be paid shall exceed twenty pounds per annum, or in case there shall be no wardmasters belonging to the municipality, then neither the contract of purchase nor the contract of hire shall be concluded by the said commissioners without the consent first had and obtained of a majority of the resident householders of the municipality present at a meeting of the resident householders of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire (as the case may be), at which meeting every commissioner may speak but no commissioner shall vote; provided, further, that when and as often as it shall be necessary to call a meeting of the resident householders for any such purpose as aforesaid it shall not be necessary to call any meeting of wardmasters for the same purpose; and provided, also, that every such meeting as aforesaid whether of wardmasters or resident householders shall be called by the said commissioners by a notice in writing, which shall be posted upon or affixed to some public place within the municipality for not less than seven clear days previous to the day appointed for the holding of such meeting; and such notice shall also be published for the same space of time in some one or more of the newspapers (if any) published within the municipality; and provided, lastly, that it shall not be lawful for any such commissioners as are in this Ordinance mentioned who shall without the consent of any such meeting as aforesaid have purchased any such property as aforesaid to purchase within the term or space of twelve months next after such former purchase, any other such property as aforesaid, without the consent of some such meeting of householders as aforesaid first had and obtained in case the purchase money of such former purchase and of such other proposed purchase shall together exceed one hundred and fifty pounds; and in like manner no such commissioners, who shall without the consent of any such meeting have hired any such property as aforesaid shall, within the space of

Ord. 5—1852.

Consent of ward-  
masters.Consent of resident  
householders in cer-  
tain cases.

Ord. 5—1852  
 twelve months next after such former hiring hire any other such property without the consent of some such meeting in case the rent of the former hiring and of such other proposed hiring shall together exceed twenty pounds per annum.

Time of taking effect. 3. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 15—1860.]

[July 17, 1860.

## ACT

For Continuing the Ordinance No. 9, 1836, entitled “Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded,” as also the Ordinance No. 2, 1844, entitled “Ordinance for Amending the Ordinance No. 9, 1836, entitled ‘Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.’”

Preamble.

WHEREAS by the Ordinance No. 3, 1853, entitled “Ordinance for Declaring the Ordinance No. 9, 1836, to be in force and operation,” it is enacted that the said Ordinance No. 9, 1836, and the said Ordinance No. 2, 1844, as the said Ordinances are more fully described in the title of this Act, should cease to be in force upon the first day of January, 1861: And whereas it is expedient that the said Ordinances should be made perpetual: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ord. 9, 1836, and 2, 1844, continued.

1. (1) The Ordinances aforesaid, No. 9, 1836, and No. 2, 1844, shall be and remain in force until Parliament shall otherwise provide.

Short titles.

2. The Ordinance No. 9, 1836, may be cited for any purpose as “The General Municipal Ordinance, 1836,” and the Ordinance No. 2, 1844, as “The General Municipal Ordinance Amendment Ordinance, 1844,” and this Act as “The General Municipal Ordinance Continuing Act, 1860.”

<sup>1</sup> See note to Ord. 9, 1836, *supra*.



No. 13—1864.]

[July 26, 1864.

## ACT

To Amend the Ordinance No. 9 of 1836, entitled “Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.”<sup>(1)</sup>

WHEREAS it has happened in some Municipalities in this Colony that the provisions of the fourteenth and fifteenth sections of the Ordinance No. 9, 1836, relative to a triennial election of Municipal Commissioners, have, from error or inadvertence, been overlooked, whereby doubts may be raised respecting the validity of the acts of certain Boards of Commissioners who formerly held office, as well as of certain Boards of Commissioners now in existence: And whereas it is expedient to remove such doubts, and at the same time to amend the said Ordinance in certain respects: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. No person now acting, or who shall at any time heretofore have acted, as a commissioner of any municipality established and existing under the Ordinance aforesaid, No. 9 of 1836, shall be deemed or taken to be, or to have been, unduly or illegally elected to such office, by reason merely that his election took place at a time and in a manner different from the time and manner in which, under and by virtue of the fourteenth and fifteenth sections of the said Ordinance, such election ought to have taken place; and the acts and proceedings of every such person, as a commissioner, and of any board of commissioners of which he was or is a member, shall be taken and judged of as if such person had been duly and regularly elected under the provisions of the said Ordinance.

Irregular elections legalized.

And whereas, whilst it is necessary, in reference to the municipalities in which such irregular elections have taken place, to fix the time at which the existing commissioners shall go out of office, and other commissioners shall be elected thereto, it will be convenient to provide that the commissioners of all municipalities established or to be hereafter established under the Ordinance aforesaid, No. 9, 1836, should be elected throughout the Colony on the same day: Be it enacted as follows:

2. It shall and may be lawful for every commissioner in every municipality established and existing under the Ordinance No. 9, 1836, no matter when such commissioner may have been elected, and whether elected at a time and in a manner directed by the

Duration of office of existing commissioners.

<sup>1</sup> See note to Ord. 9, 1836, *supra*.

No. 13—1864.

fourteenth and fifteenth sections of the Ordinance aforesaid or not, to hold office as such commissioner till the first day of March, one thousand eight hundred and sixty-five, but every commissioner in every such municipality shall then go out of office.

General election, when and how to take place.

3. On the last Monday in the month of February, one thousand eight hundred and sixty-five, a meeting shall be holden, at such hour and place as shall be notified by the commissioners then in office, for the election of commissioners for the three years next succeeding the first of March, one thousand eight hundred and sixty-five, and such election shall proceed in such manner as is by the twelfth section of the said Ordinance, No. 9, 1836, provided in regard to the first election of commissioners under the said Ordinance; and such incoming commissioners shall, in their turn, go out of office on the first day of March, one thousand eight hundred and sixty-eight, and be succeeded by others to be elected on the last Monday of the preceding month; and so on with triennial vacancies and triennial elections on the same days for ever.

Casual vacancies.

4. Every person elected in manner and form as in the sixteenth section of the Ordinance aforesaid, No. 9, 1836, provided, for supplying any casual vacancy in the office of commissioner, shall serve until the then next general election of commissioners, and shall then go out of office.

Proceedings on failure to elect at any meeting.

5. In case it shall happen that by reason of any failure or neglect, or any other cause whatever, any meeting for the election of a commissioner or commissioners shall not be duly or regularly holden, or that at any such meeting the commissioner or commissioners for the purpose of choosing whom such meeting was convened shall not be duly elected, then and in every such case the Resident Magistrate of the district, or any neighbouring Justice of the Peace, shall, as soon as any such event shall have been duly notified to him in writing by any three or more householders of the municipality within which such event shall have occurred, call, by a notice of not less than seven or more than fourteen days, a meeting of the householders of such municipality for the purpose of electing such commissioner or commissioners, in the same manner as is in the said Ordinance, No. 9, 1836, directed with respect to the first election of commissioners under the provisions of the said Ordinance; and the commissioners who shall have been in office next before the time when such failure shall have occurred in regard to any general election of commissioners shall remain and continue in office until their successors shall in manner herein provided have been duly elected, upon which the former shall forthwith go out of office, and be succeeded by the persons newly chosen.

Duration of office of first board of commissioners of any municipality when

6. In regard to the first board of commissioners to be elected by any municipality to be hereafter created or established under the Ordinance aforesaid, No. 9, 1836, such first board, if elected within

twelve months next before the last Monday of any February in which a general election of commissioners in the several municipalities existing under the Ordinance aforesaid is by this Act appointed to take place, shall not go out of office at the then next general election, but shall hold office until the general election next succeeding that general election; but in case such first board of commissioners shall be elected twelve months or upwards before the day aforesaid, then such board of commissioners shall go out of office at the then next general election, precisely as if they had been in office for three years.

No. 13—1864.  
elected within twelve months of a general election.

7. Every person who is the occupier of any house, warehouse, counting-house, shop, or office, either as proprietor or renter, of the yearly value or rent of not less than ten pounds sterling, shall be and be deemed and taken to be a resident householder within the meaning of the Ordinance aforesaid, No. 9 of 1836; and at all meetings of resident householders every such resident householder who shall be personally present shall have and be entitled to one vote, and no more.

Who to be a householder and entitled to vote at elections.

8. Where any premises shall be jointly occupied by more persons than one as proprietors or renters, each of such joint occupiers shall be entitled to be considered a resident householder within the meaning of the said Ordinance, in respect of the premises so jointly occupied, in case the yearly value or rent of such premises shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than ten pounds for each and every such joint occupier.

Joint proprietors or occupiers to be regarded as separate householders, the value of occupancy of each being not less than £10.

9. No commissioner of any municipality (except as hereinafter excepted) shall be allowed, directly or indirectly, to become a contractor with the board of commissioners of which he is a member, for or in regard to any such contract as is in the forty-third section of the Ordinance aforesaid, No. 9, 1836, described, either in his own name or in the name of, or jointly with, any other person, on pain of forfeiting for every such offence, for the benefit of the municipality, any sum not exceeding fifty pounds, and he shall also be deemed to have thereby *ipso facto*, vacated his office as commissioner, and shall not be eligible for re-election as a commissioner until the next general election of commissioners for such municipality: Provided that no commissioner of any municipality shall be deemed or taken to have vacated his office as commissioner, or to have incurred any penalty, forfeiture, or disqualification whatever, by reason merely that the board of commissioners to which he belongs shall have entered into any such contract as is in the forty-third section of the Ordinance aforesaid mentioned, or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder or director, or in which he shall be otherwise interested; nor shall any shareholder or person otherwise interested in any joint-stock company, with which company the commis-

Commissioners to have no interest in municipal contracts on pain of penalty and vacation of office.

Shareholders in joint-stock companies having transactions with municipality may hold office as commissioners.

No. 13—1864.

Commissioners may purchase property sold at public sale on account of municipality.

Commissioners may assess a rate.

Not to exceed one penny in the pound.

Four-fifths of number of commissioners present to consent.

One rate only in each year leviable.

Regulation may be made regarding liability of proprietor or occupier for rate assessed.

Provision in section 28 of Ordinance No. 9 of 1836, giving right of appeal against assessment of rate, repealed.

Right of appeal against municipal valuation.

Provided that person appealing has complied with regulations regarding such valuations.

Commissioners of any municipality shall have entered into any past or still subsisting contract, dealing or transaction, be deemed or taken to be ineligible to be elected or to act as a commissioner of any municipality, by reason merely of such contract, dealing, or transaction: Provided that it shall be lawful for any commissioner to purchase at any public sale held for or on account of the municipality of which he is a commissioner, any property, right, or other interest which such board shall put up to public competition.

10. It shall be competent for any board of commissioners for any municipality to assess a rate on the immovable property of such municipality without calling a public meeting of householders: (1) Provided that such rate shall not exceed one penny in the pound on the value of immovable property in such municipality: And provided that not less than four-fifths of the members of such board of commissioners shall be present, and consenting to such rate, at any meeting of such board at which such rate may be determined upon: Provided that no more than one such rate shall be assessed in any one year.

11. It shall be competent for any municipality, by any municipal regulations thereof, to fix and define, in regard to rates assessed under the twenty-eighth section of the Ordinance No. 9, 1836, whether such rates shall be payable by the occupier of immovable property or by the proprietor, or by either the occupier or the proprietor, at the option of the commissioners; and whether, in case the occupier shall be made liable for and shall be compelled to pay any such rate, he shall or shall not have recourse against the proprietor for the amount so paid or any part thereof; and whether occupiers of a certain description shall have such recourse, whilst occupiers not of that description shall not have such recourse; and, generally, to impose or distribute the burthen of the municipal rates between or in regard to proprietors and occupiers in such manner as, under the circumstances of such municipality, may be deemed equitable and expedient.

12. The following proviso in the twenty-eighth section of the Ordinance No. 9, 1836, namely: "Provided always that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any Court having jurisdiction," is hereby repealed.

13. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the roll of assessment in any municipality to appeal against such valuation to the Court of Resident Magistrate of the district in which such property shall be situated, and such Court shall inquire into such valuation, and the decision of such Court shall be final and conclusive: Provided that no person shall be entitled to bring any such valuation under the review of any such Court unless and until he shall have complied

<sup>1</sup> But see § 2, Act 28, 1879 (Irrigation).

with the provisions of any municipal regulations of such municipality touching and concerning the manner in which the valuation of the properties in such municipality shall be corrected by the commissioners of such municipality upon the application of the owners or occupiers thereof.

No. 13—1864.

14. It shall be competent for any municipality, by means of any municipal regulations thereof, to exercise all such powers and authorities as are conferred upon the board of commissioners of such municipality by the Ordinance No. 8, 1848, entitled "Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the common Pasture-lands of the Municipality;" and as often as such powers and authorities shall be exercised by means of municipal regulations, then the posting of notice and the other forms prescribed by the said last-mentioned Ordinance shall not be necessary: Provided, however, that it shall be lawful for the Governor, before approving, amending, or disallowing any such last-mentioned municipal regulations, to require that notice of the nature or object thereof shall be posted within the municipality, in manner and form as is by the second section of the said Ordinance, No. 8, 1848, directed, for general information.

Municipalities may exercise the powers conferred by Ordinance No. 8 of 1848, in regard of waste land of the municipality.

Municipal regulation regarding waste land to be posted before Governor's assent is given.

15. The amount of all fines imposed upon persons convicted in any municipality of offences against the Ordinance No. 9, 1836, or against the municipal regulations of such municipality shall, when recovered, be paid into the treasury of such municipality, anything in the forty-seventh section of the Ordinance No. 9, 1836, to the contrary notwithstanding.

Fines and penalties to be paid to municipality.

16. This Act may be cited as "The General Municipal Ordinance Amendment Act, 1864."

Short title.

No. 9—1885.]

[July 31, 1885.

### ACT

To Amend the provisions of Ordinance No. 9 of 1836, and to extend the provisions of the Twenty-second Section of Act No. 45 of 1882, to Municipalities which have not yet come under the operation of that Act.

WHEREAS it is expedient to amend in certain respects the provisions of Ordinance No. 9 of 1836, and to extend the provisions of the twenty-second section of the Act No. 45 of 1882, to municipalities which have not yet come under the operation of that Act: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of Ordinance No. 9 of 1836 as may be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed.

Repugnant or inconsistent provisions of Ord. 9 of 1836 repealed.

- No. 9—1885.      2. The provisions of the twenty-second section of Act No. 45 of 1882, commonly called the “Municipal Act,” shall apply, *mutatis mutandis*, to municipalities which have not yet come under the operation of that Act, and the office or seat of any person duly elected a commissioner in such municipality shall be deemed to be vacant upon any of the grounds of vacancy set forth in the said twenty-second section.
- Section 22 of Act 45 of 1882 to apply *mutatis mutandis* to municipalities not under operation of Act.
- Short title.      3. This Act may be cited as the “Municipal Law Amendment Act, 1885.”

No. 18—1880.]

[July 29, 1880.

## ACT

To Authorize the Municipality of Aliwal North to Borrow a Sum not exceeding Five Thousand Pounds Sterling, for the purpose of Erecting a Town-hall, Market-house, and Offices for the use of the Inhabitants of the Town of Aliwal North.

Preamble.

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal North with a suitable Town-hall, Market-house, and Offices: And whereas, at a public meeting of resident householders convened for that purpose on the 16th day of April, 1880, it was resolved, by the unanimous consent of all such householders then present, that the commissioners of the said municipality of Aliwal North be authorized to carry out the objects before mentioned at a cost not exceeding the sum of five thousand pounds sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to municipality to borrow £5,000.

1. It shall be lawful for the commissioners of the municipality of Aliwal North to borrow, from time to time, such sum or sums of money, not exceeding in the whole the sum of five thousand pounds sterling, for the purposes aforesaid, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, section 28.

Interest on loans to be a charge on municipal revenues.

2. As a fund for the payment of the interest upon, and gradual extinction of, the loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said municipality as aforesaid, an annual sum equal to the interest on the whole amount of such

loans, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sums shall be annually charged upon and payable out of the revenues of the said municipality, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

No. 18—1880.

3. The aforesaid sum of five thousand pounds sterling, or such lesser sum as shall have been borrowed for the purposes aforesaid by the said commissioners is hereby charged upon, and made payable out of, the rates and revenues in the first section of this Act mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal, of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other object.

Capital charged upon municipal rates

4. The commissioners aforesaid shall grant to the party, or parties, or company, society, or co-partnership, from whom they shall borrow such money as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the aforesaid sum of five thousand pounds sterling; which acknowledgment shall in substance be in the form in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by the chairman and two of the commissioners for the time being of the said municipality.

Lender to receive a written acknowledgment, as in schedule.

5. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Loans subject to "Public Bodies Act of 1867."

6. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys in the construction and maintenance of the said Town-hall, Market-house, and Offices: And the said commissioners shall yearly, as long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the office of the municipality of Aliwal North, for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said municipality not later than the 1st day of March in the year next succeeding.

Separate accounts to be kept of moneys borrowed.

7. The necessary costs, charges, and expenses of obtaining this Act and of obtaining suitable plans, drawings, designs, and specifications for the said Town-hall, Market-house, and Offices may be paid by the said commissioners out of the moneys so to be borrowed as aforesaid.

Costs and charges may be paid out of loans.

8. This Act may be cited for all purposes as "The Aliwal North Town-hall and Market-house Act, 1880."

Short title.

No. 18—1880.

## SCHEDULE.

We, the undersigned, Commissioners of the Municipality of Aliwal North, do hereby acknowledge that the Commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_, for so much money borrowed by the said Commissioners for the purposes set forth in "The Aliwal North Town-hall and Market-house Act, 1880;" and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage for and on behalf of the Commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert according to the agreement the rate of interest and the times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands, at Aliwal North, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

A.B., Chairman of Municipality.

C.D., }  
E.F., } Commissioners.

Witnesses :

G.H.,  
I.K.

No. 4—1866-'67.]

[January 12, 1867.

## ACT

For Enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the Inhabitants of such Municipality. (1)

Preamble.

WHEREAS the inhabitants of the municipality of Beaufort have long experienced inconvenience from a very deficient supply of water : And whereas facilities exist in the immediate neighbourhood of the town for constructing a large and permanent reservoir, capable of storing a quantity of water amply sufficient for the wants of the inhabitants : And whereas the commissioners of the municipality, acting in conformity with the desire and representations of the inhabitants, made arrangements some time since for commencing the construction of such a reservoir as aforesaid, and, for the purpose of procuring the necessary funds, applied to the Cape of Good Hope Savings Bank Society for a loan, which said society lent and advanced certain moneys to the said commissioners, wherewith the work aforesaid has been commenced, and has consented and agreed to lend and advance such further moneys as

<sup>1</sup> See Acts 5, 1869, 20, 1875, and 15, 1881, *infra*.



may be required, not exceeding, in the whole, the sum of two thousand pounds sterling: And whereas it is expedient that the said commissioners should be empowered to secure the repayment of the said moneys so borrowed, and to be borrowed, which shall not, in the whole, exceed the said sum of two thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 4--1866 '67.

1. It shall be lawful for the said commissioners, from time to time, to make regulations touching and concerning the terms and conditions upon which the inhabitants of the municipality may obtain, by means of private service pipes or other channels or water courses, a supply of water for domestic use, irrigation, or other purposes, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every such rate so imposed by the said commissioners shall be of the same force and effect, and be levied in like manner, as if it had been a rate imposed by a meeting of householders acting under the provisions of the Ordinance No. 9 of 1836, section 28.

Commissioners empowered to make regulations for supply of water, and to impose water rate.

2. The sum aforesaid of two thousand pounds sterling, or such lesser sum as shall have been lent and advanced for the purpose aforesaid by the Cape of Good Hope Savings Bank Society to the commissioners aforesaid, is hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal, of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated to or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections of this Act.

Loan made by Savings Bank chargeable upon rate levied.

Other funds also applicable to payment of loan or interest.

Succeeding sections of Act not affected.

3. The commissioners aforesaid shall grant to the Cape of Good Hope Savings Bank Society a written acknowledgment of, or for, the moneys borrowed by the said commissioners for the purpose aforesaid, not exceeding in the whole, the sum aforesaid of two thousand pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and shall be signed, on behalf of the said commissioners, by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Commissioners to grant written acknowledgment of loan.

Form of acknowledgment.

By whom to be signed.

4. In case it should at any time appear by the return of the Sheriff to any writ of execution sued out by the Cape of Good Hope Savings Bank Society against the commissioners for the time being of the municipality aforesaid, for the recovery of the

Supreme Court may be applied to on failure by sheriff to find assets in satisfaction of writ of execution sued out by Savings Bank.

No. 4—1866-'07.

Commissioners entitled to notice of motion.

Supreme Court to direct Master to inquire and report amount due.

Supreme Court may impose rate for liquidation of debt, with interest and costs, not to exceed one penny in the pound.

More than one rate may be levied.

But not before expiration of twelve months from date of previous levy.

Supreme Court to appoint receiver.

Notice of rate so assessed to be given in Government Gazette.

debt aforesaid, or any part thereof, that the Sheriff had not found any goods or chattels of the said commissioners wherewith to satisfy the said judgment, it shall be lawful for the said society to apply to the Supreme Court, by motion, for an order that it be referred to the Master of the Supreme Court, to inquire and report the amount due to the said society by the said commissioners for principal, interest, and costs: Provided that notice of the said motion shall be given to the said commissioners at their office.

5. Upon the hearing of the said motion, then, unless the said commissioners shall satisfy the said Court that the said commissioners will be prepared within a reasonable time, to be approved by the said Court, to satisfy from rates assessed or to be assessed, or other assets, the debt of the said society, together with costs and all interest accrued due thereupon, the said Court shall, unless the said commissioners shall admit the amount claimed by the said society, make an order, referring it to the Master to inquire and report the amount due to the said society.

6. When by report of the Master, the Supreme Court shall be informed of the whole amount of the debt due and owing by such commissioners to the said society, it shall be lawful for the said Court, and it is hereby required, to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable tenement within the municipality of Beaufort, as shall appear to be sufficient to satisfy, from and out of the net proceeds of such rate, the debt due by the said commissioners to the said society, together with all costs and interest legally chargeable thereon: Provided that if a single rate of one penny per pound, as aforesaid, shall be insufficient to satisfy the whole of the said debt, interest, and costs, then a second rate not exceeding one penny per pound shall be assessed, and so on, until the said debt of the said commissioners, and all interest and costs legally chargeable thereupon, shall be finally discharged: Provided that not less than twelve months shall elapse between the day on which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable.

7. As often as the Supreme Court shall assess any rate for the purpose of paying such debt as aforesaid, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix; and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance. Notice shall be given in the *Government Gazette* of every rate assessed as aforesaid, and of the day upon which such rate shall become due and payable; and such notice shall be, in substance, as follows:

MUNICIPALITY OF BEAUFORT.—RATE UPON IMMOVABLE  
PROPERTY.

No. 4—1866-'67.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of "The Town of Beaufort Water Act, 1866," a rate of \_\_\_\_\_ per pound upon the value of every rateable tenement within the Municipality of Beaufort, which rate will become due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and of which rate A.B., of \_\_\_\_\_, has been appointed the receiver.

Form of notice.

Dated at Cape Town this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

T. H. B., Registrar of the Supreme Court.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Publication of notice.

8. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court: Provided that every such rate shall be recoverable from the same persons who would be liable to be sued for the same in case it were a rate assessed in and for the municipality of Beaufort, under the Ordinance No. 9, 1836.

Recovery of rate.

9. Any surplus of the amount of any such rate as aforesaid which shall happen to exist after the discharge of the debt which it was assessed to liquidate shall be paid to the commissioners aforesaid.

Disposal of surplus after liquidation of debt.

10. In case there should happen to be no commissioners of the said municipality in office when the Savings Bank Society shall desire to proceed by legal process for the recovery of the debt, acknowledged in manner aforesaid, or of any part of such debt, then the publication in the *Government Gazette* of the summons issued by the said society against the commissioners of the said municipality shall be deemed to be good service of such summons, and be of the same force and effect as if on the day of such publication the said summons had been duly served at their office upon commissioners in office: Provided, also, that in case there should not, at any time when an application shall be made for the assessment of a rate under this Act, be any valuation of the immovable property within the said municipality be in force for municipal purposes, then the valuation of such property for municipal purposes which last expired shall be deemed to be still in force for the purpose of any rate to be assessed under this Act.

Service of summons for recovery of debt should no commissioners be in office

Assessment of rate when municipal valuation has ceased to be of force.

11. It shall and may be lawful for the said commissioners, and they are hereby authorized, to enter upon and take possession of such lands as may be required for the laying of the water-pipes and the construction of water-courses, and for any other necessary purpose relating to the water-works contemplated by this Act, and

Commissioners may enter upon lands, lay down pipes, and remove materials, &amp;c.

No. 4—1866-'67.

Owners to be compensated.

Arbitration.

How, if party claiming compensation, refuses or neglects to proceed to arbitration, or rejects award.

to enter upon all lands, and there dig for, excavate, and carry away all such materials as may be required for the construction and maintaining of the said water-works; and the proprietors of the said lands, and of the said materials so taken, used, and carried away, shall be paid by the commissioners a reasonable sum by way of recompense for the value of such land or materials, or for any damage that may be done by reason thereof, or connected therewith: Provided that in the event of the commissioners aforesaid and any such proprietor not being able to agree upon the sum to be paid by the said commissioners and accepted by such proprietor, then the said commissioners shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state in writing to the said commissioners, or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not, and in case he shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said commissioners shall, by another notice, call upon such proprietor, within some time to be specified in such other notice, to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said commissioners, or the person so appointed by them, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said commissioners, or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator; and the said commissioners shall cause a deed of submission to be prepared, which shall be signed by three of the said commissioners, of whom the chairman shall be one, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators; and the said arbitrator, or any two of them, shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall consider fair and reasonable; and the award of the said arbitrators, or any two of them, shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for and on account of the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said commissioners, and they are hereby authorized, to lodge in some joint-stock bank in Beaufort, or in Cape Town, the sum of money offered by them as aforesaid, for and on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the bank as his absolute property; and the said

commissioners, upon so lodging the said sum, shall be authorized and entitled to take and use the said land or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators, and as if all acts by law required for vesting in the said commissioners a sufficient title to the use of and property in the said land or materials aforesaid had been duly done and performed.

No. 4—1866-'67.

12. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the water works contemplated by this Act, distinguishing sums received for private service pipes or private water-courses from sums received from rates imposed, under the fourth section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the water works contemplated by this Act; and the said commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Civil Commissioner of Beaufort, for the inspection at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the Civil Commissioner not later than the first day of March of the year next succeeding.

Separate and distinct accounts to be kept.

Annual accounts to be deposited in civil commissioner's office.

13. The necessary costs, charges, and expense of obtaining this Act may be paid by the said commissioners out of the moneys borrowed, as aforesaid, from the Cape of Good Hope Savings Bank Society.

Expenses incurred in obtaining Act may be paid out of loan.

14. This Act may be cited for all purposes as "The Town of Beaufort Water Act, 1866."

Short title.

---

#### SCHEDULE.

We, the undersigned, commissioners of the municipality of Beaufort, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to the Cape of Good Hope Savings Bank Society in the sum of ————— sterling, for so much money borrowed by the said commissioners, for the purposes set forth in "The Town of Beaufort Water Act, 1866," and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is

w 2

No. 4—1866-'67. to say: (Here insert, according to agreement, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands, at Beaufort, this ——— day of ———, 186—.

A. B., Chairman of the Municipality.

C. D., }  
E. F., } Commissioners.

Witnesses :

G. H., }  
I. J. }

No. 5—1869.]

[Oct. 18, 1869.

### ACT

For Enabling the Commissioners of the Municipality of Beaufort to borrow a further Sum of Money, for the purpose of strengthening and otherwise improving the Beaufort Reservoir.

Preamble.

WHEREAS by the Act No. 4, 1866-'67, intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the Inhabitants of such Municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of two thousand pounds sterling, for the purpose of constructing a reservoir capable of storing such supply of water; and it is expedient to empower the said commissioners to borrow and take up such moneys as may be required for strengthening and improving the said reservoir beyond the money secured under the said Act, but not exceeding, in the whole, another sum of two thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Loan of £2,000 authorized.

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money, not exceeding, in the whole, the sum of two thousand pounds sterling, as shall be required for further strengthening and improving the reservoir aforesaid.

First ten sections of Act 4 of 1866-'67 to apply to loan under this Act.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-'67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank

Society or by some other society, or by some company or co-partnership or individual, precisely as if the said sections were, *mutatis mutandis*, herein again set forth and word for word repeated.

No. 5—1869.

3. That the sum of two thousand pounds sterling, secured by the Act aforesaid, No. 4, 1866-'67, and the interest payable thereupon, shall be a first and perferent charge upon all and singular the revenues, of every description, which are by the said last-mentioned Act made liable to the payment thereof, and the moneys to be borrowed under this Act, and the interest thereof, shall form a second preferent charge upon the said revenue.

Moneys borrowed under Act 4 of 1866-'67 to be first charge, and moneys borrowed under this Act to be second charge on revenue liable for payment.

4. Nothing in the "Public Bodies' Debts Act, 1867," shall interfere with the preference over the revenue to arise from the said reservoir given by this and the said Act No. 4, 1866-'67, nor with the powers given by the fourth to the eighth clauses inclusive of the said Act No. 4, 1866-'67, to assess a rate for payment of the money borrowed under the said Act, in case the revenue from the said reservoir shall be unequal to the repayment thereof; but on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if, in the course of any proceeding under the "Public Bodies' Debts Act, 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order, under the fourth section of the said Act, directing the Master of the said Court to inquire whether any, and if so what, debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the Act No. 4, 1866-'67, and under this Act, may appear and prove their debts respectively.

Provisions of "Public Bodies' Debts Act, 1867," not to affect such preference.

But creditors under this Act and Act No. 4 of 1866-'67 may prove claims on proceedings taken under Act named.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act, 1869."

Short title.

No. 20—1875.]

[July 30, 1875.

## ACT

For enabling the Commissioners of the Municipality of Beaufort West to borrow a further Sum of Money for the purpose of re-constructing and otherwise improving the Beaufort Reservoir, and for the payment of the Moneys already raised for the construction thereof.

WHEREAS by the Act No. 4 of 1866-'67, intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the inhabitants of such municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of £2,000 sterling, for the purpose of constructing a reservoir capable of storing such supply of water: And whereas by Act No. 5 of

Preamble.

No. 20—1875.

1869, intituled "The Town of Beaufort Water Loan Act of 1869," provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money, not exceeding in the whole the sum of £2,000 sterling, for the purpose of strengthening and otherwise improving the Beaufort Reservoir, and for securing to the lender thereof the said further sum of £2,000 to be borrowed by the said commissioners under the said last-mentioned Act, and for rendering the said sum of £2,000 sterling secured by the aforesaid Act No. 4 of 1866-'67, and the interest payable thereon, a first and preferent charge upon all and singular the revenues of every description which are by the said last-mentioned Act made liable to the payment thereof, and for rendering the said moneys borrowed under the said Act No. 5 of 1869, and the interest payable thereon, a second preferent charge upon the said revenue: And whereas it is expedient to empower the said commissioners to borrow and take up such moneys as may be required for re-constructing, strengthening, and improving the said reservoir, and for paying off the moneys already raised under the said Acts, but not exceeding in the whole the sum of £6,000 sterling:—

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Commissioners may borrow £6,000 for reservoir.

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money, not exceeding in the whole the sum of £6,000 sterling, as shall be required for re-constructing, strengthening, and improving the reservoir aforesaid, and for paying off the moneys already raised under the Acts No. 4 of 1866-'67 and No. 5 of 1869.

First ten sections of Act 4 of 1866-'67 to apply to such loan.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-'67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank Society or by some other society, or by some company or co-partnership, or individual, precisely as if the said sections were, *mutatis mutandis*, herein again set forth and word for word repeated.

Order of preference of Act 4 of 1866-'67, Act 5 of 1869, and this Act, on revenues liable for the payment of the moneys borrowed thereunder

3. That the sum of £2,000 secured by the Act aforesaid, No. 4 of 1866-'67, and the interest payable thereupon shall be a first and preferent charge upon all and singular the revenues of every description which are by the said Act made liable to the payment thereof; and the moneys borrowed and secured under the said Act No. 5 of 1869, and the interest payable thereon, shall form a second preferent charge upon the said revenue; and the moneys to be borrowed under this Act and the interest thereof shall form a third preferent charge upon the said revenues until such time as the moneys secured and borrowed by the Acts aforesaid, No. 4 of 1866-'67, and No. 5 of 1869, shall have been repaid and satisfied, when the moneys to be borrowed under this Act shall be a first and preferent charge upon the said revenue.



4. Nothing in the "Public Bodies' Debts Act of 1867" shall interfere with the preference over the revenue to arise from the said reservoir given by this and the said Acts No. 4 of 1866-'67, and No. 5 of 1869, nor with the powers given by the 4th to the 8th clause inclusive of the said Act 4 of 1866-'67, to assess a rate for payment of the money borrowed under the said Acts in case the revenue from the said reservoir shall be unequal to the repayment thereof; but, on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if in the course of any proceedings under the "Public Bodies' Debts Act, 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order under the 4th section of the said Act No. 4 of 1866-'67, directing the Master of the said Court to enquire whether any, and if so, what debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the said Acts No. 4 of 1866-'67, and 5 of 1869, and under this Act may appear and prove their debts respectively.

No. 20—1875.  
Public Bodies' Debts Act, 1867, not to interfere with such preference.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act of 1875."

Short title.

No. 15—1881.]

[June 25, 1881.]

### ACT

For enabling the Commissioners of the Municipality of Beaufort West to borrow a further Sum of Money for the purpose of repaying certain Moneys already borrowed and expended in further strengthening, repairing, and otherwise improving the "Beaufort Reservoir."

WHEREAS by Act No. 4 of 1866-'67, intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the inhabitants of such Municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of two thousand pounds, for the purpose of constructing a reservoir capable of storing such supply of water: And whereas by Act No. 5 of 1869, provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money not exceeding in the whole the sum of two thousand pounds sterling, for the purpose of strengthening and otherwise improving the said reservoir, and for securing to the lender thereof

Preamble.

No. 15—1881.

the said further sum of two thousand pounds sterling to be borrowed by the said commissioners under the said last mentioned Act, and for rendering the said sum of two thousand pounds sterling secured by the aforesaid Act No. 4 of 1866-'67, and the interest payable thereon a first and preferent charge upon all and singular the revenues of every description which are by the said last mentioned Act made liable to the payment thereof, and for rendering the said moneys borrowed under the said Act No. 5 of 1869, and the interest payable thereon a second preferent charge upon the said revenue: And whereas by Act 20 of 1875, intituled the "Town of Beaufort Water Loan Act of 1875," provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money not exceeding in the whole the sum of six thousand pounds sterling, for the purpose of re-constructing, strengthening, and improving the reservoir aforesaid, and for paying off the moneys already raised under Acts No. 4 of 1866-'67 and No. 5 of 1869, and for rendering the said moneys borrowed under the said Act No. 20 of 1875, and the interest payable thereon, a third preferent charge upon the said revenue: And whereas it was thereafter found absolutely necessary to further strengthen, repair, and otherwise improve the said reservoir, and whereas the commissioners or the municipality of Beaufort West borrowed upon credit the further sum of four thousand pounds, necessary for further strengthening, repairing, and improving the said reservoir, and expended the same in so further strengthening, repairing, and improving it: And whereas it is just and right that the sum of four thousand pounds sterling so borrowed upon credit and expended, should be repaid by the municipality of Beaufort West: And whereas to this end it is expedient to empower the commissioners of the said municipality to borrow and take up such moneys as may be required for the purpose of repaying the amount already borrowed upon credit and expended as aforesaid, but not exceeding in the whole the sum of four thousand pounds sterling:

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to municipality to borrow £4,000.

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money not exceeding in the whole the sum of four thousand pounds sterling, as shall be required for repaying the moneys already borrowed and expended as aforesaid in further strengthening, repairing, and improving the Beaufort Reservoir.

First 10 sections of Act 4 of 1866-67 to apply.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank Society or by some other society, or by some company or co-partnership or individual precisely as if the said sections were, *mutatis mutandis*, herein again set forth.

3. The sum of two thousand pounds secured by the Act aforesaid No. 4 of 1866-67, and the interest payable thereon, shall be a first and preferent charge upon all and singular the revenues of every description which are by the said Act made liable to the payment thereof; and the moneys borrowed and secured under the said Act No. 5 of 1869, and the interest payable thereon shall form a second preferent charge upon the said revenues; and the moneys borrowed and secured under the said Act No. 20 of 1875, and the interest payable thereon, shall form a third preferent charge upon the said revenues, until such time as the moneys secured and borrowed by the Acts aforesaid, No. 4 of 1866-67 and No. 5 of 1869, shall have been repaid and satisfied when the moneys borrowed and secured under the said Act No. 20 of 1875, and the interest payable thereon shall form a first preferent charge upon the said revenues, and the moneys to be borrowed under this Act and the interest payable thereon shall form a second preferent charge upon the said revenues.

No. 15—1881.  
Order of preference  
in loans raised under  
different Acts.

4. Nothing in the "Public Bodies Debts Act of 1867" shall interfere with the preference over the revenue to arise from the said reservoir, given by this and the said Acts No. 4 of 1866-'67, No. 5 of 1869, and No. 20 of 1875, nor with the powers given by the fourth to the eighth clause, inclusive, of the said Act 4 of 1866-'67 to assess a rate for payment of the money borrowed under the said Acts, in case the revenue from the said reservoir shall be unequal to the repayment thereof; but on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if in the course of any proceedings under the "Public Bodies Debts Act of 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order under the fourth section of the said Act, directing the Master of the said Court to enquire whether any, and if so what, debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the said Acts No. 4 of 1866-'67, No. 5 of 1869, and No. 20 of 1875, and under this Act may appear and prove their debts respectively.

Provisions of  
"Public Bodies  
Debts Acts, 1867"  
not to affect such  
order.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act of 1881."

Short title.

No. 44—1882.]

[June 30, 1882.

### ACT

To Consolidate and Amend the Acts No. 1 of 1861 and No. 1 of 1867. (1)

WHEREAS it is expedient to consolidate and amend the provisions of the existing Municipal Act No. 1 of 1861, entitled "An Act

Preamble.

<sup>1</sup> Amended by Act 28 of 1885.

No. 44—1882.

for the Creation of a Municipal Board for the City of Cape Town," and No. 1 of 1867, entitled an "Act to amend the Act No. 1 of 1861, entitled 'Act for the Creation of a Municipal Board for the City of Cape Town,' " and to alter the constitution and mode of election of the Town Council of the said city, and to give the said council further power to borrow money, and for the levying of rates and the general management of the affairs of the said city: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of former Acts.

1. The Act No. 1 of 1861, entitled "An Act for the Creation of a Municipal Board for the City of Cape Town," and the Act No. 1 of 1867, entitled "An Act to amend the Act No. 1 of 1861," shall be and the same are hereby repealed: Provided that the council of the said municipality, which shall be in office at the time of the taking effect of this Act, shall be deemed and taken to be in the same plight and condition, and have and possess the same powers and authorities in all respects, as if such council had been elected under this Act, and shall remain in office until the second Wednesday in the month of September, 1882, but no longer, to be then succeeded by a council elected under this Act: Provided, also, that the provisions of this Act relative to casual vacancies occurring in the office of councillor shall extend and apply to such casual vacancies as may occur amongst the members of council who shall be in office as aforesaid at the time of the taking effect of this Act.

Limits of Cape Town Municipality.

2. The municipality of Cape Town shall include the space of ground situate within the following limits, that is to say:—From the outside boundary of the military lines at Fort Knokke along the said lines to their termination at Zonnebloem; thence, in a straight line, to the summit of the Devil's Mountain; thence, along the edge of the summit of Table Mountain, to the point of the edge of the said mountain nearest the Lion's Head; thence, in a straight line, to the Government fountain in the kloof, near the block-house; thence along the ravine through which the said fountain empties itself into the sea—from the point where the said fountain empties itself into the sea along low-water mark to where the western boundary line of the property formerly belonging to the late Mr. Frederick Liesching (called Botany Bay), prolonged northwards, runs into the sea; thence, along the lastmentioned boundary line to its southern extremity; thence, by a line running in a straight direction, to the Lion's Head; thence eastwards along the ridge and on the line which divides the waters flowing therefrom to the north and south, to a point where the line of the west side of Strand-street, prolonged northwards, shall intersect the southern boundary line of the land now belonging to Mr. Wessels (being Lot No. 1 of the Green Point lots), prolonged upwards and westwards; thence downward

along the said boundary line, and by a prolongation of the said boundary line in a straight direction downward and eastward across the Somerset or Green Point Road, to a point twenty yards to the eastward of the said road; thence by a line running parallel with and twenty yards to the eastward of the said road and of the cross road branching therefrom to Three Anchor Bay, to low-water mark; thence, along low-water to the point first mentioned.

No. 44-1882.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of the "Town Council of Cape Town," and by that name have perpetual succession, and shall have common seal, and shall by that name sue and be sued, and shall do all acts, and have and enjoy all the rights and privileges which bodies corporate such as being in this Colony do and have.

Incorporation of  
"Town Council of  
Cape Town."

4. The Town Council of Cape Town shall consist of eighteen councillors (one of whom shall be the Mayor), who shall be elected in manner hereinafter provided by the householders of the said municipality voting as one constituency, and at all meetings of such council a number not less than seven shall constitute a quorum for the transaction of business.

Constitution there-  
of.

5. For the purposes of such elections the municipality of Cape Town shall be divided into six separate districts, which shall be proclaimed by publication in the *Government Gazette*, and any readjustment of or alteration in any of the said districts shall likewise be so proclaimed by publication in the *Government Gazette*, and the production of the *Government Gazette* shall be proof thereof in any proceeding or action: Provided always that until any such division, readjustment, or alteration shall have been made under this provision the existing districts into which the said town is divided under the Acts No. 1 of 1861 and No. 1 of 1867 shall remain as at present constituted.

Division of Town  
into six Districts.

6. Every person who is the occupier, either as owner or tenant, or who is an owner though not an occupier, of any immovable property within the said municipality, and whose name shall appear in the list of registered ratepayers in the twenty-ninth section mentioned, shall be entitled and qualified to vote at all and any meetings of ratepayers called in virtue of any of the provisions of this Act.

Registered rate-  
payers entitled to  
vote at meetings.

7. Every person registered as a ratepayer and qualified to vote under the last preceding section shall be eligible to be elected a town councillor.

Such persons eligi-  
ble to be elected  
Councillors.

8. No person elected a town councillor shall have or receive any salary, or shall exact, take or accept any fee or reward whatsoever for or on account of any thing done as such councillor.

No Councillor to  
accept salary, &c.

9. The list of householders in force at the time of the commencement and taking effect of this Act shall remain conclusive evidence of the qualification of any person to be elected a member of the said Town Council or to vote at any election of members of

Existing list of  
householders to be in  
force till new one  
framed.

No. 44—1882.

the said council until a list of registered voters and ratepayers shall have been made in pursuance of the provisions of this Act.

Existing Council to give notice for nominations to be sent in.

10. The councillors who shall be in office at the time of the commencement and taking effect of this Act shall be and they are hereby empowered and required to call upon the ratepayers of the municipality by a public notice in the *Government Gazette* and in one or more local newspapers to nominate in writing candidates for the said Town Council on or before some day to be mentioned in such notice not being earlier than fourteen days nor later than twenty-one days from and after the publication of the said notice as aforesaid.

No person eligible to be a candidate without a requisition.

11. No person except as hereinafter excepted shall be deemed to be a candidate at any election, or qualified to be elected a councillor, unless he shall have received a requisition signed by at least five registered ratepayers and shall have transmitted such requisition, with his acceptance thereof, to the Town Clerk on or before such day as may be appointed, as hereinbefore provided, for receiving nominations: Provided that no such registered ratepayer shall sign more than one such requisition; and if he shall sign more than one requisition, then the said Town Clerk shall erase the name of such registered ratepayer from all such requisitions as he shall have signed: And provided, further, that in case the number of candidates who shall have received and accepted requisitions as aforesaid shall be equal to or less than the number of councillors to be elected, such councillors shall be deemed and taken to be duly elected: Provided that if there shall be less than the required number of candidates nominated, then the ratepayers shall be required and called upon to nominate candidates to complete the required number of councillors in the manner provided for in the last preceding section, and the councillors elected in pursuance of this proviso shall serve until the next annual election, and it shall be the duty of the Town Council, as soon as the day named in the notice as the last for receiving such requisitions shall have expired, to publish in the *Government Gazette*, and one or more other local newspapers, the names of the candidates who shall have been so nominated.

Manner of voting.

12. The manner of voting in each district shall be as follows: the Town Council shall cause the officers appointed as hereinafter provided to take the poll at each polling place to be provided with a sufficient number of printed lists of the several candidates for the office of town councillor, and each voter shall in the presence of such officer erase or cause such officer to erase upon such list the name or names of the candidate or candidates whom such voter shall desire not to be chosen: and the name of such voter shall by such officer be legibly written on the top of such list, and shall either by himself or by such officer at his request be signed or written at the foot of such list, which list shall also be signed by

such officer in attestation of the correctness thereof: Provided always that no registered ratepayer shall be entitled to give more than one vote to each candidate; and provided, always, that when and as often as the identity of any voter shall be established, no omission in the voters' list of one or more of the christian names of such voter, and no variance between the said last-mentioned lists in regard to the christian names of such voter, and no error in the spelling of either the christian names or the surname of such voter, shall destroy or affect the validity of his vote.

No. 44—1892.

13. Every candidate may, if he think fit, appoint by a writing under his hand a person to represent him at each of the polling places to see that the votes are fairly taken and recorded.

Candidates may appoint a representative at poll.

14. Every poll for the election of a town councillor or councillors, annual or otherwise, shall be taken in each of the said districts, between the hours of 9 a.m. and 5 p.m., after which hour no vote shall be taken, and by such two polling officers as shall be nominated and appointed by the Mayor of Cape Town, or in his absence by the Town Clerk, and every registered ratepayer shall be entitled and required to vote in the district in which he shall be registered: Provided that every ratepayer who may be the owner or occupier of property in more than one district shall be required to elect the district in which he will vote; provided further that where such ratepayer shall decline or fail to make any such election, it shall be competent for the Town Council to register such ratepayer in such district as the council may think proper.

When poll to be taken.

15. No inquiry 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 any registered ratepayer, put to any voter the following questions, or either of them, and no other:

Questions to be asked of voters.

1st. Are you the person whose name appears as A. B. on the list of registered voters and on the voting paper now delivered by you?

2nd. Have you already voted at this election at any other polling place?

16. Any person who shall wilfully make a false answer to either of these questions shall be liable to a penalty not exceeding ten pounds, to be recovered in the Court of the Resident Magistrate.

Penalty for false answers.

17. On the close of the poll in each of the said districts, the polling officers shall ascertain the number of votes given for each candidate in the respective polling places, and shall immediately transmit the voting papers sealed, together with the result, verified and certified by their signatures, to the Mayor of Cape Town.

Result of poll to be sent to the Mayor.

18. Upon the receipt of such voting papers and results, the Mayor shall declare so many candidates, equal to the numbers to be elected as shall have received the greatest number of votes, to be duly elected. And in case there shall be an equality of votes, the Mayor shall publicly determine by lot which of the persons

Mayor to declare who are elected.

In case of equality of votes.

No. 44—1882.

for whom an equal number of votes shall have been given shall be elected, and at the first election of the Town Council under this Act, the Mayor shall declare which of the candidates elected are elected for three years, which for two years, and which for one year. When the Mayor has declared the names of the persons so elected, he shall cause a list of the candidates elected, and the terms for which they shall have been respectively elected, to be published in the *Government Gazette* and in one or more local newspapers.

Terms of office of  
Councillors respec-  
tively.

19. On the first election of town councillors to be held under this Act, the six councillors who shall have been elected by the largest number of votes, or shall have been determined by the Mayor by lot as hereinbefore provided to have been elected for the term next hereinafter mentioned, shall be elected to serve as such for the term of three years, and the six councillors who shall have been elected by the next largest number of votes or shall have been determined by lot as aforesaid to have been elected for the term next hereinafter mentioned, shall be elected to serve as such for the term of two years, and the six councillors who shall have been elected by the smallest number of votes, or who shall have been determined by lot as aforesaid to have been elected for the term hereinafter mentioned, shall be elected to serve for a term of one year only, at the expiration of which term of one year such last-named councillors shall vacate their office, and the vacancies so occasioned shall be filled up by the election of six councillors who shall serve for the term of three years, and all councillors elected at any annual election subsequent to the said first election shall serve for a term of three years.

In cases of casual  
vacancy.

20. When and as often as any casual vacancy shall occur in the Town Council for any of the reasons hereinafter specified, the member to be elected to fill such vacancy shall be elected in the manner hereinbefore provided for the election of candidates at the annual election, and shall serve for the remainder of the term for which the member whose place he shall have been elected to fill was originally elected.

Election to be on  
2nd Monday in  
August.

21. The annual election of town councillors shall take place on the second Monday in the month of August of each and every year.

In cases of disqua-  
lification of Council-  
lors.

22. Any town councillor who shall cease to possess the qualification by this Act provided, or shall absent himself from meetings of the council for four consecutive weeks without leave from the said council having been first had and obtained, or shall assign his estate for the benefit of his creditors without having obtained a full release, or shall become insolvent, or who shall accept any office of emolument under the town council, or who shall accept any fee or reward whatsoever for or on account of anything done as such councillor shall, *ipso facto*, vacate his office; and in case any person so elected a town councillor shall die, or become



disqualified in manner aforesaid, or shall resign, or shall refuse to accept the office of town councillor, or, in case of any casual vacancy happening in any manner whatever, the town council shall forthwith, in the manner directed by this Act, cause candidates to be nominated and elected to fill up such vacancy in the manner in this Act provided: and the person then elected shall hold office for the remainder of the term for which the councillor who has vacated office and whom he shall succeed would otherwise have remained in office.

No. 44-1882.

23. After the first election of councillors under this Act the Town Clerk shall, by notice in the *Government Gazette* and in one or more local newspapers, intimate the time and place of the first meeting of councillors.

Clerk to give notice of first meeting of new Councillors.

24. At the first meeting of the Town Council held after every annual election of town councillors, the councillors present shall elect one councillor to be Mayor, who shall forthwith enter upon his office and continue therein until his successor be appointed after the next ensuing annual election of town councillors, unless his office be sooner vacated, and in case of such vacancy then a successor shall at the second next meeting of the council after such vacancy be chosen by the remaining councillors from amongst themselves, who shall forthwith enter upon his office and serve until the next annual election of councillors.

Mayor to be chosen.

25. So often as the Mayor shall not be present at any meeting of the Town Council, or on any other occasion when his presence is necessary, or in case there be no Mayor, a chairman shall be chosen by the councillors present. And as often as the votes of the councillors shall be equally divided, the Mayor, or chairman, as the case may be, shall have a casting vote in addition to his deliberative vote.

Chairman of meeting in absence of Mayor.

26. The Town Council shall cause a true list to be made in alphabetical order of all persons qualified to vote at the election of councillors, setting forth the name, surname, place of abode, and occupation of each voter, which list shall be made in the month of July of each and every year, and shall be and remain open to public inspection.

List of qualified voters to be made.

27. The Mayor shall in the month of July in each and every year cause such list to be affixed in some conspicuous place in the Town Hall, and cause to be appended thereto and published in the *Government Gazette* and in one or more local newspapers, a notice of not less than fourteen days that all objections and claims to be inserted will be heard and determined at some time and place to be therein stated.

Lists to be posted.

28. The Town Council shall hear and determine all claims and objections and may insert in the list the names of any persons which have been omitted, and strike out the names of all persons not entitled to be therein: provided that no name of any person shall be struck out until such person shall have had forty-eight

Claims and objections to be heard.

- No. 44—1882. hours' notice of the investigation of his qualification, and shall be heard in regard thereto should he so desire. The meetings of the Town Council for hearing and determining such claims and objections may be adjourned from time to time.
- Lists when settled to be lists of registered ratepayers. 29. The list when so settled and amended shall be the list of registered ratepayers for the municipality of Cape Town for the then ensuing year and until the next annual list shall in like manner be completed, and such list shall be deemed and taken to be conclusive proof of the right of every person inserted therein to act and vote as a registered ratepayer.
- Power to make and alter regulations. 30. The Town Council may, from time to time, repeal, alter, add to, or amend any of the municipal regulations, and may frame any new regulations, and from time to time alter, add to, or amend such regulations.
- As to new streets, and rules for planning, laying out, &c. 31. No new streets shall for the future be laid out until the plan thereof has been first submitted to and approved of by the Town Council, and it shall be lawful and competent for the Town Council to make rules and regulations for the planning and laying out of all new streets and thoroughfares, for securing the regularity of lines of buildings, for preventing or stopping the further progress of buildings being built in an insecure manner, and for pulling down and removing at the cost of the owner, all buildings of an unsafe and dangerous character, or which have been allowed to fall into a dilapidated or ruinous condition.
- Rules for public carriages. 32. It shall be lawful and competent for the Town Council to make rules and regulations for the safe and commodious conveyance of passengers travelling by conveyances plying for hire, not being tramway or railway carriages, within the limits of Cape Town, and to impose and recover fines, not, however, to exceed five pounds sterling in any one case, for the breach of such rules and regulations.
- Rules when framed to be published in English and Dutch. 33. After framing regulations, the Town Council shall publish the same in the *Government Gazette* and one or more local newspapers, in the English and Dutch language, for three or more consecutive weeks, and thereafter transmit the same to the Governor for approval.
- Must be approved by Governor. 34. No municipal regulation shall be of force that is inconsistent with the provisions of this Act, and that has not been approved by the Governor, and published in the *Government Gazette*.
- Treasurer to render accounts to Mayor. 35. Every Treasurer and other officer appointed by virtue of this Act shall, under his hand, and at such time and in such manner as the Town Council shall direct, deliver to the Mayor, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge by virtue of this Act, and also of all moneys which shall have been by such officer received by virtue or for the purpose of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that

every such officer shall pay all such moneys as shall remain due from him to the Treasurer for the time being, or to such person or persons as the Town Council shall appoint to receive the same; and if any such Treasurer, officer, or other person shall refuse or neglect to make or render such account, or refuse to deliver up the vouchers relating to the same, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the Mayor, or to such person or persons as he shall appoint to receive the same, within three days after being thereunto required by the Mayor by notice in writing under his hand, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the Mayor or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the Mayor or by such person or persons as aforesaid of any such refusal or wilful neglect as aforesaid to the Supreme Court or any Judge thereof, the said Court or Judge shall, if they or he shall see fit, order the officer so refusing or neglecting to appear before him, and if it shall appear to the said Court, or Judge, upon the hearing of the case, that any moneys remain due from such officer, such Court or Judge may, by decree of the said Court, or warrant under the hand of the said Judge, cause such money to be levied by distress and sale of the goods and chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money and the charges of distraining and selling the said goods and chattels, or if it shall appear to such Court or Judge that such officer had refused, or wilfully neglected, to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Ordinance remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then, and in every such case, it shall be lawful for such Court or Judge to commit such offender to the common gaol or house of correction within the municipality, there to remain without bail until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said Town Council, or to such other person or persons as aforesaid, or until such other or further time as the said Court or Judge shall direct: Provided that nothing herein contained shall prevent such Treasurer, officer, or other person from being tried, and, if found guilty, convicted and sentenced, according to law, for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act; and provided, further, that nothing herein contained shall prevent the Town Council from bringing an action for the recovery of any sum

No. 44—1882.

Penalties for refusal or neglect.

No. 44—1882.

or sums due by the Treasurer, officer, or other person, to the said Town Council.

Prosecution of officers not to exonerate sureties.

36. No prosecution or commitment of any Treasurer or other officer or person shall acquit and discharge any surety or security that shall or may have been taken by or given to the Town Council for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Records to be kept

37. All acts, orders, and proceedings of the said Town Council shall be entered in a book to be kept for that purpose, and shall be signed by the Mayor or chairman, as the case may be, and two of the councillors then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts and proceedings, upon any proceeding, civil or criminal, and in any Court.

Books to be kept showing receipts and expenditure of Council.

38. The Town Council shall, from time to time, order and direct a book or books to be provided and kept at the Town-hall in Cape Town, which shall not be taken thence, except by leave of the council, or by process of some competent Court, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the town councillors, and of every resident householder, without fee or reward; and the said town councillors and other persons aforesaid, or any of them, may take copies of or extracts from the said book or books, without paying for the same. And in case the said Town Council, or any officer of the Town Council, shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, the Town Council or officer shall forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

Accounts to be made in January of receipts and payments to 31st December of previous year.

39. In the month of January in every year a true account shall be made in writing of all moneys received and paid by virtue of this Act during the preceding year, ending on the 31st day of December; and a copy or duplicate of such account, verified by solemn declaration by the said Treasurer, and certified by the Mayor and two of the said town councillors, shall be deposited with the said Town Council, and shall be open to the inspection of any registered ratepayer, and an abstract thereof published in the *Government Gazette* and one or more papers published in the said city, for general information, before the first day of March following.

Abstract to be published.

Estimates of Revenue and Expenditure to be framed in

40. The said Town Council shall also, in the month of January in every year, draw out an estimate of the probable revenue and

expenditure for the current year, showing the several taxes or rates to be levied or assessed during the same, which estimate shall be signed by the Treasurer, Mayor, and Town Clerk, and shall be open to the inspection of any ratepayer or any party interested, and an abstract thereof published in the *Government Gazette* and one or more papers published in the said city before the 31st day of the said month of January in every year. And after such publication of the said annual estimate a special meeting of the Town Council shall be held upon fourteen days' notice for the purpose of finally considering and confirming the said estimate, and at such meeting it shall not be competent and lawful to place any new item on said estimates or to increase any item.

No. 44—1882.  
same month and  
published.

41. After the said estimate accounts and abstracts in the two last preceding sections of this Act mentioned shall have been published, as therein directed during fourteen days, the said Town Council shall immediately after the expiration of the same call a meeting of the Town Council upon not less than seven days' notice, to be published in the *Government Gazette*, and one or more papers published in the said city, for the purpose of assessing any such rate or rates on the immovable property situate within the municipality not to exceed the rate or rates hereinafter provided, and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Act.

When assessment  
rates to be made.

42. <sup>(1)</sup> It shall be lawful and competent for the Town Council to impose and levy a rate to be called the tenants' rate of not more than one penny in the pound in any one year on the value of all rateable immovable property, and which rate shall be payable by the occupier of such property; and also to impose and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the limits of the municipality, such rate or assessment to be called the "landlords' rate," and to be made and levied on an estimate of the value of such property, to be made as hereinafter provided, and which rate shall be payable by the owner of such property and shall not exceed in any one year the sum of threepence in the pound.

What rates may be  
imposed.

43. The rates in the last preceding section mentioned shall be voted and levied for specific services or objects in manner and to the extent following, that is to say, one rate shall be voted and levied for the waterworks and generally for the supply of water to the inhabitants, and another rate for public works, sewerage, drainage, paving, cleaning, repair and watering of streets, and generally for all purposes of a municipal nature, exclusive of the waterworks and the supply of water: Provided that no rate voted for waterworks and the supply of water shall be invalidated or impeached by reason that no rate shall have been voted at or by the same meeting for any other municipal purpose, and conversely,

How and for what  
purposes to be levied

<sup>1</sup> See Act 28 of 1885, §§ 1 and 2.

No. 44—1882.

that no such last-mentioned rate shall be invalidated or impeached by reason that no rate shall have been voted for waterworks or the supply of water: Provided, also, that separate and distinct accounts shall be kept, showing the receipts from and the expenditure of each separate rate which shall be voted, and that the funds arising from any rate voted for any specific purpose, shall be applied to that specific purpose, and none other: Provided, also, that the funds arising from water rates and private water leading shall not be spent upon or applied to any other purpose than the supply of water to the inhabitants.

Minutes, &c., to be kept in the English language.

44. All minutes of the proceedings of the Town Council, and all books, writings, accounts, and records thereof, shall be made and kept in the English language.

Collectors of rates to be appointed.

45. (1) After the rates to be levied by virtue of this Act shall have been assessed, the same shall be published in the *Government Gazette* and in one or more local newspapers, and it shall and may be lawful for the said Town Council to appoint one or more collectors for the purpose of collecting the amounts due and payable, and the said collectors are hereby authorized to demand and receive the amounts so to be collected, which shall, on non-payment thereof, be recoverable at the suit of any such collector, upon production of the said *Government Gazette* and such local newspaper, by action in the Court of the Resident Magistrate of Cape Town, or in case any person liable for any rate shall not reside within the municipality of Cape Town, then either in the Court of the Resident Magistrate of Cape Town, or in the Court of the Resident Magistrate of the district in which such ratepayer shall reside: Provided that as often as any ratepayer not resident in the Cape division shall be proceeded against in the Court of the Resident Magistrate of Cape Town, the summons directed to such ratepayer shall be served upon the person, if any, in occupation of the premises in regard to which the rate alleged to be due is claimed. And such collectors shall give security to the said Town Council for the due execution of their office to such amount as the Town Council shall deem sufficient.

Rates recoverable in Magistrate's Court.

Powers to sue for unpaid rates.

46. If the amount of any rate, which under the provisions of this Act shall have been assessed on any immovable property within the said municipality, shall not, on demand made by the person duly authorized to collect the same, be paid by the occupier of such property or by the owner thereof, as the case may be, it shall be lawful for the said Town Council to sue either the said occupier or the said owner separately or both of them in one and the same action, each for the whole, before any competent Court, and to obtain the judgment and process of such Court for the recovery of the same, reserving to such occupier and owner respectively such relief against each other as he may be lawfully entitled to: Provided, always, that no person shall, as occupier of

<sup>1</sup> See § 13, Act 28, 1885.

any such immovable property be liable to pay or to be sued for any rate which had been assessed on the same, in respect of any period, or which had become due and payable at any time before such person entered on the occupation of such property. And that every person who, as occupier of any such property, shall at any time have become liable to pay any rate which may have been assessed thereon, shall continue to be liable, and may be sued in manner aforesaid for the same, notwithstanding that such person shall have ceased to occupy such property: And provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid, by either the owner or occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate, as far as regards the municipality aforesaid.

No. 44—1883.

47. [§ § 47 and 48 repealed by Act 31 of 1883 (Police).]

49. A certificate, signed by the Auditor-General of the Colony, or the officer acting as such, certifying that a certain sum, to be specified in such certificate, has been the expense, for the purposes of this Act, of the police force aforesaid, for the year mentioned in such certificate, shall be deemed and taken to be *prima facie* evidence of the amount of such expense: Provided that the Town Council shall, should they require it, be supplied with a detailed statement showing the particulars of such expense.

Auditor-General's certificate shall be proof of expense in question.

50. (1) It shall be lawful for the Town Council, from time to time, to keep up fire-engines, with pipes and other utensils proper for the same for the use of the municipality, and to provide a proper place or places for the keeping of the said fire-engines and to place the same under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and to make such further rules and regulations thereon as they shall think necessary.

Fire Engines, &amp;c.

51. It shall be lawful for the Town Council, from time to time, to cause such lamp-irons or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisades of any house, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner, within all or any of the roads, streets, and places within the limits of the municipality, as shall be deemed proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil, gas or otherwise, during such hours as shall be necessary, and also from time to time to make such regulations thereon as they shall find necessary.

Lamp posts, &amp;c.

52. It shall be lawful for the Town Council, from time to time, to provide and to carry and lay any pipes for the conveyance of water, to which the inhabitants of the municipality shall, at any

Water pipes.

<sup>1</sup> See §§ 3-11, Act 28 of 1885.

No. 44—1882.

time, have or acquire a common right from any reservoir, river, or spring, to any house, building, or other place, within the limits of the municipality, and also from time to time to make such regulations touching the same, and the quantity of water to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary; and also touching the most expedient mode of preventing any waste of drinking water within the said municipality.

Green Point to be provided with water.

53. The inhabitants of the municipality of Green Point shall have the right, and shall be entitled, to be furnished and provided from the waterworks now existing, or which may hereafter be made, erected or provided, for supplying water to the inhabitants of Cape Town, in whomsoever the property, management, or administration of any such waterworks shall for the time being be vested, with a supply of water, in the same proportions, on the same terms, at the same rates, and under the same regulations, in, on, at, and under which, the inhabitants of Cape Town shall for the time being have or be entitled to have, water supplied to them; and in consideration of such water rates to be paid by the inhabitants of the municipality of Green Point as aforesaid, the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid shall for the time being be vested, shall, and they are hereby required to provide, keep in good order, and repair a main pipe extending from the said waterworks as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends,—and also the fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the municipality of Green Point.

Water rates payable by inhabitants of Green Point.

54. Every rate which shall be voted, in manner and form as in the forty-second and forty-third sections of this Act, for the waterworks, and generally for the supply of water to the inhabitants, shall be chargeable upon and payable by the inhabitants of the municipality of Green Point, according to the valuation, for the time being, of the immovable property of the said municipality, in like manner as by the inhabitants of the municipality of Cape Town.

Private water leadings at expense of owners compulsory.

55. The owner of each and every house shall be obliged when called upon by the municipality, to take from the municipality, at his own expense, a private waterleading of not less than one hundred gallons per diem, and pay the usual rate upon the same.

Water for public fountains, fireplugs, shipping, &c. and for private houses.

56. The Town Council is hereby required to maintain, at all times an adequate supply of water to every public fountain and fire-plug, to the cisterns from which the shipping in the harbour of Table Bay is supplied, and to all dwelling-houses and private water leadings and shall maintain such supplies of water as, under the provisions of this Act, such dwelling-houses and private water-



leadings may be entitled to; and in order to enable the Town Council to supply every dwelling-house with water, the owner of every such dwelling-house shall, within twenty-one days after receiving written notice to that effect, lay on a private service pipe to the main or branch service as may be directed, and in all cases when the owner shall refuse or neglect, the Town Council is hereby empowered, to supply and lay on such private service pipe at his expense; and for such purpose, and in the case of renewing or relaying such pipes as may already have been lawfully laid, or in the laying on, at the expense of owners, private service pipes or waterleadings to dwelling houses, the Town Council shall have power to enter on private property.

57. The Town Council shall make and maintain, at all times, in serviceable order and efficient repair, all dams, tanks, reservoirs, and other works necessary for the impounding of an adequate supply of water to the inhabitants of the municipalities of Cape Town and Green Point, with the shipping in Table Bay: as also all mains, branch service pipes, and other appurtenances required to convey that supply to every locality or district entitled to it by the provisions of this Act.

Making and repairs of dams, tanks, reservoirs, &c.

58. The Town Council shall cause to be made, provided, erected, and built, covered in, or removed, such bridges, sluices, dams, or reservoirs, watercourses, drains, and ditches, as now are or shall be deemed necessary, within the municipality, and shall cause the same to be kept at all times in good and efficient repair, and from time to time to make such rules and regulations thereon as they shall find necessary.

Bridges, sluices, &c.

59. It shall be lawful for the commissioners of the municipality of Green Point, upon a notice of not less than three months, to be given by them to the Town Council of Cape Town, to terminate and annul the arrangement mentioned in section fifty-three, either in the whole or in part, regarding the supply of water from the waterworks of Cape Town for the time being to the inhabitants of the municipality of Green Point; and upon the expiration of such notice, or sooner, should both boards of commissioners so agree, all and singular the provisions of the fifty-third, fifty-fourth, and fifty-fifth, sections shall cease, determine, and become void as to the district or districts in respect to which the notice is applicable: Provided, always, that if any such arrangement be terminated and annulled, either in the whole or in part, the municipality of Cape Town shall sell, at a fair value, to the municipality of Green Point the service-pipes and water-leadings belonging to the municipality of Cape Town, situate in the district or districts in respect of which such arrangement shall terminate.

Municipality of Green Point may terminate arrangements provided for in Section 53.

60. It shall be the duty of the Town Council to cause the public streets, roads, and places, within the limits of the municipality, to be at all times kept in good and efficient repair; and, as far as the funds of the municipality shall permit, to cause such new

Repairs of streets roads, &c.

- No. 44--1882. streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and efficient repair, and from time to time to make such rules and regulations thereon as to them shall seem fit.
- Establishment of markets. 61. It shall be lawful for the said Town Council, from time to time, as occasion may require, to keep up and establish within the limits of the said municipality, a market or markets for the sale of cattle, meat, fish, poultry, vegetables, fruit and other colonial produce, and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and cause the same to be kept in good and efficient repair, and also to frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.
- Weights and measures, &c. 62. It shall be lawful for the said Town Council, and they are hereby empowered, from time to time, to make the necessary rules for the due and proper care of weights, measures, and the quality and assize of bread, and quality of meat and other eatables; and any person by the said council duly authorized, is hereby empowered, at all times, to visit and enter into the shops or places where bread, meat, fish or other eatables are sold, for the purpose of assizing the bread, and examining the weights and measures, and also of taking proper care that the bread, meat, fish or other eatables therein sold are good and wholesome; and to seize, confiscate, remove and destroy all bad or unwholesome bread, meat, fish, and other eatables.
- Rules regarding commonage lands. 63. It shall be lawful for the said Town Council, and they are hereby empowered, from time to time, if necessary and expedient, to make rules for the due and proper care of the common pasture lands of the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also to impose fines on any person contravening such regulations, and to establish and erect one or more pound or pounds within the said municipality, and to appoint one or more poundmasters, and to make all such pound regulations as shall be necessary or expedient: Provided, always, that the said Town Council shall not be authorized or permitted to dispose of, alienate, build upon, enclose, or cultivate any such common pasture lands, nor suffer any other person to build upon, enclose, or cultivate the same, and any such alienation by sale, gift, or otherwise, except made in the manner and by authority hereinafter in the seventy-third section mentioned, shall be, and is hereby declared to be, null and void.
- Penalties for injuring Municipal property. 64. If any person shall wilfully break, throw down, spoil, or damage any lamp, lamp-iron, lamp-post, pale, rail, chain, or other

furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil, or damage any building, the property in which is by the provisions of this Act vested in the said Town Council, or shall wilfully break or damage any public watercourse, drain, or ditch within the limits of the said municipality, it shall be lawful for any person who shall see the offence committed, to apprehend, and also for any other person or persons to assist in apprehending, the offender, and by the authority of this Act, and without any warrant, to deliver him to any constable, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate for Cape Town, or any Justice of the Peace having jurisdiction, and if the party accused shall be convicted of any such offence by such Resident Magistrate, he shall forfeit any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby, and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act; and in case any such offender shall not, on conviction, pay the said forfeiture such Magistrate is hereby required to commit him to the common gaol or house of correction, there to be kept at hard labour, if such Magistrate shall so order, for any time not exceeding one calendar month, unless such forfeiture shall be sooner paid: Provided, nothing herein contained shall prevent the Town Council from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

65. If any person shall carelessly or accidentally do any such damage or injury as hereinbefore mentioned, and shall not, upon demand, make satisfaction to the said Town Council for the damage or injury so done, it shall and may be lawful for the said Resident Magistrate, and he is hereby required, upon the application or complaint of the Town Council, to summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction, to the said Town Council for such damage as such Resident Magistrate shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same, and all expenses attending the recovery thereof, may be levied and recovered as any penalty or forfeiture is by this Act directed to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the Town Council from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

66. The Town Council shall use all endeavours to keep the impounded water from being fouled or in any way rendered

No. 44—1882.

Proceedings when  
injury done by care-  
lessness or accident.

Provisions against  
fouling water and  
penalties for fouling.

No. 44—1882.

impure, and for this end, every person convicted upon the prosecution of the Town Council, of any of the following offences, shall forfeit to the use of the said council a sum not exceeding five pounds; in failure of the payment of such fine the party convicted shall be liable to imprisonment, with or without hard labour, for any period not exceeding two calendar months:

- (a) Every person who shall bathe or wash himself in any stream, reservoir, or other waterworks belonging to the council, or wash, throw, or cause to enter therein any dog or other animal;
- (b) Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, or other waterworks, or wash or cleanse therein any cloth, wool, leather or skin of any animal, or any clothes or other thing;
- (c) Every person who shall cause the water of any sink, sewer, or drain, or any filthy water whatever, belonging to him or under his control, to run or be brought into any such stream, reservoir, or other waterworks, or do any other act whereby the water under the charge of the Town Council shall be fouled or made impure. And every such last-mentioned person shall also forfeit the sum of one pound aforesaid for each day, if more than one, during which the last mentioned offence shall be continued.

In case of land, buildings, &c. required within Cape Town or Division.

67. In case the said Town Council shall require to take or use any land within the limits of the municipality or within the limits of the Cape division, with or without the buildings, if any, erected thereon, or any frontage or stoep belonging to any premises, for the purpose of making or improving causeways or pavements, or to dig out to carry away any materials, or to appropriate or make use of any springs, streams, or other supplies of water belonging respectively to any person or persons upon any lands within the limits of the municipality or of the Cape division, who shall not be bound by law to allow the Town Council so to do, then, and in that case, it shall be lawful for the said Town Council, and they are hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or supplies of water as aforesaid; or for payment of consequential damages, and generally to enter into any such contract or contracts relative to the obtaining of any such land, buildings, materials, springs, streams or any other supplies of water as aforesaid, on such terms and conditions as they shall deem expedient. And if any such person or persons and the said Town Council shall not agree upon the purchase-money, or hire, or recompense for consequential damages to be respectively given by one party and received by the other, then the amount of recompense or compensation shall be settled by arbitration.

68. For the purposes of any land taken, and of any arbitration under the provisions of this Act, the provisions of the "The Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

No. 44—1882.

"Lands and Arbitration Clauses Act 1882" incorporated.

69. It shall be lawful for the said Town Council, and they are hereby authorized and required, to remove, put down, and abate all nuisances of a public nature within the said municipality, or which may tend either to injure the health or in any way affect the safety or reasonable comfort, peace and quiet, or the rights of the inhabitants at large, and, if need be, to proceed at law before the Resident Magistrate or Supreme Court, against any person or persons so committing any such nuisance as for abatement thereof, and aforesaid damages; and, further, that the said Town Council shall, and they are hereby required to cause all streets, watercourses, drains, roads and places within the said municipality to be kept clean and free from dirt, filth, or rubbish: and any person convicted upon the complaint made by the Town Council to the Resident Magistrate, of throwing dirt, filth, or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding five pounds; and in default thereof to be imprisoned for any period not exceeding two months unless such fine shall be sooner paid.

Removal of nuisances.

70. It shall and may be lawful for the Town Council from time to time, to enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the said Town Council, by virtue and for the purposes of this Act, which contract shall specify the work to be done and the price to be paid for the same, and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by the Mayor and by two or more of the said town councillors, and also by the person or persons contracting: which contract, or a copy thereof, shall be entered in a book to be kept for that purpose; but no contract above the value of fifty pounds shall be entered into, unless fourteen days' notice be previously given in one or more of the public newspapers published in this city, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said Town Council at a certain time and place in such notice to be mentioned: Provided always, that if the said Town Council shall be of opinion that it will not be advantageous to contract with the person offering the lowest price, it shall be lawful for the said Town Council to contract with such other person or persons as they shall think proper, and such person or company so contracting shall give security for the due performance thereof to the satisfaction of the Town Council: Provided, however, that no town councillor shall be allowed, either directly or indirectly, to become a contractor, or to tender for any contract either in his name or in the name of, or jointly with, any other persons,

Power to make contracts for carrying out works.

No Councillor to be a contractor.

No. 44—1882.

on pain of forfeiture of all his share and interest in such contract for the benefit of the municipality, and shall also be considered to have vacated his office of town councillor *ipso facto*, and be ineligible to be elected at any future period to serve as a town councillor.

Except as shareholder in a contracting Joint-Stock Company.

71. No town councillor shall be deemed or taken to have vacated his office of town councillor or to have incurred any penalty or forfeiture whatever by reason merely that the Town Council shall have entered into any such contract as in the last preceding section of the Act aforesaid mentioned, or any other dealing or transaction with the directors or other managers of any joint-stock company in this Colony of which such town councillor shall be a shareholder or in which he shall be otherwise interested, nor shall any shareholder or person otherwise interested in any joint-stock company with which company the Town Council shall have entered into any executed or still subsisting contract, dealing or transaction be deemed or taken to be ineligible to be elected or to act as a town councillor by reason merely of such contract, dealing or transaction: Provided, always, that no town councillor who is also such a shareholder or so otherwise interested as aforesaid shall be allowed to vote as a town councillor upon the question of making or entering into any contract, dealing, or transaction with the joint-stock company in which he is interested; and any town councillor who shall so vote in contravention of this restriction shall for every such offence forfeit the sum of one hundred pounds: Provided also that nothing herein contained shall be deemed or taken to prevent the Mayor, being such a shareholder as aforesaid, from signing any such contract as by the seventieth section aforesaid is required.

Powers of borrowing on security of rates.

72. It shall be lawful and competent for the Town Council to borrow on the security of the town rates, at any time, any sum or sums of money not exceeding one hundred and fifty thousand pounds sterling altogether, including existing loans, but should a larger sum than one hundred and fifty thousand pounds be required, then and in such case the consent of the ratepayers thereto shall be first had and obtained at a meeting to be convened for the purpose upon a notice of not less than twenty-one days: Provided, however, that any ratepayer present at such meeting, may demand a poll of the ratepayers of the municipality.

Landed property vested in the Town Council.

73. The property hereinafter mentioned, and situate within the municipality: to wit, the town-hall, the town market, the butchers' shambles, the granary buildings, the fish market, the waterworks and the buildings belonging thereto, together with all the waste ground or land situate within the municipality, together with all the stone quarries therein situate, and all right, title, and interest in the same, and which was before the 1st day of January, 1828, vested in or committed to the administration of the late Burgher Senate, and which, by Ordinance No. 34, was afterwards vested in trustees, and all other property which at the time of the expiration of Ordinance No. 1, 1840, was legally vested in the

commissioners, shall be and the same are hereby vested in the council appointed under this Act to be administered, and the revenue thereof employed and made use of for the benefit of the municipality, and for the purposes of this Act: Provided that the said Town Council shall not be authorized or permitted to sell or otherwise alienate the said buildings or lands without having first obtained the consent of the Governor for the time being, to such sale or alienation, and without having, after obtaining such consent published such resolution to sell, during three successive weeks, in the *Government Gazette* and one or more papers published in the said city: Provided, also, that nothing herein contained shall affect, or be construed to affect, any right or title which Her Majesty's Board of Ordnance has, or may have, in the immovable property hereinbefore mentioned, or any part thereof, or to vest in the Town Council aforesaid any greater or other right in or to the granary buildings aforesaid than shall have been lawfully vested in them on the 31st December, 1860, under the provisions of the Ordinance No. 1, 1840.

No. 44—1882.

Not to be sold  
without authority of  
Governor.

74. The property of and in the lamps, lamp-irons, lamp-posts, bridges, sluices, dams, market houses, pipes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials, and furniture and things, of, in, and belonging thereto (except when the same shall be otherwise regulated by the contract with the said Town Council), also all the movable property which now is under the administration of the municipality of Cape Town, and employed by them for the use of Cape Town and its vicinity, shall be, and the same is hereby, vested in the said Town Council, and may be used, sold, and disposed of by them from time to time as they shall deem necessary; and the money arising from such sale shall be applied towards the purposes of this Act, and the said Town Council are hereby authorized and empowered to bring or cause to be brought, any civil or criminal action, in manner as hereinbefore is provided, against any person or persons who shall steal, break or otherwise damage any of the buildings or other things, the property which is hereby vested in the said Town Council, subject, however to the provisions of the Ordinances Nos. 40 and 73, or of any law or ordinance which may hereafter be created or then be in force in that behalf; and in all such actions it shall be, and be deemed and taken to be, sufficient to state generally that the article or thing for or on account of which such action shall be brought is the property of the Town Council.

Property in lamps,  
bridges, sluices, &c.  
vested in Council.

75. All offences committed in contravention of this Act, or of any municipal regulation, may lawfully be prosecuted in the Court of the Resident Magistrate for Cape Town; and if any person shall be duly convicted of any such offence, and shall not pay or satisfy the amount of fine imposed upon him, it shall be

Prosecution of of-  
fences before Magis-  
trate's Court.

No. 44—1882.

lawful unless otherwise provided in this Act for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months unless such fine shall be sooner paid; and the amount of all such fines, when recovered, shall be paid to the Treasurer of the municipality for the time being, for the purposes of this Act.

Private rights to property protected.

76. Nothing herein contained shall extend, or be construed to extend, to injure or impair the rights of property which any person or persons may have in, to, or in respect of, any of the matters aforesaid: and in every case in which the Town Council shall commit any act under and by virtue of this Act, or of any municipal regulation, by which the right of property of any person or persons is injured or impaired, the Town Council shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said Town Council personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction in the case in which such compensation or satisfaction is hereby directed to be made by the said town councillors.

Pensions to retired officers.

77. It shall be lawful for the Town Council to pay to such officers and servants of the municipality as shall be superannuated or become unfit for duty, such pensions or retiring allowances as such officers or servants would be entitled to according to the scale and regulations at the time existing relative to pensions or retiring allowances of the civil service of the Colony.

Immovable property to be valued every five years.

78. The immovable property within the municipality shall be valued, for municipal purposes, every five years, and to that end the Town Council shall, every five years, employ one or more valuers to make such valuation. Every such valuation shall, when made, be laid before the Town Council, but shall not become fixed until the owner or occupier of each property included in such valuation shall have had from the Town Council notice of and an opportunity of objecting before them to the value placed upon such property: Provided that such owner or occupier, if dissatisfied with the determination of the Town Council in regard to his objections, may bring the same in review before the Supreme Court; and provided, always, that it shall be lawful and competent for the Town Council to have all new buildings erected or existing buildings improved during the year valued or re-valued, and shall be entitled thereupon to levy a rate upon the increased value; reserving to the owner or occupier, if dissatisfied such right of review as aforesaid.

Suits to be in the name of the "Town Council of Cape Town."

79. In any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, by or against the said Town Council,



it shall and may be lawful for the said Town Council to sue or be sued by the style or description of "the Town Council of Cape Town," and the warrant of attorney to sue or defend any action or suit shall be issued under the common seal of the Town Council: Provided, always, that every such town councillor may and shall (if not otherwise interested or objectionable), be a good, examinable, and competent witness in every action or suit, either for or against the Town Council, and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding, shall and may be lawfully made by any such town councillor; and provided, also, that the said Town Council shall always be reimbursed and paid out of the moneys to arise by virtue of this Act, all such costs, charges, and expenses as they shall be put to or become chargeable with, by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same, or any part thereof, unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

80. All the necessary costs, charges, and expenses attending the carrying the provisions of this Act and of the municipal regulations into effect, shall be paid out of the money authorized to be received by the Town Council under the provisions of this Act.

Expenses provided for.

81. The Act No. 11 of 1867, intituled "An Act to make provision for the payment of judgment debts found to be due by public bodies empowered to levy rates," and known as the "Public Bodies Debts Act, 1867," shall apply in the case of all debts due, or which may hereafter become due, by the municipality of Cape Town, anything in the said Act to the contrary notwithstanding.

"Public Bodies Debts Act, 1867," to apply.

82. The several existing regulations of the Town Council in so far as the same are not contrary to law, and not repugnant to or inconsistent with the true intent and meaning of this Act, shall remain as legal, valid, and effectual as if the same had been word for word inserted in this Act, until such time as the same shall have been altered by the said Town Council in due form of law.

Existing regulations to continue till changed.

83. Every meeting of the Town Council, held under the provisions of this Act, shall be open to the public.

Meetings to be open to public.

84. The Town Council constituted under this Act shall be subject and liable to every contract, engagement, debt, and demand to which the present Town Council of Cape Town shall be subject or liable to at the time of the taking effect of this Act, and in like manner shall be vested with or entitled to all rates, assets, or claims to which the said last-mentioned Town Council were at the time of the taking effect of this Act vested with or entitled to.

Existing contracts and debts of Council to be taken over by New Council.

85. So soon as any burial-ground within the limits of this municipality or portion thereof, shall become so crowded as to be, in the opinion of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein

Power of closing burial grounds.

No. 44—1882.

shall cease, and after the expiration of the said term of six months any person or persons causing any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds sterling, to be recovered in any competent Court: provided, however, that at and from the time that burials in such burial-ground shall cease, the Town Council shall, unless other satisfactory provision is made provide some other suitable burial-ground for the interment of the dead.

Short title.

86. This Act may be cited for all purposes as the "Cape Town Municipality Act, 1882."

No. 28—1885.]

[August 11, 1885.

## ACT

## To Amend the Act No. 44 of 1882.

Preamble.

WHEREAS it is expedient to amend the Cape Town Municipality Act No. 44 of 1882, entitled "An Act to consolidate and amend the Acts No. 1 of 1861 and No. 1 of 1867": And whereas it is deemed desirable to increase the powers of the Town Council of Cape Town, and also to enable and to authorize the said council to make further and better provision for the protection and saving of property from fire within the municipalities of Cape Town and Green Point and Sea Point, and to impose a tax on certain vehicles, and to impose penalties in default: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Who liable for  
landlord's rate.

1. The person or persons in whom shall be vested on the 15th day of March in each year the legal title to any immovable property on which rates shall be assessed shall be the person or persons liable for the landlords' rate for that year, and the occupier on the 15th day of March shall be the person liable for the tenants' rate.

Rates, when and  
where payable.

2. All rates levied under the Act 44 of 1882 shall be due and payable at the office of the Treasurer of the Town Council on the 15th day of March of each year, and every person who shall be in default in payment of any such rates after the 30th day of June in each year shall become liable to pay and shall pay in addition to the rate in regard to which he shall have made such default an additional sum equal to one-twentieth of the rate, and such additional sum together with the original rate shall be deemed to be the rate payable under Act 44 of 1882, and shall be recoverable as such by any of the means provided by this Act or Act 44 of 1882 for the recovery of rates.

Fine for default.

How recoverable.

Powers given to  
the officer in charge  
of fire brigade in  
case of fire.

3. On the occasion of any fire the superintendent of the Cape Town Municipal Fire Brigade or other officer in charge may in his discretion avail himself of the assistance and take the command of any person who may voluntarily place their services at his

disposal ; and generally he may take any measures that may appear expedient for the protection of life and property ; with power by himself or his men to break into or through, or take possession of, or pull down, any premises for the purpose of saving life or property or putting an end to a fire, doing as little damage as possible ; and for these purposes he shall have free right of access to, and liberty to draw water from, all tanks, cisterns, pipes, or other supplies of water, whether on municipal or private property.

No. 28—1885.

4. The police authorities shall aid the fire brigade in the execution of their duties, they may close any street, passage or thoroughfare in or near which a fire is burning, and may on their own authority, or on the request of the superintendent or other officer of the fire brigade, remove any persons who interfere by their presence or otherwise with the operations of the fire brigade.

Police to assist brigade.

5. The Town Council, the Mayor, the superintendent and men of the fire brigade, as also all police constables and other persons acting under the orders of such superintendent or other officer in charge of the fire brigade, are hereby indemnified and exempted from all claims or demands whatsoever by reason of any damage done upon sufficient necessity to property in the execution of their duties.

Indemnity for damage caused in discharge of duty.

6. In every case of fire the Town Council shall be authorized to charge on every shop, store, warehouse, station, hotel, manufactory, timber or store-yard, carpenter's shop, or block of offices in which fire breaks out the sum of ten pounds sterling for the services of the fire brigade and the use of the fire engines and appliances, and also the sum of two pounds sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said premises or upon the neighbouring premises, to prevent the extension of the fire ; and on every dwelling-house or other building, not above specified, in which fire breaks out the Town Council shall be authorized to charge the sum of five pounds sterling for the services of the fire brigade, and the use of the fire engines and appliances, and also the sum of one pound sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said dwelling-house or other building or upon the neighbouring premises to prevent the extension of the fire.

Charges for services of brigade.

7. The amounts charged as aforesaid shall be paid by the tenant of the property on which the same shall be charged, or on his default by the owner thereof, and shall be recoverable from either by action in the name of the Town Council in the Court of the Resident Magistrate or any court of law having jurisdiction.

By whom payable.

8. Whenever the Town Council has incurred any expenses in saving or removing, or attempting to save or remove, merchandize, furniture or other goods or articles from any fire, or in pulling

Expenses incurred may be recovered from interested persons

y

- No. 28—1885. down or destroying any buildings in order to prevent the spread of the fire, or otherwise in saving, or attempting to save, buildings or property adjacent to a fire, the said Town Council shall be entitled to recover the amounts so expended from those interested in equitable proportions, whether the said buildings or property be ultimately saved or not.
- Town Clerk to ascertain value of property dealt with. 9. In order to decide on the equitable distribution of such expenses, the Town Clerk shall ascertain as near as may be the values of the properties dealt with, and divide the outlay accordingly, and the amounts so apportioned shall be paid by the several owners of the properties dealt with, and shall be recoverable from such owners respectively in any competent Court after seven days' notice of such apportionment, unless within such seven days they shall intimate to the Town Clerk their objections to the same, and agree to submit the whole apportionment of expenses to arbitration.
- Arbitration in case of dispute. 10. Should any of such owners object to the distribution as arranged by the Town Clerk, or dispute his liability to contribute to such expenses, the whole matter shall be referred to arbitration, and for the purposes of any arbitration the provisions of the Lands and Arbitration Clauses Act, 1882, are hereby incorporated.
- What shall be deemed to be "loss, or damage by fire." 11. Any damage occasioned by the fire brigade in the due execution of their duties, and all expenses incurred by them or by the other parties empowered by this Act, in the removal or attempted removal of goods or in operations to save property and extinguish fire, and charged to the owners whether of immovable or movable property under this Act, including the charges mentioned in the eighth section of this Act, shall be deemed to be loss or damage by fire within the meaning of any policy of insurance of such property or goods against fire.
- Power to tax vehicles plying for hire or profit. 12. The Town Council may from time to time make, alter and revoke bye-laws or regulations for imposing a tax on all vehicles, wagons, carts and other conveyances drawn by any horse, mule, donkey or ox kept within the municipality, and plying for hire or profit, and for requiring and compelling the owner thereof to take out an annual licence therefor under a penalty in default not exceeding five pounds, and for fixing the sum to be paid in respect of such licence.
- Rates, &c., how recovered. 13. All rates levied, penalties inflicted, and amounts due under this Act shall be recoverable in the Resident Magistrate's Court of Cape Town or otherwise as in manner provided by section 45 of Act 44, of 1882, or in any other competent court of law in the Colony.
- Repugnant sections of Act. No. 44 of 1882 repealed. 14. All sections or portions of sections of the Cape Town Municipality Act, No. 44, of 1882, in so far as the same are repugnant to or inconsistent with the provisions of this Act, are hereby repealed.
- Short title. 15. This Act may be cited for all purposes as the "Cape Town Municipality Act, 1882, Amendment Act, 1885."

No. 29—1877.]

[August 8, 1877.

## ACT

To Release a portion of the Estate Orangezicht of the Entail of *Fidei Commissum*, and to Authorize the Town Council of the City of Cape Town to acquire said Lands for the purpose of constructing thereon one or more Reservoirs.

WHEREAS it is expedient to extend and improve the water-works of the Municipality of the City of Cape Town, and to construct a new reservoir or reservoirs to increase the supply of water of the said City: and whereas it is expedient that the Town Council of the said City of Cape Town should acquire for such purpose certain lands forming part of the estate Orangezicht, situate in Table Valley, the property of the family of Van Breda, held by them subject to the burthen and entail of *fidei commissum* under the provisions, conditions, and stipulations set forth and provided in the deed of transfer of the said estate, duly registered in the Registry of Deeds of this Colony from the Executors Testamentary of the estate of the late Michael van Breda, senior, to and on behalf of Dirk Gysbert van Reenen van Breda, and dated the 13th day of February, 1851: That is to say,—that the whole of the estate Orangezicht shall for ever, and for the utmost and longest time which the law of this Colony may permit such fiduciary limitations to subsist, be and remain an inalienable hereditary family estate of the family of “Van Breda,” to be possessed and succeeded to as hereinafter mentioned: That, at the death of said Dirk Gysbert van Reenen van Breda, the said estate shall devolve upon and be succeeded to by his eldest son, or his male descendants in a direct line, and such failing, in the indirect line of succession, and in case there shall be none such, then to his second son or his male descendants in the direct or indirect line as aforesaid, and so on until there be no more male descendants begotten by, or issued from, the said Dirk Gysbert van Reenen van Breda, and in case there should be no male descendants of the said Dirk Gysbert van Reenen van Breda, subject to the further conditions in the said deed of transfer expressed and declared.

Preamble.

And whereas Gerrit Hendrik van Breda, son of the said Dirk Gysbert van Reenen van Breda, the person now entitled to and in possession of the said estate, subject to the said burthen and entail, did on the 2nd day of June, 1876, enter into an agreement in writing with the said Town Council, whereby, after reciting that negotiations had been pending for the purchase by the Town Council of certain portion of the said entailed estate Orangezicht, subject to an Act being obtained from Parliament to authorize the

y 2

No. 29—1877.

said Gerrit Hendrik van Breda to dispose of the same, and that the said parties having been unable to agree upon the purchase price, it was declared and agreed that the question as to what sum of money should be paid by the Town Council for the said land should be submitted to the award and final determination of certain three arbitrators in the said deed named, or any two of them, provided that such award be made in writing before the 30th day of June, 1876: and whereas the said arbitrators accepted the burden of the said submission, and by an instrument, in writing, dated the 10th day of June, 1876, under the hands of two of them, they, the said two arbitrators, appraised the value of the said land at the sum of one thousand seven hundred and fifty pounds, and awarded accordingly: And whereas it is expedient that the said Gerrit Hendrik van Breda should be authorized to sell, and the said Town Council to purchase, the said land, and that so far as relates to the said piece of land the entail of *fidei commissum* should be removed, and also that provision be made for securing the principal sum and the payment of the annual interest to the persons for the time being entitled to the possession and enjoyment of the said entailed estate Orangezicht: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Part of estate "Orangezicht," called Kampement, released from entail.

1. The burthen and entail of *fidei commissum* set forth in the deed of transfer in favour of the said late Dirk Gysbert van Breda, dated the 13th day of February, 1851, is hereby removed and annulled so far as relates to a certain portion of the said estate Orangezicht, commonly known as the Kampement, containing 12 morgen and 190 square roods or thereabouts, and more particularly described in the diagram framed by the surveyor, C. R. Borchers, and bounded northerly by Camp-street and vacant ground; easterly by vacant ground, Orange-street, and part of the remainder of the estate Orangezicht; southerly by vacant ground, and the remainder of the estate Orangezicht; westerly by vacant ground and a thoroughfare.

Said piece of land may be sold to Town Council for £1,750.

2. It shall be lawful for the said Gerrit Hendrik van Breda to sell, and for the said Town Council to purchase, the piece of land in the preceding section mentioned for the said sum of one thousand seven hundred and fifty pounds sterling, and for the said Gerrit Hendrik van Breda to give transfer thereof to the said council in full and absolute property, subject only to the conditions hereinafter mentioned.

The said sum to be a preferent charge on the revenues of the municipality.

3. The said sum of one thousand seven hundred and fifty pounds is hereby charged upon the revenues of the municipality of the city of Cape Town as a preferent debt ranking in order next after any debt heretofore contracted under the authority of any Ordinance or Act of Parliament: and shall continue until by any Act of Parliament, the decree of any competent Court, or the

happening of any event whereby the said estate Orangezigt shall pass free and discharged from the said entail to any person or persons in full and absolute property, and shall then be payable to such person or persons.

No. 29—1877.

4. Interest upon the said sum of one thousand seven hundred and fifty pounds, calculated at the rate of six per centum per annum from the day upon which transfer of the said land shall be passed by the said Gerrit Hendrik van Breda to the said Town Council shall be payable, and paid, half-yearly by the said Council to the said Gerrit Hendrik van Breda so long as he shall be entitled to the use and enjoyment of the said estate Orangezigt, and thereafter to the person for the time being entitled to the use and enjoyment thereof so long as the said entail shall subsist.

And to bear interest at 6 per cent per annum.

5. The said land shall be used wholly and exclusively for the construction of one or more reservoirs thereon, wherein to store water for the supply of Cape Town and neighbourhood.

The land to be used for one or more reservoirs.

6. The walls of any reservoir or reservoirs to be so constructed shall in no case exceed sixteen feet above the present surface of the said ground at its highest level, and before the commencement of any work the plan of the said reservoir or reservoirs shall be submitted for the approval of the Government.

Height of walls.

7. This Act may be cited for all purposes as "The Orangezigt Purchase Act, 1877."

Short title.

No. 23—1882.]

[June 30, 1882.

### ACT

To Make provision to release a further Portion of the Estate Orangezigt from the Entail of *Fidei commissum* and to invest the Town Council of the City of Cape Town with the Right to the Water Springs on the said Estate, and of collecting Water on the said Estate and leading out the same for the use of the City of Cape Town, and to confirm the provisions of a certain Rule and Order of the Honourable the Supreme Court, made on the 8th day of December, 1881, relative to the Compensation to be paid for the same.

WHEREAS by Act 29 of 1877, entitled "An Act to release a portion of the Estate Orangezigt of the entail of *Fidei commissum* and to authorize the Town Council of the City of Cape Town to acquire the said lands for the purpose of constructing thereon one or more Reservoirs," authority is given to the Town Council of Cape Town to extend and improve the water works of the municipality of the city of Cape Town and to construct a new reservoir or reservoirs

Preamble.

No. 23—1882.

for the purpose of increasing the supply of water of the said city, for which purpose the said Town Council of Cape Town was further authorized and empowered to acquire certain lands forming part of the estate Orangezicht, situate in Table Valley, the property of the family of Van Breda, held by them subject to the burthen and entail of *Fidei commissum* as in the said Act is stated and set forth: and whereas under the powers conferred by the said Act, the said Town Council has acquired for the purposes of the city of Cape Town certain portion of the said entailed estate for the purposes stated in the said Act: and whereas it has since been found desirable and necessary that the said Town Council should further acquire for the purposes aforesaid the right and title to and the ownership of the several springs of water rising on the said estate, with the right to dig, bore, excavate or otherwise open up the said springs and carry out all such works as may be found necessary for the said purposes and to construct filtering beds and all other works required for the purpose of collecting the waters of the said estate and to lay down pipes in, on, and across the said estate so as to lead out such waters for the use of the city of Cape Town: and whereas in accordance with such necessity the said Town Council did, under the provisions of section 70 of Act 1 of 1861, acquire and take possession of the water springs on the said estate, and proceeded to do all things necessary to collect and utilize the water for the use of the city of Cape Town, but could not agree with Gerrit Hendrik van Breda, the person now entitled to and in possession of the said estates as to the compensation to be paid for the same, whereupon such compensation was referred for assessment and decision to arbitrators mutually appointed: and whereas the said arbitrators made their award in writing on the 18th day of November, 1881, which award was on the 8th day of December, 1881, made a rule or order of the Honourable the Supreme Court, which rule or order is set forth in the schedule to this Act: and whereas by reason of the said entail of *Fidei commissum* aforesaid it is necessary that the rights so acquired by the Town Council of Cape Town, and the compensation to be paid for the same, should be sanctioned and confirmed by Legislative enactment: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Burthen of *Fidei  
Commissum* removed  
from springs of  
"Orangezicht"

Vesting of them  
in Town Council.

1. The burthen and entail of *Fidei commissum* in Act 29 of 1877 mentioned is further removed and annulled so far as it affects the water springs and other sources of water on the estate Orangezicht, and all the said springs and sources of water are hereby declared to be vested in the Town Council of Cape Town and their lawful successors, with the right to dig, bore, excavate and otherwise open up and carry out all such works on the said estate as may be found necessary for the said purposes and to construct filtering beds and all other works required to collect the waters of the said



estate and to lay down pipes in, on, and across the said estate so as to lead out the waters for the use of the city of Cape Town.

No. 23—1882.

2. For the acquisition by the said Town Council of the said springs and other sources of water on the estate Orangezigt and for the right to collect and lead out the waters thereof, and for the other privileges as in the last preceding section mentioned in terms of the said award and rule of court, the said Town Council shall pay the sum of Seven Hundred Pounds sterling per annum (subject to the conditions hereinafter mentioned) to the said Gerrit Hendrik van Breda, the present proprietor, and the future proprietors of the said estate.

£700 per annum to be paid to proprietors of estate.

3. The said sum of Seven Hundred Pounds sterling is hereby charged upon the annual revenues of the Municipality of the City of Cape Town, as a preferent debt ranking in order next after any debt heretofore contracted under the authority of any Ordinance or Act of Parliament: and shall continue until by any Act of Parliament the decree of any competent Court, or the happening of any event, the said estate Orangezigt shall pass free and discharged from the said entail to any person or persons in full and absolute property, and shall then be payable to such person or persons.

Charged upon the revenues of the Municipality.

4. The said annual sum of Seven Hundred Pounds sterling shall be payable in half-yearly instalments to the person or persons entitled to receive the same.

Payable half-yearly

5. This Act may be cited for all purposes as “The Orangezigt Further Purchase Act, 1882.”

Short title.

#### SCHEDULE.

In the Supreme Court of the Colony of the Cape of Hope, Cape Town, Thursday, 8th December, 1881.

Upon reading the award, dated at Cape Town, the 18th day of November, 1881, made between Gerrit Hendrik van Breda, of Cape Town, and Johannes Anthony Roos, in his capacity as Secretary to the Town Council of Cape Town, the terms of which said Award is in the words and figures following, that is to say: Whereas by a certain written deed of submission to arbitration, bearing date the 8th day of August, 1881, made between Gerrit Hendrik van Breda, of Orangezigt, Cape Town, of the one part, and Johannes Anthony Roos, also of Cape Town, in his capacity as Secretary to the Town Council of Cape Town, being duly authorized thereto by a resolution of the said Town Council, dated the 29th day of July, 1881, of the other part, reciting that it was expedient and necessary to construct certain water works and filtering beds, and to carry out other operations in order to increase the water supply of the city of Cape Town, and that it was expedient that the said Town Council should acquire for such purpose certain rights over the estate Orangezigt, situated in Table Valley, the property of the family of Van Breda held by them subject to the burden and entail of *Fidei commissum* under the provisions, conditions,

No. 23—1882.

and stipulations set forth and provided in the Deed of Transfer of the said estate, of which said estate the said Gerrit Hendrik van Breda is the present proprietor, and farther reciting that negotiations had already taken place between the said Gerrit Hendrik van Breda and the said Town Council with reference to the acquisition by the said Town Council, of the rights aforesaid, and that the said Gerrit Hendrik van Breda was willing to cede the rights aforesaid to the Town Council, but that differences had arisen between the said parties regarding the sum to be paid by the Town Council to the said Gerrit Hendrik van Breda annually by way of rent or compensation, and as to the date from which the said payment should be computed, it was agreed that the question as to the amount of compensation, to be paid annually by the said Town Council to the said Gerrit Hendrik van Breda and his successors in the said estate, for the transfer of the said rights enumerated and set forth in the said Deed, subject, however, to certain conditions duly enumerated at length in the said Deed, and also the question as to the date from which such compensation should be computed should be referred to the award, order, and final arbitrament of us, James Rose Innes, junior, and Thomas Watson, both of Cape Town, and of such third arbitrator as we, the said James Rose Innes, junior, and the said Thomas Watson should, by writing under our hand, to be endorsed upon the said Deed of Submission before we proceeded to the said arbitration, nominate and appoint to act with us, or to the final award or order of any two of us the said arbitrators: And whereas we, the said James Rose Innes, junior, and the said Thomas Watson did accept the burden of the said arbitration, and did, by writing under our hands, bearing date the 25th day of August, 1881, endorsed upon the said Deed of Submission nominate and appoint James Murison to act with us as third arbitrator in the said matter; and whereas the said James Murison did accept the said appointment: Now, therefore, we the said arbitrators, James Rose Innes, junior, Thomas Watson, and James Murison, having duly weighed and considered the several allegations of the said parties and also the proofs and documents which have been given in evidence before us, do hereby make and publish our award of and concerning the questions above referred to, as follows:—

1. We award and direct that for the rights and privileges ceded by the said Gerrit Hendrik van Breda, and acquired by the said Town Council, as set forth in the said Deed, under the provisions and conditions also set forth in the said Deed, a copy of which, marked "A," is annexed to this Award, there shall be paid every year by the said Town Council to the said Gerrit Hendrik van Breda and his successors in the said estate the sum of £700 sterling.
2. We further award and direct that such compensation shall be computed from the 1st January, 1881.  
It is ordered that the said Award be, and the same is, hereby made a rule of this Court.

By order of the Court,

J. C. B. SERRURIER,  
*Registrar.*

No. 23—1880.]

[July 30, 1880.

## ACT

(1) For the Incorporation of the Municipality of East London.

WHEREAS it is expedient that the municipality of East London should be incorporated and shall have perpetual succession, and possess, exercise, and enjoy all the rights and privileges which municipal corporation can or may possess, exercise, or enjoy in this Colony: Preamble.

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, No. 5 of 1852, and the Act No. 13 of 1864, in so far as the same are applicable to the municipality of East London, shall continue to be of legal force and operative as heretofore, until after the first election of councillors, as provided for in and by this Act; and immediately upon and after the names of the councillors shall have been published, as hereinafter provided, the said Ordinances and Act, in so far as the same apply as aforesaid, and also so much of the Act No. 8 of 1877, or any other law as is inconsistent with this Act, shall be and the same are hereby repealed: Repeal of certain statutes. Provided that the municipal regulations in force at the time of taking effect of this Act shall continue to be in force and operation until such time as the same shall be altered or new ones published under this Act: Existing rules to be in force till new ones are framed. And provided also, that the commissioners and officers of the municipality who may be in office at the time of the taking effect of this Act shall, until after the first election of councillors under this Act, remain in office, and exercise all such powers and authorities as previous to the taking effect of this Act were vested in them: And provided also, that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act, and the assessment roll in use at the time of the taking effect of this Act shall continue to be used until a new one shall be completed under this Act.

2. The municipality of East London shall comprehend the town and township of East London, including all common lands and property within the area formed by the boundaries hereinafter more particularly mentioned and described, to wit: Boundaries of the municipality.

West Bank of the Buffalo River.—From the mouth of the spruit which bounds sections 2, 1, 4, and 5, following that spruit to its eastern source at the Fort Grey Road; thence along that road to the continuation of the south-eastern

<sup>1</sup> Printed as Amended by Act 12 of 1881.

No. 23—1880.

boundary of section 8; thence along that boundary to the Buffalo River; thence down that river to the sea; thence along the coast line to the spruit as aforesaid.

East Bank of the Buffalo River.—From the mouth of the spruit in the bend of the Buffalo River above the said spruit to the common beacons of lots 112 and 113; thence along the south-eastern boundary of the said lot 113; thence along the southern boundary of lots 67 and 68 to the Amalinda River; thence up that river to the south-west corner beacon of lot 74; thence along the south-eastern boundaries of lots 74, 73, 72, 23, and 70, to the most easterly corner of lot 70; thence in a direct line to the south-easterly corner beacon of lot 24 (Tapson's lot) on Mr. Griffith's plan of survey: thence to the western corner beacon of lots 2 and 3 (German immigrant lots); thence along the western boundaries of sections 3, 25, 26, 43, and 44, to the south-western corner beacon of 44; thence following the southern line of lot 44, the western and southern boundaries of lot 50, the south-western boundary of lot 51, and the southern boundary of lots 53, 54, 55, 56, and 57 to the East London and Maclean Road; thence following that road to the P'hlanza River; thence as indicated on the sketch plan, framed by Mr. A. E. Murray, Government surveyor, dated 14th June, 1876, down the P'hlanza River aforesaid to a point near its mouth, marked A on the said plan; thence in a straight line to a point marked F; thence in a straight line to a point marked C; thence in a straight line to a point on the west side of the Inkyanza River, marked D; thence in a straight line to a point on the Limekiln Spruit, marked E; thence down that spruit to its mouth, marked F; thence following the coast line to the harbour works fence, marked G; thence along that fence to its northern corner, marked H; thence along the same fence to its junction with the Guigney River: thence down that river to the Buffalo River; thence up the Buffalo River to the point first named.

Creation of body corporate and its title.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor, Councillors, and Townsmen of East London," and by that name shall have perpetual succession, and sue and be sued, and shall have a common seal; and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may do and have.

Constitution of municipal council.

4. The council of the said municipality shall consist of twelve members, one of whom shall be the Mayor.

Division of the municipality into wards.

5. The said municipality shall consist of three wards, as follows:

Ward No. 1.—That portion of the municipality which is situate on the west bank of the Buffalo River.

No. 23—1890.

Ward. No. 2.—That portion of the municipality which is situate between the east bank of the Buffalo River and Union-street, or a line drawn either way to points on the Buffalo River and sea beach respectively in continuation thereof, being the whole of the township hitherto known as East London East.

Ward No. 3.—The whole of the remaining portion of the municipality not included in either of the foregoing wards.

6. The said council may, from time to time, if they think fit, alter the boundaries of all or any or either of the said wards, and extend the limits of the town or municipality, and may purchase and hold adjoining properties for the purpose of extending the common pasturage lands: Provided that the council shall, before making any such alteration, increase, extension, or purchase, give, in one or more of the newspapers published in East London, public notice of the alteration, increase, extension or purchase intended to be made; which notice shall be published for not less than thirty-one days before any such alteration, increase, extension, or purchase shall be made; and a copy of the same shall also be posted in some conspicuous place upon or near the municipal office or market place; and in case six townsmen or more or any other person who may consider that his right will be interfered with by the proposed alteration, increase, extension, or purchase shall, within the time aforesaid, object to the same in writing, or to the objects, terms, and conditions thereof, the notice and the objections shall be forwarded to the Governor for his consideration and consent; and on such consent being obtained, but not otherwise, the council may complete the proposed alteration, increase, extension, or purchase aforesaid.

Boundaries of wards may be altered

7. Four councillors shall be elected for each ward in manner hereinafter mentioned.

Four councillors to each ward.

8. Every person of full age who is the owner or occupier of any immovable property in any ward of the municipality of the yearly value of not less than ten pounds sterling, in regard to which property no municipal rate shall at the time of any election of councillors, or a councillor of such ward, be due, and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward: Provided that his name shall appear in the list of voters to be framed as hereinafter mentioned, and as a ratepayer in the assessment roll of such ward, which shall have been made next or latest before the election at which such person shall be elected: Provided also that the assessment roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in

Qualification of voters for councillors

- No. 23—1880. arrear, shall be deemed and taken to have been assessed under this Act.
- Qualification of councillors. 9. Every person of full age who shall have been the owner or occupier of immovable property of the yearly value of twenty pounds sterling and upwards within the limits of the said municipality for a period of not less than twelve months next before such election, and in regard to which property no municipal rate shall at the time of the commencement of election be due and in arrear, shall be eligible to be elected a councillor: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully and effectually as if they had been one and the same premises or properties.
- Requisition of candidates necessary. 10. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward until such person shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such ward, and shall have transmitted such requisition, with the acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.
- Case of joint occupiers. 11. When any property as aforesaid is occupied by more persons than one, each of such co-occupiers shall, subject to the provisions in the preceding sections mentioned, be entitled to vote in respect of such property, or eligible to be elected a councillor; Provided the yearly value of such property when divided by the number of such co-occupiers shall be equal to the sum of ten pounds sterling or twenty pounds sterling respectively for each such co-occupier.
- Persons disqualified to be councillors. 12. The following persons shall be disqualified from voting or being elected as councillors at any election under this Act, viz., persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon.
- Town clerk to make yearly list of voters. 13. On or before the first Saturday in November next after the passing of this Act, and afterwards on or before the first Saturday in November in every year, the Town Clerk shall cause a list to be made in alphabetical order for each ward of all persons qualified to vote at the election of councillors for each ward, setting forth the christian and surname of each at full length, the place of abode, and the nature of the qualification of such person.
- Publication of such lists. 14. The chairman of the commissioners until the appointment of a Mayor, and afterwards the Mayor, shall forthwith cause such lists to be published by affixing the same to some conspicuous place upon or near the municipal office or market-place: and to every list so published shall be subjoined a notice, signed by such chairman or Mayor, that all objections thereto and claims to be inserted therein will be heard and determined at some time and

place to be named in such notice, and to be fixed by such chairman or Mayor.

No. 23—1880.

15. The chairman of the commissioners and two commissioners, afterwards the Mayor and two councillors, to be selected for that purpose by the commissioners or councillors, as the case may be, shall have the power after hearing objections and claims in open court, to strike out of any list the names of persons not entitled to be therein, and also to insert in any list the names of all persons entitled to be, but not appearing in such list.

Provision for hearing objections to lists

16. The list so settled shall be called "The Townsmen's Roll of East London," and shall be brought into use on the first day of January in each year, and shall continue to be used until the next succeeding list shall be brought into use.

Title of the lists.

17. The chairman of the commissioners and afterwards the Mayor shall immediately after the settlement of such roll publish the same in accordance with the sixty-third section of this Act.

Republication of lists when settled.

18. On the last Saturday in February next after the passing of this Act, an election shall be held in manner hereinafter provided for twelve councillors, being four for each ward who shall enter upon their office upon the first day of March following, and thenceforth on the last Saturday in February in each succeeding year an election shall take place for three councillors, being one for each ward, excepting in every third year when such election shall be for six councillors, in terms of the thirtieth section of this Act. All occasional vacancies shall be filled up as hereinafter mentioned.

Yearly election of councillors.

19. The chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor shall at least twenty-eight days before the day appointed for the election of a councillor or councillors by notice to be published as hereinafter provided, notify the times and places at which and the ward or wards for which the election or elections will be held, and shall, by such notice require that all requisitions and acceptances thereof under the tenth section of this Act be sent in to him fourteen days at least before the day appointed for such election.

Times and places of election to be notified.

20. The Town Clerk shall at least ten days before the day appointed for any election cause the names of the candidates, together with the names of persons who have signed such requisition, to be published in manner hereinafter mentioned.

Publication of requisitions to candidates.

21. Every meeting for the election of a councillor or councillors shall be presided over by a polling officer, to be appointed for that purpose by the Mayor, or, before the appointment of a Mayor under this Act, by the chairman of the commissioners. The poll shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day.

Mayor to preside at meetings of council.

22. At every election of a councillor or councillors every person whose name appears on the townsmen's roll for any ward then in use (a copy of which shall be furnished to each polling officer for

Voters in each ward to have as many votes as there are vacancies.

No. 23—1880.

his guidance at such election) shall be entitled to vote in such ward in person for any candidates, not being more than the number to be elected for such ward, but not elsewhere or otherwise.

Voting to be by ballot.

23. The votes shall be taken by ballot in manner following: that is to say, every voter shall, in the polling-booth, in the presence of the polling officer, set his name on a paper provided by the returning officer against the name of the candidate or candidates for whom he intends to vote, and hand the same to the polling officer, who shall forthwith deposit such paper in a locked-up box to be provided for the reception of such papers and such box shall not be opened until after the close of the poll, and then only by the chairman of the commissioners, or Mayor as the case may be, in the presence of the polling officer only. No voter shall be allowed to give more than one vote to one candidate.

What questions may be asked of voter.

24. No inquiry shall at any election be permitted to be made as to the right of any person to vote, except as follows, that is to say, the polling officer may of himself, or at the request of any qualified voter, put to any voter the following questions, or either of them, and no others:

1st. Are you the person whose name appears as A. B. on the townsmen's roll of East London, and on the voting paper now handed in by you?

2nd. Have all municipal rates assessed upon the immovable property now occupied (or owned) by you been paid?

And in case it shall be proved to the satisfaction of the polling officer before accepting the voting paper or of the chairman or Mayor as the case may be before declaring the poll that the person has made a false answer to either of such questions, the polling officer shall reject and the Mayor or chairman as the case may be expunge the vote of such person.

Penalty for false answers.

25. If any person shall wilfully make a false answer to either of the above questions, he shall in addition to the disqualification before mentioned be liable to a penalty not exceeding ten pounds to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for a period not exceeding one month, if such penalty be not sooner paid.

Candidates may be present at polling.

26. All candidates shall be entitled to be present personally or to be represented by proxy in the polling booth (but not at the polling table which shall be properly isolated) during the time the polling is going on, but shall not interfere in any manner in the election. Any person interfering in the election or holding intercourse in the polling booth with any voter previous to such voter recording his vote may be forthwith removed from the polling booth and prohibited from entering the same during the hours of election; and any person so interfering and refusing to obey the orders of the polling officer to leave the booth or re-entering the same during the hours aforesaid, shall for each act of



interference be liable to a penalty of not more than five pounds, to be recovered in the Court of the Resident Magistrate.

No. 23—1880.

27. In the event of the number of duly qualified candidates invited to stand as councillors for any particular ward, and accepting the requisition mentioned in section ten, being not more than the number required to fill the vacancies in the representation of such ward, the Mayor, or before the appointment of a Mayor, the chairman of the commissioners, shall forthwith declare such candidate or candidates duly elected.

If number of candidates only equal to vacancies, they are to be declared elected

28. On the opening of the ballot box as hereinbefore mentioned the person or persons having the greatest number of votes duly recorded shall be taken to be duly elected, but if at any election the ballot shall by reason of an equality of votes be rendered indecisive, the returning officer shall thereupon publicly determine by lot which of the persons for whom an equality of votes has been given shall be elected.

How if votes for two or more candidates equal.

29. When the chairman of the commissioners or the Mayor as the case may be, has ascertained the names of the parties so elected, he shall forthwith cause a list thereof with the names of the wards for which they are respectively elected to be published in one or more of the local newspapers.

List of elected persons to be published.

30. Of the persons so elected as before mentioned the councillor who for each ward respectively shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year, from the first day of March next after the passing of this Act, and the councillor who for each ward respectively shall have been elected by the next smallest number of votes shall vacate his seat at the end of two years from the said first day of March, and the remaining two councillors who for each ward respectively shall have been elected by the greatest number of votes shall vacate their seats at the expiration of three years from the said first day of March; and upon the retirement of such councillors respectively they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, except at every such third yearly election when there shall be elected two councillors for each ward, every such councillor so elected entering on his office on the first day of March in each year, and continuing therein for three years thereafter; and every retiring councillor shall be eligible for re-election: Provided that in case by reason of any two or more councillors in any ward having been elected by an equal number of votes, or in the event of the election having been an uncontested one, it shall be uncertain in what rotation they shall vacate their seats the Mayor shall at the first meeting of councillors decide by lot the rotation in which such person shall retire.

Provision for retirement of councillors in rotation.

31. At the first ordinary meeting following the first general election of councillors under this Act, the councillors shall choose

Mayor to be elected by councillors.

No. 23—1880.

from among themselves by a majority of votes the Mayor of the town, who shall hold office for one year; and thereafter at the first ordinary meeting following every annual election of councillors, the councillors for the time being shall, in like manner, choose from among themselves the Mayor of the town for the ensuing year, and such Mayor shall forthwith enter upon his office and shall continue therein for the year next ensuing: Provided that the chair at any meeting of the council for the election of Mayor shall be taken by some member of the council, chosen by a majority of votes of councillors present, and in case of an equality of votes by lot, who is not a candidate for the office of Mayor: And provided also, that any person who may have filled or may have held the office of Mayor may be re-elected to such office. In case of an equality of votes at any election of Mayor, the question between the candidates having such an equal number of votes shall be determined by the presiding councillor by lot.

Also auditors of municipal accounts.

32. At the second ordinary meeting after the annual election of councillors, the council shall appoint from amongst the townsmen two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the following year, subject to the provisions of section thirty-five of this Act: Provided that no person shall be eligible to be an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality, and in case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected in case such persons cannot both be elected.

Provision in case office of mayor vacant.

33. If the Mayor or any councillor shall die, resign, become insolvent, or be absent from the ordinary meetings of the council for a period of three calendar months without the leave of the council (such leave in no case to be for more than three months during the year of office), his office shall be declared vacant, and another Mayor or councillor, as the case may be, shall be chosen or elected in his place in manner aforesaid, and shall hold office for the remainder of the term for which the Mayor or councillor, who has vacated office, would otherwise have remained in office: And provided that the Mayor shall in no case resign his office without giving one month's notice to the council.

In case of office of auditor being vacant

34. If any auditor shall die, resign, assign his estate, become insolvent or incompetent, or in any way disqualified, his office shall at once become and be declared vacant, and the council shall, at the first ordinary meeting thereafter, appoint another auditor to fill the vacancy.

No councillor to have municipal contracts.

35. No member of the council, or person holding any office in the gift or disposal thereof, shall, directly or indirectly, have any share or interest in any contract with or employment by the council otherwise than as a shareholder in any bank or fire insurance company with which such council may transact business, or

shall receive any fee, reward, or compensation for any vote given or act performed in his capacity as councillor or officer. And such councillor or officer who shall contravene the provisions of this section shall thenceforward cease to be a member of the council or to hold such office as aforesaid, and in case of an officer, shall not be entitled to any pension or compensation for loss of office, and shall further be liable to a penalty not exceeding fifty pounds: Provided that nothing herein contained shall apply to the case of a lease *bonâ fide* entered into between the council and a councillor or officer, as landlord, and tenant, or to the case of an officer of the council receiving the ordinary salary or remuneration for the performance of the duties of his office.

36. The council shall have power and authority to do the following acts:

Powers of council.

To make, construct, alter, keep clean and in repair, the roads, streets, dams, furrows, sewers, drains, culverts, and bridges within the limits of the municipality.

To excavate, construct, and lay down within the limits of the municipality watercourses, water pipes, conduits, sluices, dams reservoirs, aqueducts, wells, and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes, or to execute any other like works.

To establish and retain the sole right to any ferry, pontoon, bridge, or other public means of crossing the Buffalo River.

To make provisions for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with hose, pipes, and all necessary utensils, and to establish and to maintain a fire brigade.

To establish, alter, regulate, and maintain markets and fairs, and to set apart places for these purposes.

To light or provide for the lighting of the streets.

To hold, occupy, lease, or purchase any land, and to erect, lease, or purchase, maintain, and keep in repair any building or buildings for any municipal requirement or purpose.

To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper, and the exigencies of the times may render necessary and advisable, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now be or may hereafter be in force for this purpose: Provided, always, that the ordinary revenue of the town be not used in the lease,

No. 23—1880.

purchase, erection, or maintenance of any school buildings.

To cause all buildings which shall be certified in writing by any three master builders to be unsafe to the public to be placed in a state of security, and, if necessary, removed at the expense of the owners of such buildings: Provided that notice in writing shall have been first given by the council to the owner or owners of such buildings that such buildings are in a state of insecurity, and that the same must be removed or placed in a state of security within a reasonable time.

To cause all buildings used by the public capable of containing more than two hundred persons to be provided at the expense of the owner or owners of such buildings with sufficient and proper means of egress in cases of fire or panic: Provided that notice in writing shall have been first given by the council to the owner or owners of such buildings that the existing means of egress is insufficient, and must be made sufficient within a reasonable time.

To erect and maintain proper weighing machines for ascertaining the weight of wagons and other carriages and their loads.

To grant permits and licences for any purposes, to be defined by the municipal regulations, and to make such charges for the same as may be defined.

To levy tolls and dues, as hereinafter provided.

To make such provisions for the isolation of cases of dangerous contagious diseases affecting persons or animals within the municipality, and for the suppression and prevention of the same as shall be necessary from time to time, and according to law.

To define the width and direction of such streets as may be made on private property by the owners thereof; which streets when so defined, shall thereupon, upon application by the owners of the property, become public streets.

To make provision for the removal and disposal of all night soil, stable litter, excrement, filth, slops and refuse from public and private premises and from the streets, and to construct and maintain cemeteries, and generally to devise and carry out all such measures as shall appear to the council to the advantage and convenience of the townsmen.

To establish and provide for the management of public pounds within the said municipal limits.

To assize weights and measures according to the standard in force.

Provisions of Act of 1857 to apply. 37. The provisions of Act No. 15 of 1857, entitled "An Act for enabling Municipalities to obtain Additional Police by

contributing towards the Expense thereof," shall *mutatis mutandis*, continue applicable to the Municipality of East London hereby constituted; the words "Town Council" being read in place of the words "municipal commissioners" or "commissioners."

No. 23—1880.

38. It shall be lawful for the council at any meeting at which not less than nine of the members shall be present, and agreeing thereto, by a majority to frame bye-laws, rules, and regulations as to the registration of births and deaths within the municipality, as to the compulsory vaccination of all persons residing within the municipality, the distribution of water to all such persons, the inspection of public and private wells, tanks, cisterns, and reservoirs, and the temporary or permanent closing of any such in which the water is so polluted as to be injurious to public health, the inspection, construction, and cleaning of ashpits, privies, cess-pools, and middens, and of stables, kraals and enclosures wherein horses, horned cattle, sheep, goats, pigs, or other live-stock may be stabled, kraaled, or kept; the times and places for slaughtering cattle, sheep, or goats within the municipality, and the state and condition of slaughter-houses or enclosures, skin stores, tanneries, and wool-washeries within the municipality, the confining or killing of dogs, pigs, goats, and fowls, the appointment of one or more competent persons to examine meat and other provisions, milk, spirituous and other drinks offered for sale, and who, in case of such meat, provisions, or drinks being found unfit for human food or drink, shall be empowered to cause the same to be destroyed; the prevention, abatement, and removal, of nuisances, and the recovery of the expenses thereby incurred from the person or persons committing or permitting such nuisances; what acts of commission or omission, neglect or refusal shall be deemed to constitute a nuisance, the weight of loads to be carried through and upon the public streets and roads within the municipality; the undue obstruction of the public streets and footpaths by carriages or otherwise, and securing that the footpaths shall be for the use and enjoyment of foot passengers; as to the registration, rates of charge and conduct of coolies; to make all such sanitary and other regulations for the preservation of the health of the inhabitants of the town, and of natives and others residing or staying within the Native Location as may be deemed advisable; as to the management of the common pasturage lands of the municipality; the number and description of cattle which each resident householder (who for the purpose here specified shall be deemed and taken to be a person occupying immovable property within the municipality of the yearly value of not less than ten pounds), shall be allowed to depasture on such lands; as to the portion or portions of the commonage upon which carriers and others frequenting or passing through the municipality, or attending the markets thereof may depasture their stock, as to the establishment, continuance, management, and regulation of public pounds within

What municipal regulations may be framed.

No. 23—1880.

the municipality, the erection of toll-bars and the imposition of tolls for the maintenance and repairs of the public streets and roads within the municipality, the establishment of one or more ferries, pontoons, bridges, or other public means of crossing the river Buffalo, and levying of tolls in connection therewith; as to the user, or non-user, of the streets and public places within the municipality for holding of public auctions, and the imposition of reasonable tolls and dues to be paid to the council in respect of such use; the licensing of any boats, cabs, carriages, or vehicles of any description, not being Government property, plying for hire within the limits of the municipality; the granting of licences or permits for digging or getting brick, clay, or gravel, or quarrying stone or cutting fire-wood on the commonage, and generally as may seem meet for the good rule and government of the municipality, and as may be expedient for the proper working of the powers thereby given, and as may appear necessary for the purpose of carrying out the provisions of the sixtieth section of this Act as well as all the other provisions of this Act and all such measures as shall appear to the council to be for the benefit, convenience, or improvement of the municipality, and of the health and comfort of the inhabitants thereof, with power, from time to time, to alter, vary, or rescind all or any of such bye-laws, rules, and regulations, and to frame such others as may from time to time appear expedient: Provided that no such bye-law, rule, or regulation, nor any alteration, variation, or rescindment thereof, shall be of force until the same has been published, as is in the sixty-third and sixty-fourth sections of this Act provided, for twenty-eight days (together with a notice calling upon all townsmen who may have any objections to the same, to lodge such objections in writing within the period aforesaid), and thereafter shall have been submitted by the council to the Governor (together with the objections, if any, that may have been so lodged), and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

Published regulations to be deemed duly made.

39. After any municipal bye-law, rule, or regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it, to prove that the required number of members of the council was present at the meeting at which such bye-law, rule or regulation was framed.

Power to impose fines.

40. It shall be competent for the council by any such bye-law, rule, or regulation, as aforesaid to provide for punishing the contravention thereof by a fine not exceeding ten pounds, and in default of payment of such fine, to imprisonment unless such fine be sooner paid for any period prescribed by such regulation not exceeding three months.

Power to establish tolls.

41. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable on all persons making use of any road, street, ferry,

pontoon, bridge, or market-place, within the municipality, which the council is hereby empowered to make or maintain, and in case of non-payment thereof, to cover the same by legal process, or in such other manner as may by any such municipal regulation be in that behalf provided; but no toll shall be payable by any officer or private of Her Majesty's forces, or any colonial police, volunteer, or other force, or by any judicial or civil officer, mail-carrier, or other Government servant, while travelling on public duty, or by any person or persons, who under or by virtue of the provisions of a certain agreement bearing date the first day of October, 1874, and made between the Divisional Council of East London and the municipal commissioners of East London, are exempt from payment of such toll, provided that no more than one toll shall be payable in any one day to be computed from twelve o'clock in one night to twelve o'clock in the next succeeding night for or in respect of the same vehicle or animal, except such as may be in respect of any ferry, pontoon, bridge, or other means of crossing the Buffalo River.

42. All property and servitudes as heretofore or by this Act vested in the said commissioners, or chairman of the commissioners, and all unsold erven within the municipality's limits, and all municipal pasturage lands, after the taking effect of this Act, and by virtue thereof, are hereby and shall be transferred to and vested in the corporation hereby created, or to and in the Mayor respectively, upon the like trusts and purposes for which the same were originally granted or transferred, and, as to such erven and pasturage lands, subject to the provisions for the sale, leasing, or other disposition thereof hereinafter contained; and in like manner all liabilities or debts lawfully incurred and contracts lawfully entered into by the aforesaid commissioners, acting for and on behalf of the said municipality, shall become the liabilities, debts, contracts, and engagements of the said corporation, and all expenses incurred in the passing of this Act shall also in like manner be charged to the corporation herein created.

Lands and servitudes vested in Town Council.

43. It shall be lawful for the council, by virtue of a resolution to that effect passed at any ordinary meeting at which at least nine members are present and agreeing thereto, by a majority of not less than two-thirds of those present, and with the consent of the Governor, to be duly certified by writing under the hand of some proper officer to raise by public sale, or by mortgage of any land or property vested in the said council, or of any municipal rates, or by debentures or other securities charged upon such land or property or rates, any sum of money which shall be necessary to carry on any important public work, or other municipal purpose, which the council shall deem desirable and the Governor shall approve of: Provided that the said council shall, before applying to the Governor for his consent, give continuous public notice of at least one month of their intention to apply for such consent, in

Power, with consent of Governor, to raise money on mortgage or debentures.

No. 23—1880.

which notice shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold or mortgaged, or charged by these debentures or other securities, and of the object or purpose for which the money to arise from such sale, mortgage, or issue of debentures, or other securities, is required; and which notice shall further call for objections to such sale, mortgage, or issue of debentures, or to such object or purpose to be lodged with the council in writing; which objections, *mutatis mutandis*, shall be dealt with in manner provided for objections according to section six of this Act.

Debenture holders to rank *pari passu* on municipal property.  
Debentures to be under municipal seal

44. As often as the said council shall raise money by the issue of debentures, to be charged upon any land or property or rates as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, a mortgage of the land or property upon which it is intended that the said debentures shall be charged; to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in the mortgage. Every mortgage aforesaid, or power of attorney for authorizing the execution of a mortgage of any land or property under this Act, and every debenture issued under this Act, shall be under the common seal of the said corporation, and shall be executed by the Mayor and countersigned by the Town Clerk. The debentures herein mentioned shall be as near as is material to form No. 1 annexed to this Act, and all transfers of such debentures shall be registered in the books of the corporation herein created.

Fresh debentures may be issued as old ones fall due.

45. As often as any mortgage granted or debenture issued under the two last preceding sections of this Act shall be called up or become payable, it shall be lawful for the said council to raise by fresh mortgage of the same land or property mortgaged, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off, and the council may raise upon debentures moneys to pay off mortgages, and conversely, may raise by mortgage moneys required to pay off debentures, so long as the same land and property which were charged by the one form of security and none other shall be charged by the other or substituted form of security; provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Power of leasing pasturage lands.

46. The council, by virtue of a resolution of not less than nine members present at any ordinary meeting, and agreeing thereto by a majority, may from time to time lease any portions of the municipal pasturage land for agricultural, garden, building, or trading purposes, for any period not exceeding fourteen years; provided that continuous public notice shall have been given of



not less than twenty-one days previous to the intended leasing, setting forth the objects, terms, and conditions of the proposed lease, and requiring any person objecting to the proposed leasing to lodge with the council, within fourteen days after the first publication of such notice, his objection thereto in writing; and in case six townsmen or more, or any other person who may consider that his rights will be interfered with by the proposed leasing, shall, within the time aforesaid, object to the same, or to the objects, terms, and conditions thereof, the notice and objections shall be forwarded to the Governor for his consideration and decision, and in case such decision shall be in favour of the council, but not otherwise, the council may enter into such lease notwithstanding such objections.

No. 23—1880.

47. The council may, by public tender, after public notice of not less than twenty-one days, grant from time to time privileges of working any quarries belonging to the council, or beneath the municipal pasturage lands, for any term not exceeding five years, upon such terms as to the council may seem fit.

Licences to quarry.

48. No lessee of any such land, or of any quarries, shall assign or sublet the same without the previous consent of the council testified in writing first had and obtained.

Not to be sublet.

49. In case the said council shall require to take or use any land, with or without the buildings, if any erected thereon, for the purpose of making, widening, or improving any street, market or public building, or to dig out or to carry away any materials belonging to any person within the municipality, then in that case it shall be lawful for the said council, by virtue of a resolution of eight members present at any ordinary meeting, and agreeing thereto, and it is hereby authorized and empowered to treat and agree with every such person for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings, or materials, upon any such terms and conditions as may be mutually agreed upon between the council and said proprietors, and in case any such person and the said council shall not agree upon the purchase money, hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council may cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days of the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall neglect or refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council shall, by another notice, in writing, call upon such person to refer to arbitration the amount of recompense or compensation

Powers of council to appropriate certain lands.

No. 23—1880.

to be paid to him by the said council, and for that purpose to transmit to the said council, within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said municipality by the Town Clerk for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, previous to entering upon the reference, to appoint an umpire, and the decision of the arbitrators, or, in case of difference, the decision of the umpire, shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony, or of the Court of the Eastern Districts, or of any Circuit Court, and shall be binding and conclusive, and may be pleaded, in bar of any action or proceeding at law brought for, or on account of, the same subject matter: Provided, however, that unless the amount so settled by the arbitrators, or umpire as the value of any property so required by the council or such hire or other recompense shall not be less than three-fourths of the amount demanded by the owner of such property or materials, the council shall be bound to pay the amount of such owner's demand in full, together with the whole costs of and incidental to the reference: And provided further, that all expenses incurred by such arbitration, fees of arbitrators, and legal assistance of whatever kind, shall, except in the case above provided, be considered costs in the case, and shall be paid by the parties, one or other of them, in such manner as the arbitrators or umpire shall direct; and in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrators as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, on its first notice in this section mentioned, for and on account of and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, or materials aforesaid had been duly done and performed.

In case of the appropriation of lands of absent owners.

50. In case the said council, shall for any purpose in the last preceding section, require to take or use any of the land, with or

without the buildings, if any, erected thereon, or to dig or carry away any of the materials, in the last preceding section mentioned, the owner of which shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and in one or more newspapers published in the town of East London, for not less than once in each month for twelve successive months, describing as accurately as may be, the materials, land, or buildings which are required to be taken or used, and calling by name on the owner of the said land, buildings, or materials, if known, or, if not known, upon the owner, whoever he may be, to take notice that the said council is ready and willing to treat with the owner or any persons duly authorized by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner to apply, within twelve months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, the like proceeding in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner had from the first been in actual occupation, and in case such owner shall not apply to the said council within the said period, it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such persons shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay whatever sum the said land, buildings, and materials shall have been valued at by such persons into the Guardian's Fund to the credit of the person or persons entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105 of 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council upon so paying the said sum shall be authorized and entitled to take or use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, or materials aforesaid had been duly done and performed.

51. All acts, matters, and things hereby authorized or required to be done by the council, and all questions that may come before it, shall, except as hereinafter excepted, be done and decided by Quorum of council.

No. 23—1880.

the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-eighth, forty-third, forty-fifth, forty-ninth, fiftieth, and fifty-ninth sections of this Act.

Ordinary meetings.

52. The ordinary meeting of councillors following the first general election of councillors under this Act shall be held on the first Thursday following such election, and all subsequent ordinary and special or extraordinary meetings of the council shall be held as directed by the municipal regulations, and all meetings of the council shall be open to the public.

In absence of mayor  
a chairman to be  
chosen.

53. At every meeting of council, the Mayor, if present, shall preside, and, in case of his absence, the councillors present shall elect a chairman from among themselves, who shall thereupon and during such absence have authority to sign all documents and do all such acts as herein is provided shall be done by the Mayor. In all cases of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote.

Minute book to be  
kept.

54. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read and confirmed at the next succeeding meeting, and signed by the person presiding thereat. All such minutes shall be deemed and taken to be original minutes and such books shall and may be produced and read as *prima facie* evidence of all the proceedings therein recorded in any proceeding, civil or criminal, in any Court.

Committees may be  
formed.

55. It shall be lawful for the council from time to time to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always that the proceedings of every such committee shall be regularly entered in a minute book and submitted to the council for its approval, and the Mayor shall *ex officio* be a member of all such committees.

Town clerk and  
treasurer to be ap-  
pointed; also other  
necessary officers.

56. It shall be lawful for the council from time to time to appoint fit and proper persons (not being members of the council) to be Town Clerk and Treasurer; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries or remuneration as the council shall deem reasonable, and to demand of all such officers such security as the council may deem sufficient; and, unless it shall otherwise be stipulated in the contract of service, to remove all such officers upon notice of not less than three months, or, in case of misconduct without any notice.

Streetkeepers, po-  
lice, and others.

57. The said council are hereby empowered, from time to time to appoint and employ such number of street-keepers, policemen,

and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition, and weapons, and appoint to them such duties and hours or time of duty, and shall make such rules, orders, and regulations, relative to such street-keepers, policemen, and special constables and their duties as shall be deemed fit. All such street-keepers and policemen shall act as constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures as ordinary constables are invested with, or shall or may have or enjoy, or are or may be subject or liable to by law.

No. 23—1880.

58. For the purpose of raising the means for making new roads, streets, market-places and conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks; for the purchase of such lands, or the erection of such buildings, as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines and appurtenances; for the effecting of all other public works and improvements within the municipality; for lighting the streets and public places in the municipality, and for providing proper and necessary plant for the same; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, dog and carriage tax, and other fees and licence moneys as shall be deemed necessary and reasonable, and shall be authorized by any such municipal regulation as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy a rate upon all immovable property within the municipality, the value of such property to be ascertained as hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least nine members of the council present at the meeting at which such rates shall be imposed, and consenting thereto by a majority, and provided also that no rate except a water rate or rate levied for the purpose of raising funds to meet interest or other expenses connected with the construction at any time of a bridge across the Buffalo River shall be imposed upon any immovable property belonging to Her Majesty the Queen or to her Colonial Government (other than such property as may be from time to time occupied for the purpose of a railway station, railway stores and workshops, or residences for the

Purposes for which rates may be imposed

No. 23—1880.

employés on any railway, or which may be occupied by any person or persons on his or their individual capacity); nor on public prisons or police stations, almshouses, or hospitals; nor on any buildings solely appropriated to the purposes of gratuitous education; nor upon any building solely appropriated to public worship, nor upon any burial-grounds: Provided the exemption last mentioned shall not be construed to extend to any separate or adjoining building or buildings in which the teacher or teachers, or his or their family, or any other person or persons, dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils; and all persons owning or occupying property within the limits of the municipality, except such property exempted, shall be liable to be rated on account of such property to any municipal rate in such manner and to such extent as is in this Act provided; but nothing in this Act contained shall be taken to authorize the assessment of the same rate both upon the owner and the occupier of any one property in respect of such property.

Estimates of re-  
venue.

59. The council shall annually in the month of February make an estimate of the amount of money required for municipal purposes, and shall assess such rate or rates accordingly as to the council shall seem fit upon either the owners or occupiers of immovable property, or one or more of such rates upon the owner or owners and one or more upon the occupier or occupiers, provided that any such occupiers' rate as aforesaid shall be assessed only upon such persons as are *bonâ fide* tenants of immovable property and not merely boarders or temporary lodgers therein: And the council shall give public notice thereof in one or more of the newspapers published in the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the year ending on the last day of February next following, make a supplementary estimate, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year ending on the day aforesaid to levy any rate or rates amounting in the aggregate to more than threepence in the pound on the value of the immovable property subject to such rates without obtaining the consent of the majority of the townsmen present and entitled to vote according to the eighth and eleventh sections of this Act at a public meeting to be called for the purpose of authorizing such rate or rates, of the object and the time and place of holding which meeting at least seven days' notice shall be given as provided in the sixty-third and sixty-fourth sections of this Act: And provided that in case of a rate being so levied as aforesaid upon the occupiers of immovable property the owners shall in all cases in which such properties shall be unoccupied or occupied by the owners thereof, be deemed to be the occupiers thereof within the meaning of this Act and liable to the payment of such rate notwithstanding the

Assessment of  
rates.

payment by them of any other rates levied upon the owner or owners in respect of the same property.

No. 23—1880.

60. The mode of valuing the immovable property within the municipality for rating purposes ; of objecting to the valuation ; of conducting and hearing of appeals against the valuation ; the time during which any valuation shall be in force, and how often the same shall be renewed, and the effect of the valuation, shall be as directed by any municipal regulations to be from time to time made in conformity with the powers hereinbefore contained.

How property to be valued, &c.

61. Every rate assessed by the said council shall become due and payable upon a certain day, to be fixed by the council, of which day, and the amount of which rate, the said council shall give at least twenty-one days' notice in one or more of the local newspapers ; and when any such notice shall have been given, it shall be incumbent upon all persons liable to such rate to pay the amount thereof to any person whom the council may have authorized to receive the same, on or before the day fixed in the said notice for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, for the recovery of the amount, and in any suit or proceeding for the recovery of any rate, the valuation roll of the municipality for the time being shall be *prima facie* evidence of the value of the property rated, and it shall not be necessary to prove anything further as to the due assessment of the rate and of due notice thereof having been given than the publication of the notice in the commencement of this section mentioned. The Town Clerk may, in suing for the recovery of any rate assessed upon the owner or owners of immovable property proceed against the owner, or, in case of his absence from the municipality, his agent, or the person receiving the rents for him, or against the occupier, either separately or both of them in one and the same action, each for the whole rate, in the Court of the Resident Magistrate for the district of East London, and recover the same by the judgment and process of such Court ; provided that no occupier of any immovable property shall be liable for any rate which became due and payable thereon at any time before he entered on the occupation thereof ; and provided, further, that any person who, as occupier, may have become liable for any rate assessed upon either owner or occupier of immovable property as aforesaid shall continue to be so liable, although he may have ceased to occupy the property in respect of which the rate has been imposed ; and provided, also, that any occupier who shall have paid any such rate assessed upon the owner as aforesaid shall be entitled to recover the same from the owner, unless there be an agreement to the contrary.

Enforcement of payment of rates.

62. The Treasurer of the said municipality shall be bound, within a reasonable time, to lodge with some joint-stock bank within the municipality, to be ordered by the council, all moneys from time to time entrusted to him or received by him, and shall,

Treasurer to lodge moneys in a bank.

- No. 23—1880. in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly, on the last day of February, or at such other times as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, if found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality: Provided always, that in no case shall any payment of municipal moneys be made to any person or persons whomsoever, without a warrant in that behalf being first granted under the hand of the Mayor, which warrant shall be in substance and form according to the schedule hereto annexed, marked No. 2.
- How payments to be made. 63. Every notice calling a public meeting of the townsmen, and every notice or other document or thing required by this Act to be published, shall, where no other mode is prescribed, be published by causing a copy thereof to be posted or affixed in some conspicuous place upon or near the municipal office or market-place, and, when practicable, in one or more of the local newspapers.
- How notices to be published. 64. All public meetings of townsmen shall be called by the Mayor of the town by notice under his hand, published in accordance with the sixty-third section of this Act; and no public meeting of townsmen shall be so called by the Mayor, except upon a resolution of the council to that effect, and at all public meetings called by the council the Mayor, if present, shall preside: Provided, always, that the Mayor, upon receiving a requisition, signed by not less than twenty-five townsmen, shall call such public meeting within a reasonable time; and provided, further, that the expenses incurred by the council through the Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such a character as, in the opinion of the council, would warrant it in charging the same expenses to the municipality.
- How public meetings to be called. 65. The storing of paraffine, gunpowder, or other explosive material, shall not be permitted within the municipality, except in such places as may be approved of and licensed by the council for that purpose.
- Licence to store gunpowder, &c. 66. No burial-ground shall be established within the municipality without the permission of the council; and so soon as any burial-ground within the municipality, or any portion thereof, shall become, either from overcrowding or from any other cause, in the opinion of the council, dangerous to the public health, the council shall be empowered to give six months' notice that the
- Burial-ground.



burials therein must either wholly or partially cease, and after the expiration of such six months it shall not be lawful to continue burials, except such as may be authorized by the council, in such grounds, and any person, after the expiration of such period, who shall, without such authority, inter, or cause any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court, and in default of payment of such fine, to imprisonment for not exceeding six months: Provided that, whenever any such burial-ground shall be so closed as aforesaid it shall be incumbent upon the council to provide (at the option of the council), either by means of a new burial-ground or by the allotment of the use of a portion of any existing or new public burial-ground, sufficient accommodation to meet the requirements of any religious denomination whose burial-ground shall have been so closed.

No. 23—1880.

67. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall and may be prosecuted for in any competent Court, and in the name of the Mayor, councillors, and townsmen, and shall when recovered be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution shall be commenced later than three months from and after the date of the act or omission upon which the same shall be grounded.

How fines and penalties to be sued for.

68. Every warrant and power of attorney, deed, contract, or other document to be given, made or entered into by the said council, shall, when no other mode is prescribed, be under the common seal of the corporation, to be affixed thereto by the Mayor, and countersigned by the Town Clerk. And the said common seal of the corporation shall be and remain in the care and custody of the Mayor of the town for the time being.

Municipal documents to be under common seal.

69. This Act may be cited as "The East London Municipality Act, 1880."

Short title.

ANNEXURES.  
(SCHEDULE No. 1.)

Municipality of East London.—Debenture Certificate.

No. ——— .

£ ——— .

This is to certify that the Town Council of East London is indebted to ——— in the sum of ——— for so much money borrowed for the purpose of (here state the object for which the loan has been raised) under and by virtue of the provisions of the East London Municipality Act of 1880, and that the said money is secured by mortgage on (here state the nature of the mortgage or security as contemplated in the forty-third and forty-fourth sections of the said Act); and further that the said debt will be payable and paid by the said Town Council to the said ——— or assigns in the manner

No. 23—1880. following, that is to say (here insert the rate of interest, time of payment, and other conditions agreed upon).

Given under my hand and the seal of corporation, at East London, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

(C. D.),  
Town Clerk.

(A. B.),  
Mayor.

\_\_\_\_\_  
(SCHEDULE No. 2.)

The Treasurer of the municipality of East London is hereby authorized to pay to \_\_\_\_\_ the sum of \_\_\_\_\_, being for (here state the object of the payment), which money was voted by the Council at its meeting on \_\_\_\_\_ (or being for fixed salary, as the case may be).

East London, \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

No. \_\_\_\_\_.

(A. B.),  
Mayor.

No. 12 of 1881.]

[June 25, 1881.

ACT

To Amend in certain respects Act No. 23 of 1880, intituled  
“An Act for the Incorporation of the Municipality  
of East London.”

Preamble.

WHEREAS it is expedient to amend in certain respects the Act No. 23 of 1880, intituled “An Act for the incorporation of the Municipality of East London:” Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation of  
Section 8 of Act 23  
of 1880.

1. The eighth section of the said Act shall be read and construed as if the words, “And provided further that for the purposes of this section the owner and occupier shall not both be entitled to vote in respect of one and the same property, and that the occupier shall be entitled at all times to the vote,” at the end of the said section had not been inserted therein, but had been entirely omitted therefrom.

Of 18th Section of  
same.

2. The eighteenth section of the said Act shall be read and construed as if the words, “excepting in every third year, when such election shall be for six councillors, in terms of the thirtieth section of this Act,” had been inserted therein after the words, “being one for each ward.”

Of 22nd Section.

3. The twenty-second section of the said Act shall be read and construed as if the word “roll” had been inserted therein, in place of the words “or assessment rolls” after the word “townsmen’s.”

4. The thirty-eighth section of the said Act shall be read and construed as if the words "by a majority" had been inserted therein after the words "and agreeing thereto," and also as if the words "the distribution of water to all such persons" had been inserted therein after the words "residing within the municipality," and also as if the words "the provisions of the sixtieth section of this Act as well as all the other provisions of this Act and" had been inserted therein after the words "for the purpose of carrying out."

No. 12 -1831.  
Of 38th Section.

5. The forty-third section of the said Act shall be read and construed as if the words "not less than two-thirds of those present" had been substituted therein for the words "not less than a two-thirds of those present," also as if the words "or of any "municipal rates" had been inserted therein after the words "property vested in the said council," and also as if the words "or rates" had been inserted therein after the words "upon such land or property."

Of 43rd Section.

6. The forty-fourth section of the said Act shall be read and construed as if the words "or rates" had been inserted therein after the words "debentures to be charged upon any land or property."

Of 44th Section.

7. The fifty-eighth section of the said Act shall be read and construed as if the words "the same" had been substituted therein for the word "a" after the words but "nothing in this Act contained shall be taken to authorize the assessment of."

Of 58th Section.

8. The fifty-ninth section of the said Act is hereby repealed, and the following shall be read and substituted in its place, that is to say:—The council shall annually in the month of February make an estimate of the amount of money required for municipal purposes, and shall assess such rate or rates accordingly as to the council shall seem fit upon either the owners or occupiers of immovable property, or one or more of such rates upon the owner or owners and one or more upon the occupier or occupiers, provided that any such occupiers' rate as aforesaid shall be assessed only upon such persons as are *bonâ fide* tenants of immovable property, and not merely boarders or temporary lodgers therein: And the council shall give public notice thereof in one or more of the newspapers published in the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the year ending on the last day of February next following, make a supplementary estimate, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year ending on the day aforesaid to levy any rate or rates amounting in the aggregate to more than threepence in the pound on the value of the immovable property subject to such rates without obtaining the consent of the majority of the townsmen present and entitled to vote according to the eighth and

Repeal of 59th Section.

Substitution of new Section.

aa

- No. 12—1881. eleventh sections of this Act at a public meeting to be called for the purpose of authorizing such rate or rates, of the object and the time and place of holding which meeting at least seven days' notice shall be given as provided in the sixty-third and sixty-fourth sections of this Act: And provided that in case of a rate being so levied as aforesaid upon the occupiers of immovable property the owners shall in all cases in which such properties shall be unoccupied or occupied by the owners thereof, be deemed to be the occupiers thereof within the meaning of this Act and liable to the payment of such rate notwithstanding the payment by them of any other rates levied upon the owner or owners in respect of the same property.
- Interpretation of 61st Section. 9. The sixty-first section of the said Act shall be read and construed as if the word "or" had been inserted therein in place of the word "of" after the word "suit," and also as if the words "assessed upon the owner or owners of immovable property," and the words "assessed upon either owner or occupier of immovable property," and the words "assessed upon the owner as aforesaid" had been respectively inserted therein after the words "the Town Clerk may in suing for the recovery of any rate," "become liable for any rate," and "shall have paid any such rate" respectively.
- Interpretation of 65th Section. 10. The sixty-fifth section of the said Act shall be read and construed as if the word "parafine" had been inserted therein after the words "the storing of."
- Moneys borrowed subject to provisions of "Public Bodies Debts Act." 11. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of the said Act or of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."
- Interpretation. 12. The word "municipality" used in this Act shall mean the municipality of East London as created by the said Act No. 23 of 1880, and the word "council" the Municipal Council of East London.
- Short title. 13. This Act may be cited for all purposes as the "East London Municipality Amendment Act, 1881."
-

No. 15—1882.]

[June 21, 1882.

## ACT

To Enable the Municipal Council of East London to provide the Inhabitants of the Town of East London with Water, and for that purpose to take Water from the Amalinda River and tributaries thereof, and to acquire Government and other Lands required for the Construction of the necessary Water Works.

WHEREAS it is desirable that the inhabitants of the town of East London should be supplied with good water, and the Municipal Council thereof have caused surveys to be made and are advised that the same can be obtained by the erection and construction of a reservoir with other necessary works in the Amalinda Valley, in the division of East London. Preamble.

And whereas it is expedient that the works, necessary to accomplish that object should be constructed by the said council or by a joint-stock company or co-partnership of individuals or an individual with whom the said council may contract either for the whole or any portion of the said works or the material therefor. And that to enable the said council to procure the necessary funds the said council should be empowered, by the issue of debentures from time to time, or otherwise, as the council may deem fit, to raise such a sum or sums of money as may be required, not exceeding in the aggregate the sum of twenty-five thousand pounds. And that, in order that the said council may be enabled to pay the interest on such sum or sums of money so raised as well as to contribute annually a sum not less than one pound per cent. on the said capital by way of a sinking fund, in order to enable the said council to pay off the said loan, the said council shall be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly, as follows:—

1. It shall be lawful for the said council from time to time to borrow and to take up by the issue of debentures or otherwise at interest, such sum or sums of money not exceeding in the whole twenty-five thousand pounds sterling as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum so to be borrowed by the said council. Power to Council to borrow £25,000.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Amalinda River and its tributaries, in the division of East London, and from surface area, Power to impound water from Amalinda River and its tributaries.

No. 15—1882.

the drainage from which shall flow into the said Amalinda River or any of its tributaries, such a supply of water as they may require for the purposes of this Act. And for the purpose of enabling them to do so it shall and may be lawful for the Governor of this Colony, and he is hereby authorized to give and grant to the said council, in full and free property, on such conditions as may be agreed upon, such Government land as may seem to him desirable on which the said Amalinda River or any of its tributaries take their rise, or all such Government land as is situate at or immediately adjoining the point or points on the said river or any of its tributaries, or which may form part of the drainage area from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance shall deprive any person of any water or any right of water which he may at the time of the taking effect of this Act possess or be entitled to in reference to the said Amalinda River or any of its tributaries, or in any way interfere with or lessen such water or right of water, such person shall be entitled to recompense or compensation to be settled in case of difference as in the eighth section of this Act provided: Provided further that no person, to whom any Government land shall be sold or leased after the passing of this Act shall thereby acquire any water or right of water for the interference with or lessening of which by the works hereby authorized he shall be entitled to claim any recompense or compensation.

Power to construct works for carrying out purposes of the Act.

3. The said Council is hereby empowered to construct and make, or cause to be constructed and made, all such works as may in the opinion of the said council be necessary and expedient for the purpose of impounding, storing, diverting, appropriating; taking or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works for securing an adequate supply of water for the inhabitants of the said town of East London and for the shipping visiting that port, as well as for such irrigation purposes as the said council may deem necessary and expedient.

Powers of entry on lands.

4. The said council is hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart as commonage lands for any place or village not being a municipality at the time of the passing of this Act, and also to enter upon, occupy, enclose, take, and use any land, the private property of any person or persons whomsoever, which may be required for the construction or maintainance of any works aforesaid, for the obtaining of the necessary drainage area or for any of the purposes of this Act, and may agree, as

hereinafter provided, for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe, or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works upon such terms and conditions as may be mutually agreed to.

5. It shall be lawful for the said council to acquire and take possession, in the manner hereinbefore and hereinafter provided, of any land, whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land set apart as commonage as aforesaid, or land belonging to private persons that may be required for the purpose of protecting the sources of the said Amalinda River or any of its tributaries, the drainage area required for the collection of water or the sources of supply from whence the water may flow into the reservoirs, dams, places, or place where the said works may take off the water of the said river or any of its tributaries.

Power to acquire Crown Lands, commonage, &c.

6. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street, or under or along any ground set apart in the diagram or conditions of sale of any land as a street or thoroughfare, without making, or being liable to make any compensation in respect thereof.

To lay down pipes and conduits.

7. It shall be lawful for the said council, at all times by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council acquired or to be acquired under the provisions of this Act, for the purpose of adding to, repairing, relaying, or super-  
vising the said works or for any other purpose whatsoever, that may be deemed expedient by the said council in or about carrying out the purposes of this Act: Provided, however, that such right of way shall in no case exceed a space of ten feet on each side of the line of works.

Rights of way and access.

8. Any person or persons from whom any water or right of water, land, or right of way, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, shall be bound and obliged to send in to the Town Clerk his, her, or their claim or claims for the purchase amount, hire, recompense or compensation which he, she, or they shall claim to be entitled to for such water or right of water, land, or right of way, or any stone, gravel or other material required or taken or which shall be required or taken for the purpose of this Act within twelve months after such taking as aforesaid, and for that purpose the necessary

Arbitration clause.

No. 15—1882

plans, specifications, and reports in connection with the said works shall lie at the office in East London of the Town Clerk during his usual business hours for and during the period aforesaid, for the inspection of any person or persons who shall be interested therein. After which said period no further or any claim or claims which shall not have been sent in in manner hereinbefore provided for shall be recognized nor shall such claimants be entitled to recover the amount of their claims or any portion thereof from the said council by any means or proceeding whatever. And in case the said council shall not consent or agree to pay the amount of such or any claim or claims then the said council shall cause to be served upon the person or persons whose claims they shall reject a written notice offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such persons to state in writing to the said council or to some other person by them appointed within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice whether he is willing to accept the sum therein mentioned or not; and if such person or persons should refuse the sum offered or neglect to reply to the said notice then the said council or other person aforesaid, shall by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council or other person aforesaid, within a reasonable time to be specified in the last mentioned notice the name of some person whom he or they shall select to be an arbitrator; and the said council or other person as aforesaid, upon receiving the name of the person so selected shall nominate a second arbitrator, and the said two arbitrators shall before proceeding in the arbitration choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person as aforesaid, shall cause a deed of submission to be prepared which shall be signed by or on behalf of the said council or other person aforesaid, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said council or other person as aforesaid, may lodge in some joint-stock bank in East London the sum of money offered by them as aforesaid in their first notice in this section mentioned for or on account of and at the risk of such person as aforesaid, who



shall at all times be entitled to draw the same out of said bank as his absolute property ; and the said council or other person aforesaid upon so lodging the said sum shall be authorized and entitled to take and use the land or materials in question, without being subject to pay or make any further recompense or compensation whatever in respect thereof, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or which had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council, or other person aforesaid a sufficient title to the use of, or property in the land or materials aforesaid had been duly done and approved.

9. In case the said council or other person aforesaid shall require to take or use any water or right of water, land, or right of way, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorized in his capacity as such guardian or curator, to treat and agree with the said council or other person aforesaid for the purchase or hire of the land, rights, or materials required, and to execute any contract that may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid, for or on account of any land or materials in this section mentioned, shall be paid by the said council or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorized to receive the same and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall, by way of *fidei commissary* limitation, or any limitation of a like nature be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid under guardianship or curatorship, shall be also interested in remainder or expectancy, when the whole value of the lands as fixed by contract, or by appraisement, or by arbitration, shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest therein shall be entitled to draw the interest payable on the sum so paid in ; provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master to be administered

No. 15—1882.

In case the lands, &c., of minors and persons under curatorship required to be taken.

No. 15—1882.

in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability are therein administered, subject however at all times to such orders as the Supreme Court aforesaid may upon motion of any person having an interest see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials as in the last preceding sections mentioned of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized to cause a notice to be inserted in the *Government Gazette*, and in one or more local papers for four or more successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and calling on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any person duly authorized by him or them for the recompense or compensation to be made by the said council for the said land or materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its first publication, to the said council stating the recompense or compensation claimed, and if the owner or owners shall not apply, within the said period, then the like proceedings in regard to the agreement for, or otherwise determining the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last two preceding sections precisely as if the said owner or owners had been from the first in actual possession; and in case the owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division of East London to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question at, into the Guardian's Fund to the credit of the party or parties entitled thereto subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony, and the said council upon so paying the said sum shall be authorized and entitled to take or use the land or materials in question without being subject to pay or make any further recompense or compensation whatever in respect thereof, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or

property in the land or materials as aforesaid had been duly done and performed.

No. 15—1882.

10. Any person who shall wilfully injure, damage, obstruct, or interrupt any building, erection, conduit, reservoir, dam or water-course, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act or any of them, shall upon conviction, be liable to forfeit for the use of the said council, for each offence, a sum not exceeding one hundred pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment, provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid Acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally, both under this Act and any other law for, or in regard to one and the same Act.

Penalties for injuries to the works.

11. Any person who shall bathe or wash himself in any dam or reservoir, belonging to the said council, or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the council, or shall wash, throw, or cause to enter therein any dog or other animal, or shall place or throw any rubbish, dirt or filth, or other noisome thing in any such dam or reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing whatsoever, shall for every offence on being convicted thereof forfeit for the use of the said council a sum not exceeding five pounds sterling, and in default of the payment of such fine the party convicted shall be liable to be imprisoned with or without hard labour, for any period not exceeding twenty-one days.

Penalties for bathing, washing, &c., in dams or water-courses.

12. The said council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings, and the supply of water to the shipping visiting the port of East London, or to the railway or other Government departments shall be regulated, and payment for all private water-leadings, and for the supply of water to such shipping or to such railway or other Government departments shall be in accordance with such tariff; provided nevertheless that the said council or any person duly authorized by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

Tariff of charges to be published.

13. It shall be lawful for the said council at any meeting at which not less than nine of the members shall be present, and agreeing thereto by a majority, to frame from time to time such regulations or bye-laws as they shall deem necessary for regulating the system of water supply to the town of East London, such regulations and bye-laws to be framed and submitted for the approval of the Governor in manner provided

Council may frame rules and by-laws.

No. 15--1882.

for in the Act No. 23 of 1880, intituled "The East London Municipality Act, 1880."

Provision for paying interest and capital borrowed.

14. In order to pay the interest on the said loan, and to provide for an annual contribution of not less than one per cent. per annum on the said capital, to provide a sinking fund for the payment thereof, and for all other claims under this Act, the council shall be empowered and compelled to impose, levy and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the immovable property within the limits of the said municipality: and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed upon owners of immovable property, under the provisions of the said Act No. 23 of 1880, or the Act No. 12 of 1881, intituled "The East London Municipality Amendment Act, 1881," so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act, shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof, provided that when and so soon as a revenue shall be derived from charges fixed for water-leadings as aforesaid, the same shall annually, after payment thereof of all working expenses connected with the said supply of water, be applied so far as the same will extend towards payment of the interest on the said loan before the levying of any such rate as aforesaid, and provided that it shall be lawful for the said council to apply for the payment of interest or principal or interest and principal of the said loan or any part thereof, any funds or moneys coming to the said council from any source whatever, and not specifically appropriated or required for any other object.

Assessment roll of municipality to be assessment roll for this Act.

15. The amounts for assessment entered on the assessment roll in force within the said municipality for each and every year shall be the amounts on which the rates shall be levied for the purposes of this Act, so far as the properties included in such assessment roll are concerned, but for any or all properties not included in such assessment roll, and for all properties not liable to assessment under the said Act No. 23 of 1880, or the said Act No. 12 of 1881, the value shall be made and determined by some competent person appointed by the council, in the same manner in all respects, and subject to the same provisions in regard to the hearing and determining objections to such value as is provided for by the said Act No. 23 of 1880, or any regulations framed thereunder, in regard to the valuation and assessment of such immovable property as under that Act is liable to be valued and assessed for rating purposes.

When rates to be payable.

16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day, to be fixed by the said council, of which day and of the amount of the

rate or assessment so to become payable, not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town Office.

No. 15-1882.

17. As soon as any rate shall be assessed as aforesaid, the same shall be collected in the same manner as any rates duly levied under the provisions of the said Act No. 23 of 1880, or the said Act No. 12 of 1881, and shall on non-payment thereof be recoverable as a separate and distinct rate by action in the Resident Magistrate's Court having jurisdiction within the said municipality or in any Resident Magistrate's Court in the district in which such defaulter shall reside.

How to be collected.

18. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act, shall be subject to the "Public Bodies Debts Act, 1867."

"Public Bodies Debts Act, 1867," to apply.

19. The said council shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act. And the said council shall yearly and every year, so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Town Clerk, for the inspection at all reasonable times, of any townsman, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart, provided that every such account shall be made up to the 31st December in each and every year.

Accounts to be kept.

20. The necessary costs, charges, and expenses, of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid.

Costs of Act, &c.

21. Nothing in this Act contained shall be taken to deprive the said council of any rights and privileges it may possess, or of which it may be entitled to avail itself under the provisions of the Acts No. 8 of 1877, intituled "The Irrigation Act, 1877," No. 28 of 1877, intituled "An Act to assist Municipalities to carry out Irrigation Works," No. 7 of 1880, intituled "The Irrigation Amendment Act, 1880," No. 23 of 1880, intituled "The East London Municipality Act, 1880," and No. 12 of 1881, intituled "The East London Municipality Amendment Act, 1881," or any or either of them; the true intent and object of this present Act being to add to and increase, and in no way to derogate or detract from such rights and privileges.

Provisions of this Act not to affect the rights of the Council under other Acts.

22. The word "municipality" in this Act shall mean the municipality of East London as established by the said Act No. 23 of 1880, and the word "council" the municipal council of East London.

Interpretation clause.

23. This Act may be cited as "The East London Water Supply Act, 1882."

Short title.

No. 19—1863.]

[July 28, 1863.

## ACT

For enabling the Commissioners of the Municipality of George Town to procure a better Supply of Water for the Inhabitants of such Municipality.

## Preamble.

WHEREAS the inhabitants of the municipality of George Town have for some years past experienced great inconvenience in consequence of a deficient supply of water; and whereas the present supply of water is derived from streams having their rise in a portion of the Outeniqua Mountains, situate within and forming part of the commonage lands of the municipality of George Town, the waters from which streams are collected in a reservoir at the base of the mountain, and thence conducted to and distributed in the town of George by means of open sluits; and whereas the existing reservoir is insufficient for the storage of an adequate supply of water, and the waters conveyed in such sluits are constantly polluted by decayed vegetable and animal matter continuously accumulating therein; and whereas it will be very beneficial to the inhabitants that additional reservoir space should be constructed and provided, and that the water should be conveyed to the town in supply pipes in place of open sluits; and whereas to enable the said commissioners to construct such additional reservoir space and procure and lay such pipes, it is proposed that a special rate should be laid on all immovable property within the municipality of George Town, to be called the water rate; and whereas it is proposed that the said commissioners should be empowered to borrow money on the security of the intended water rate to enable them to construct the intended works, but such objects cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

## Short title.

1. This Act may be cited as the “George Town Water Act, 1863,” and shall take effect from and after the promulgation thereof.

## Interpretation of terms.

2. In the construction of this Act the following words and expressions have the several meanings assigned to them over and above their several ordinary meanings, unless there be something in the context repugnant to such construction, namely: Words importing the singular number include the plural number, and words importing the plural number include the singular number; words importing the masculine gender include females: the expression “commissioners” shall mean commissioners of the municipality of George Town: the expression “inhabitants” shall mean householders of the municipality of George Town; the expression “street or public thoroughfare,” shall mean street, or public

thoroughfare situate within the municipality of George Town; and the expression "ratepayers" shall mean parties paying the special rate to be laid by this Act.

No. 19—1863.

3. The commissioners are hereby empowered to cause to be made, provided, and constructed, in or upon any part of the commonage lands all such reservoirs, dams, watercourses, drains, and ditches as may be deemed necessary for the impounding of an adequate supply of water for the said inhabitants, for domestic, irrigating, and other purposes, and also to provide and lay down, in or under any commonage, land, street, or thoroughfare, any pipe or pipes for the conveyance of water from such reservoir to and throughout the township for the supply of the inhabitants, and from time to time to maintain and keep such reservoirs, dams, watercourses, ditches, and pipes in repair, provided that the amount to be expended shall not exceed the sum of four thousand pounds.

Commissioners to provide for impounding adequate supply of water.

4. The commissioners shall erect within the township public fountains for the gratuitous supply of water, with suitable drinking troughs for the convenient use of horses, cattle, sheep, and other animals, and shall from time to time maintain and keep in repair such fountains and troughs.

Commissioners to erect public fountains with drinking troughs.

5. The number and situations of such fountains and troughs shall from time to time be determined by the commissioners.

Commissioners to determine number of such fountains and troughs.

6. Every ratepayer shall be entitled at his own expense to have a private service pipe laid on to the main or branch pipe for the supply of water for domestic, irrigating, or other purposes, on payment of such special or extra rate as the commissioners may think fair and reasonable, such special or extra rate to become due and payable in advance.

Ratepayers may have private service pipe.

7. The commissioners shall determine and publish the tariff by which the supply of water by private water-leadings shall be regulated, and the payment for all private water-leadings shall be in accordance with such tariff.

Commissioners to fix and publish charges for private water-leadings.

8. Before proceeding with the works hereinbefore authorized, the commissioners shall cause a plan, specification, and estimate of such intended works to be placed in the Town-house in George Town, for the inspection of the inhabitants, and shall cause a notice in the form number one in the schedule hereto to be given to the inhabitants as hereafter is directed; after the publication of such notice, the plans, specification, and estimate shall remain open for inspection in the Town-house aforesaid for the period of twenty-one days. Any ratepayer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within the said period of twenty-one days leave with the secretary of the said commissioners a statement in writing setting forth clearly and concisely his objections to the same. On the expiration of the said period of twenty-one days the plan, specification, and estimate, together with a duplicate of the notice given by the commissioners.

Plan, &c., of works to be placed in town-house for inspection previous to commencement of works

Objections to be made in writing.

No. 19—1863.

and all notices of objection lodged with the said secretary, shall be deposited in the office of the Colonial Secretary, for the purpose of being laid before the Governor for the time being, for his approval; and in the event of the Governor not dissenting from such plans within forty-two days from the time of their being so deposited, the commissioners may proceed with the contemplated works.

Commissioners not to be interested in contracts.

9. No commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, or in any manner to participate in any profit to be derived from any work to be performed for the said commissioners in pursuance of this Act, on pain of forfeiture of all his interest in such contract for the benefit of the municipality; and shall also be considered to have vacated his office of commissioner *ipso facto*, and be ineligible to be elected at any future period to serve as commissioner: Provided that no commissioner shall be deemed or taken to have vacated his office or to have incurred any forfeiture whatever by reason merely that the commissioners shall have entered into any such contract or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder; nor shall any shareholder or person otherwise interested in any joint-stock company with which company the commissioners shall have entered into any executed or still subsisting contract, dealing, or transaction, be deemed or taken to be ineligible to be elected or to act as a commissioner by reason merely of such contract, dealing, or transaction.

Water rate.

10. A special rate of one penny half-penny in the pound, to be called the "water rate," is hereby imposed on all immovable property, situate within the municipality; the rate to commence and be payable on the first day of January next, and to become due and payable on the first day of January in every successive year up to and including the first day of January which will be in the year one thousand nine hundred and twenty-one.

Power to borrow money on security of water rate.

11. The commissioners are hereby empowered, with the consent of the Governor, from time to time, subject to the proviso herein-after contained, to borrow and take up at interest upon the security of the water rate any sum of money not exceeding in the aggregate the principal sum of four thousand pounds, and to mortgage the rate for securing the repayment of such moneys: Provided that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of such four thousand pounds.

Notice to be given of intention to borrow.

12. The commissioners, before applying to the Governor for his consent to borrow and take up at interest any such moneys as mentioned in the last section, shall cause a notice in the form number two in the schedule hereto to be given as hereinafter is directed. Any ratepayer objecting to the raising of such money must within the period of fourteen days from the publication of



such notice leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections, and the evidence to be adduced in support of such objections. On the expiration of such period of fourteen days the commissioners shall deposit in the office of the Colonial Secretary a duplicate of the notice given by them with a statutory declaration verifying the due publication thereof, and all notices of objection lodged with the secretary of the said commissioners, in order that the validity of such objections may be taken into consideration by the Governor; and in the event of the Governor not dissenting from the proposed taking up of such moneys within the period of forty-two days from the time of such notice being deposited as aforesaid, the consent of the Governor shall be assumed, and the commissioners shall be empowered to take up such moneys as shall have been specified in their notice.

No. 19—1863.  
Mode of objecting.

13. All mortgages to be granted in pursuance of this Act shall be in the form number three in the schedule hereto, and shall be signed by the commissioners for the time being or any three of them.

Form of mortgage.

14. The commissioners shall cause all mortgages granted by them to be registered, and such registry shall be produced at every annual meeting, for the inspection of the inhabitants.

Registration of mortgage.

15. All transfers of mortgages by deed shall be in the form number four in the schedule hereto, and shall be registered with the commissioners, and a fee of two shillings and sixpence in respect of such registry shall be paid to the said commissioners.

Transfer of mortgage.

16. All moneys received from the water rate or land sold for the purposes of this Act, and from special or extra water rates in respect of private supplies or leadings, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.

Appropriation of money.

17. The commissioners shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall lay before the ratepayers at every annual meeting an abstract in the form number five in the schedule hereto, showing all moneys received and expended under and by virtue of this Act between the first day of January and thirty-first day of December in the then preceding year, and of all liabilities and assets in respect of this Act on the next preceding thirty-first day of December, and also an estimate of all moneys to be expended and received during the then current year.

Annual account to be submitted to ratepayers.

18. An annual meeting of the inhabitants shall be held in the month of March in each year, of the time and place of which meeting twenty-one clear days' notice shall be given by the commissioners.

Annual meeting.

19. In case it should appear at any such annual meeting that it will not be necessary for the requirements of the current year to

Annual water rate may be reduced.

- No. 19—1863. levy the full amount of the rate hereby imposed, in every such case the commissioners shall reduce such rate for such current year from the said amount of one penny half-penny in the pound to such an amount as will in the opinion of the commissioners be adequate to meet the estimated expenditure for such current year.
- Costs of Act. 20. All the necessary costs, charges, and expenses attending the procuring of this Act and carrying the provisions thereof into effect shall be paid out of the money authorized to be received by the commissioners under the provisions of this Act.
- Erection of public baths and washing-places. 21. The commissioners are hereby empowered, with the consent of the resident householders present at any annual or special meeting, to erect and construct public baths and washing-places, and to make such regulations touching the same as the commissioners shall think proper and necessary.
- Regulations respecting water supply. 22. The commissioners are hereby empowered from time to time to make such regulations touching the water to be supplied to the inhabitants and the time and times at which such supply is to be received as shall be proper and necessary; and also touching the most expedient mode of preventing any waste of water within the said municipality.
- Penalties. 23. Every person who shall bathe or wash himself in any reservoir belonging to the commissioners, or in any stream flowing into such reservoir, or who shall wash, throw, or cause to enter therein any dog or other animal, or who shall throw any rubbish, dirt, filth, or other noisome thing into any such reservoir or stream, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing, shall for every such offence, upon being convicted thereof upon the prosecution of the commissioners, forfeit to the use of the commissioners a sum not exceeding five pounds nor less than one pound: in failure of the payment of such fine the party convicted shall be liable to imprisonment, with or without hard labour, for any period not exceeding fourteen days.
- Rates how to be recovered. 24. In all cases in which the occupier of immovable property assessed to the water rate imposed by section twelve shall not be the owner, the owner shall in the first instance be liable to pay to the commissioners the full amount of such rate and to recover from the tenant or occupier for the time being one-half of the amount of such rate: Provided that the tenant or occupier may if he think proper pay such rate and deduct and retain from the rent payable to the landlord one-half of the amount so paid.
- How notices under this Act to be promulgated. 25. All public notices required by this Act shall be deemed to be sufficiently given by affixing a copy thereof on the Town-house and at the office of the Resident Magistrate for the district of George, and at such other places, if any, as the resident householders present at any annual meeting shall from time to time direct.

## THE SCHEDULE BEFORE REFERRED TO.

No. 19—1863

## No. 1.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the plans, specification, and estimate of the works proposed to be constructed by the commissioners of the municipality under the authority of the above Act have been this day placed in the Town-house in George Town for the free inspection of the inhabitants, and that the same may be inspected on any day (Sundays excepted) up to and including — the — day of — (next or instant), between the hours of ten a.m. and four p.m. Any rate-payer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within twenty-one days from this date leave with the secretary of the commissioners a statement in writing, setting forth clearly and concisely his objections to the same, in order that such objections may accompany the plans, specification, and estimate, and be laid with them before the Governor for his consideration.

Dated this — day of — 186—.

## No. 2.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the commissioners of the municipality of George Town, in pursuance of the above Act, intend to make application to the Governor of the Colony for his consent to their borrowing and taking up at interest under the provisions of the above Act a sum of money not exceeding £— on the security of the water-rate. Any party liable to such rate objecting to the raising of such money must, within the period of fourteen days from this date, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections and the evidence to be adduced in support of such objections, in order that such notice may accompany the application to the Governor and be laid before him for his consideration.

Dated at George Town, this — day of — 186—.

## No. 3.

## FORM OF MORTGAGE.

We the undersigned, being commissioners of the municipality of George Town, in consideration of the sum of — pounds sterling, lent and advanced to us for the purposes of the George Town Water Act, 1863, by — do hereby, in pursuance of the powers contained in the said Act authorizing us in this behalf, charge the water-rate of one penny half-penny in the pound imposed by the said Act with the repayment to the said —, his executors, administrators, or assigns, of the said sum of —, by the instalments and in manner following: the principal sum of £— on the — day of — and the like

bb

No. 19—1863.

principal sum of £— on the day of — in each and every subsequent year until the whole of the said principal sum of £— shall have been paid and discharged; and also with the payment of interest after the rate of — pounds per centum per annum on all principal moneys, continuing secured hereon by equal half-yearly payments, on the — day of — and — day of — in each year.

As witness our hands this — day of —, in the year of our Lord one thousand eight hundred and —.

## No. 4.

## FORM OF TRANSFER.

I, the undersigned, — in consideration of the sum of — sterling money paid to me by — do hereby assign unto — his executors, administrators, and assigns, all principal moneys and interest secured by a certain deed bearing date the — day of — 18—, under the hands of — commissioners of the municipality of George Town, with power for the said —, executors, administrators, and assigns, or his or their substitute or substitutes, in the name or names of the said — executors or administrators, to sue for, receive, and give receipts for the same.

As witness my hand this — day of — 186—.

## No. 5.

## IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Account of all Moneys received and paid by the commissioners of the municipality of George Town under or by virtue of this Act, between the 1st day of January, 18—, and the 31st day of December, 18—, both inclusive.

*Moneys Received.*

To amount received from water-rate	..	..
„ amount received from water-leadings	..	..
„ amount received from sale of lands	..	..
„ amount taken up on loan	..	..
„ amount received from any other source		

*Moneys Expended.*

By amount expended on works	..	..
„ „ „ in salaries	..	..
„ „ „ in repairs	..	..
„ „ „ in interest of debt	..	..
„ „ „ in repayment of debt		
„ „ „ on any other account		

*Summary of Receipts and Expenditure on Capital Account up to the 31st day of December, 18—,*

To amount realized on sale of lands	..	..
To amount taken up on loan	..	..

To amount received from rates after payment of interest and working expenses as under :

Water-rate	..	..	..
Private water-leadings	..	..	..
By amount expended on works	..	..	..
By repayment of loans	..	..	..

*Statement of Liabilities and Assets on the 31st December, 18—.*

*Liabilities.*

To amount due on loans	..	..	..
„ outstanding accounts	..	..	..
„ Cash balance	..	..	..

*Assets.*

Arrears of rate	..	..	..
Cash Balance	..	..	..

*Estimate of Income and Expenditure for the current Year.*

*Income.*

To cash balance	..	..	..
„ amount to be received from arrears of rate	..	..	..
„ amount to be received from private water-leadings	..	..	..
„ amount to be received from water-rate	..	..	..

*Expenditure.*

By cash balance	..	..	..
„ new works	..	..	..
„ interest on advances	..	..	..
„ repayment of advances	..	..	..
„ salaries	..	..	..
„ repairs	..	..	..
„ any other account	..	..	..

No. 16—1875.]

[June 30, 1875.

AN ACT

To Enable the Commissioners of the Municipality of Graaff-Reinet to Borrow a Sum of Money not exceeding Twelve Thousand Pounds Sterling, for the purpose of providing the Inhabitants of the Town of Graaff-Reinet with a better and purer supply of Drink Water, and also of extending and improving the Waterworks within the Municipality. (1)

WHEREAS the inhabitants of the municipality of Graaff-Reinet have been for a number of years and are still suffering great inconvenience and loss in consequence of the periodical flooding of

Preamble.

<sup>1</sup> See § 33 Act 10, 1880, *infra*.

No. 16—1875.

Sunday's River, from which the town is supplied; and whereas it is expedient that the commissioners of said municipality should be empowered to borrow a sum of money, not exceeding twelve thousand pounds sterling, for the purpose of increasing and improving the supply of water, making reservoirs, and laying pipes from the main watercourses to the different parts of the town of Graaff-Reinet: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Commissioners authorized to borrow £12,000 on security of rates and revenues of municipality.

1. It shall be lawful for the commissioners of the municipality of Graaff-Reinet to borrow and take up such sum or sums of money, not exceeding in the whole the sum of twelve thousand pounds sterling, for the aforesaid purpose, and any amounts borrowed as aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said municipality, and shall be a first and preferent charge upon the same.

Whenever revenue is insufficient to pay principal or interest, or both, annual rate may be imposed on immovable property.

2. It shall be lawful for the commissioners of said municipality, whenever the general revenue is insufficient, to impose, for the purpose of providing for the payment of the principal or interest or principal and interest of such loan, a certain annual rate or tax upon the value of the immovable property of the inhabitants, not exceeding one penny in the pound, and every rate so imposed shall be levied in the same manner as if it had been imposed under the provisions of Ordinance No. 9, 1836.

Ratepayers entitled to have private pipes.

3. Every ratepayer shall be entitled at his own expense to have a private pipe laid from the main or branch pipe to his residence on payment in advance of such rate, and upon such regulations and stipulations as commissioners may decide.

Acknowledgment for money borrowed under this Act to be given in form in schedule.

4. The commissioners aforesaid shall grant to the party or parties or company or society from whom they shall borrow such money, a written acknowledgment of or for the money so borrowed, not exceeding in the whole the above mentioned sum of twelve thousand pounds sterling, such acknowledgment to be in substance in the form annexed to this Act, and to be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Public Bodies Debts Act, 1867, to apply.

5. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the Public Bodies Debts Act, 1867.

Separate account to be kept of moneys borrowed under this Act.

6. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, and shall, as long as any part of any debt contracted by virtue of this Act shall be in existence, make an annual statement thereof up to 31st December, which statement shall be deposited in the Town Office for the information and inspection of resident householders.

7. The commissioners shall not be allowed to make any use of the borrowing powers under this Act before having first submitted a feasible plan, with estimate of the works contemplated in this Act, and approved of by the ratepayers of aforesaid municipality at a meeting called specially for that purpose by public notice of at least fourteen days.

No. 16—1875.  
Money borrowed under this Act not to be expended without approval of rate-payers.

8. The necessary costs, charges, and expenses for obtaining this Act and carrying the provisions thereof into effect, shall be paid by the commissioners out of the general revenue of aforesaid municipality.

How cost of this Act to be paid.

9. This Act may be cited as the "Graaff-Reinet Municipal Water Act, 1875."

Short title.

#### SCHEDULE.

We, the undersigned, Commissioners of the Municipality of Graaff-Reinet, do hereby acknowledge that the said Commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of £ \_\_\_\_\_, for so much money borrowed by the said Commissioners for the purposes set forth in the Graaff-Reinet Municipal Water Act, 1875; and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided; and we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Graaff-Reinet this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Witnesses:

D. D.  
E. E.

A. A., Chairman.

B. B. }  
C. C. } Commissioners.

No. 10—1880.]

[July 29, 1880.

#### ACT

For <sup>(1)</sup> Constituting the Town of Graaff-Reinet a Municipality.

WHEREAS it is expedient to repeal so much of the Ordinance No. 9 of 1836, entitled "An Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony;" of the Ordinance No. 2 of 1844, entitled "An Ordinance for amending Ordinance No. 9 of 1836;" of the Ordinance No. 8 of 1848, entitled "An Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality; and of the Ordinance No. 5 of 1852, entitled "An Ordinance to enable Municipal Commissioners

Preamble.

<sup>1</sup> Printed as amended by Act 34 of 1886, *infra*.

- No. 10—1880. — appointed under Ordinance No. 9 of 1836 to Purchase or Hire Immovable Property for Municipal Purposes ;” and the Act 13 of 1864, intituled “An Act to amend the Ordinance No. 9 of 1836 ;” in so far as such Ordinances and Act, severally and respectively, shall apply to the municipality of Graaff-Reinet, together with so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Former enactments to apply until this Act is enforced. 1. The said Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, and No. 5 of 1852, and Act 13 of 1864, in so far as the same are applicable to the municipality of Graaff-Reinet, shall continue to be of legal force and operation as heretofore, until after the first election of councillors as provided for in and by this Act; and immediately upon and after the declaration of the names of the said councillors shall have been published as hereinafter provided, the said Ordinances, Law, and Act, together with so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, in so far as the same apply as aforesaid, shall be and are hereby repealed.
- Boundaries of the municipality. 2. The municipality of Graaff-Reinet shall comprise the town of Graaff-Reinet, and the common pasture lands thereof (as shown by the title signed by Lieutenant-Governor Wynyard, and dated the 2nd day of July, 1860).
- Title of municipal body. 3. There shall be in the said municipality a body corporate, which shall take and bear the name of “the Mayor and councillors of Graaff-Reinet,” and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may in this Colony do and have.
- Constitution of the municipality. 4. The council of the said municipality shall consist of nine councillors, one of whom shall be the Mayor, and the said councillors shall be elected by the ratepayers of the said municipality voting as one constituency in manner hereinafter provided: Provided, however, that every councillor elected before the passing of this Act shall notwithstanding anything herein contained continue to hold office in the said council as if this Act had not been passed.
- Disqualification. 5. [§§ 5, 6, 7, and 8, repealed by Act 34 of 1886.]  
9. (1) The following persons shall be disqualified from voting at any such election:  
Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.
10. [Repealed by Act 34 of 1886.]

---

<sup>1</sup> See also § 6, Act 34, 1886.



11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor, until he shall have been invited to become such candidate, by a requisition signed by at least five qualified voters, and shall have transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

No. 10—1880.  
Requisitions to be sent to councillors.

12. The Town Clerk shall, at least ten days before the day appointed for the election cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Requisitions to be published.

13. On the second Wednesday in the month of December in every alternate year, an election shall take place for councillors of the said municipality, the first election, however, to be on the second Wednesday in the month of December after this Act shall have been passed.

When elections to take place.

14. The poll shall be taken by some person or persons and at some place or places to be appointed for that purpose by the Mayor, or in case of the first election, by the chairman of the municipality: Provided that as often as the number of candidates nominated shall not exceed the number of councillors to be elected no poll shall be deemed necessary, but the candidate or candidates so nominated shall be deemed and taken to be duly elected: Provided also that the said chairman of the municipality, or Mayor, as the case may be, shall be the returning officer of the said municipality.

How poll to be taken.

15. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

16. The election shall take place in the following manner:— Every ratepayer, qualified as aforesaid may vote for any candidate or candidates, not being more than the number to be elected, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates for whom he votes, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and occupation: Provided that no voter shall be capable of giving to any one candidate more than one vote.

Number of votes allowed to each voter.

17. The polling officer shall receive such voting paper, and register the vote.

Vote to be registered.

18. The poll shall commence at eight o'clock in the forenoon, and shall finally close at twelve o'clock noon of the same day.

Duration of poll.

19. [Repealed by Act 34 of 1886.]

20. If any person shall wilfully make a false answer to either of these questions, he shall be liable to a penalty not exceeding ten pounds (£10), to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for any period not exceeding one month.

Penalty for false answers.

- No. 10--1880. 21. The polling officer shall, at the close of the election, transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes, shall be declared duly elected; and such returning officer shall forthwith cause a list thereof to be published in manner hereinafter mentioned.
- Duty of polling officers after close of election.
- In case votes are equal 22. In case of an equality of votes at any election of councillors, the returning officer shall cause to be determined by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.
- Rules for first election. 23. At the first election of councillors under this Act, the ratepayers shall elect, in manner hereinbefore provided, two councillors for each ward, who shall enter upon their office on the first day of January following, and shall hold office as such councillors until the expiration of two years from the said date.
- If councillor resign, die, &c. 24. If any councillor shall die, resign, become insolvent, assign his estate for the benefit of his creditors, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office until the next biennial election.
- Election of mayor. 25. The councillors shall, at the first meeting of council in January following each general election, elect from among themselves by a majority of votes the Mayor of the municipality, who shall hold office for two years from the date of the councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.
- Resignation of mayor. 26. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.
- Provision in case of resignation, &c., of mayor. 27. If any Mayor shall die or resign, or shall become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be absent from the municipality, without the permission of the council, for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the term of office.
- Auditors. 28. At the first meeting of every newly elected council, two auditors from among the ratepayers shall be appointed for the municipality by the councillors, who shall continue in office until the next general election.

29. No person shall be eligible as an auditor who shall be a councillor, Treasurer, Clerk, or other officer of the municipality.

No. 10—1880.  
Disqualification of  
auditor.  
Resignation, &c.,  
of auditor.

30. If any auditor shall die, resign, or be declared insolvent, or shall assign his estate for the benefit of his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.

31. No councillor or person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or shall directly or indirectly sell or supply any goods whatsoever to the council. And any person contravening the provisions of this section shall, if a councillor, be deemed to have *ipso facto* vacated office, and if a person holding any office in the gift or disposal of the council, he may be summarily dismissed from such office without notice, and without any claim for compensation for loss of office.

Councillors and officers not to be contractors.

32. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges, within the limits of the municipality, and all such other lands vested in the municipality; to excavate, construct, and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils; to establish markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and places for slaughtering sheep and cattle, and the state and condition of slaughter-houses, tanneries and woolwashing establishments; to appoint one or more competent persons to examine meat, and other provisions exposed for sale, and who, in case such meat or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality; and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of tolls and public pounds: Provided that no toll due, or fee, or charge for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the thirty-

Powers of the council.

No. 10—1880.

sixth section mentioned: And provided also, that no regulation shall diminish the rights of commonage of proprietors or occupiers as to the number of stock to be allowed to be depastured below that stated in the seventy-first section of the Graaff-Reinet Municipal Regulations in force on the first day of May, 1879, viz.:—“Every proprietor or occupier of a house or erf of the under-mentioned value, shall be allowed to depasture on the common pasture lands of the municipality the following number of cattle, being his *bonâ fide* property, viz.:—1st class, from £25 and under £200, five sheep or goats, three horses, mules, or other cattle or so many of each as will not exceed three in the whole; 2nd class, from £200 and under £500, ten sheep or goats, fourteen horses, mules, or other cattle, or so many of each as will not exceed fourteen in the whole; 3rd class, from £500 and upwards, fifteen sheep or goats, sixteen horses, mules, or other cattle, or so many of each as will not exceed sixteen in the whole.”

Water supply.

33. The provisions of Act No. 16 of 1875, entitled “An Act for enabling the Commissioners of the Municipality of Graaff-Reinet to Procure a Better and Purer Supply of Water for the Inhabitants of such Municipality,” shall apply to the municipality constituted under this Act, and all powers and duties therein vested in or given to the commissioners for the municipality of Graaff-Reinet are hereby vested in and given *mutatis mutandis* to the councillors elected under this Act.

Distribution of water.

34. The distribution of water shall be regulated according to the division thereof made by the late board of landdrost and heemraden of Graaff-Reinet on the 19th November, 1827; but whereas, in certain cases, no provision has been made in the said water distribution with respect to the water commonly called “afloop water,” it shall be lawful for the council, and it is hereby empowered, to dispose of the said water, and to apportion it in such a manner and to such erven as it shall consider just and equitable. The strength of the streams in the various furrows from which the erven in town are irrigated shall be regulated in manner as follows: that is to say, the whole of the water brought into the town, both by the upper and lower furrows, shall, for the purpose of distribution, be divided into five equal streams. The erven irrigated from the lower furrow, and those on the eastern side of the Dry River, shall be each entitled to one of those streams: that is to say, to a volume equal to one-fifth of the whole brought into the town.

The strength of the stream to supply the erven understood to be supplied from the upper furrow, but not including those on the eastern side of the Dry River, shall be one-half of the strength of the stream supplying the lower furrow erven, or one-tenth of the whole.

The strength of the stream to irrigate the erven entitled to special supplies of water shall be in strict accordance with the rules

adopted by the said late board of landdrost and heemraden on the 19th November, 1827; and if the water-overseer shall fail in his duty to make the distribution accordingly, he shall be liable to a fine not exceeding five pounds sterling.

35. In the month of January in each year a water tax shall be paid to the council by the proprietors or occupiers of erven, according to the following scale:—For an allowance of two hours of a single stream of water, twice a week, the sum of nine shillings sterling; for the same allowance of a double stream or more, the sum of eighteen shillings sterling; and so in proportion for every longer or shorter time: Provided that all erven having an allowance of less than one hour twice a week of a single stream, or less than half-an-hour of a double stream, shall pay four shillings and sixpence sterling; And provided, also, that for each and every house, tenement, or other building on any of the erven above referred to, other than the dwelling-house belonging to such erf, which shall have been let during any part of the year, the proprietor or occupier shall pay the sum of three shillings sterling.

Water tax.

36. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Graaff-Reinet at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act, and shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act.

Power to frame regulations.

37. No municipal regulation framed by the council shall be of force to subject any person to any fine, penalty, or payment, until it shall have been submitted to the Governor by the council, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

Regulations to be approved of by Governor in Council.

38. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

No proof required of published regulation having been duly made.

39. It shall not be competent, by means of any municipal regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds: Provided that it shall be competent for any such municipal regulation to provide that, if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period shall not exceed three months.

Limitation of penalties for contravention of regulations.

No. 10—1880.

Vesting of municipal property.

40. All property which shall at the time of the taking effect of this Act be vested in the commissioners for the municipality of Graaff-Reinet, elected under and by virtue of Ordinance No. 9 of 1836, and the Amended Municipal Act No 13 of 1864, shall, from and after the taking effect of this Act, become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into by the said commissioners, or their predecessors in office, on behalf of the municipality of Graaff-Reinet, shall be taken over by the council.

Power to sell such property under certain restrictions.

41. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of: Provided that the said council shall, before applying to the said Governor for his consent, give public notice of not less than twenty-one days in the manner hereinafter mentioned of their intention to apply for such consent, in which notice so published shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required: Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold: Provided, further, that the said council may, with such consent as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

Power to mortgage property.

42. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of: Provided that the provisions of the last preceding section requiring the publication of notice of an intended sale shall, *mutatis mutandis*, apply to the case of an intended mortgage or issue of debentures: Provided also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons

in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

No. 10—1880.

43. The sum of money to be raised under the last preceding section in any one year, reckoned from the first day of January till the thirty-first day of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

Limit of amounts to be raised on mortgage.

44. The council may, for any such purpose as is in the forty-second section described, mortgage or charge by debentures the municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed from Government or from any person or persons or body corporate, or for any purpose whatsoever, under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council, upon a notice of not less than twenty-one days, to be published in the manner hereinafter mentioned: And provided that it shall not be lawful for the said ratepayers to sanction, or for the said council to borrow upon security of the said rates, any sum or sums exceeding at any one time the sum of three thousand pounds sterling.

Municipal rates may be charged with money borrowed.

45. Every mortgage aforesaid or power of attorney for authorizing the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and shall be executed by two councillors, and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

Mortgages, &c., to be under seal of municipality.

46. As often as any mortgage granted, or debenture issued, under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates, which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent

Fresh mortgages or debentures to redeem those falling due.

No. 10—1880.

of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Power of leasing.

47. The council may lease with the consent of the Governor any portion of the common pasture lands belonging to the municipality for the purpose of erecting woolwashing establishments, for building, and for any other purpose, for a period not exceeding thirty-three years: Provided that no such lease shall be granted by the council until a notice in writing of the proposal of the council to grant such lease shall have been posted for general information at some conspicuous place of public resort, within the municipality, for a period of not less than twenty-one days, and shall cause the same to be published in a local paper for the same period, which notice shall in some part thereof describe the part or portion of land proposed to be leased, and the object, terms, and conditions of the proposed lease, and shall require any person objecting to the proposed lease to lodge with the council, within twenty-one days from and after the posting and publication of such notice, his objection thereto in writing, whereupon the council shall receive and consider the objections, if any, and shall grant or refuse the said lease as they shall think fit: Provided also, that all such leases shall first be put up at auction to public competition, and shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Lease of mines.

48. The council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

Sub-letting.

49. No lessee of any such land, or of any mines or quarries, shall assign or sub-let the same without the previous consent of the council, testified in writing, first had and obtained.

Power to appropriate lands under certain restrictions, and for certain purposes.

50. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, then, and in that case, it shall be lawful for the said council, and it is hereby authorized and empowered to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, and generally to enter into such contract or contracts for the obtaining of any such land, buildings, or materials upon such terms and conditions as the said council shall deem expedient, and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by



it appointed, within twenty-one days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council, within a certain reasonable time, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme or any Circuit Court of this Colony, or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law, brought for, or on account of, the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned, for or on account, and at the risk, of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, or materials aforesaid had been duly done and performed.

51. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, of which land the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to

In case of appropriation of lands of absent owners.

No. 10—1880.

be inserted in the *Government Gazette*, and one or more newspapers published in the town of Graaff-Reinet, for three months, describing as accurately as may be the materials, land, or buildings which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorized by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner or owners to apply, within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings, in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the same period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath, before some Justice of the Peace, that he hath, to the best of his judgment, fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, or materials in question at into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorized and entitled to take or to use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in, the said land, buildings, or materials aforesaid had been duly done and performed.

- Quorum of council. 52. At all meetings of the Town Council five members of the council shall form a quorum: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-sixth and sixty-first sections of this Act.
- Ordinary meetings once a fortnight. 53. An ordinary meeting of the council shall take place at least once in every fortnight, and all such ordinary meetings shall be open to the public.
- Special meetings. 54. The Mayor or any two councillors may at any time call a special meeting of the council, provided that he or they cause a

notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them, or by the Town Clerk, to be notified to every councillor, either personally, or at his usual place of abode, twenty-four hours at least before such meeting.

No. 10—1880.

55. At every meeting of the council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from amongst themselves.

Mayor to preside.

56. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.

Casting vote.

57. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Minute book of meetings.

58. 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 consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always, that the proceedings of every such committee shall be submitted to the council for its approval; the Mayor to be *ex-officio* member of all such committees.

Committees to be formed.

59. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or in case of misconduct, without any notice.

Clerk, treasurer, and other officers.

60. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers, location constables, policemen, overseers, labourers, and others as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night, and for other purposes; and to provide all such street-keepers, constables, and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers, constables, policemen, and others and their duties, as shall be deemed fit.

Street-keepers and constables.

61. For the purpose of raising the means of making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other water works; for the purchase of water-pipes, fire-engines and appurtenances; and for the effecting of all other permanent public works and improvements within the municipality; for the purpose of raising the means for effecting

Power to levy rates.

No. 10—1880.

the repairs of all such works as the council are hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have the power to impose, levy, and recover all such market dues, water rates, and pound fees as shall be deemed necessary and reasonable; and shall also have the power, as often as shall be deemed necessary, to make and levy in manner hereinafter provided, rates or assessments upon all immovable property within the municipality, the value of such property to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting, at which such rate shall be imposed, at least nine members of the said council; And provided also, that no rate or assessment, excepting water rates, shall be imposed upon any almshouses, botanical gardens, or hospitals, nor on any buildings appropriated for public worship, nor upon burial-grounds, nor upon buildings solely appropriated to the purposes of education.

Appraisers to be appointed.

62. Within three months after the promulgation of this Act, the council shall appoint one or more competent appraisers, not being members or officers of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.

Valuations may be inspected.

63. As soon as any valuation as aforesaid shall be completed, it shall lie in the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days, and at reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice, announce for general information, that it will, upon some day and at some hour and place to be fixed by such notice, hold a court, at which, at least, a quorum of members shall be present, for the purpose of hearing and determining objections to such valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court: And provided also that it shall not be necessary in any suit or action for the recovery of any rate to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in one or more of the local newspapers.

Court for hearing objections.

How objections to valuations to be heard.

64. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner or occupier, or other person on his behalf, and shall inquire into the merits of such objections, and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show

reasonable grounds for not being ready with the proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

No. 10—1880.

65. The decision of the said court upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatever.

No appeal or review.

66. The council shall annually, in the month of December, make an estimate of the amount of money required for municipal purposes in the next ensuing year, and shall assess a rate accordingly upon all immovable property liable thereto, and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rate or rates amounting in the aggregate to more than one penny in the pound on the value of the immovable property subject to such rates, without obtaining the consent of the majority of the ratepayers present and entitled to vote, according to the eighth section of this Act, at a public meeting to be called for the purpose of considering such rate or rates; of the object and time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Graaff-Reinet newspapers; and all rates assessed under the provisions of this Act shall be recoverable against the owner or occupier thereof.

Rates to be assessed and notice thereof

Limitation of rates.

67. Every rate so assessed, as aforesaid, shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers. Provided that it shall not be necessary in any suit or proceeding, for the recovery of any such rate, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

When rates payable.

68. As soon as any rate or rates shall have been assessed as aforesaid, the same shall be payable, and the council shall appoint under the corporate seal one or more fit person or persons to collect such rate or rates, which shall, on non-payment thereof, be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Graaff-Reinet, or in case any person liable for any rate shall not reside within the district of Graaff-Reinet, in the Court of the Resident Magistrate of the district in which such ratepayer shall reside.

Collection of rates.

69. In case by reason of the non-payment of any rate, it shall be necessary to sue for the same as in the last preceding section mentioned, the council may, through its collector, and it is hereby authorized, to sue the owner or the occupier, either separately or

Power to sue for rates.

- No. 10—1880. both of them in one and the same action, each for the whole rate: Provided, however, that the occupier of any property who shall not at the same time be the owner thereof, and who shall not have entered into such occupation in pursuance of a contract or agreement for becoming the owner of the same shall in the absence of any written agreement to the contrary, be entitled to retain or recover from such owner the amount of any rate as aforesaid which such occupier shall have paid.
- Publication of rates in arrear. 70. The council may once in every year publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.
- Valuation to be made every three years. 71. The first valuation to be made, as aforesaid, for the purposes of this Act, shall subsist and be in force for three years from the date of the first assessment under this Act; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as is hereinbefore directed with regard to the first valuation.
- New buildings to be valued within the three years. 72. In case any new buildings shall be erected on any property during any such period of three years, increasing the value of such property, it shall be lawful for the council to proceed to have the land and such buildings thereon valued or re-valued as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed, the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.
- Tolls. 73. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable upon all persons making use of any road, bridge, or market place within the municipality, which the council is hereby empowered to make and maintain, and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may by the municipal regulations be in that behalf provided.
- Exemption from toll. 74. No toll shall be payable by any officer or soldier, or member of any colonial or imperial military forces on duty, or by any member of any police force appointed under the Divisional Police Act, 1873, or any other Act, or any judicial or civil officer, mail-carrier, or other Government servant, whilst travelling on public duty; and further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock in the next succeeding night, for and in respect of the same vehicle or animal.
- Treasurer's accounts. 75. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof each sum shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together

with a full abstract or balance sheet thereof, shall yearly at such time as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

76. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall (except when otherwise provided), be so published by causing a copy thereof to be inserted in one or more of the newspapers within the municipality, and a copy of the same shall also be affixed in some conspicuous place, upon or near the Town-hall: Provided always that the Mayor shall call a meeting on receiving a requisition to that effect signed by not less than twenty-five duly qualified ratepayers.

Notices of public meetings to be published.

77. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council in the name of the "Municipal Council of Graaff-Reinet," and all such fines and penalties, when recovered, shall be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act of omission or commission upon which such prosecution shall be founded: And provided also that in all such prosecutions the Town Clerk may appear on behalf of the council.

How fines to be recovered.

78. The storing of kerosene, gunpowder, or other explosive material shall not be permitted, except in such places as may be approved of and licensed by the said council for that purpose.

Gunpowder regulations.

79. It shall be competent for the Town Council to set apart any part or portion of the municipal land for burial-grounds or cemeteries, and to prohibit burials in any other part within the municipality, and any person or persons causing any interment to be made elsewhere than in the part or parts so set apart, shall be liable to a fine not exceeding fifty pounds, to be recovered in any competent Court.

Burial grounds.

80. This Act may, for all purposes, be cited as "The Graaff-Reinet Municipality Act, 1880."

Short title.

No. 34—1886.]

[July 6, 1886.

## ACT

## To Amend “The Graaff-Reinet Municipality Act of 1880.”

## Preamble.

WHEREAS, by the Act No. 10 of 1880, commonly called “The Graaff-Reinet Municipality Act, 1880,” and hereinafter called the said Act, the Municipality of Graaff-Reinet is divided into seven wards, the ratepayers in each of which are entitled to elect two councillors to represent them in the council of the said municipality: And whereas the council thus constituted of fourteen councillors so elected does not fairly and properly represent the majority of ratepayers in the said municipality: And whereas the aforesaid division of the said municipality into wards is inexpedient and inequitable, inasmuch as many ratepayers having great and important interests in the said municipality are thereby not at all or insufficiently represented in the said council: And whereas it is expedient and necessary to amend the said Act, so as to repeal and abolish the division of the said municipality into such wards as aforesaid, and to provide that every ratepayer in the said municipality shall have an equal right to vote in the election of any and every councillor to represent him in the said council, and to that end to constitute the entire body of ratepayers of the said municipality one constituency for the election of such councillors and for all municipal purposes in respect of which heretofore under the said Act the several wards have had a separate voice: And whereas, moreover, it is expedient and necessary to amend the said Act in certain respects with regard to the qualification of voters in municipal elections and of councillors, and with regard to the disqualification of any councillor by reason of his being personally interested in any contract to which the said council is a party and also to provide additional security against the borrowing of money by the said council without the authority of the necessary majority of ratepayers: And whereas at a public meeting of the said ratepayers convened and held on the 10th day of March, 1886, and at another public meeting of ratepayers, convened by the Mayor in conformity with the provisions of the 76th section of Act No. 10 of 1880, and held on the 25th day of May, 1886, it was resolved by a majority of ratepayers then present to seek Legislative amendment of the said Act:

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

## Sections repealed.

1. The sections five, six, seven, eight, ten and nineteen of the said Act are hereby repealed.



2. The fourth section of the said Act shall be amended by expunging the word "fourteen" and substituting the word "nine," and by the addition of the following words at the end of the clause :

No. 34—1886.  
Section 4 amended.

" And the said councillors shall be elected by the ratepayers of the said municipality voting as one constituency in manner hereinafter provided : Provided, however, that every councillor elected before the passing of this Act shall notwithstanding anything herein contained continue to hold office in the said council as if this Act had not been passed."

3. The following sections of the said Act are hereby amended as follows : Certain Sections amended.

- (1) The eleventh section by the omission of the words "for any ward," and of the words "of such ward."
- (2) The twelfth section by the omission of the words "in each ward."
- (3) The fourteenth section by the omission of the words "in every ward," of the words "for any ward," and of the words "for such wards" wherever they occur in the said section ; and by the insertion of the words "or persons," and at some place "or places" after the word "person" where the same occurs in the second line of the said section.
- (4) The sixteenth section by the omission of the words "for his ward" and of the words "for the ward."
- (5) The twenty-first section by the omission of the words "with the numbers of the wards for which such persons are elected."

4. Every person of full age, not disqualified under the provisions of this Act, who on the first day of June in any year is the owner or occupier of any immovable property in the municipality, and who shall have paid all sums if any then payable by such person in respect of any rates made three months or more before such day, shall be entitled to be enrolled on the assessment roll for the municipality according to the following scale : Who entitled to be enrolled on voters' roll.

- (1) If the property liable to be rated be of the value of or exceeding one hundred pounds, and less than five hundred pounds, he shall have one vote. Number of votes for which person entitled to be enrolled.
- (2) If such value amount to five hundred pounds and be less than one thousand pounds, he shall have two votes.
- (3) And if such value amount to or exceed one thousand pounds, he shall have three votes.

5. Where more persons than one are jointly liable to be rated in respect of any property, each of such persons, not exceeding three in all, shall for the purposes of the last preceding section, be deemed to be liable to be rated, in respect of rateable property, equal to that of the whole of such first mentioned property divided How for purposes of last section when more persons than one liable to be rated in respect of any property.

No. 34—1886.

by the number of persons so rated not exceeding three. In case more than three persons are liable to be rated in respect of any property the persons to be deemed liable and qualified to vote shall be any three whom the remaining or other persons so liable shall nominate in writing, and failing such nomination, those three whose names stand first in order upon the rate book in use, or if no rate book has been made, upon the valuation roll: Provided that in any such case the annual value of the property liable to be rated shall be of an amount which when divided by the number of persons jointly liable to be rated, not exceeding three, shall give a sum of not less than one hundred pounds for each such person.

Who not qualified to vote at elections under this Act.

6. The following persons shall not be qualified to vote at any elections held under the provisions of this Act:

- (1) Persons who have not paid all sums due from them in respect of any rates made or levied three months or more before the day of voting.
- (2) Persons convicted of treason, murder, rape, theft, perjury, or of bribery, or receiving a bribe, or of any other corrupt practice at any election, or any infamous crime, and who shall not have received a free pardon.
- (3) Persons whose names do not appear upon the assessment roll for the time being.

Section 31 amended.

7. The thirty-first section of the said Act shall be amended by the insertion after the word "business" of the words "or shall directly or indirectly sell or supply any goods whatsoever to the council."

Section 44 amended.

8. The forty-fourth section of the said Act shall be amended by the insertion after the word "borrowed" where it occurs in the proviso to the said section of the words "from Government or from any person or persons or body corporate, or for any purpose whatsoever."

Costs of obtaining Act out of revenue from rates.

9. The costs, charges and expenses of promoting and procuring the passing of this Act shall be paid out of the revenue derived from rates in the said municipality.

Short title.

10. This Act may be cited as "The Graaff-Reinet Municipality Amendment Act, 1886."

No. 23—1869.]

[October 18, 1869.

## ACT

To Repeal the Act No. 29, 1861, intituled "Act for establishing a Municipality for the City of Graham's Town," and to make other provisions in lieu thereof. <sup>(1)</sup>

Preamble.

WHEREAS it is expedient to repeal the Act No. 29 of 1861,

<sup>1</sup> See also Acts 12 of 1878, 2 of 1871, 10 of 1885, and 21 of 1886 (*infra*).

intituled "Act for establishing a Municipality for the City of Graham's Town," and to substitute other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 23—1869.

1. The Act No. 29, 1861, shall be and is hereby repealed: Provided, however, that such repeal shall not affect the municipal regulations at present in force, but the same shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act; and provided, also, that the present Mayor, councillors, and officers of the municipality shall, on the taking effect of this Act, until other persons shall be elected or appointed in their places respectively hereunder, be, and they are hereby declared to be the Mayor, councillors, and officers, respectively, of the municipality created by this Act; and shall, during the time aforesaid, do and perform all acts, matters, and things, and be vested with all the rights and powers, and be subject to all the liabilities which are authorized or required to be done or performed by, or are vested in or imposed upon the Mayor, councillors, or officers, respectively, of the municipality by this Act: Provided, also, that the assessment roll at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.

Act No. 29, 1861, repealed; but existing municipal regulations to continue in force until altered.

Present mayor, councillors, and officers to remain in office till election of others.

Existing assessment roll and rates assessed to be taken as framed and assessed under this Act.

2. The municipality of Graham's Town shall comprehend the city of Graham's Town, including all common lands and property within the area formed by the boundaries hereinafter more particularly mentioned and described: to wit, on the south by the northern boundaries of Featherstone's and Amos's farms, to the south-western beacon of Mr. Fuller's farm; thence to the north-west corner of Mr. Fuller's farm, to the south-west corner of Hart's farm (now Carlisle); thence in a northerly direction along the western boundaries of Hart's and Fynn's farms (now Carlisle's) to the northern boundaries of Fynn's and junction of Burnet's farm (also now Carlisle's); thence in a northerly direction along the north-west and north boundaries of Burnet's farm (now Carlisle's), to a junction with Carlisle's farm, "Belmont;" thence along the south-western boundary to the north-east corner beacon of "Belmont;" and thence along the north-east boundary of the said estate to a junction of "Grobbelaar's Kloof;" thence along the north-west and north-eastern boundaries of Grobbelaar's Kloof and R. H. Rubidge's farm to a junction beacon of W. Clark's and A. B. Diet's farms (now Carlisle's); thence along the south-western boundaries of Diet's (now Carlisle's) farm and Campbell's farm (now Cawood's) to the southern boundaries of "Saxfold" and "Burntkraal," to the north-east corner of "Zypherfontein;" thence in a southerly direction along the eastern boundaries of the

Extent of municipality of Graham's Town.

Boundaries.

- No. 23—1869. said farm to the north junction beacon of Goodwin's Kloof; thence north-east along the east and southern boundaries of the said farm to the north-east beacon of "Howison's Poort;" thence along the south-east boundary of said last-mentioned farm to the south-western and north-western boundaries of Featherstone's farm (now Wood's).
- Style of corporation. 3. There shall continue to be in the said city a body corporate, which shall take and bear the name of "The Mayor, Councillors, and Citizens of Graham's Town," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may do and have.
- Mayor and councillors. 4. The council of the said municipality shall consist of twenty-four councillors, one of whom shall be the Mayor.
- Municipality divided into eight wards. 5. The said municipality shall be divided into eight wards,—to wit:
- Ward No. 1. Bounded south by Prince Alfred Row, Newstreet; east by Somerset-street; north by City Boundary and Bedford-street; and west by City Boundary.
- Ward No. 2. Bounded south by High-street; east by Hill-street; north by City Boundary; west by Somerset-street and Bedford-street.
- Ward No. 3. Bounded south by City Boundary; east by Hill-street; west by City Boundary; north by High-street.
- Ward No. 4. Bounded south by High-street; east by City Boundary; north by City Boundary; west by Hill-street.
- Ward No. 5. Bounded south by City Boundary; east by Bathurst-street; north by High-street
- Ward No. 6. Bounded south by Beaufort-street; east by City Boundary; west by Bathurst-street; north by High-street.
- Ward No. 7. Bounded south by City Boundary; east by York-street; north by Beaufort-street; west by Bathurst-street.
- Ward No. 8. Bounded south by City Boundary; east by City Boundary; north by Beaufort-street; west by York-street.
- Council may alter boundaries of wards. 6. The said council shall from time to time, if they shall think fit, alter the boundaries of the said wards.
- Three councillors to each ward. 7. Three councillors shall be elected for each ward in manner hereinafter mentioned.
- Who qualified to vote at election of councillors. 8. Every male person of full age, being duly enrolled, in manner hereinafter mentioned, who is the occupier of any immovable property in any ward of the municipality, of the yearly value or rental of not less than ten pounds sterling, in regard to

which property no municipal rate shall at the time of any election of councillors or a councillor of such ward be due and in arrear, shall be entitled and qualified to vote at such election.

No. 23—1869.

9. The following persons shall be disqualified from voting at any such election: Persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon.

Who disqualified.

10. When any such property as aforesaid is jointly occupied by more persons than one, each of such joint occupiers shall, being duly enrolled, be entitled to vote in respect of such property: Provided the yearly value or rental of such property shall be an amount, when divided by the number of such joint occupiers, equal to the sum of ten pounds for every and each such joint occupier.

As to joint occupiers.

11. (1) No person shall be eligible to be elected a councillor for any ward who is disqualified from voting as in the ninth section is mentioned, or who has not been an occupier of immovable property within the municipality, of the yearly value or rental of not less than ten pounds sterling, for not less than twelve months next before the election, or who is the occupier of any such property in regard to which any municipal rate shall at the time of the acceptance by such person of such requisition as is mentioned in the next section be due and in arrear: Provided that different premises or properties, occupied in immediate succession, shall satisfy this section as to occupation as if they had been one and the same premises or properties.

Who ineligible as councillor.

12. (1) No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the Mayor, at least fourteen days before such election is appointed to take place.

Candidates to have requisitions.

13. [Superseded by § 5 of Act 12, 1878.]

14. On or before the first Monday in September in every year the Town Clerk shall cause a true list to be made, in alphabetical order, of all men qualified to vote at the election of councillors for the city of Graham's Town, setting forth the christian and surname of each at full length, the place of his abode, his business or quality, the nature of his qualifications, and the ward or wards in which he is entitled to vote, and shall transmit the same to the Mayor.

List of voters to be framed annually.

15. The Mayor shall forthwith cause such list to be published by affixing it in some conspicuous place upon the municipal office, and to every list so published he shall subjoin a notice of not less than fourteen days that all objections thereto will be heard and determined at such time and place as he may fix for that purpose.

List to be published and day fixed for determining objections thereto.

<sup>1</sup> But see §§ 2 and 3 Act 12, 1878.

- No. 23—1869. 16. The Mayor, and two councillors to be elected for that purpose  
 List to be revised and amended. by the council, shall have the power, after hearing such objections in open court, to strike out of the lists the names of all persons not entitled to be therein, and also to insert in the said lists the names of any persons which have been improperly omitted.
- Designation of list 17. The lists so settled shall be called the Citizens' Roll of Graham's Town, and shall be brought into use on the first Wednesday in November in each year, and shall continue to be used for one year thence next ensuing.
- Roll to be posted. 18. The Mayor shall, immediately after the settlement aforesaid, cause such roll to be published by posting the same in front of the municipal office.
- Election of councillors. Mayor to call meeting. 19. [Superseded by § 4 Act 12, 1878].
20. Within fourteen days after the publication of the names of the several candidates invited to stand as councillors, the Mayor shall, by a public notice of not less than fourteen days, in accordance with the eighty-second section of this Act, call separate meetings of the citizens of each of the wards respectively, to be holden at some convenient place or places, for the election of the councillors required to fill the vacant seats out of the number of candidates invited for each ward, except when the number of candidates does not exceed the number of vacancies, as hereinafter mentioned.
- Who to preside at meeting. 21. Every such meeting for the election of any councillor or councillors shall be presided over by a returning officer, to be appointed for that purpose by the Mayor. The poll shall commence at ten o'clock in the forenoon, and shall finally close at three o'clock in the afternoon of the same day.
- Duration of poll. 22. At every meeting for the election of any councillor or councillors who shall have accepted a requisition in manner aforesaid every qualified citizen, duly enrolled as aforesaid, shall be entitled to vote in person, but not otherwise.
- Electors to vote in person. 23. The votes shall be taken by ballot, and the person or persons having the greater number of votes shall be taken to be duly elected: Provided that all candidates shall have the right to be present, either personally or by proxy, during the whole time the voting is going on, and when the contents of each ballot-box are examined by the returning officer.
- Manner of voting. 24. If such ballot shall be rendered indecisive by reason of an equality of votes, the returning officer shall thereupon publicly determine by lot which of the persons shall be elected for whom an equal number of votes shall have been given.
- Candidates may be present during voting and examination of contents of ballot-box. 25. [Superseded by § 4 Act 12, 1878.]
- How in case of equality of votes. 26. The returning officer for each ward shall immediately transmit the names of the persons elected, together with the final state of the poll, to the Mayor.
- Returning officer to transmit names of persons elected with final state of poll to mayor. 27. When the Mayor has received the names of the persons so elected, or when he himself has declared persons elected as afore-
- Names of persons elected to be published.

said, he shall forthwith cause a list of all such persons, with the names of the wards for which they are elected, to be published by advertisement in one of the local newspapers.

No. 23—1869.

28. [Superseded by §§ 4 and 5 Act 12, 1878].

29. If any councillor shall die, resign, or become insolvent or otherwise disqualified, or shall be absent from the meetings of the council for a period of four calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office: Provided, always, that if such absence as aforesaid arise from sickness or other sufficient cause, the council shall be empowered to extend the term for one month longer.

Casual vacancies,  
how to be filled up.

30. At the second ordinary meeting after the annual election of the Mayor in July, the Mayor and council shall appoint from among the citizens two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the year following.

Auditors to be appointed.

31. No person shall be eligible as an auditor who shall not be a duly enrolled citizen, or who shall be a councillor, treasurer, clerk, or other officer of the municipality.

Who ineligible as auditor.

32. If any auditor shall die, resign, or become insolvent, or otherwise become disqualified, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.

In case of vacancy  
fresh election to take place.

33. In case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.

How in case of  
equality of votes.

34. On the Thursday following every yearly election of councillors, those of the councillors then in office, together with the newly-elected councillors, shall choose from amongst themselves, by ballot, the Mayor of the municipality for the following year, and such Mayor shall enter forthwith upon his office, and shall continue therein for one year then next ensuing, provided that the chair at such meetings of the council as shall be held for the purpose of such election shall be taken by some member of the council who is not a candidate for the office of Mayor.

Election of mayor.

Duration of office.

35. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.

Mayor may resign.

36. If any Mayor shall die, or resign, or shall become insolvent or otherwise disqualified as a councillor, or shall be absent from the municipality without the permission of the council for one month, or shall neglect to attend the meetings of the council for the period of three months, such Mayor shall be held to have vacated office, and the council shall elect out of their own number

When mayor shall  
be deemed to have  
vacated office.

No. 23—1869.

Members or officers of council being interested in contracts with council to forfeit seats or office.

And liable to penalty.  
Exceptions.

Council to frame municipal regulations.

Regulations to be approved by Governor and published.

Publication of regulations sufficient proof of validity.

Penalties for contravening regulations limited.

All property vested in existing council vested in council under this Act.

a successor for the remainder of the year, a week's notice having been given to each councillor of such election.

37. If any member of the council, or person holding any office in the gift or disposal thereof, shall directly or indirectly, as agent or otherwise, have any share or interest in any contract with or employment by the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water or insuring against fire any part of the municipality, or shall receive any fee, reward, or compensation for any vote given or act performed in his capacity of councillor or officer, he shall thenceforward cease to be a member of the council, or to hold such office as aforesaid; and shall, upon conviction, be liable to a penalty not exceeding fifty pounds sterling: Provided that the case of the receipt of salary by an officer for the performance of the duties of his office, and that the case of a lease between the council and a councillor, as landlord and tenant, be excepted.

38. [Superseded by § 6 Act 12, 1878.]

39. It shall be lawful for the council at any meeting, at which not less than sixteen of the members shall be present, to frame from time to time all such municipal regulations as may seem meet for the good rule and government of the municipality and all such as may be expedient for the more effectual working of the powers hereby given.

40. No municipal regulation shall be of force until it shall have been by the council submitted to the Governor, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

41. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that sixteen members of council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

42. It shall not be competent by any municipal regulation to provide for punishing the contravention thereof in any higher or more severe manner than by a fine not exceeding ten pounds: Provided that it shall be competent for any such municipal regulations to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed on him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such municipal regulation: Provided, moreover, that such period shall not exceed three months.

43. All land or immovable property heretofore vested in the council of the municipality now existing for the city of Graham's Town shall, after this Act shall come into force, and by virtue thereof, be transferred to and vested in the corporation heretofore mentioned, upon the like trusts and purposes for which the same were



originally granted or transferred; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into by the aforesaid council for the time being, or their predecessors, on behalf of the municipality of Graham's Town, shall become and be the liabilities, debts, contracts, and engagements of the said corporation.

No. 23—1869.

Existing liabilities, contracts, &c., binding on new council.

44. The council may, with the consent of the Governor of this Colony, raise, by sale at public auction or by mortgage of any land or property belonging to the corporation, or by debentures on the security charged upon such land or property, any sum of money which shall be necessary in order to carry on any important public work, or other municipal purpose which the council shall deem desirable, and of which the Governor shall approve: Provided that the council shall, at least two months previously to such intended sale, or mortgage or issue of debentures, cause to be published a full and clear statement of the situation, nature, and extent of such land or property, and the object and purpose for which the money is required.

Council may sell or mortgage lands.

But not without previous public notice.

45. As often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute, to and in favour of any person or persons whom the said council shall select, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

Where debentures are charged on lands, mortgage to be executed.

46. The said council may for the like purpose in the preceding section mentioned, with the consent of the majority of the enrolled citizens of the said municipality present at such meeting, to be convened in manner hereinafter provided, mortgage, or charge by debentures, one-third of the rates of the said municipality for a period not exceeding ten years: Provided, nevertheless, that only one such loan shall exist at the same time, and that every such loan shall be called for by public tender.

Council may borrow on security of rates.

47. Every mortgage aforesaid, or power of attorney for authorizing the execution of a mortgage of any land or property under this Act, shall be under the common seal of the corporation, and shall be executed by the Mayor and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner under the common seal.

Mortgages, how to be executed.

48. As often as any mortgage granted or debenture issued under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon

New loans may be raised for purpose of paying off loans falling due.

No. 23—1869.

debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

As regards loan taken up from Frontier Commercial and Agricultural Bank.

And whereas the council of the municipality of Graham's Town, elected under the provisions of the Act aforesaid, No. 20 of 1861, and acting under the provisions of the said Act, heretofore borrowed and took up from a certain company or co-partnership, trading as bankers in Graham's Town under the style or title of the Frontier Commercial and Agricultural Bank, the sum of six thousand pounds sterling, which sum was borrowed and taken up for the completion of a certain reservoir and other works necessary for supplying water to the inhabitants of the said municipality, and which sum was applied to such purpose: And whereas there now remains due and owing to the said bank, upon or in regard to the said loan, a balance or sum of five thousand pounds sterling: And whereas it has become necessary that the said balance or sum now due to the said bank should be paid off and discharged, and that for the raising or obtaining of the necessary money the council to be elected under the provisions of this Act should be authorized and empowered to mortgage landed property by this Act vested in the corporation created by this Act: Be it therefore enacted as follows:

Powers to raise funds to pay off loan.

49. It shall be lawful for the council of the municipality created by this Act, and the said council is hereby empowered, to borrow or take up from any person or persons, or company, such sum, not exceeding five thousand pounds sterling, as shall be necessary for paying off or discharging the balance or sum now due as aforesaid to the bank aforesaid, and, for the purpose of securing the principal and interest of the sum so borrowed, to mortgage to the person, persons, or company lending the same so much of the landed property vested in the corporation created by this Act as shall be necessary and be agreed upon: Provided that the person, persons, or company lending the said sum shall not be bound to see to the application by the council of the sum so lent, nor shall the mortgage granted by the said council for securing the principal and interest of such sum be impeached or questioned upon the ground of any irregularity which may be alleged to have been committed in regard to the borrowing from the bank aforesaid the sum which the council is by this section empowered to borrow money to discharge.

Lender not bound to see to application of sums lent.

Mortgage not affected by irregularity in previous loan.

Municipal lands and buildings may be leased.

50. The council may lease any portion of the lands belonging to the municipality, or any buildings already erected thereon, for a period not exceeding twenty-one years: Provided that such leases

shall be put up to public competition, after public notice of not less than fourteen days, and that they shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

No. 23—1869.  
Mode of leasing and conditions of lease.

51. The council may by public sale or tender, after public notice, from time to time, lease the privilege of working any mines or quarries belonging to the municipality, for any term not exceeding five years.

Mines and quarries.

52. No lessee of any such lands, buildings, mines, or quarries as aforesaid shall assign or sublet the same without the previous consent, in writing, of the council; and any assignment or subletting, without such consent, shall, as against the council, be null and void.

Lessee not to sublet without consent of council.

53. In case the said council shall require to take or use any land with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building; or, for such purpose, to dig out or carry away any materials belonging to any person within the said municipality; or, for the purpose of supplying the said city with water, to appropriate or make use of any springs, streams, or other supplies of water within the said municipality belonging to any person who shall not be bound by law to allow the council so to do, then and in that case it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings, materials, springs, streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient. And in case any such person and the said council shall not agree upon the purchase money, hire, or recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person a written notice offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state, in writing, to the said council, or to some person by it appointed, within a certain time to be specified in the said notice, not being less than fourteen days from the service of the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said council, and for that purpose to transmit to the said council within a certain reasonable time, to be specified in the said lastmentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said council, upon

Council may purchase or hire lands, buildings, materials, &c., for public improvements, and appropriate streams and fountains.

How where parties disagree as to terms of sale or purchase.

Arbitration may be referred to.

*dd*

No. 23—1869.

receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed, on behalf of the said municipality, by the Town Clerk for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators before commencing such arbitration to appoint an umpire, and their or his decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court, Eastern Districts Court, or any Circuit Court of this Colony, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject matter. And in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Eastern Province of this Colony the sum of money offered by it, as aforesaid, in its first notice in this section mentioned, for or on account and at the risk of such person aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section; and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

How where owner of property neglects or refuses to name arbitrator.

How if owner of property be absent or not discoverable.

54. In case the said council shall, for any purpose in the last foregoing section in that behalf mentioned, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, of which the owner shall be absent from the Colony, and not represented therein by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive months, describing, as accurately as may be, the materials, land, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner of the said land, buildings, materials, springs, streams, or other supplies of water, if known, or, if not known, then upon the owner, whoever he may

No. 23—1869.

be, to take notice that the said council is ready and willing to treat with the owner, or any person duly authorized by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner to apply within six months from the date of such notice, which shall be the day of its first publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation. And in case such owner shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before any Justice of the Peace that he hath to the best of his judgment fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorized and entitled to take or use the land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

Value to be paid  
into  
Guardian's  
Fund.

55. All acts, matters, or things hereby authorized or required to be done by the council, and all questions that may come before it, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-ninth and fortieth sections of this Act.

Questions to be  
decided by majority  
of votes.

56. An ordinary meeting of the council shall take place at least once in every week, and all meetings of the council shall be open to the public

But not to affect  
sections 39 and 40.

Ordinary meetings

57. The Mayor, or any three councillors, may at any time call a special meeting of the council, provided that he or they cause a

Special meetings.

- No. 23—1869. notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them, or by the Town Clerk, to be served on every councillor, either personally or by leaving the same at his usual place of abode, twelve hours at least before such meeting.
- Who to preside. 58. At every meeting of council, the Mayor, if present, shall preside; and in case of his absence, the councillors present shall elect a chairman from among themselves.
- Chairman to have casting vote. 59. In all cases of equality of votes, the Mayor, or chairman, as the case may be, shall have a second or casting vote.
- Minutes of proceedings to be kept. 60. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.
61. [Superseded by § 7, Act 12, 1878.]
- Appointment and removal of officers. 62. It shall be lawful for the council from time to time to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable, and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers upon a notice of not less than three months, or, in case of misconduct, without any notice.
- Appointment of street-keepers and policemen. 63. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places within the municipality, by day and by night, and to provide all such street-keepers and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours and times of duty, and shall also make such rules, orders, and regulations relative to such street-keepers and policemen and their duties, as shall be deemed fit.
- Street-keepers and policemen to act as constables. 64. All such street-keepers and policemen shall act as constables while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers and authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures, as constables are invested with or shall or may have or enjoy or are or may be subject or liable to by law.
65. [Superseded by § 8, Act 12, 1878].
66. [Superseded by § 9, Act 12, 1878].
- Who liable to be rated. 67. All persons owning or occupying property within the limits of the municipality, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property to the city rate in such manner and to such extent as is hereinafter provided: Provided that nothing in this Act contained shall
- Owner and occupier not jointly lia-

be taken to authorize the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.

No. 23—1869.  
ble to assessment in respect of same property.

68. Within three months after the passing of this Act the council shall appoint one or more competent appraisers, not being members of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.

Valuation of fixed property.

69. [§§ 69 and 70 superseded by § 10 Act 12, 1878].

71. The decision of the council upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any Court or proceeding whatsoever.

Decision of court final.

72. [Superseded by § 13, Act 12, 1878].

73. Every rate so assessed as aforesaid shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers: Provided that it shall not be necessary, in any suit or proceeding for the recovery of any such rate, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

When rate assessed shall become due.

Notice to be given. Proof of publication of notice sufficient.

74. When the council shall have announced in one of the local papers the day on which any rate duly assessed under this Act will become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorized to receive the same, on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, for the recovery of the amount: Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be any agreement to the contrary.

Collection and recovery of rates.

Rates paid by occupier recoverable from owner.

75. The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the Colony, his agent or the person receiving the rents for him, or the occupier, either separately or both of them in one and the same action, each for the whole rate, in any competent Court, and recover the same by the judgment and process of such Court: Provided that no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered on the occupation thereof; and provided, further, that any person who, as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate, although he may have ceased to occupy the property in respect of which the rate had been imposed.

Who may be sued for rates.

Occupier not liable for rates due previous to his occupation but former occupiers to remain liable.

76. The council shall, once in every year, publish in one or more of the local newspapers a statement of every sum in arrear, and of the property in respect of which the same is due.

Arrears of rates to be published.

77. [Superseded by § 14, Act 12, 1878].

No. 23—1869.

Valuation of buildings erected or improved during duration of list.

78. In case any new building shall be erected during any such period of five years, or in case of any addition to, or alteration of, any building then already rated, increasing the value thereof, the council shall proceed to have the land and such building thereon valued or re-valued, as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.

Council may adopt valuation of Albany Divisional Council.

79. Instead of the mode aforesaid of ascertaining the value of property within the said municipality to be rated as aforesaid, it shall be lawful for the council, by resolution to adopt the valuation of such property subsisting and in force for the time being made for road purposes by or under the direction of the Divisional Council of Albany; and such valuation shall thereupon become and be the valuation for the purposes of this Act, just as if it had been made by appraisers appointed by the council as aforesaid.

Council may establish tolls.

80. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such toll or dues as may be reasonable on all persons making use of any road, bridge, or market-place within the municipality, which the council is hereby empowered to make or maintain, and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such manner as may be by the municipal regulations be in that behalf provided.

Who exempt from tolls.

81. No toll shall be payable by any officer or soldier or member of any Volunteer Corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant whilst travelling on public duty; and further that no more than one toll shall be payable in any one day, to be computed from twelve o'clock in one night to twelve o'clock in the next succeeding night, for or in respect of the same vehicle or animal.

Treasurer to keep accounts, which shall be audited and abstract published.

82. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid. All such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited: and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the local newspapers.

83. [Superseded by § 15, Act 12, 1878.]

84. [Superseded by § 16, Act 12, 1878.]

Storing of gunpowder, &amp;c.

85. The storing of gunpowder or other explosive or inflammable material shall not be permitted, except by Her Majesty's Govern-



ment for public purposes in such places as may be approved by Her Majesty's officers, or by other persons in such places as may be approved of and licensed by the Town Council for that purpose.

No. 2—1871.

86. So soon as any burial-ground or portion thereof, shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease; and after the expiration of the said term of six months any person causing any interment to be made therein shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Council may close burial-grounds.

87. This Act may for all purposes be cited as "The Graham's Town Municipality Act, 1869."

Short title.

No. 2—1871.]

[August 11, 1871.]

## ACT

For Removing certain Doubts as to the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act, 1869."

WHEREAS certain doubts have arisen as to whether the provisions of the Act No. 11 of 1867, commonly called "The Public Bodies Debts Act," apply to debts due or hereafter to become due by a certain body incorporated by and under the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act;" and whereas it is expedient that such doubts should be removed: Be it therefore declared and enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. All and singular the provisions of the Act No. 11 of 1867, commonly called "The Public Bodies Debts Act," apply and extend to all debts now due or hereafter to become due by the body incorporated under and by the Act No. 23 of 1869, commonly called "The Graham's Town Municipality Act," anything contained in either of the said Acts to the contrary notwithstanding.

Public Bodies Debts Act to extend to debts of municipality.

No. 12—1878.]

[August 2, 1878.]

## ACT

To Amend the Act No. 23 of 1869, intituled an Act to Repeal the Act No. 29 of 1861, for Establishing a Municipality for the City of Graham's Town, and to make other provisions in lieu thereof.

WHEREAS it is expedient to amend the Act No. 23 of 1869; intituled an Act to repeal the Act No. 29 of 1861, "For establish-

Preamble.

No. 12—1878.

ing a Municipality for the City of Graham's Town:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Act 23 of 1869 repealed.

1. So much of the said Act No. 23 of 1869 as shall be repugnant to, or inconsistent with, any of the provisions of this Act, is hereby repealed.

Who may be candidates at election of councillors.

2. No person shall be eligible as a candidate at any election, nor qualified to be elected a councillor for any ward, unless he be a registered citizen, and shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the Mayor, as is provided for in the following section.

Proceedings when seat of any councillor becomes vacant.

3. That when the seat or seats of any councillor or councillors shall become vacant, the Mayor shall, under his signature, give notice of such vacancy or vacancies in any one of the local newspapers, and shall therein appoint a day, not later than seven days from the first publication thereof, for the purpose of considering and determining upon such requisitions as shall be addressed to any candidate or candidates to fill up such vacancy or vacancies, but such requisitions and the replies thereto shall be delivered at the Town Office not later than three o'clock p.m. on the day so appointed.

How when requisitions are not more than sufficient to fill up vacancies; if requisitions exceed the number of vacancies, election to take place

4. If, on the day appointed, as in the preceding section mentioned, there shall be no more requisitions delivered at the Town Office than are sufficient to fill up such vacancy or vacancies, it shall be competent for the Mayor, without any further action or proceeding, to declare the candidate or candidates who have accepted the requisition or requisitions duly elected a member or members of the council, but if the requisitions to candidates exceed the number of vacancies to be filled up, then all such requisitions shall be published by affixing the same on some conspicuous place in the Town Office; and the Mayor shall within three days thereafter publish the names of the several candidates in one of the local newspapers, and at the same time therein give fourteen days' notice to the citizens, calling a meeting for the election of councillors to fill up the vacancy or vacancies, and in such notice he shall also state the date, hour, and place of such meeting.

Yearly election provided for.

Councillors to hold office three years, and may be re-elected on retirement.

5. At every yearly election, which shall take place on the first Wednesday in July of each year, there shall be elected one councillor for each ward, who shall enter upon his office on the first Thursday after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

Power and authority of council defined.

6. The council shall have power and authority to do the following acts: To make, alter, and keep in repair the roads, streets, dams, sewers, drains, culverts, and bridges within the limits of the

municipality; to secure regularity in the erection of buildings; to define the width and direction of such streets as may be made over private property by the owners thereof, which streets when so defined shall thereafter upon application by the owners of said property to the said municipality become public streets; to excavate, construct, and lay water courses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to adopt necessary measures for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils; to establish and regulate markets; to light or provide for the lighting of the streets; and to hold, occupy, or purchase any land, and to erect or purchase and to keep in repair any building for any of the purposes required by the said council; to cause all buildings which shall be certified in writing by any three master builders to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings; to cause all buildings used by the public capable of containing more than three hundred persons to be provided with sufficient and proper means of egress in case of fire or other dangerous casualty; to assize weights and measures according to the standards in force by law, to grant licences or permits for any purpose to be defined by the municipal regulations of the city, such as for cabs, omnibuses, or other vehicles plying for hire, and to regulate the tariff of charges in connection therewith; and to levy tolls and dues as hereinafter provided, and generally to devise and to carry out all such measures as shall appear to the council to be to the advantage and convenience of the municipality:—and by municipal regulations to do any of the following acts, that is to say, to direct the method by which night soil may be disposed of with power to abolish any existing practice that may be found prejudicial to health, and to substitute others; to regulate the time and place for slaughtering cattle, and the state and condition of the slaughter-houses, and the confining or killing of dogs, pigs, goats, and fowls, and to levy a tax on all carts, carriages, and dogs kept within the limits of the municipality; to regulate the width of any footpath or pavement in the street in front of any private property, and to determine on the nature and description of the material to be used therefor, also to provide for the registration at the Town Office of all births and deaths that may occur within the municipality, and of all sales of landed property, for the maintenance of order in the streets, public places, and thoroughfares of the municipality, for the conduct of traffic therein and the conservancy of the water kloofs, reservoirs, and all property and plant connected with the municipal water supply. The council shall by municipal regula-

No. 12—1878.

tions have the further power to appoint one or more competent persons to examine meat and other provisions and drinks exposed for sale, and who, in case such meat or other provisions or drinks be found unfit for human food or drink, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances; to provide for the management of the common pasture-lands of the municipality, and for fixing the number and description of cattle which each householder shall be allowed to depasture on such lands; to establish and provide for the management of public pounds within the municipal limits, provided that no toll due, or fee, or charge for any permit, or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed in accordance with the provisions of the 39th section of the said Act 23 of 1869 mentioned.

But no toll, penalty, &c., to be imposed except in accordance with section 39 of Act 23 of 1869.

Appointment by council of general or special committees.

7. 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 consisting of such members as the council may see fit, for the purpose of examining and reporting upon any matter or performing any act which in the judgment of the council would be more conveniently performed or examined into by means of a committee: Provided always that the proceedings of every such committee shall be regularly entered in its minute-book, and the result reported to the council. The Mayor to be *ex-officio* a member of all such committees.

For municipal purposes council may collect certain dues, taxes, &c.

8. For the purpose of raising the means for making new roads, streets, market conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other water works; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines, and appurtenances; for the effecting of all other public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of water works, fire-engines, police establishment, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, pound fees, dog and carriage tax, as shall be deemed necessary and reasonable, and shall be authorized by any such municipal regulations aforesaid, and shall have the power, as often as shall be deemed necessary, to make and levy a rate and assessment upon all immovable property within the municipality, the value of which is to be ascertained in the manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least sixteen members of the said council present at the meeting at which such rate shall be imposed; and provided, also, that no rate or assessment shall be imposed upon any immovable

And may levy rate on immovable property.

No such rate to be assessed unless 16 members be present at meeting.

What property exempted from rates.

property belonging to Her Majesty the Queen, nor on public prisons or police stations, almshouses or hospitals, nor on any buildings appropriated to public worship, nor upon any burial-grounds, nor upon buildings solely appropriated to the purposes of gratuitous education, provided the exemption last mentioned shall not be construed to extend to any separate or adjoining building or buildings upon the premises in which the teacher or teachers or his or their family or any other person or persons dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils, and that any other part of the premises and buildings not so appropriated shall be rated in like manner as other immovable property not exempted within the said municipality; provided that these exemptions shall not extend to any immovable property which, although belonging to Her Majesty the Queen or to the Colonial Government, shall be possessed or occupied by any person or persons in his or their individual capacity only as lessee, or sub-lessees, or otherwise.

No. 12 -1878.

Qualification of such exemption.

9. No market dues shall be levied on any person not using the public market, nor shall any compulsion be used to induce any person to use such public market; nor shall water rates be levied on any person whose property or properties in the city cannot be supplied with the water provided by the council, but the council shall have the power to impose the current water rate on the proprietors or occupiers of all buildings, houses, shops, or stores situated in any street through which the council's main water pipes run, except where tanks are formed or supplied to hold water adequate for the premises in the estimation of the council.

Levying of market dues.

On what properties water rates may and may not be levied.

10. As soon as any valuation as aforesaid shall be completed, it shall lie at the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may upon all lawful days and at all reasonable times, inspect the same and take extracts therefrom, within the period of one calendar month thence following, and the council shall, by public notice, announce for general information that it will, on some day not more than a fortnight after the expiration of said month, and at some hour and place to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation, provided that such notice shall be published immediately after the valuation shall be ready for such inspection, and repeated every week in one of the local newspapers during the said month: Provided, also, that it shall not be necessary in any suit or proceeding for the recovery of any rate to prove anything further in the nature of due notice of any such valuation as aforesaid than the publication of the said notice during the said month in pursuance thereof, in one of the said local newspapers; and upon such day as aforesaid, and at the place and hour mentioned in such notice, the said council shall hold a court and shall

Valuation roll to lie for inspection.

Notice to be given of court to hear objections to the valuations.

What proof required in proceeding for recovery of any rate.

Court to be held as announced in notice. May correct or amend valuation.

No. 12—1878.

hear all objections which may be urged to any valuation by any owner or occupier, or other persons on his behalf, and shall inquire into the merits of such objections, and for that purpose may, if the council think it desirable, take the oath of any person whom it shall see fit to examine (which oath the presiding member of the court is hereby authorized to administer) and shall confirm or correct any valuation objected to, provided the said court may be adjourned from time to time as the said court may deem necessary; and provided further that it shall not be competent for any councillor when any objection to the valuation of his property or of premises rented by him is raised to sit in his place, hear, and determine or vote upon such objection, and such objection shall be determined by the remaining members present forming the court.

No councillor to sit when valuation of his own property is in dispute.

How if property has been undervalued

11. If, in the opinion of the said court, any property in the city should appear to be undervalued, it shall be competent for the court to submit the value of such property to a duly qualified appraiser, other than the original valuer of the same, and should such appraiser be of opinion, after inspection of the property, that the same has been undervalued, then the owners or occupiers of such property together with the appraiser aforesaid, and the first valuer shall be cited to appear before the council on a day to be named, not being less than three days from the date of citation, and the several matters in question, together with any evidence which may be tendered and produced in support of or opposed to the valuations, shall then be heard by the council, who shall decide thereon.

Proceedings if property subdivided after valuation and sold publicly.

12. After the valuation of the immovable property has been made in manner hereinbefore provided, should any such property be sub-divided by the proprietor or proprietors and sold by public auction to other persons, it shall be competent for the council, pending the time of taking the next valuation, to levy rates on such sub-divided lots according to the price agreed to be given at the auction by each purchaser for the same respectively, and in such case the original valuation in respect of the entire undivided lot shall be dispensed with, and each sub-division valued at the price given therefor, and the rates thereupon shall be claimable from the purchasers respectively. But should such property be sub-divided and transferred to other proprietors by private sale or by demise or otherwise, then an appraiser shall be appointed to value the said properties, and a day shall be appointed by the council, of which a week's notice shall be given in writing to the owners of the sub-divided property, on which any objection to the said valuation shall be heard in the manner provided in the 70th section of the Graham's Town Municipality Act, 1869, and the new valuations as determined on by the council shall stand in the roll of assessment in place of the original valuation.

If sold or alienated privately.

Annual rate to be assessed.

13. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes

aforesaid, and shall assess the rate accordingly, and public notice thereof shall be given in one or more of the local newspapers, and shall, in like manner, if any further unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof and assess a second or further rates, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rates amounting in the aggregate to more than three pence in the pound on the value of the immovable property assessed, without obtaining the consent of the majority of the citizens present, and entitled to vote at a public meeting to be called for the purpose of considering such rate or rates, of the object and time and place of holding which meeting at least seven days' notice shall be given in manner hereinbefore mentioned; and provided that it shall be lawful for any two or more duly enrolled citizens at such meeting to demand a poll of the citizens entitled to vote, which poll shall be taken on a day to be fixed by the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in one or more of the local papers, and which poll shall commence at ten o'clock a.m., and close at three o'clock p.m. of such day.

No. 12—1878.

Further rate if necessary.

Aggregate rates not to exceed three pence in pound, unless public meeting approve.

Regulations with regard to such meeting.

14. The first valuation, to be made as aforesaid, of all immovable property for the purposes of Act 23 of 1869, and of this Act, shall subsist and be in force for five years from the date of the first assessment under this Act, at the expiration of which term, and of each successive term of five years, an appraiser shall be appointed and a fresh valuation shall be made in the same manner as is directed in the said Act No. 23 with regard to the first valuation.

New valuation every five years.

15. Every notice calling a public meeting of the citizens, and every notice or other document or thing required by this Act, or by the Graham's Town Municipality Act, 1869, to be published, shall, except when otherwise provided, be so published by causing a copy thereof to be inserted in one or more of the local newspapers, and a copy of the same shall also be affixed in some conspicuous place upon or near the municipal office, provided always that the Mayor shall call a meeting upon receiving a requisition signed by not less than thirty duly qualified ratepayers, and provided further that the expenses incurred by the council through its Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such a character as in the opinion of the council would warrant it in charging the same expenses to the municipality.

How notices under this Act to be published.

When mayor to call a meeting.

How expenses of meeting to be defrayed.

16. All fines or penalties imposed by this Act or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council by the name of "The

Recovery of fines and penalties.

- No. 12—1878. Council of the City of Graham's Town," and shall, when recovered, be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded; and to avoid the provisions of any municipal regulations being evaded it shall be competent for any officer of the local constabulary force, personally cognizant of the contravention of any such regulation by any person, or on production or delivery to him of an affidavit duly sworn to before a Justice of the Peace by any individual containing information that any regulation has, to his knowledge, been contravened, and stating the date of such contravention, to cite such person to appear before the Resident Magistrate for the purpose of having such contravention immediately thereafter heard and determined; and unless such person shall give security for his appearance not exceeding the maximum penalty imposed in and by the said regulation for the offence, such officer shall be justified in detaining him until the hearing of the charge, or he may release such offender with the sanction of the Mayor or Town Clerk on payment of the penalty provided in such regulation.
- Barred by lapse of three months.
- As to contravention of municipal regulations.
- Short title. 17. This Act may for all purposes be cited as "The Graham's Town Municipality Act, 1878."

No. 10—1885.]

[July 31, 1885.

## ACT

To confer Additional Powers upon the Body Corporate styled "The Mayor, Councillors and Citizens of Graham's Town."

- Preamble. WHEREAS it is expedient to confer additional powers upon the body corporate styled "The Mayor, Councillors, and Citizens of Graham's Town": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Repugnant laws repealed. 1. All laws repugnant to or inconsistent with this Act shall be, and the same are hereby repealed.
- What unoccupied rateable property in arrear for rates may be taken possession of and leased by Council. 2. Whenever any rateable property situated within the Municipality of Graham's Town shall be unoccupied and any rates accrued thereon shall have been unpaid for five years, the council of the said body corporate may in the name of the said body corporate take possession of such property and grant leases of the same subject to the provisions of this Act.
- Conditions on which Council may lease such property. 3. Every such lease shall be for such term not exceeding five years as the said council may deem fit, and shall be granted for the



best rent which may be reasonably had for such property, and subject to such covenants and conditions as the said council may determine.

No. 10—1885.

4. The said council shall not take possession of any such property until three months after a notice in writing, setting forth that rates in respect of such property are unpaid and demanding payment thereof, and stating that in the default of payment the said council will take possession of such property under the provisions of this Act has been served upon the owner of such property, if within this Colony, and whose name and address is known to the said council, or if there is no such owner within this Colony, or no such owner whose name and address is so known, until such notice has been affixed to some conspicuous place on such property and published in the *Government Gazette* at least once a month during three months; and every such notice shall contain a sufficient description of the property to identify the same; but every lease granted by the said council otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with the provisions of this section, unless all arrear rates and interest thereon are paid within twelve months after the said council shall have taken possession.

What Council to do before taking possession of such property

5. Within three months after demand by the owner of any property taken possession of by the said council as aforesaid made within thirty years after the date of taking possession, and after payment of all arrears of rates due in respect thereof and interest upon such arrears at the rate of six per centum per annum, such owner shall be entitled to resume possession of such land subject to the terms of any lease theretofore lawfully granted by the said council under the provisions of this Act.

On what conditions owner entitled to resume possession of such property.

6. All rent and other moneys payable under any such lease shall, until the payment of all arrears and interest as aforesaid by the owner, or the expiration of thirty years from the date of taking possession of such property by the said council, whichever shall first happen, be received by the said council and shall be applicable

By whom rent, &c., payable under such lease to be received and how to be applied.

- (1) In defraying the expenses of and incidental to the giving of the notices as aforesaid and the execution of such lease and the collection of the rents.
- (2) In payment to the said council of all arrears of rates and other payments due in respect of such property together with interest on all arrears of rates at the rate of six per centum per annum from the time when interest upon such rates shall accrue respectively, and in payment of all rates and other payments becoming due thereon.

And the residue of such money shall belong to such person as would have been entitled to receive the rents or profits of such property if this Act had not been passed.

7. Unless some person entitled to resume possession of any property of which the said council has taken possession as aforesaid

Such property if possession not resumed within thirty

No. 10—1885.  
years to vest in Mu-  
nicipality.

shall within thirty years after the date of taking possession pay all arrears of rates, interest and incidental expenses properly chargeable under this Act, such property and all accumulations of rent and other moneys received in respect of such property shall vest absolutely in the aforesaid body corporate.

Short title.

8. This Act may be cited for all purposes as the "Graham's Town Municipal Amendment Act, 1885."

No. 21—1886.]

[July 6, 1886.

### ACT

To Authorize the Municipality of the City of Graham's Town to Borrow the Sum of £6,000 sterling for the Repayment of Certain Advances made by the Standard Bank of South Africa.

Preamble.

WHEREAS the Council of the Municipality of Graham's Town, duly elected under the provisions of the Act No. 23 of 1869, and of Act No. 12 of 1878, and acting under the provisions of the said Acts, did from time to time borrow and take up from the Standard Bank of South Africa divers sums of money amounting to the sum of six thousand pounds sterling, which sum was so borrowed and taken up and applied, to the search for and storage of water during the late severe drought, and for other important public works and for municipal purposes in the interest generally of the inhabitants of the said municipality :

And whereas it has become necessary that the said sum or loan of £6,000 now due to the said bank should be repaid, and that in order to obtain funds for the repayment of the said sum, the council elected or hereafter to be elected under the provisions of the aforesaid Acts should be authorized and empowered, subject further to the provisions of the 48th section of the Act No. 23 of 1869, to raise by mortgage of any land or property belonging to the corporation or vested therein under the provisions of the aforesaid Acts, or by debentures on the security charged upon such land or property or by charge on the security of the rates of the said municipality, a sum not exceeding £6,000 sterling :

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Council authorized to borrow £6,000, and to secure loan by mortgage or debentures.

1. It shall be lawful for the council of the municipality of Graham's Town, now or hereafter duly elected under the provisions of the Act No. 23 of 1869, and the Act No. 12 of 1878, and the said council is hereby empowered in one or more sums from time to time to borrow or take up at interest not exceeding six per cent. from any person or persons, company or corporation, such

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1885

sum, not exceeding in all the sum of six thousand pounds sterling, as shall be necessary for repaying the amount advanced as aforesaid by the Standard Bank of South Africa, Limited; and for the purpose of securing the principal and interest of the sum so borrowed to mortgage to the person or persons, company or corporate body lending the same, so much as may by the said council be deemed sufficient of the land or property vested in the corporation of the said municipality, to issue debentures charged on the land or property vested in the corporation of the said municipality, and to mortgage or charge by debentures the rates of the said municipality:

No. 21—1886.

Provided that the person or persons, company or corporate body, lending the said sum shall not be bound to see to the application by the council of the sum so lent, nor shall the mortgage or debentures granted by the said council for securing the principal and interest of such sum be impeached or questioned upon the ground of any irregularity which may be alleged to have been committed in regard to the borrowing from the bank aforesaid the sum or any part thereof so advanced as aforesaid, and to repay which the council is hereby empowered to borrow money, and further that the provisions of the 48th section of the Act No. 23 of 1869 shall, *mutatis mutandis*, apply to any mortgage or debenture passed or issued by the said council under the provisions of this Act.

Lender not liable for application of money borrowed: Section 48 of Act 23 of 1869 to apply, *mutatis mutandis*, to mortgage or debentures.

2. Any loan obtained by the said council for the purposes of this Act shall be deemed to constitute a just debt and liability of the said council within the meaning of the Public Bodies Debts Act, 1867, and any such loan obtained from the Governor of this Colony shall be deemed to be a loan within the meaning of the Local Works Loans Act, 1882.

Loan to be a debt under Public Bodies Debts Act, 1867, and to be a loan within meaning of Local Works Loans Act, 1882.

3. All necessary costs, charges and expenses incurred in obtaining the passing of this Act shall be paid out of the ordinary revenue of the said council.

Provision for costs, &c.

4. This Act may be cited as "The Graham's Town Municipality Loan Act, 1886."

Short title.

No. 14—1859.]

[July 8, 1859.]

ACT

For the Creation of a Municipal Board for the Districts of Green Point and Sea Point, and for other purposes connected with the said Municipality.

WHEREAS the Ordinance No. 4, 1839, entitled "Ordinance for the Creation of a Municipal Board for the Districts of Green Point and Sea Point," has expired on the 1st day of January, 1859, and it is expedient that a municipal board should be again constituted and established therein: Be it enacted by the Governor of the

Preamble.

cc

1886 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14 - 1859.

Municipality of Green Point and Sea Point created.

Boundaries of municipality.

To be under administration of five commissioners.

Qualification of householders and right of voting.

Qualification of commissioners.

Meeting of householders for election of commissioners.

Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that from and after the promulgation of this Bill, a municipality shall be created, which shall be styled and called the Municipality of Green Point and Sea Point, and which shall include the space of ground situated within the following limits :

The southern boundary line of the land now the property of Mr. Wessels and others, formerly belonging to Mr. Smuts (being lot No. 1 of the Green Point lots), prolonged upward and westward to the point where the line of the west side of Strand-street, prolonged northward, shall intersect it, and prolonged downward and eastward across the Somerset or Green Point road to a point twenty yards to the eastward of the said road. A line commencing at the said lastmentioned point, and running parallel within twenty yards to the eastward of the said road, and of the cross road branching off therefrom to Three-anchor Bay to low-water mark ; thence along low-water mark to where the western boundary line of the property now belonging to Mr. Henry Hewitt, formerly belonging to Mr. Frederick Liesching (called Botany Bay), prolonged northward, runs into the sea ; thence along the last-mentioned boundary line to its southern extremity ; thence running in straight direction to the summit of the hill called the Lion's Head ; and thence eastward along the ridge and on the line which divides the water flowing therefrom to the north and south to the first point of intersection herein mentioned.

2. The said municipality shall, for the purposes of this Act, be under the administration of a municipal board consisting of five commissioners, to be elected in manner hereinafter provided.

3. Every person who is the proprietor of, or who, as renter, occupies any dwelling-house situated within the said municipality, and of the yearly value or rent of not less than ten pounds, shall be, and be deemed and taken to be, a householder within the meaning of this Act, and that, at the several meetings of such householders hereinafter appointed or authorized to be holden, every such householder who shall be personally present shall have and be entitled in his own right to one vote, and no more.

4. Any person residing within the said municipality, being the proprietor of landed property, situated within the same, of the value of not less than three hundred pounds, and none other, shall be qualified and eligible to be elected a commissioner, for the purposes of this Act.

5. Within eight days after the promulgation of this Act, the Resident Magistrate for Cape Town, or the officer at the time acting as such, shall call a meeting of the householders of the said municipality, to be holden at the Town-house, in Cape Town, in order to elect five commissioners to form such municipal board as aforesaid, for the purposes of this Act ; and at such meeting the said commissioners shall be elected in manner hereinafter provided.

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1887

6. Every person who shall be elected a commissioner at such meeting as aforesaid shall go out of office on the first day of January, 1861; and in place of such commissioners so going out of office, a like number of other commissioners, to be elected in manner hereinafter provided, shall come into office, and remain in office for two years, and at the expiration of such biennial term shall, in like manner, go out of office, and be succeeded by other commissioners, who shall remain in office for a like biennial term, and so on for ever, so long as this Act shall remain in force: Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and shall in such case again come into office; anything herein contained to the contrary notwithstanding.

No. 14—1859.  
Commissioners to go out of office every two years, but re-eligible.

7. On the first Monday in the month of December, 1860, and thereafter on the first Monday in every month of December, immediately preceding the day on which any such biennial term shall expire, a meeting of the householders of the municipality shall be holden, at such hour and place as shall be duly notified by the said commissioners, for the election of commissioners for the next succeeding biennial term.

Meeting of householders for election of succeeding commissioners.

8. Any commissioner who shall cease to possess the qualification required by the fourth section of this Act, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated to fulfil the duties of his office by mental or bodily infirmity or disease, shall, *ipso facto*, vacate his office, and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, the commissioner or commissioners then being in office shall forthwith call a meeting of the householders, for the purpose of electing a commissioner to fill up every such vacancy.

Commissioners vacating office from any cause, meeting to be called to elect others.

9. If it shall happen that at any such biennial meeting as aforesaid for the election of commissioners, there shall not have been at the least three commissioners duly elected to come into office, and succeed the commissioners who, in manner hereinbefore provided, are to go out of office at the expiration of any such biennial term, then, and in every such case, such lastmentioned commissioners shall remain in office until at the least three commissioners shall be duly elected, when they shall forthwith go out of office and be succeeded by such newly-elected commissioners.

If at biennial election three new commissioners be not chosen, those in office to remain until succeeded by others to be elected.

10. Whenever any commissioner or commissioners, by reason of the time at which his or their election shall have taken place, shall come into office on any other day than the first day of any such biennial term as aforesaid, he or they shall remain in office only until the expiration of such biennial term, and no longer, except in the case provided in the ninth section of this Act.

Commissioners elected after first day of biennial term, how long to hold office.

1888 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

In case of failure or neglect to hold biennial meeting.

11. If it shall happen that, by reason of any failure or neglect, or other cause, the biennial meeting for the general election of commissioners shall not have been duly holden on the first Monday of any month of December, in manner hereinbefore provided, or that at such biennial meeting there shall not have been three commissioners duly elected, or that when the office of any commissioner shall be or have become vacant in any manner aforesaid, the commissioner or commissioners in office shall not, within eight days after such vacancy shall have occurred, have called a meeting of the householders of the municipality to elect a commissioner to fill up such vacancy, then, and in every such case, the Resident Magistrate of Cape Town, or the officer at the time acting as such, shall, so soon as any such event shall have been notified to him in writing by any commissioner or householder, forthwith call a meeting of the householders of the municipality for the purpose of electing a commissioner or commissioners, as the case may be.

Resident magistrate to call meeting for election of commissioners.

Manner of proceeding at election of commissioners.

12. At every meeting for the election of any commissioner or commissioners, every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other qualified person; and every vote which at any such election shall be given for any person who has not been so proposed and seconded shall not be taken into account in such election, but shall be wholly void and ineffectual: And that the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected commissioner or commissioners, as the case may be: Provided, always, that when there shall be only one vacancy to be filled up, and only one candidate shall have been proposed and seconded in manner aforesaid, no vote shall be taken, and such candidate shall thereupon be elected and become commissioner: And provided, also, that when, by reason of any two or more candidates having obtained an equal number of votes, any ballot shall be indecisive as to them, such candidates shall forthwith be balloted for a second time, and he or they who shall obtain the greatest number of votes shall be elected commissioner or commissioners, as the case may be; but if such second ballot shall also be rendered indecisive, by reason of any equality of votes, the chairman of the meeting shall decide the election by his casting vote; and the commissioners elected at any meeting shall be ranked on the list according to the number of votes by which each shall have been elected, and all other commissioners elected to fill up any vacancy occurring during any such biennial period as aforesaid, shall be ranked on the list after the commissioners holding office at the time of such lastmentioned election: And where two or more commissioners shall have been each elected at the same meeting by the same number of votes, their respective priority on the list of commissioners shall be decided by lot.

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1889

13. At all meetings of such commissioners, not less than three commissioners shall be a quorum. And be it further enacted, that at the first meeting of the said commissioners, the commissioner to be called and styled the chairman of the board of commissioners shall be chosen by a majority of the votes of the commissioners then present; and the said commissioner so elected chairman shall hold such office until the next succeeding general election of commissioners; and in case of the death, resignation, or other incapacity of such chairman, then a successor shall be forthwith chosen to serve in manner aforesaid, till the then next general election as aforesaid: Provided, however, that if at any meeting of commissioners as aforesaid the chairman shall be absent therefrom, and which absence shall not have arisen from the death, resignation, or incapacity aforesaid, the commissioners then present may choose, by majority of votes, any one of their number to act as chairman for that meeting: Provided, also, that at the first meeting of every successive board of commissioners, to be elected biennially as aforesaid, the commissioners shall, in manner hereinbefore mentioned, with respect to the first board of commissioners choose a chairman to act as such for the term of two years then ensuing; and whenever the votes of such commissioners, including such chairman, are equally divided, the chairman shall have a casting vote.

No. 14—1859.

Quorum of commissioners.

Chairman to be chosen.

How, in the absence of chairman.

Chairman elected at first meeting of board to hold office for two years and have casting vote.

14. The said commissioners shall meet at such times as are specified in the municipal regulations for the time being, at some convenient place or office previously publicly notified, with open doors; and, at such meetings, it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make, concerning any matter or thing by force of, or in pursuance of, or under pretence of, the provisions of this Act, or of the municipal regulations.

Meetings of commissioners, when and how to be held.

15. The said commissioners shall meet at all other times, and so often, and at such places, as at any previous meeting shall have been determined; and it shall be at all times competent for any two commissioners, by writing under their hands, upon at least forty-eight hours' notice, to summon the commissioners to meet for any special purpose therein named; and it shall at all times be lawful for any quorum of the said commissioners, who shall have assembled together, although without any such previous notice, to hold a meeting of the municipal board, and then and there to transact any of the business of the municipality, provided that all the commissioners then present shall agree to do so, and that every other commissioner not then present and who shall not be then absent from the municipality at a greater distance than twenty miles, shall have, by writing, under his hand, signified his consent that such meeting of the municipal board shall be holden for the transaction of such business.

Special meetings of commissioners.

16. No person elected in manner aforesaid a commissioner of the said municipality shall have or receive any salary, or shall

Commissioners to receive no fee or reward.

1890 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

Commissioners  
may sue and be sued.

To be competent  
as witnesses.

To be reimbursed  
all costs, unless in  
case of wilful neglect  
or default.

Commissioners to  
frame regulations.

And submit them  
to meeting of house-  
holders within two  
months after election

Division of muni-  
cipality into wards,  
and other matters  
regarding which re-  
gulations should be  
framed.

exact, take, or accept any fee or reward whatsoever, for or on account of anything done or to be done by him, in virtue of this Act, or relative to putting the provisions of this Act into execution.

17. In any action, or suit, or prosecution which shall or may be brought for the recovery of any penalty or sum of money, due or payable by virtue of this Act, or for or in respect of any property, movable or immovable, vested in the said commissioners, or for or of any other matter or thing relating to this Act, by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued, or to prosecute, by the style or description of "The Commissioners for the Municipality of Green Point," and the secretary of the commissioners may sign all documents necessary for prosecuting any action, suit, or proceeding. Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action, or suit, or prosecution, either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding, shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be reimbursed and paid, out of the moneys to arise by virtue of this Act all such costs, charges, and expenses as they shall be put to or become chargeable with, by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same, or any part thereof, unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

18. The commissioners who shall be elected, in manner aforesaid, to compose the said municipal board, for the term commencing on the passing of this Act and terminating on the first day of January, 1861, shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same, when prepared, to a meeting of the householders of the municipality, to be called by the said commissioners upon seven days' notice: Provided, always, that such commissioners shall submit such regulations to such meeting as aforesaid within two months from the date of their election, otherwise such commissioners shall thereupon, *ipso facto*, vacate their offices, and a new board of commissioners shall thereupon be elected in manner aforesaid, and proceed to frame such regulations in manner aforesaid.

19. In such regulations it shall be the duty of the said commissioners to divide the municipality into wards, if it shall be deemed necessary so to do, and to fix the limits of such wards, and to distinguish the same by numbers, and to fix the number, and make rules as to the mode of election of the wardmasters, and as to the duties to be performed by them, and for the classification and



valuation of the immovable property therein, and to frame all other regulations which may be necessary to enable the said commissioners to carry into effect the provisions of this Act, or such of them as the said commissioners shall think expedient and necessary for the municipality.

20. At the meeting to which such regulations as aforesaid shall be submitted, the question shall be put by the chairman on each and every clause contained in such regulations, *seriatim*, and afterwards, on the whole of such clauses as have not been disapproved of and rejected by such meeting, jointly; and the majority of votes shall decide whether such clause, or the whole of such regulations, as the case may be, shall or shall not be adopted.

Regulations, how to be adopted by meeting of householders.

21. The regulations adopted at such meeting shall first be published in the *Government Gazette* for fourteen days, for general information, and then be transmitted by the said commissioners to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof, of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the *Government Gazette*, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein: and in the event of the said regulations being amended by the said Governor, by and with the advice of the Executive Council, the regulations, so amended, shall forthwith be transmitted to the said commissioners, who shall forthwith, upon a notice of not less than seven days, call a meeting of the householders of the municipality, who shall, by a majority of votes, decide whether the said regulations so amended shall be adopted or not: and if the regulations be adopted, the said commissioners shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation, and cause the same to be published in the *Government Gazette*, and upon such publication, the same shall become as legal, valid, and effectual as if the same had been inserted herein: Provided, always, that nothing contained in such regulations, or in any of the regulations mentioned in the twenty-second and twenty-third sections of this Act, shall be repugnant to, or inconsistent with, the true intent and meaning of the provisions of this Act.

Regulations, how to be made valid.

22. If the said regulations, when submitted to the said Governor, shall be disallowed by him, by and with the advice of the Executive Council, or if such regulations, after being amended by the Governor, by and with the advice of the Executive Council, shall not be adopted by the majority of votes at the meeting of the householders of the municipality aforesaid, then, and in every such case, the commissioners shall again, *de novo*, frame other municipal regulations; and the like proceedings shall be taken for having the same submitted to and adopted by, and when amended by the

In case regulations be disallowed, commissioners to frame new regulations.

1892 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No 14—1859.

Governor, decided upon by the householders of the municipality, and submitted to, and approved or amended by the said Governor, by and with the advice of the Executive Council, as by the provisions of the twenty-first section of this Act are prescribed to be taken as to the municipal regulations therein mentioned; and so on, until such regulations as have been adopted by the householders in manner aforesaid shall have been approved of by the said Governor in manner aforesaid, or when amended by him in such manner, shall have been adopted by such householders in manner aforesaid.

Regulations, how to be amended, reformed, or repealed.

23. At any time within one month after the expiration of each and every term of ten months from the publication of any such regulations as aforesaid, and at any other time, when such commissioners shall have obtained the consent of the said Governor so to do, it shall be lawful for the said commissioners, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of such householders as aforesaid, not less than ten, to call a meeting of such householders as aforesaid, upon seven days' notice, to be given in manner aforesaid, for the purpose of adding to, amending, or repealing the existing regulations, or any of them, by a majority of persons present and entitled to vote at such meeting; and the said regulations, after being so reformed, shall be first published in the *Government Gazette*, for fourteen days, and then transmitted by the said commissioners to the Governor, for the approval or disallowance thereof, or of any part thereof, by the said Governor, by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the *Government Gazette* forthwith, and proclamation of such approval shall be made, and the said reformed regulations, so approved of as aforesaid, shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void, in so far as the same have been altered or repealed by any such reformed regulations, so approved of as aforesaid.

Reformed regulations to be published in *Gazette*, and former regulations repealed.

Commissioners to appoint treasurer and other officers, and may remove them.

24. It shall be lawful for the said commissioners for the time being, and they are hereby authorized and required, to appoint during pleasure, such Treasurer and other officers as shall be specified in any such regulations, and to remove and displace the same.

Treasurer to give security.

25. It shall be lawful for the said commissioners, and they are hereby required, to take security from the Treasurer to be appointed by virtue of this Act, for the due execution of his office of Treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said Treasurer at any one time. And in case any such Treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said commissioners, then the appointment of

How, if he fail to do so.

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1893

every such person so neglecting or refusing, shall be null and void to all intents and purposes, and the said commissioners shall, within three weeks then next, assemble and appoint some other fit and proper person to the office of Treasurer, instead of the person so refusing or neglecting as aforesaid; and shall so assemble and appoint, from time to time, until security shall be given to their satisfaction as aforesaid.

No. 14—1859.

26. Every such Treasurer and other officer appointed by virtue of this Act shall, under his hand, and at such time or times, and in such manner as the said commissioners shall direct, deliver to the said commissioners, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge by virtue of this Act, and also of all moneys which shall have been by such officer received by virtue, or for the purposes, of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the Treasurer for the time being, or to such person or persons as the said commissioners shall appoint to receive the same: and if any such Treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said commissioners, by notice in writing under their hands given to or left at the last or usual place of abode of such officer, all books, papers, and writings, in his custody or power relating to the execution of this Act, or to give satisfaction to the said commissioners, or such other person or persons as aforesaid, respecting the same, then, and in every such case, upon complaint made by the said commissioners, or by such person or persons as they shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to the Supreme Court, or any Judge thereof,—the said Court or Judge shall, if they or he shall see fit, summon the officer so refusing or neglecting to appear before him; and if it shall appear to the said Court or Judge, upon the hearing of the case, that any moneys remain due from such officer, such Court or Judge may, by decree of the said Court, or warrant under the hand of the said Judge, cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such Court or Judge that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings,

Treasurer and other officers to render accounts to commissioners.

How, in case of refusal or neglect.

1894 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

relating to the execution of this Act, remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then, and in every such case, such Court or Judge shall, and they or he are or is hereby required to commit such offender to the common gaol or house of correction of Cape Town, there to remain without bail until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said commissioners, or to such other person or persons as aforesaid, or until such other or further time as the said Court or Judge shall direct: Provided that nothing herein contained shall prevent such Treasurer, officer, or other person from being tried, and if found guilty, convicted and sentenced according to law, for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act: And provided, further, that nothing herein contained shall prevent the said commissioners from bringing their action for the recovery of any sum or sums due by such Treasurer, officer, or other person to the said municipality.

Defaulter may be prosecuted criminally.

Sums deficient may be recovered from him at law.

Prosecution of treasurer or other officers not to acquit their sureties.

Commissioners to keep records of proceedings.

To keep accounts of money received and expended, which shall be open to inspection.

27. No prosecution or commitment under the provisions of this Act, of any Treasurer or other officer or person, to be appointed under the powers of this Act shall acquit and discharge any surety or security that shall or may have been taken by, or given to, the commissioners for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

28. All acts, orders, and proceedings of the said commissioners, at any of their meetings, shall be entered in a book to be kept by them for that purpose, and shall be signed by the chairman, or person acting as such, and one of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings, upon any appeal, or trial, or information, or any proceeding, civil or criminal, and in any Court within this Colony.

29. The said commissioners shall, and they are hereby required, from time to time, to order and direct a book or books to be provided and kept by such person and at such place as they shall from time to time appoint, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for, or on account of, the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall, at all reasonable times, be open to the inspection of the said commis-

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1895

No. 14—1859.

sioners, and of every such householder as aforesaid, without fee or reward; and the said commissioners and other persons aforesaid, or any of them may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners, or any of them shall refuse to permit, or shall not permit, the persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such commissioners or commissioner shall each forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

30. In the month of January, in every year, a true account shall be made, in writing, of all moneys received and paid by virtue of this Act during the preceding year, ending on the 31st day of December in every year; and a copy or duplicate of such account, verified by the said Treasurer, and certified by the chairman and one of the said commissioners, shall be deposited with the said commissioners, and shall be open to the inspection of any householder of the municipality, or any party interested, and an abstract thereof published in the *Government Gazette* for general information, before the fifteenth day of the said month of January.

Annual account to be rendered and published.

31. It shall and may be lawful for the said commissioners, when they shall see fit, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of householders of the said municipality, not less than ten, to call a meeting of such householders, for the purpose of assessing any such rate or rates on the immovable property situated within the municipality, and to endure for such period, not exceeding twelve months, as the majority of persons present and entitled to vote at such meeting shall deem necessary for all and any of the purposes of this Act: Provided, always, that when it shall at any time be deemed to be necessary or expedient to assess any rate for the purpose of defraying the expense of lighting or watching any particular ward or wards, or any portion of such ward or wards, or any particular district of the said municipality, or of procuring for the use of the inhabitants thereof any additional supply of water other than that to be furnished from the Cape Town waterworks, in manner hereinafter mentioned, every such rate shall be assessed solely and exclusively on the immovable property situated within the ward or wards, or portions thereof, or the particular district so to be lighted or watched, or for the use of the inhabitants of which such supply of water is to be furnished, unless such meeting shall decide and appoint, by a majority of not less than three-fourths of the votes of the persons present and entitled to vote thereat, that the rate for defraying the expense of any such lighting or watching shall be assessed on the immovable property situated elsewhere within the municipality: Provided, also, that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any Court having jurisdiction.

Rates, how to be assessed.

Meeting of householders.

Rates for particular wards.

1896 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.  
Rates when due,  
may be collected by  
a collector.

32. The rates to be levied by virtue of this Act shall become due and be payable within fourteen days after the same shall have been assessed in manner aforesaid, and that it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed; and the said collector is hereby authorized to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners, or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided, also, that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Collector to pay  
over sums collected  
to treasurer.

33. The said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the Treasurer, to be appointed in the said municipality under this Act, within forty-eight hours after the receipt of any sum so collected by such collector, from the person by whom such sum was paid; and at the time of making any payment to the said Treasurer the said collector shall deliver to him a note in writing, signed by him, specifying the amount so paid, which note shall be kept by the Treasurer as a voucher for his receipt of that particular amount; and the receipt of the said Treasurer specifying the amount paid him by the said collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with the municipality.

Watchmen may be  
appointed by com-  
missioners.

34. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time to appoint and employ such number of watchmen as shall be sufficient for the proper protection of the inhabitants, houses, and property within the limits of the municipality, by day and night, and provide all such watchmen with such clothing, arms, ammunition, and weapons, and to assign to them such duties, and appoint such hours for them to be on duty, and also to fix their monthly pay, salary, or allowance; and from time to time to make such regulations, relative to them and their duties, as shall be deemed fit; and also to cause such a number of watch-houses to be provided as shall be necessary for the purposes aforesaid, within the limits of the municipality.

Watchmen to act  
as constables.

35. All watchmen, while in execution of the powers and authorities of this Act, shall act as constables, and they are hereby invested with, and shall have and enjoy, the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with or shall or may have and enjoy, or is or are, or shall be subject or liable to by law.

Commissioners to  
keep up fire-engines.

36. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they

are hereby empowered, from time to time, to keep up fire-engines for the use of the municipality, and to make such further regulations thereon as they shall think necessary.

37. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, to cause such lamp-irons or lamp-posts, or other posts, to be put or be fixed upon or against the walls or palisades of any houses, tenements, buildings or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner, within any of the roads, streets, and places within the limits of the said municipality as shall be deemed proper; and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting any such roads, streets, and places, and cause the same to be lighted during such hours as shall be necessary; and also, from time to time, to make such regulations thereon as as they shall find necessary.

To put up lamp-posts and lamps in the roads and streets.

38. The said commissioners shall, and they are hereby empowered to cause to be made, erected, and built, and covered in, such bridges, watercourses, drains, and ditches as now are or shall be deemed necessary within the municipality, and cause the same to be kept at all times in good and sufficient repair; and to remove such of the same as shall be deemed unnecessary, and from time to time to make such regulations thereon as they shall find necessary.

To build, repair, and remove bridges.

39. Every proprietor of immovable property within the said municipality shall be bound, and such proprietor is hereby required, in case of sale and disposal by him of immovable property within the said municipality, to give notice in writing of such sale and disposal to the secretary of the said municipality, and such notice in writing shall be given within thirty days after transfer of such immovable property shall have been executed in the office of the Registrar of Deeds in the name of the purchaser or purchasers thereof; and if such proprietor shall neglect to give such notice, he shall continue liable for the amount of any rate which shall have been assessed on such immovable property, and it shall be lawful for said commissioners, and they are hereby empowered, to sue such proprietor before any competent Court, and to obtain the judgment and process of such Court for the recovery of the same.

Proprietors of immovable property to give notice when selling such property.

40. It shall be lawful for the said commissioners, and they are hereby empowered, to cause the roads within the limits of the municipality to be at all times kept in good and sufficient repair, and, as occasion shall require, to cause such new roads to be made within the limits aforesaid, as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair, and from time to time to make such regulations thereon as to them shall seem fit. And that for this

Commissioners to make and repair roads.

1898 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

Race-course not to be injured.

purpose, it shall be lawful for the said commissioners to cut drains for conveying water from off the said roads into any common land or other land lying between the said roads and the sea, whether within or without the said municipality, wherever the same may be necessary or requisite; and also to take, gratis, from any of the said common land within or without the said municipality, materials for the repair and improvement of the said roads: Provided, always, that no such drain shall be carried across the race-course at Green Point, or shall be carried under any house, now erected or hereafter to be erected, or through any garden now enclosed, or hereafter to be enclosed, without the consent of the proprietor thereof, and that such materials shall always be taken in such manner as that no injury be thereby done to the said race-course, and that the gravel pits or holes be properly fenced in or enclosed whilst the material is being extracted, and that the said pits or holes be filled and levelled within the period of fourteen days from the cessation of such works; on failure of which the party so extracting and neglecting to fill up the holes, or the commissioners of the municipality, under whose orders he may be acting, shall become liable to a penalty not exceeding five pounds, and which may be recovered before any competent Court by any party or parties suing for the same.

To build bridges over drains appertaining to public roads, when crossed by private roads.

41. Wherever any road now exists or shall hereafter be made, leading from any public road within the municipality, across any drain appertaining to such public road, it shall be lawful for the said commissioners, and they are hereby empowered, either to cause a bridge to be made over the drain, where it is so crossed by, or to pave it to the extent of the breadth of such road so crossing it, as they shall consider to be most expedient, at the expense of the proprietor or proprietors, for affording access to whose property such lastmentioned road shall be used; and to make such regulations for having all such bridges kept in such repair as to occasion no stoppages in or injury to any such drain, and to cause all accumulations of sand or other obstructions of such drain under any such bridge, or at any such crossings, to be removed at the expense of such proprietor or proprietors; and also to remove, or cause to be removed, any pond, reservoir, or accumulation of water, situated on any ground adjacent or near to any such public road, whereby injury is occasioned to any such road, at the expense of the proprietor or proprietors of such ground. And if the amount of any such expense shall not be by him or them paid within fourteen days after demand, the commissioners are hereby empowered to institute proceedings at law for the recovery thereof.

To establish markets, keep them in repair, and regulate their cleanliness.

42. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, as occasion may require, to keep up or establish within the limits of the said municipality,



MUNICIPALITIES (GREEN POINT AND SEA POINT). 1899

No. 14—1859.

a market or markets for the sale of cattle, meat, fish, poultry, vegetables, fruit, and the like; and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and to cause the same to be kept in good and sufficient repair; and also, to frame and make such regulations, and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

43. It shall and may be lawful to and for the commissioners, and they are hereby empowered, from time to time, to make necessary rules for the due and proper care of weights, measures, and the quality and assize of bread, and the quality of meat; and they are hereby empowered, at all times, to visit and enter into the shops or places, where bread, meat, and other articles are sold, for the purpose of assizing the bread and examining the weights and measures; and also of taking proper care that the bread and meat sold are good and wholesome.

To examine weights and measures, and assize bread.

44. The property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said roads, and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials, and furniture and things, of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners), shall be, and the same is hereby vested in the said commissioners, and may be used, sold, and disposed of by them, from time to time, as they shall deem necessary; and the money arising from such sale shall be applied towards the purposes of this Act; and the said commissioners are hereby authorized and empowered to bring or cause to be brought, any civil or criminal action, in manner as hereinbefore or hereinafter is provided, against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things, the property in which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or Ordinance which may hereafter be created, or then be in force in that behalf. And in all such actions it shall be, and be deemed and taken to be, sufficient to state generally that the article or thing, for or on account of which such action shall be brought, is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Property in lamps, &c., vested in commissioners, who may sue and prosecute in respect of damage done thereto.

45. If any person shall wilfully break, throw down, spoil, or damage, any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil, or damage any building, the property in which is by the provisions of this Act vested in the said commissioners, or shall wilfully break or

Persons injuring property vested in commissioners to be punished.

1900 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

damage any public watercourse, drain, or ditch within the limits of the said municipality, it shall be lawful for any person who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the Resident Magistrate of Cape Town; and if the party accused shall be convicted of any such offence by such Resident Magistrate, he, she, or they shall forfeit, severally, any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act; and in case any such offender shall not, on conviction, pay the said forfeiture and satisfaction, such Magistrate is hereby required to commit him, her, or them to the common gaol or house of correction, there to be kept to hard labour, if such Magistrate shall so order, for any term not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid: Provided that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

Proceedings, where injury is done carelessly or accidentally.

46. If any person shall carelessly or accidentally do any such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said commissioners for the damage or injury so done, it shall and may be lawful for the said Resident Magistrate, and he is hereby required, upon the application or complaint of the commissioners, or any two of them, to summon the party complained of, and upon the hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said commissioners, for such damage, as such Resident Magistrate shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof, may be levied and recovered as any penalty or forfeiture is by this Act directed to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

Commissioners may abate nuisances.

47. It shall be lawful for the said commissioners, and they are hereby authorized, to remove, put down, and abate all nuisances of a public nature within the said municipality, or which may tend

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1901

No. 14—1859.

either to injure the health or in any way affect the safety or the right of the inhabitants at large, and if need be, to proceed at law before the Resident Magistrate, or Supreme Court, against any person or persons so committing any such nuisance, as for the abatement thereof, and for any damages thereby occasioned; and, further, that the said commissioners shall, and they are hereby required to cause all watercourses, drains, roads, and places within the said municipality to be kept clean and free from dirt, filth, or rubbish; and any person convicted upon complaint made by the commissioners to the Resident Magistrate, of throwing dirt, filth, or rubbish into any such road, watercourse, drain, or place as aforesaid, shall forfeit and pay any sum of money not exceeding five pounds; and in case of neglect or refusal forthwith to pay such money, then the same, and all expenses attending the recovery thereof, may be levied and recovered as any other penalty or forfeiture is by this Act directed to be levied and recovered in other cases.

48. It shall be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the said commissioners for the purposes of this Act, which contract shall specify the work to be done, and the price to be paid for the same, and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by two or more of the said commissioners, and also by the person or persons contracting; which contract, or a copy thereof, shall be entered in a book to be kept for that purpose; but no contract beyond the value of one hundred pounds shall be entered into, unless eight days' notice be previously given in the *Government Gazette*, and affixed to some conspicuous place within the municipality, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if such commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price, it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper: Provided, however, that no commissioner shall be allowed, either directly or indirectly, to become a contractor, or to tender for any contract, either in his name, or in the name of, or jointly with, any other person, on pain of forfeiture of all his share and interest in such contracts, for the benefit of the municipality, and be considered to have vacated his office of commissioner, *ipso facto*, and to be ineligible to be elected at any future period to serve as a commissioner.

Commissioners may enter into contracts.

49. The said commissioners, acting in pursuance of any such regulations as aforesaid, may, and they are hereby authorized and

May hire houses or lands for the purposes of this Act.

ff

1902 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14--1859.

empowered to treat with the owner or owners and occupier or occupiers of any houses or buildings, lands, and grounds, for the purpose of this Act, for such sum of money or yearly rent, or for such time as to them shall appear reasonable.

Property in lands, &c., vested in commissioners.

50. The property of and in all lands, roads, and buildings to which inhabitants of the municipality of Green Point shall at any time have or acquire a common right, shall be vested in the commissioners of the said municipality for the time being.

Commissioners to make regulations as to care of pasture lands, and to establish pounds.

51. It shall be lawful for the said commissioners, and they are hereby empowered, from time to time, if necessary and expedient, to make rules for the due and proper care of the common pasture lands within the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kind; and also to impose fines on any person contravening such regulations, and to establish and erect one or more pounds within the said municipality, and to appoint one or more poundmasters, and to make all such pound regulations as shall be necessary or expedient.

Commissioners may, with consent of ratepayers and approval of Governor, sell or lease lands.

52. It shall be lawful for the commissioners for the time being of said municipality to sell or lease, as they may consider most expedient, any lands to which the inhabitants of Green Point and Sea Point shall at any time have or acquire a common right, or any lands which may be the property of the said commissioners in their said capacity, and apply the proceeds to the purposes of the said municipality: Provided that the said commissioners shall not be authorized or permitted to sell any such lands, or to lease any such lands for any term longer than five years, without having first obtained the consent of a majority of ratepayers at a public meeting called for that purpose, after a notice of fourteen days duly given in the *Government Gazette* of such sale or lease, and without having also obtained the consent of the Governor, acting with the advice of the Executive Council: And provided that all such lands shall, when sold, be sold by public sale, and that all leases of such lands for any term exceeding five years shall be granted or disposed of in such manner and under such conditions as the said commissioners shall propose, and the said majority of ratepayers shall approve of.

May raise loans on credit of rates.

53. It shall be lawful for the commissioners for the time being of said municipality, if it should be found necessary so to do, to raise, by way of loan, on the credit of any rates to be assessed by the said commissioners, any such sum or sums of money as may, at any time, be required by said commissioners for the time being for carrying into effect the objects of this Bill: Provided, always, that no such loan shall be effected, unless the object and amount thereof shall have been published fourteen days previous in the *Government Gazette*; and provided permission to conclude such loans shall have been received from a majority of ratepayers at a

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1903

No. 14—1859.

public meeting called for that purpose, after a notice of fourteen days duly given in the *Government Gazette*, and having previously obtained the sanction of the Governor and Executive Council to borrow any sum exceeding one thousand pounds: Provided, always, that the said commissioners for the time being shall, in every case in which such loan shall have been approved of in manner aforesaid, call for tenders for the loan of the sum or sums of money required, and shall accept the tender which specifies the lowest rate of interest; and provided, also, that every sum so borrowed shall be paid out of the proceeds of the rates hypothecated with all convenient speed: Provided, further, that the loan or loans in existence shall not at any time exceed five thousand pounds sterling.

54. The proprietors and inhabitants of or on any lands situated within the municipality of Green Point, and being within one quarter of a mile of the common pasturage land lying between the Somerset and Green Point road and the sea, and without the municipality of Green Point, shall at all times, and in whomsoever the property or administration of such common pasture land shall for the time being be vested, have right and be entitled to pasture their cattle thereon, on the same or on as favourable terms and conditions, and under such and the same regulations as the inhabitants of Cape Town, or any part thereof, shall, for the time being, be entitled to pasture their cattle thereon.

Proprietors within municipality to have a right to pasture cattle on common pasture lands.

55. (1) The inhabitants of the said municipality of Green Point shall have the right, and shall be entitled to be furnished and provided from the waterworks now existing, or which may hereafter be made, erected, or provided, for supplying water to the inhabitants of Cape Town, in whomsoever the property, management, or administration of any such waterworks shall, for the time being, be vested, with a supply of water, in the same proportions, on the same terms, at the same rates, and under the same regulations, in, on, at, and under which the inhabitants of Cape Town shall for the time being have, or be entitled to have, water supplied to them. And that, in consideration of such water rates so to be paid by the inhabitants of the municipality of Green Point as aforesaid, the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid shall for the time being be vested, shall, and they are hereby required to provide, keep in good order, and repair, a main pipe, extending from the said waterworks as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends; and also the four fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the said municipality of Green Point.

Inhabitants of Green Point to be supplied with water from waterworks for supply of Cape Town

<sup>1</sup> See also §§ 53, 54 and 59, Act 44, 1882 (Municipalities, Cape Town).

1904 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

Neither commissioners nor inhabitants to have property in, or management of, such waterworks.

56. Provided, always, that neither the said commissioners nor any of the inhabitants of the municipality of Green Point shall have any property in, or any management of, any pipes, pumps, or other machinery now used, or which may hereafter be erected, provided, or used by the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid, for the purpose of furnishing and providing from the said waterworks a supply of water to the inhabitants of the said municipality in manner aforesaid. And that the property, management, and administration of such last-mentioned pipes, pumps, and other machinery shall be vested in such community or communities, person or persons, as aforesaid.

Commissioners to make regulations as to water procured from other sources.

57. It shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time, to provide and to carry and lay any pipe or pipes for the conveyance of water, to which the inhabitants of the municipality shall at any time have or acquire a common right (not being water supplied in manner aforesaid from any such waterworks as aforesaid), from any reservoir, river, or spring, to any house, building, or other place within the limits of the municipality; and the said commissioners shall acting in pursuance of any such regulations as aforesaid and they are hereby authorized from time to time to make such regulations touching the quantity of water (not being water so supplied in manner aforesaid from the aforesaid waterworks) to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary.

Seven days' notice to be given of all meetings of householders.

58. Every meeting of the householders of the municipality hereinbefore appointed or authorized to be called by the Resident Magistrate for Cape Town, or by the commissioners of the said municipality, shall be called, and that the hour and place at which shall be holden the meetings appointed to be holden in the seventh section of this Act, shall by the said commissioners be notified by advertisements, to be published in the *Government Gazette* of this Colony, not later than on the seventh day previous to the day on which such meeting shall be appointed to be holden: Provided, always, that in the event of any sudden and unforeseen emergency, it shall be lawful for the said commissioners to call a meeting of the householders of the municipality, on notice of not less than one clear day to be given by them, by written or printed notices, posted on conspicuous places within the municipality, or by advertisements published in the said *Gazette*, or in any newspaper published in Cape Town, or by writing shown to or left at the dwelling-house of every householder residing within the municipality. And every such notice, notification, and advertisement shall specify the purpose or purposes for which any such meeting shall be holden.

Except in cases of sudden emergency.

MUNICIPALITIES (GREEN POINT AND SEA POINT). 1905

59. At any of the meetings hereinbefore mentioned and appointed, or authorized to be holden, such householder as may be elected by the majority of persons present and entitled to vote shall preside as chairman, and shall, notwithstanding, be entitled to vote as he might have done had he not been elected chairman, and shall, when the votes of the meeting are equally divided, also have a casting vote.

No. 14—1859.

At such meetings, chairman to be elected and to have casting vote.

60. No proprietor, renter, householder, agent, or other person, being a female, shall be entitled to vote at any meeting of householders of the municipality of Green Point, or to be proposed as a candidate for, or to be elected to hold, any office created or established under the provisions of this Act.

No female to vote or hold office.

61. No inhabitant of or proprietor of property within the said municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceedings, to be had, made, prosecuted, or carried on under the provisions of this Act.

Inhabitants or proprietors to be deemed competent witnesses

62. If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property within the said municipality shall not, on demand made by the person duly authorized to collect the same, be paid by the occupier of such property, or by the proprietor thereof, it shall be lawful for the said commissioners, and they are hereby empowered, to sue, either the said occupier or the said proprietor separately, or both of them in one and the same action, each for the whole, before any competent Court, and to obtain the judgment and process of such Court for the recovery of the same, reserving to such occupier and proprietor respectively such relief against each other as they may be lawfully entitled to: Provided, always, that no person shall, as occupier of any such immovable property, be liable to pay or to be sued for any rate which had been assessed on the same, in respect of any period, or which had become due and payable at any time, before such person entered on the occupation of such property. And that every person who, as occupier of any such property, shall, at any time, have become liable to pay any rate which may have been assessed thereon shall continue to be liable, and may be sued in manner aforesaid for the same, notwithstanding that such person shall have ceased to occupy such property: And provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid, by either the proprietor or the occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate.

Occupier or proprietor may be sued, or either of them, for amount of any rate.

63. All offences committed in contravention of this Act, or of any municipal regulation made under the authority thereof, may lawfully be prosecuted by the said commissioners, in manner hereinbefore provided, in the Court of the Resident Magistrate for Cape Town; and if any person shall be duly convicted of any such offence, and shall not pay or satisfy the amount of the fine

Punishment of offences in contravention of this Act.

1906 MUNICIPALITIES (GREEN POINT AND SEA POINT).

No. 14—1859.

imposed upon him or her, it shall be lawful for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months. And that where it has hereinbefore been enacted and provided that any such offence as aforesaid shall be punishable by fine, and the amount of such fine has not been specified, it shall be lawful for the said Resident Magistrate to sentence any person who shall be duly convicted of any such offence to pay a fine of not less than five shillings nor exceeding five pounds; and the amount of all such fines when recovered shall be paid to the Treasurer of the municipality for the time being, for the purposes of this Act: Provided, always, that the said commissioners may award so much of every such fine as they may deem fit, to be paid as a reward to any person who may have given information concerning the offence in respect of which such fine was imposed, or who may have apprehended the offender.

Act not to affect private rights.

64. Nothing herein contained shall extend, or be construed to extend, to injure or impair the rights or property which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Act, or of any municipal regulation, by which the right or property of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally, or any of their goods and chattels (other than such as may be vested in them in pursuance of this Act), liable to the payment of any sum of money, as or by way of compensation or satisfaction, in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Expenses incurred in 1859, for repairs to public road, and expenses of carrying this Act into effect, to be paid out of moneys levied under this Act.

65. All the necessary costs, charges, and expenses incurred during the year 1859, by the proprietors and inhabitants of the said municipality, for or in respect of any proceedings by them had for the purpose of having better and more effectual provision made for the repairs of the public road within the districts of Green Point and Sea Point, or in anywise incurred, touching and concerning this Act, as also all the necessary costs, charges, and expenses attending the carrying the provisions of this Act into effect, shall be paid out of the money authorized to be received by the commissioners under the provisions of this Act.

Laws repugnant to this Act repealed, as far as repugnant thereto.

66. The Ordinance No. 34, entitled "An Ordinance for dissolving the Burgher Senate;" the Ordinance No. 48, entitled "An Ordinance for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the Laws and Regulations relating thereto;" the Proclamation bearing date the 1st of April, 1814; the Ordinance No. 55, entitled "An Ordinance for regulating and defining the mode of Collecting Taxes



and Rates in Cape Town and the district thereof, and for constituting a General Survey of the same;" and the Ordinance No. 57, entitled "An Ordinance for Repealing certain Taxes and Duties, and imposing certain others in lieu thereof;" shall, in so far as the same, or any of the provisions thereof, are repugnant to or inconsistent with any of the provisions of this Act, be repealed, and the same are, to such extent as aforesaid, hereby repealed accordingly.

No. 36—1877.

No. 36—1877.]

[August 8, 1877.]

## ACT

To enable the Commissioners of the Municipality of Hanover to borrow a Sum of Money not exceeding Two Thousand Pounds Sterling for the purpose of Constructing a Covered Watercourse in the said Municipality or otherwise improving the Water Supply of the Village of Hanover, and of repaying Moneys already borrowed and expended for that purpose.

WHEREAS the inhabitants of the Municipality of Hanover have been for a number of years, and still are suffering great inconvenience in consequence of a very deficient and defective supply of pure water: And whereas it has been considered expedient that the said water supply should be improved: And whereas the commissioners of the municipality, acting in conformity with the desire and representations of the inhabitants, have borrowed certain moneys for the improvement of the said water supply, and have expended them upon the same: And whereas it is expedient that the said commissioners should be empowered to borrow a sum of money, not exceeding two thousand pounds sterling, for the purpose of constructing a covered watercourse in the said municipality, or otherwise improving the water supply of the village of Hanover, and of repaying the moneys heretofore borrowed and expended by them for the said purposes as aforesaid:

Preamble.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the commissioners of the municipality of Hanover to borrow and take up such sum or sums of money, not exceeding in the whole the sum of two thousand pounds sterling, for the purposes aforesaid, and any amounts borrowed as aforesaid are hereby charged upon and made payable out of all

Borrowing powers.

- No. 36—1877. and singular the rates and revenues for the said municipality, and shall be a first and preferent charge upon the same.
- Special rate may be levied. 2. It shall be lawful for the commissioners of the said municipality, whenever the general revenue of the municipality is insufficient, to impose for the purpose of providing for the payment of the principal or interest, or principal and interest of such loan, a certain annual rate or tax upon the value of the immovable property of the inhabitants, not exceeding two-pence in the pound, and every rate so imposed shall be levied in the same manner as if it had been imposed under the provisions of Ordinance No. 9, 1836.
- Acknowledgments to be given for moneys borrowed. 3. The commissioners aforesaid shall grant to the party or parties or company or society from whom they shall borrow such money a written acknowledgment of or for the money so borrowed not exceeding in the whole the abovementioned sum of two thousand pounds sterling, such acknowledgment to be in substance in the form annexed to this Act, and to be signed on behalf of the said commissioners by at least three of the commissioners for the time being.
- Applying Act 11 of 1867. 4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."
- Account to be kept. 5. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall, as long as any part of any debt contracted by virtue of this Act shall be in existence, make an annual statement thereof up to the 31st December, which statement shall be deposited in the office of the Civil Commissioner or Resident Magistrate, or of the said municipality, for the information and inspection of resident householders.
- Costs of this Act. 6. The necessary costs, charges, and expenses for obtaining this Act and carrying the provisions thereof into effect, shall be paid by the commissioners out of the general revenue of the municipality.
- Short title. 7. This Act may be cited as the "Hanover Municipal Water Act, 1877."

---

#### SCHEDULE.

Schedule. We, the undersigned commissioners of the municipality of Hanover, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ pounds sterling for so much money borrowed by the said commissioners for the purposes set forth in the Hanover Municipal Water Act, 1877: and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided: and we further covenant and engage in our said capacity that the principal

and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

No. 42—1882.

Given under our hands at Hanover, this — day of — 18—.

A. A. , Chairman.  
 B. B. }  
 C. C. } Commissioners.

Witnesses :

D. D.  
 E. E.

No. 42—1882.]

[June 29, 1882.]

## ACT

For enabling the surviving Trustees of the Church Committee of Hanover to transfer to the Commissioners of the Municipality of Hanover certain Immovable Property, and for other purposes connected with such transfer.

WHEREAS the farm " Petrus Vlei," situated in the division of Colesberg, was on the 13th day of October, 1856, transferred by G. W. Gous to the following persons, that is to say : Christoffel Johannes Vermeulen, Walter Barber, Johannes Wilhelmus Swart, Philippus Johannes Andreas Watermeyer, and Adriaan Johannes Botha, in their capacity as " The Church Committee of Hanover," for the purpose, as therein set forth, of establishing the village of Hanover, and making the same a separate parish of the Dutch Reformed Church : and whereas the said village has been established and the said parish formed as contemplated by the said transfer, but all the several persons hereinbefore named, to whom such transfer was made, are now dead with the exception of the said Philippus Johannes Andreas Watermeyer and the said Adriaan Johannes Botha : and whereas it has been deemed advisable by the Church Committee of Hanover that the rest, residue and remainder of the said property so vested in the said Church Committee or the surviving members thereof, still unsold, should be transferred to and vested in the commissioners of the municipality of Hanover under the same terms and subject to the same conditions as those under which the said farm was transferred to the several persons hereinbefore named : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

Preamble.

1. It shall and may be lawful for the said Philippus Johannes Andreas Watermeyer, and Adriaan Johannes Botha, or the survivor of them as such surviving members of the Church Committee

Power to surviving  
 Members of Church  
 Committee to trans-  
 fer remainder of pro-

- No. 42—1882.  
 perty to Hanover  
 Municipality.
- No transfer duty  
 payable.
- Lands to be held  
 under conditions in  
 schedule.
- Municipality may  
 transfer under con-  
 ditions.
- Short title.
- of Hanover, by any power of attorney or other instrument required for that purpose to make and pass transfer before the Registrar of Deeds to the commissioners for the time being of the municipality of Hanover, of all and singular the erven and lands included in the remainder of the said farm "Petrus Vlei," so held by them under the aforesaid deed of transfer of the 13th October, 1856.
2. No such transfer as is required to be passed by the preceding section shall be subject to the payment of transfer duty.
3. The property so transferred to the said commissioners of the municipality of Hanover for the time being, shall be held by them, and administered, subject to all and singular the conditions set forth in the schedule to this Act annexed.
4. It shall and may be lawful for the said commissioners of the municipality of Hanover for the time being, from time to time to make and pass transfer to the purchaser or purchasers of erven, under and subject to the conditions in the said schedule referred to.
5. This Act may be cited as the "Hanover Transfer Act, 1882."

---

SCHEDULE.

The following are the conditions referred to in the 3rd section of this Act :

1. All erven sold and transferred by the municipal commissioners shall be subject to the same servitudes as attach to those heretofore sold by the members of the church committee.
2. The sale of the erven or building plots shall be confined to the portions surveyed, beaconed off, and marked off in the diagram annexed to the deed of transfer to the church committee, the remaining part of the farm shall be common as grazing ground to proprietors of ground within the plot so marked off: Provided that if at any time the proprietors aforesaid shall consent by a majority at any meeting duly convened for that purpose by the municipal commissioners, to empower the board of commissioners to dispose of any of the said ground so reserved for grazing purposes, the board of commissioners shall have the right to do so.
3. Out of the proceeds of the sale of such erven or ground the said commissioners of the municipality shall be obliged to pay over to the consistory for the time being of the Dutch Reformed Church of the parish of Hanover, for the use of the congregation of that parish, seventy-five per cent. of such proceeds, and the remaining twenty-five per cent. shall be paid into the municipal funds for general municipal purposes: provided that the said consistory of the Dutch Reformed Church shall at all times have the right of appointing one of their members to consult and agree with the board of commissioners of the municipality in the fixing of a reserved price at which such erven or plots of ground are to be sold.
4. In laying out new erven within the defined limits, the commissioners of the municipality may create such new squares and thoroughfares as they may think fit, but shall at no time interfere or do away with any street or square already existing without the unanimous

consent, at a public meeting duly convened for that purpose, of all proprietors of ground in the village who shall be present at such meeting.

No. 23 1876.

5. Proprietors unable or unwilling to attend any public meeting hereinbefore mentioned may be represented by proxy or agent at such meeting, and every such proxy or appointment of agent shall be deposited with the secretary of the municipal commissioners at the time of such meeting, and every such proprietor shall be bound by the vote of such agent or proxy.

No. 23—1876.]

[July 4, 1876.

ACT

For enabling the Commissioners of the Municipality of Heidelberg to borrow Two Thousand Pounds for the purpose of Opening up the Doorn River and diverting its course into a Canal.

WHEREAS the inhabitants of the municipality and town of Heidelberg have long experienced inconvenience from floods and inundations caused by the overflow of the Doorn River: And whereas facilities exist in the immediate neighbourhood of the said town for constructing a Channel or permanent Canal capable of carrying off all the surplus water of the Doorn River: And whereas the commissioners of the municipality, acting in conformity with the desire and representation of the inhabitants, made arrangements for commencing the construction of such a Channel or Canal as aforesaid: And whereas to enable the said commissioners to construct such Channel or Canal, and otherwise improve the present drainage of the said town of Heidelberg, it is proposed that a special rate should be levied on all immovable property within the municipality of Heidelberg, to be called the "Canal Rate:" And whereas as it is proposed that the said commissioners should be empowered to borrow money on the security of the intended Canal rate to enable them to construct the intended work, but such objects cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the said commissioners to borrow from time to time such sum or sums of money, not to exceed in the whole the sum of two thousand pounds sterling, for the purpose aforesaid, and to impose for the purpose of providing for the payment of the principal and interest of the moneys to be borrowed under this Act, special rates upon the immovable property situate within the municipality and liable to be rated for municipal

Loan of £2,000 authorized.

Commissioners empowered to levy special rates for payment of debt.

No. 23—1876.

purposes, and every such rate so imposed by the said commissioners for the purpose of this Act shall be of the same force and effect and be levied in like manner, as if it had been a rate imposed in accordance with the provisions of the Ordinance No. 9 of 1836 or of the Act No. 13 of 1864. <sup>(1)</sup>

Acknowledgment for money borrowed under this Act to be given in form in schedule.

2. The commissioners aforesaid shall, upon the receipt of any sum or sums of money, grant to the party or parties, or company, society, or partnership, from whom they shall borrow such money as aforesaid, a written acknowledgment of or for the moneys so to be borrowed by the said commissioners for the purpose aforesaid, as in the last preceding section mentioned, not exceeding in the whole the said sum of £2,000 (two thousand pounds sterling), which acknowledgment shall be framed according to the schedule A hereunto annexed, and shall be signed and subscribed for and on behalf of the commissioners aforesaid by the chairman and two commissioners for the time being of the said municipality.

“Public Bodies Debts Act, 1867,” to apply.

3. All moneys borrowed for the purpose of this Act shall be subject to the provisions of the Public Bodies Debts Act, 1867. <sup>(2)</sup>

Separate account to be kept.

4. The commissioners shall keep or cause to be kept a distinct and separate account of all moneys borrowed under this Act, and of all rates to be levied under the provisions of the first section of this Act upon the rateable property of the municipality aforesaid, and of all moneys expended upon the construction and maintenance of the Canal contemplated by this Act, and shall, as long as any portion of the debt contracted by virtue of the provisions of the first section aforesaid shall remain unpaid, on the 31st (thirty-first) day of December, in each and every year, frame an account showing the particulars aforesaid, and deposit the same in the office of the said municipality of Heidelberg, where it shall be open to inspection of any householder thereof not later than three calendar months from the said thirty-first day of December.

And submitted annually for inspection of householders

Municipality may enter upon and take possession of land for proposed canal on payment of compensation.

5. It shall and may be lawful for the said municipality, and they are hereby authorized, to enter upon and to take possession of all such lands within the limits of deviation of the Canal aforesaid: Provided that the proprietor or person holding by lease or otherwise from the Crown the lands so taken possession of shall be paid by the said municipality the just value by way of recompense or compensation for the interest of the said proprietors, or lessees, in such land and for any damage which may be done by reason thereof.

In cases of disagreement amount of compensation to be referred to arbitration.

6. In the event of the said municipality and any such proprietor or the person claiming compensation not being able to agree upon the sum to be paid by the said municipality and accepted by such proprietor or person claiming compensation, then the said municipality shall cause to be served upon such proprietor or person claiming compensation a written notice offering as recompense or

<sup>1</sup> Printed as amended by Act No. 35, 1877, § 1.

<sup>2</sup> See also § 3, Act 35, 1877, *infra*.

compensation whatsoever sum of money they shall deem sufficient and requiring such proprietor or person claiming compensation to state, in writing, to the said municipality within three days, to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not, and in case he shall refuse to accept the sum offered or shall neglect to reply to the said notice, then the said municipality shall, by another notice in writing, call upon such proprietor or person claiming compensation to refer to arbitration the amount of recompense or compensation to be paid to him by the said municipality, and for that purpose to transmit to the said municipality within ten days, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said municipality upon receiving the name of the person so selected shall nominate a second arbitrator, and the said arbitrators shall before proceeding in the arbitration choose a third arbitrator, and the said municipality shall cause a deed of submission to be prepared which shall be signed by the chairman of the said municipality and by the said proprietor or person claiming such recompense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators; and the said arbitrators or any two of them shall be authorized to fix and determine the amount of compensation to be paid as aforesaid according to what they shall conceive fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter referred to arbitration, and in case such proprietor or person as aforesaid claiming compensation or recompense shall neglect or refuse to name such person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said municipality, and they are hereby authorized, to lodge in some joint-stock bank, in Cape Town, the sum of money offered by them aforesaid for or on account and at the risk of such proprietor or person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said municipality upon so lodging the said sum, shall be authorized and entitled to use the land in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and had been paid accordingly. And thereupon, or upon payment of any sum which may be awarded or which may be agreed to be accepted as and for recompense or compensation as aforesaid, the said land shall be held and taken to be vested in the said municipality as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors thereof, or parties interested therein in favour of the said municipality

No. 23—1876.

according to the law and custom of the Colony, or as if all acts by law required for vesting in the said municipality a sufficient title thereto had been duly done and performed, and the said land shall be held and taken to be and shall be the free and absolute property of the said municipality: Provided that the cost of the arbitration as aforesaid shall be in the discretion of the arbitrators.

Payment of costs of this Act.

7. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys to be borrowed as aforesaid.

Short title.

8. This Act may be cited for all purposes as the "Heidelberg Canal Act, 1876."

---

SCHEDULE A.

We, the undersigned, do hereby acknowledge that the Commissioners for the time being of the Municipality of Heidelberg are truly and lawfully indebted to and on behalf of \_\_\_\_\_ in the sum of £ — (here write amount in full) being the amount obtained on loan from the said \_\_\_\_\_ by the said Commissioners acting on behalf of the Municipality of Heidelberg aforesaid under the provisions of the Heidelberg Canal Act, 1876, and hereby undertake, covenant, promise, and agree to repay or cause to be repaid to the said \_\_\_\_\_ the said sum of £ — with such interest as may be due thereon at the rate of — per cent. per annum as follows, to wit (here insert when amount is to be paid and generally the conditions under which the loan was effected).

Given under our hands, at Heidelberg, this — day of ——— 18  
Witnesses:

G. H.  
J. K.

A. B. } Chairman and Commis-  
C. D. } sioners of the Muni-  
E. F. } cipality of Heidelberg.

No. 35—1877.]

[August 8, 1877.

---

ACT

To Amend the "Heidelberg Canal Act, 1876."

Preamble.

WHEREAS by the "Heidelberg Canal Act, 1876," the commissioners of the municipality of Heidelberg are empowered to borrow for the purposes of the said Act a sum not exceeding two thousand pounds, and to impose for the purpose of providing for the payment of the principal and interest of the moneys to be borrowed special rates upon the immovable property situate within the said municipality and liable to be rated, not exceeding at one time or within one year one penny in the pound: And whereas a rate not exceeding in one year one penny in the pound upon the value of the property liable to be rated would be insufficient to provide for the payment of the interest on the amount required to



be borrowed, and a fund for repayment of the principal: And whereas it is expedient to remove the restriction to impose for the purposes of the said Act rates not exceeding one penny in the pound in any one year, and otherwise to amend the said Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 35—1877.

1. The following proviso to the first section of the said Act, to wit, "Provided that no such rate shall at any one time, or within one calendar year, exceed one penny in the pound on the value of such immovable property as aforesaid," shall be, and the same is hereby repealed.

Amendment of Act 23 of 1876.

2. All moneys borrowed by the commissioners of the municipality of Heidelberg for purposes of the "Heidelberg Canal Act, 1876," are hereby charged upon and made payable out of the rates to be imposed under the first section of the said Act: Provided that it shall be lawful for the commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other purpose.

Payment of moneys borrowed under Act 23 of 1876.

3. It shall be lawful for the Supreme Court, in case any petition shall be presented to such Court under the provisions of the "Public Bodies Debts Act, 1867," for enforcing payment of any judgment for the recovery of money borrowed under the provisions of the "Heidelberg Canal Act, 1876," to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of "Public Bodies Debts Act, 1867," to the contrary notwithstanding.

Supreme Court may impose rate if necessary.

4. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money to be borrowed under the said Act.

Costs of this Act.

5. This Act may be cited for all purposes as the "Heidelberg Canal Amendment Act, 1877."

Short title.

No. 11—1883.]

[Sept. 12, 1883.

ACT

To Repeal the Laws relating to the Municipality of Kimberley, and to make other Provisions in lieu thereof.<sup>(1)</sup>

WHEREAS the Ordinance No. 17 of 1879, enacted by the Administrator of the then Province of Griqualand West, by and with the consent of the Legislative Council thereof, requires amendment in consequence of the passing of Ordinance No. 21 of

Preamble.

<sup>1</sup> Printed as amended by Acts 30 of 1884 and 10 of 1886.

No. 11—1883.

1880, by which confusion and uncertainty have been caused between the Town Corporation of Kimberley and the Mining Boards of Kimberley and De Beer's respectively, so far as the mining area allotted to each is concerned, such mining area in several instances including the public roads and streets of the township, and leaving the buildings and plots of ground sold by the owner of Vooruitzigt Estate on each side of the said roads and streets within the jurisdiction of the corporation: And whereas it is expedient and necessary to set at rest such confusion and uncertainty, and that all the provisions respecting the said corporation of Kimberley be contained in one Act: It is therefore expedient to repeal the said Ordinance No. 17 of 1879, and to re-enact the provisions of the said Ordinance or such of them as it may be deemed right and proper to continue: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of former laws.

Exceptions.

1. The Ordinance No. 17, 1879, and No. 10 of 1880, and the Ordinance No. 7 of 1876, of Griqualand West, so far as such last-mentioned Ordinance applies to the Borough of Kimberley, are hereby repealed; provided, however, that such repeal shall not affect the bye-laws of the corporation at the time of the passing of the said Act in force, but the said bye-laws shall continue to be of force and operation until such time as the same shall be altered or new ones are published under the provision of the Kimberley Borough Act, 1883, or this Act; and such bye-laws or borough regulations passed or purporting to have been passed under the authority of the Kimberley Borough Act, 1883, shall be taken to be and to have been of equal force and virtue as if the same had been published either under the authority of the various provisions of this Act or of the Kimberley Borough Act, 1883.

And provided, also, that the present Mayor, councillors, and officers shall, until other persons shall be elected or appointed in their places respectively be, and they are hereby declared to be and to have been the Mayor, councillors, and officers of the borough of Kimberley created by the said Kimberley Borough Act, 1883, and this Act, and shall during the time aforesaid do and perform all such acts and things, and be vested with all the rights and powers, and be subject to all liabilities which are authorized or required to be done or performed by or are vested in or imposed on the Mayor, councillors, and officers respectively of the borough by the said Acts.

Extent of Kimberley Borough.

2. From and after the promulgation of this Act the town of Kimberley, including all lands and property within a radius of two miles, measured from the Resident Magistrate's Court-house, situated in Market-square, Kimberley, shall be, and the same is hereby constituted a borough: Provided that in the direction of Du Toit's Pan and Bultfontein the said radius shall be restricted to the ridge running across the Du Toit's Pan Road.

MUNICIPALITIES (KIMBERLEY BOROUGH). 1917

3. There shall be in the said borough a body corporate, which shall be styled the "Mayor, Councillors and Burgesses of Kimberley," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall by the council thereof do all acts, and have and enjoy all the rights and privileges, which bodies corporate as such may do and have.

No. 11—1883.  
Body Corporate  
created.

4. The council of the borough shall consist of a Mayor and town councillors, to be elected as hereinafter provided; and it shall be competent for the council to pay from and out of the funds of the borough to the Mayor as long as he shall hold office, a sum of money not exceeding five hundred pounds sterling per annum as table allowance.

Its constitution.

5. The said borough shall be divided into six wards, to wit:

Division into six  
wards.

- No. 1. Central Ward bounded on the north by a line running from the junction of the Pniel Road and Murray-street, past Kimberley gaol, to a line four hundred and fifty-four feet to the north of the junction of Ward-street and Barkly-street; on the south by a line from the corner of Old De Peer's Road and Market-square, to the junction of Jones-street and Market-square, excluding the buildings on the south of Market-square, and thence by a line running from north to south through Jones-street to the junction of Jones-street and Du Toit's Pan Road, and thence in a westerly direction along the Du Toit's Pan Road and Barry-street to the corner of Reitz-street; on the east by Barkly-street and Market-square, to the junction of Old De Beer's Road and Market-square not including the building on the east side of Market-square; on the west by Pniel Road, Kimberley gaol and Reitz-street.
- No. 2. Southern Ward, bounded on the north by the Southern limit of the Central Ward, and including all the land south of Barry-street, east of Jones-street, south of the Market-square and Bean-street, and bounded on the south by the limit of the borough boundaries as aforesaid.
- No. 3. Eastern Ward, bounded on the north and south by the limits of the borough boundaries as aforesaid; on the west by Giddy-street, Barkly-street, and Market-square; and the south-west by Bean-street, on the west by Lanyon Terrace and the Gladstone Reserve.
- No. 4. Western Ward, bounded on the north by Circular Road and Green-street; on the west and south by the limit of the borough boundaries as aforesaid; on the south-east by Barry-street; on the east by Reitz-street, by the limits of the Central Ward and Pniel Road.
- No. 5. Northern Ward, bounded on the north and west by the limit of the borough boundaries as aforesaid; on the

1918 MUNICIPALITIES (KIMBERLEY BOROUGH).

No. 11—1888

south by Green-street and the Circular Road, comprising all stands on the north side of the Circular Road and Lord-street to the junction of Giddy-street, the corner of the gaol buildings.

No. 6. Old De Beer's Ward (including the township of Old De Beer's and the Gladstone Reserve), bounded on the north, south and east by the limits of the borough boundaries as aforesaid.

Council may alter boundaries of wards.

6. The said council may from time to time, if it shall think fit, alter the names and boundaries of the said wards; and may, if the increase of the population render it necessary, increase the number of the wards from six to any number as to such council may seem expedient, and for that purpose may alter or wholly change the boundaries and limits of any ward or wards then existing: Provided, however, that in case of an increase in the number of wards having taken place, it should afterwards be deemed desirable to reduce such number, it shall be competent for the council to do so: Provided that the number of wards in such borough shall not be reduced below six, and that the reduction shall not take place unless resolved on by a majority of councillors, at a meeting specially convened for that purpose, of which one month's prior notice has been published in such local papers as the council shall select, and at which not less than three-fourths of their number are present, and that such resolution shall receive the sanction of the Governor, and in the event of such reduction, then the boundaries and limits of such wards may be altered or wholly changed: Provided that in every case in which the wards shall be increased as aforesaid, the councillors shall also be increased in number at the election next following the time of such increase of wards, held for the election of councillors, so that there shall be two councillors for every ward, and for each additional ward created as aforesaid; and in every case in which after the wards shall have been increased, they shall again be reduced, then, at the election of councillors next following the time of such reduction, there shall be a proportionate reduction also in the number of such councillors, so that no more than two councillors shall be elected for each ward.

Two Councillors for each ward.

7. Two councillors shall be elected for each ward, in the manner hereinafter provided.

Qualification of voters.

8. Save as hereinafter excepted, every male person of full age, who is the owner or occupier of any immovable property of the value of not less than one hundred pounds, in any ward of the borough, in regard to which property no borough rate shall, at the time of any election of councillors or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election in respect of such ward; and shall have one vote for each candidate: Provided that at any general election, after the passing and promulgation of this Act, he may give two votes

MUNICIPALITIES (KIMBERLEY BOROUGH). 1919

for one candidate for such ward: And provided that the name of such voter shall appear on the Voters' List in manner hereinafter provided.

No. 11—1883

9. When any immovable property as aforesaid shall be jointly occupied by more persons than one, each of such joint occupiers shall be entitled to vote as aforesaid, in case the value of such immovable property shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than one hundred pounds for each and every joint occupier.

Joint occupiers.

10. Persons who have been convicted of treason, murder, rape, theft, arson, fraud, perjury, forgery, or illicit dealing in diamonds, and who shall not have received a full pardon, shall be disqualified from voting at any such election.

Persons disqualified from voting.

11. On or before the first day of June in every year, the Town Clerk shall make, or cause to be made, a true roll in alphabetical order of all men qualified to vote at the election of councillors for the borough, setting forth the name of each person at full length, the place of his abode, his business or quality, the nature of his qualification, and the ward or wards in which he is entitled to vote, in the form following:

Roll of voters to be made annually.

*List of persons qualified to vote at the Election of Councillors for the Borough of Kimberley.*

Name at full length.	Place of abode.	Business or quality.	Nature of Qualification.	Ward or Wards in which he is entitled to vote.

12. The Mayor shall cause a copy of the said roll mentioned in the eleventh section to be made, and shall cause the same to be publicly exhibited at the office of the Town Clerk, or in case of there being no such office, then in some other public place within the borough, and have subjoined to such copy a notice that on a certain day and place, to be therein set forth, and for two days immediately following such day, objections to the said roll shall be heard and determined: Provided that such day so set forth shall be some day before the first day of July of the year then current.

Copy Roll to be exhibited at Town Clerk's Office.

13. The Mayor shall in at least one of the newspapers published within the borough, forthwith notify that such Voters' Roll is so exhibited as aforesaid, and shall also notify the time and place for hearing any such objections, and if there be no newspapers published in the borough, the Mayor shall notify the same by a notice under his hand, and shall cause such notice to be affixed upon the principal door of the Court-house in such borough.

Publication of such exhibition; objections.

- No. 11—1883. 14. Every voter of such borough shall, on application during office hours to the Town Clerk, be allowed to copy the said roll or to make extracts therefrom free of any cost or charge.
- Voters to have access to Roll.
- How objections to be heard, &c. 15. The Mayor and two councillors to be elected by the council for that purpose shall have the power, after hearing such objections in open court, to strike out of the roll the names of all persons not entitled to be thereon, and also to insert in the said roll the names of any persons which have been improperly omitted therefrom.
- “Voters’ Roll.” 16. The roll shall be called the Voters’ Roll of the borough, and shall be brought into use on the first day of July, and shall continue to be used for one year then next ensuing.
- Qualification of Councillors. 17. No person shall be eligible to be elected a councillor for any ward who is not a rated owner or occupier of immovable property of the assessed value of not less than two hundred pounds within the borough, or who is the owner or occupier of any such property in regard to which any borough rate shall, at the time of the commencement of such election, be due and in arrear, or who is an unrehabilitated insolvent or whose estate is under assignment or composition, or who is disqualified from voting as in the tenth section of this Act provided, or who has a contract or share or interest in any contract made by or existing with the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which may contract with the council for the lighting or supplying with water, or insuring against fire any property belonging to the said borough: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully as if they had been one and the same premises or property.
- Requisitions necessary. 18. No person shall be deemed a candidate at an election, or qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition signed by at least three qualified voters of such ward, and shall have transmitted such requisition with his acceptance thereof addressed to the Town Clerk and delivered at his office between the hours of 10 a.m. and 3 p.m. at least fourteen days before such election is appointed to take place.
- How notice of election to be given. 19. The Mayor, or in his absence the Town Clerk, shall, twenty-one days before the day appointed for any election, by public notice call upon the burgesses to nominate some fit and proper person or persons to be the councillor or councillors for the ward or wards named in such notice, and shall, at least ten days before the day appointed for the election in each ward, cause a list of the names of the candidates for election, together with the names of the persons who have signed such nomination, to be published in such local papers as the council may select, and to be affixed in some conspicuous place upon or near the Town-hall.
- When to take place. 20. On the second Tuesday in the month of December in every year, an election shall take place of councillors for the said

borough, and the councillors as elected in manner hereinafter provided shall take office on the first day of January in the ensuing year, and remain in office for the period of one or more years, as hereinafter provided. No. 11—1883.

21. The poll in every ward shall be taken by some person and at a place to be appointed for that purpose by the Mayor, or in case of his absence from the borough of Kimberley, by the Town Clerk: Provided that, as often as at any general election subsequent to the next ensuing general election after the passing and promulgation of this Act, the number of candidates nominated for any ward shall not exceed the number of councillors to be elected for such ward, no poll shall be necessary for such ward, but the candidates so nominated shall be deemed and taken to be duly elected. How poll to be taken.

22. The Mayor or Town Clerk, as the case may be, shall be the returning officer of the said borough. Returning officer.

23. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded. Scrutineers.

24. The election shall take place in the following manner:— Every person qualified to vote as in this Act provided, may vote for any candidate in his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper written by such voter, or caused to be written by him in the presence of the polling officer, containing the christian and surname of the candidate or candidates for whom the elector votes, and signed by the person voting, or by the polling officer at his request, and stating his place of abode, occupation and qualification. Manner of conducting election.

25. The polling officer shall receive such voting paper, and shall register each vote. Polling officer to register votes.

26. The poll shall commence at nine o'clock in the forenoon, and shall finally close at five o'clock in the afternoon of the same day. Duration of poll.

27. No enquiry shall, at any election, be permitted to be made as to the right of any person to vote except as follows: That is to say, the polling officer may himself, or at the request of any qualified voter, put to any voter the following questions, and no other:—Are you the person whose name appears as A. B. No. — on the Voters' Roll? Have all the rates assessed and due upon the property owned or occupied by you been paid? Have you already voted at this election for this ward? Questions to voters.

28. If any person shall wilfully make a false answer to either of the foregoing questions, he shall be liable to a penalty not exceeding ten pounds. Penalty for false answer.

29. At the close of the election, the polling officer shall transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and the candidate, or so many candidates, being equal to the number to be chosen, as shall have received the Polling officer to forward voting papers to returning officer.

No. 11—1883.

greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list of the successful candidates, with the number of the wards for which such persons are elected, to be published in manner hereinbefore in the nineteenth section of this Act provided.

Councillors elected for one or two years, according to majority at first election.

30. At the next ensuing general election of councillors after the passing and promulgation of this Act, the burgesses appearing on the Voters' Roll shall elect, in manner hereinbefore provided, two councillors for each ward, one of whom, being the one who receives the greater number of votes, shall remain in office for a period of two years and no more; and the other remaining councillor, being the one who receives the less number of votes, shall remain in office for a period of one year and no more; and in case there are two or more candidates at the head of the poll, having received an equal number of votes, the returning officer shall determine by lot which of such candidates shall take the office for a period of two years and which for a period of one year.

At subsequent elections Councillors chosen for two years

31. At every general election subsequent to the said next ensuing general election, the burgesses appearing on the Voters' Roll shall elect in manner hereinbefore provided, one councillor to fill the vacancy in each ward, and he shall remain in office for a period of two years and no more.

In case of death, &c., of Councillor.

32. If any councillor shall die, resign, or become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be convicted of any of the offences in the tenth section of this Act mentioned, or shall be absent without leave from the ordinary meetings of the council for a period of one calendar month, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office; and should any ward fail so to nominate a candidate or candidates as in the nineteenth section provided, the Town Clerk shall within seven days thereafter, again call for nominations, and should any ward fail to nominate a candidate or candidates, as the case may be, on such second call, then such ward shall be disfranchised, so far as the existing vacancy is concerned, for the remainder of the year, of which liability to disfranchisement the Town Clerk shall give due notice in such second call.

In case of equality of votes.

33. In case of an equality of votes at any election of councillors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.

Mayor to be chosen by ballot.

34. On the Tuesday following the annual general election of councillors, the councillors for the following year shall meet and shall elect by ballot from among themselves, by a majority of votes,



MUNICIPALITIES (KIMBERLEY BOROUGH). 1923

No. 11—1883.

the Mayor of the borough for the following year; and every such Mayor shall enter upon his office on the first day of January next after his election, and shall continue therein for one year, and shall during the year of his office be exempt from serving on any jury summoned in Kimberley: Provided that in the case of an equality of votes at election of Mayor, the question between the candidates so equal shall be determined by lot.

35. It shall be lawful for the Mayor to resign his office: Provided he shall give to the council not less than one calendar month's notice of his intention so to do. Mayor may resign.

36. If the Mayor shall resign, or shall fail to attend the meetings of the council for a period of one calendar month, without leave, or shall be convicted of any of the offences in the tenth section of this Act mentioned, the office of Mayor shall be deemed vacant, and the council shall forthwith elect, out of their own number, a successor for the remainder of the year. In case of resignation, &c.

37. An ordinary meeting of the council shall take place at least once in every week, and all meetings of the council shall be open to the public. Ordinary meetings once a week.

38. Save where it is otherwise specially provided in this Act, all acts, matters or things hereby authorized or required to be done by the council, 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 five members of the council shall attend. Majority to decide all questions.

39. At every meeting of the council, the Mayor, if present, shall preside, and in case of his absence, the councillors present shall elect a chairman from among themselves, who shall have the power and authority of the Mayor until the Mayor is again present and acting, or until another chairman is appointed. Mayor to preside, or Chairman.

40. In case of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote. Casting vote.

41. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat. Minute book.

42. The Mayor or any three councillors may at any time call a special meeting of the council: Provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them, or by the Town Clerk, to be served on every councillor, either personally or by leaving the same at his usual place of abode, twelve hours at least before such meeting. Special meetings.

43. 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 consisting of such number 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: Provided Committees.

No. 11—1883.

always, that the proceedings of the committees shall be regularly entered in a minute book to be kept for that purpose, and reported to the council. The Mayor shall be *ex-officio* member of all such committees.

Officers to be appointed.

44. It shall be lawful for the council, from time to time, to appoint such fit and proper officers, not being members of the council, as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so appointed such salaries or remuneration as the council shall deem reasonable, and unless it shall be otherwise stipulated in the contract of service, to remove all such officers upon a notice of not less than one month, or in case of misconduct without any notice.

Councillors not to have interest in contracts.

45. No councillor or person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water, or insuring against fire any property belonging to the said borough; and any person contravening the provisions of this section shall, upon conviction, vacate his seat, and be liable to a penalty not exceeding fifty pounds.

Penalty.

Auditors.

46. On the second Wednesday in the month of January in every year, the council shall appoint from among the burgesses two persons to be auditors to the borough, who shall continue in office until the same day in the following year, and the Town Clerk shall at least seven days previous call for applications from burgesses willing to undertake the duty.

Disqualifications for the office.

47. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the borough, or who shall be an unrehabilitated insolvent, or who shall have been convicted of any crime or offence in the tenth section mentioned, and shall not have received a full pardon for the same.

In case of resignation, &c

48. If any auditor shall die, resign, or be declared insolvent or compound with his creditors, or assign his estate for the benefit of his creditors, or be convicted of any crime or offence in the tenth section mentioned, another auditor shall be elected in his stead on a day to be fixed by the Mayor.

Powers of the Council.

49. The council shall have power and authority to do the following acts on all land within the limits of the borough:

To make, alter, and keep in repair roads, tramways, streets, thoroughfares, dams, ditches, sewers, drains, and bridges; to dig, deepen, preserve, fence in, and cover or fill up wells, to excavate, construct and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works supplying the borough with water; and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, dig or deepen

wells, or to execute any other like works : to take means for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils ; to establish and maintain fire brigades and salvage corps under the control of such officer or officers as may be from time to time appointed by the said Borough Council, with power to do all things necessary to save any building or buildings from destruction by fire ; to make regulations for the storing, carriage, and removal of gunpowder, dynamite, kerosene, and other explosives within the borough ; to order, establish, hold, alter or remove markets, outspans, and to lease or purchase any land, and to erect, lease, or purchase, or keep in repair any building for any municipal requirement or purpose ; to cause all buildings, bridges, and other erections which may be found to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings ; to lease, purchase, or erect and maintain such school buildings and manage such schools as the Borough Council shall from time to time think fit, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such school may be required under any Act in force for this purpose, and to grant annually, half-yearly, or quarterly sums of money in aid of any school now existing or which hereafter may be established within the borough, such sums to be determined in such manner and according to such system as to the Borough Council from time to time may seem good ; to appoint an inspector or inspectors of schools ; to grant such sums of money in aid of public libraries within the borough as may from time to time be voted by a majority of two-thirds of the Borough Council ; to cause all buildings used by the public, capable of containing more than three hundred persons, to be provided with sufficient and proper means of egress in case of fire or other casualty ; to regulate from time to time the materials of which all future buildings shall be constructed, the distances, spaces, and character of party walls which shall be left between them, the height the foundation shall be above the level of the surrounding ground, and the height the floor shall be above the same ; and no proprietor of any house or building found with insufficient foundations, or with floors lower than the height allowed after the taking effect of the Kimberley Borough Act, 1883, shall be entitled to any compensation for damages caused by flooding from heavy rains or thunderstorms ; to assize weights and measures according to the standards in force by law, and to appoint an officer for that purpose ; to grant permits and licences for any purpose to be defined by the borough regulations for the time being ; to levy dues as hereinafter provided ; and by borough regulations duly approved to do any of the following acts, that is to say :—To regulate the time and place for slaughtering cattle, and the state and condition of slaughter

No. 11—1883.

houses or slaughter places ; to make due provisions for the licensing, confining or killing of dogs, the confining or killing of pigs, goats and fowls ; to appoint one or more competent persons to examine meat, fish, or other provisions exposed for sale, and to test or analyse any drinks offered for sale, and who, in case such meat, fish, or other provisions, or beverages be unfit for human food or drink, shall be empowered to cause the same to be destroyed ; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be for the advantage and convenience of the borough ; to establish and provide for the management of public pounds within the borough limits ; to make due provisions for the lighting of the streets, to regulate the width and direction of roads, streets and thoroughfares, to make regulations for the licensing of carts, wagons, or other vehicles belonging to residents, whether plying for hire or not, within the limits of the borough ; to fix a tariff of charges which the owners or drivers of vehicles plying for hire may make within a radius of four miles from the centre of the market-square ; and to order, establish, alter, maintain, or remove, and to make regulations for the maintenance and control of Native Locations, and of locations for Indian immigrants, commonly called "Coolies," at the time of the passing of the said Kimberley Borough Act, 1883, existing or thereafter to be created by the Borough Council ; and for the good government and control of natives, coolies and immigrants within the borough ; to regulate the proceedings of the council and the duties of their officers and servants, and to preserve order at council meetings ; to regulate and licence market guides, market agents, porters, public carriers, carters ; to regulate public sales, to suppress houses of ill-fame and gaming-houses ; to restrain noisome or offensive trades ; to compel residents to keep their premises free from offensive or unwholesome matters ; to preserve public decency ; to prevent the spread of contagious or infectious diseases, and to preserve the public health ; to regulate the removal of night-soil, stable litter, filth and refuse from private premises, and from all streets, roads, and public places ; to prevent impure water being supplied to the inhabitants ; to establish and maintain cemeteries ; to plant and preserve trees and shrubs ; to grant licences for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting grass upon municipal commonage or lands ; to fix the number and description of live-stock any inhabitant shall be allowed to keep within the limits of the borough ; to grant temporary grazing rights to carriers, travellers, and others frequenting or passing through the municipality or attending the markets thereof ; to establish, maintain, and regulate public libraries, museums, botanical gardens, parks, public baths, wash-houses, and places of public recreation ; to regulate traffic and processions ; provided that no dues or charge for any permit or licence or any punishment or penalty shall be imposed by reason

of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the fifty-fifth section of the Kimberley Borough Act, 1883, provided.

50. Save and except as is hereinafter in this section and in section seventy-two of the Kimberley Borough Act, 1883, provided, nothing in this Act contained shall be construed so as to authorize the said Borough Council to exercise any of the powers vested in them within any mining area at the time of the passing of the Kimberley Borough Act, 1883, existing, or which may thereafter be created, so as to interfere with the rights and privileges of the claimholders of any mine at such time existing or which may thereafter be proclaimed on their depositing floors, or with the rights of the Government, or any mining board, proprietor or claimholder of any mine, or any tramways, tipping sites, roads or other works connected with such mine, whether the same at such time existed or shall thereafter be constructed or fixed; provided, nevertheless, that in case the said Borough Council shall deem it necessary for the proper municipal management of the said borough that drains or other public works should be constructed or carried out within such mining area, whether such works are or are not connected with any works situate without such area, or that any other of the duties or powers imposed or conferred upon the said council under the provisions of the Kimberley Borough Act, 1883, or of this Act, shall be performed and carried out within any such area, then and as often as the same shall happen the said Borough Council shall by writing notify to the mining board as is provided in the fifty-eighth section of Act 19 of 1883, or joint-stock company as aforesaid exercising jurisdiction over such mining area or mining works as aforesaid, the nature, accompanied by sufficient particulars, of the work or duty which the said Borough Council may desire to have done or performed, and such mining board or body of persons or joint-stock company as aforesaid shall, within seven days after receipt of such notice, notify its sanction or refusal to do or perform such work or duty as aforesaid; then and in case and as often as the said mining board shall refuse to do the work thought necessary by the said Borough Council, or to sanction the same being done, the matter at issue shall forthwith be referred to arbitration under the provisions of Act No. 6 of 1882, save and except that the period limited by the said Act within which the arbitrators or umpire shall make their or his award shall not exceed seven days from the date of reference: Provided, further, that all such works or duties within any such mining area as aforesaid as may be sanctioned, approved or directed as aforesaid, shall forthwith be performed and carried out by such mining board, or body of persons, or joint-stock company as aforesaid, or by the Borough Council at the expense of such mining board, or body of persons, or joint-stock company as aforesaid, as may be determined by mutual

No. 11—1883.

Powers of Council  
in mining areas.

Exceptions.

No. 11—1883.

arrangement, or by the award of the said arbitrators or umpire; provided, further, that the said Borough Council shall in no case be or be held liable in damages or otherwise by reason of any injury to person or property within any mining area, whether the same shall arise from flooding, defective drainage, or any other cause whatever, or by reason of such injury outside any mining area, provided the same shall have been caused by accumulation of water, flooding, defective drainage, or other cause within such mining area; provided, further that in case any mining board or body of persons, or joint-stock company as aforesaid, shall neglect to carry out proper sanitation within its mining area to the satisfaction of the sanitary inspector for the time being of the Borough Council nothing in this section contained shall be deemed to prevent the Borough Council from enforcing such sanitary regulations, and claiming and charging such sanitary dues within such mining area as aforesaid, either as against the mining board or the claimholders and residents in such mining area, as may have been framed by the Borough Council specially for application within such mining area, and duly sanctioned by His Excellency the Governor; and in the event of any mining board ceasing to exist from any reason whatsoever, and no such board of persons as is provided in the fifty-eighth section of Act 19 of 1883 being appointed, or any joint-stock company acquiring the said mine, and who shall have notified to the Borough Council its willingness to discharge the duties herein imposed on mining boards or body of persons, then and in that case the Borough Council shall be vested with the same power as the mining board to carry out the provisions of this section, and the expenses incurred in connection therewith shall be borne by such mining board, or if there be no mining board or such body of persons appointed as aforesaid, by the owners of claims and other property in such mining area as aforesaid *pro rata*, according to the assessed value of the claim and other property in such mining area; and provided, further, that in such case as last aforesaid the Borough Council shall have the power from time to time, when necessary, to make an assessment of such claims and other property, and to levy rates thereon; and provided, further, that the proceedings in respect of the said assessment, levy and recovery shall be as far as possible in the manner provided for in respect of the assessing, levying and recovery of rates on other property within the Borough, according to the provisions of this Act and of the Kimberley Borough Act, 1883.

Toll bars, &c., authorized.

51. For the purpose of providing sufficient funds for the construction, maintenance, alteration and repairs of roads, streets and thoroughfares, within the borough, the council is hereby authorized to erect toll-houses, turnpikes, toll-gates, or toll-bars, within the said municipality, and in such places as the said council shall deem most expedient, for the purpose of collecting tolls, and from time to time to fix the rates of such tolls so to be collected, and also to

decide on whom or on what carts, wagons or other vehicles such tolls shall be levied, or whether or not such rates shall be levied on horses, oxen or other animals passing through the aforesaid turnpikes, toll-gates, or toll-bars.

No. 11—1883.

52. No toll shall be payable by any officer or soldier or member of any volunteer corps being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any member of constabulary or mounted police force, or any burgher force, or any judicial or civil officer, mail carrier, or other Government servant, whilst travelling on public duty; and, further, no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for and in respect of the same vehicle or animal.

Exemptions from tolls.

53. A separate account shall be kept of all moneys arising from such tolls, and the same shall be applied solely for the purpose of constructing, maintaining, repairing, altering, and improving roads, streets and thoroughfares within the borough.

Separate account of moneys from tolls.

54. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame from time to time all such borough regulations as may be within the powers and authority herein given to the council, and may seem fit for the good rule and government of the borough.

Regulations to be framed.

55. No borough regulation shall be of force to subject any person to a fine, penalty or payment until it shall have been by the council submitted to the Governor, and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

To be gazetted, &c.

56. After any borough regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Due passing of regulations need not be proved.

57. It shall not be competent by any borough regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding ten pounds: Provided that it shall be competent for any such borough regulation to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period must not exceed three months.

Extent of penalty to be allowed in any regulation.

58. It shall be lawful for the Borough of Kimberley to acquire by grant, transfer, devise, purchase, exchange, or otherwise, any lands or buildings for borough purposes in the district of Kimberley, and to have and to hold the same for the burgesses of Kimberley: Provided that the consent of the Governor and the majority of the burgesses be first had and obtained in all cases where the purchase price for such lands or buildings, or the value

Power to acquire lands, &c.

1930 MUNICIPALITIES (KIMBERLEY BOROUGH).

No. 11—1883.

of the property exchanged for the same, exceeds the sum of one thousand five hundred pounds: And provided that title shall be issued to the Mayor and councillors for the time being, and the signatures of the Mayor and any two councillors on behalf of such borough shall suffice for the valid execution of all deeds, agreements, notarial or other instruments of grant, transfer, purchase, sale, exchange, mortgage, leasing, letting, hiring, or other transaction relating to such lands as aforesaid.

Power to lease lands.

59. The council may, with the consent of the Governor, lease any portion of the lands belonging to the borough for any period not exceeding fifty years, with or without the option of purchase, and with or without an undertaking to renew such lease as hereinafter provided at such price and upon such conditions as may be approved of by the Governor: Provided that the council shall, at least one month previous to such intended lease, cause to be published a full and clear statement of the situation, nature and extent of such land, which shall be sold by public auction.

To renew leases.

60. The council may, from time to time, renew any such lease for any period not exceeding fifty years: Provided there shall be buildings on the ground of the then value of at least five hundred pounds, in any case in which the lessee shall, two months previous to the expiration of such lease, give notice of his desire or intention so as to renew such lease.

How rental to be fixed on renewal.

61. The council may, on application for the renewal of any such lease, cause the then annual rental of the lease in respect of which such renewal is sought, exclusive of the buildings thereon, to be estimated either by mutual agreement between the council and the applicant for renewal; or, in case of difference of opinion, then by arbitration.

Power to borrow on debentures.

62. The council may, with the consent of the majority of the burgesses as provided in section eighty-nine of this Act, and of the Governor first had and obtained, raise by debentures, on or by the sale by public competition of any land belonging to the council, any sum of money which shall be necessary in order to carry on any public work, and may exchange any portion of the lands belonging to the council for other lands in the division of Kimberley for public purposes: Provided that the council shall, at least two months previously to such intended sale or mortgage, cause to be published a full and clear statement of the situation, nature, and extent of such land, and the object and purpose for which the money is required.

Rates may be hypothecated.

63. The council may for any of the purposes of this Act, hypothecate or charge by debentures one-third of the borough rates of the said borough for a period not exceeding ten years in security for any sum of money to be borrowed by the said council: Provided that no sums of money shall be capable of being borrowed under the provisions of this section, except with the previous consent of a majority of the said burgesses as provided in



section eighty-nine as aforesaid: Provided, also, that it shall be lawful for the said burgesses to sanction, and after such sanction, for the said council to borrow upon the security of the said rates or property of the borough any sum or sums which may be found necessary not exceeding the sum of ten thousand pounds in any one year.

No. 11—1883.  
Limitation of borrowing powers.

64. Notwithstanding anything in the last two preceding sections contained, it shall be lawful for the Borough Council by resolution of not less than two-thirds of its members, without the consent of the burgesses, for any of the purposes of this Act, to borrow any sum not exceeding two thousand five hundred pounds: Provided, however, that so long as the above sum shall remain unpaid, the borrowing powers under this section shall cease and determine.

May by resolution borrow to extent of £2,500.

65. All streets, roads, and thoroughfares now in existence and running over land the property of the Government or of private persons or companies within the limits of the borough, and which shall have been already recognized by the council, and all streets, roads, and thoroughfares which may hereafter be established over such property, with the approval of the council, shall be vested in the said council in trust to keep the same open, and as far as may be consistent with the funds at their disposal, in repair for the use and benefit of the burgesses.

Streets, &c., vested in Council.

66. Every hypothecation aforesaid, or power of attorney for authorizing any hypothecation under this Act, shall be under the common seal of the corporation, and shall be executed by the Mayor and two councillors, and countersigned by the Town Clerk.

Common Seal.

67. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, or any frontage or stoep belonging to any premises, for the purpose of making, widening or improving any street, drain, market or public building, or for any other public purpose, or to dig out or carry away any materials belonging to any person or persons within the borough, or to appropriate or make use of any springs, streams or other supplies of water belonging to any person or persons who shall not be bound in law to allow the Town Council so to do, then, and in that case, it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire as the case may be of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, and generally to enter into such contract or contracts relative to the obtaining of such land, buildings, materials, springs, streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the amount of recompense or compensation shall be settled by arbitration.

Powers to take lands for certain purposes.

No. 11—1883.

“Lands and Arbitration Clauses Act” to apply.

In case of appropriating lands of absent owners.

68. For the purposes of any land taken, and of any arbitration under the provisions of this Act, the provisions of “The Lands and Arbitrations Clauses Act, 1882,” are hereby incorporated.

69. In case the said council shall, for any purpose in the last preceding section in that behalf mentioned, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, the owner of which shall be absent from the borough and not represented therein by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in such of the local papers, if any, as the council may select, for four successive weeks, describing as accurately as may be the materials, lands, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner of the said land, buildings, materials, springs, streams, or other supplies of water, if known, or if not known, by inserting the beforementioned notice in the manner herein provided, calling upon all persons concerned to take notice that the said council is ready and willing to treat with the owner, or any person duly authorized by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner to apply within six months from the date of such notice, which shall be the day of its first publication to the said council, stating the recompense or compensation claimed; and if the owner shall so apply within the said period, then the like proceeding in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had been from the first in actual occupation. And in case such owner shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of Kimberley, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before any Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay the sum at which such person shall have valued the land, buildings, materials, springs, streams or other supplies of water in question into the Guardian Fund, to the credit of the party or parties entitled thereto, subject to the same provisions, in all respects, which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to absent persons; and the said council upon so

paying the said sum shall be authorized and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid, had been duly done and performed.

No. 11—1883.

70. Notwithstanding anything in this Act contained, and without compensation to the owner, the Borough Council shall at all times have full power and authority, without prejudice, however, to the provisions of the fiftieth section of this Act, to enter upon all streets, roads, and thoroughfares now existing, or hereafter to be constructed within the boundaries of the borough, as well as upon all land, not being a mining area and not allotted for mining purposes, not built upon, cultivated, or enclosed, within or adjoining the boundaries of such borough, for the purpose of laying pipes and of making and constructing drains, sewers, culverts, and similar works necessary and proper for the sanitary management and efficient drainage of the borough.

Powers of entry on lands, streets, &amp;c.

71. The council may appoint and maintain such number of watchmen and street-keepers as to them may seem fit or necessary, and may from time to time make such rules and regulations touching their pay, clothing, allowances and duties, as to them may seem fit.

Watchmen, &amp;c.

72. For the purpose of raising the means for making and repairing the roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, wells, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines and appurtenances, for the effecting of all other public works and improvements within the borough; for the purpose of raising the means for effecting the repairs of all such works as the council is hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other current expenses required to be borne by the borough, the council shall have the power to impose, levy, and recover all such market dues, water rates, pound fees, sanitary fees or charges, outspan fees, grazing fees, fees or charges for all such licences which may be granted by them, location fees, dog taxes, charges or expenses for services rendered in the extinction of fires, cemetery fees, and dues on all firewood not being delivered on contract, but being sold or hawked within the limits of the borough exclusive of the public market, and shall be authorized by the said borough regulations as aforesaid, and shall also have the power, as often as shall be deemed necessary and in manner hereinafter and in the Kimberley

Power to impose rates.

hh

No. 11—1883.

Borough Act, 1883, provided, to assess the value of all immovable property within the borough, and to levy a rate on such assessment; provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least eight members of the said council; and provided, also, that no rate shall be imposed on any immovable property belonging to Her Majesty the Queen and used for public purposes, nor on public prisons, or police stations, almshouses or hospitals, nor on any public building appropriated to public worship, nor upon burial-grounds, nor upon buildings and land solely appropriated to the purposes of education, nor upon any claim in the Kimberley or Old De Beer's diamond mines, nor upon any claim in any declared digging or mine within the borough, save and except in such manner and under such conditions as are in section three of this Act provided: provided, further, that notwithstanding anything in this section or in section three of this Act contained, the said Borough Council shall have the power to assess the value of and to levy and recover rates in respect of all houses and buildings within such mining area, whether the same are used for mining purposes or not; which assessment, levy and recovery shall be, as far as possible, in the manner provided for in respect to the assessment, levying, and recovery of rates on other property within the borough.

Ratepayers.

73. All persons owning or occupying properties within the limits of the borough, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property in such manner and to such extent as is hereinafter and in the Kimberley Borough Act, 1883, provided; and provided, further, that in any case where a house, building, or other erection shall have been erected on any land the property of any person not the owner of such house or building or erection, the owner of such land shall be liable to be separately rated in respect of the value of such land, which value shall be computed on the principle that the annual rental receivable by the landlord in respect of such land is six per cent. of such rateable value; and the owner of such house, building, or erection shall be liable to be separately rated in respect of the value of such house, building, or erection; and it shall not be lawful for the owner of such land to enter into any contract with the occupier of such house, building, or erection, whereby the liability of the owner of such land shall be in respect thereof transferred to the owner of such house, building, or erection. And in case such house, building, or erection shall have become abandoned or unoccupied, then the owner of the land on which such building shall have been erected shall further be liable to be rated in respect of such house, building, or erection.

Valuators.

74. For the purpose of valuing all and singular the immovable property situate within the borough, the council shall and may appoint one or more competent appraisers.

75. As soon as any valuation as aforesaid shall be completed, an assessment roll embodying the same shall be compiled, which shall lie in the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days and at all reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice announce for general information that it will, upon some day and at some hour and place to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided that such notice shall be published fourteen days at least before the day appointed therein for the holding of such court: Provided, also, that it shall not be necessary in any suit or proceeding for the recovery of any rate, to prove anything further in the nature of due notice of any such valuation as aforesaid than the publication of the notice aforesaid in one or more of the local newspapers.

No. 11—1883.  
Assessment Roll.

76. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner or occupier or other person on his behalf, and shall enquire into the merits of such objections, and for that purpose may take the oath of any person whom it shall see fit to examine (which oath the presiding member of the council is hereby authorized to administer), and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon application made by any person objecting who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

How objections to be heard and determined.

77. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, to appeal within twenty-one days against such valuation from the decision of the court in the last preceding section mentioned, to the Court of the Resident Magistrate, and such Court shall inquire into such valuation, 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 incumbent on such Resident Magistrate, at the request of the council or party objecting, instead of himself deciding such question, to record such question of law for the decision of the High Court of Griqualand, and such question shall be stated in the form of a special case, the terms of which shall be agreed upon between the respective parties, or, in case of their disagreement, by such Resident Magistrate, and such case shall be argued before and determined by the said Court, and the said Court may make such order as to the costs of such special case as to it shall seem fit, provided no objection shall be taken to the principle of any such assessment or rate, or to the amount payable in

Appeal from decision of Court.

1936 MUNICIPALITIES (KIMBERLEY BOROUGH).

No. 11—1883.

respect thereof by any person, unless such person shall have appealed against such assessment or rate; provided, also, that in case any assessment or rate shall have been either wholly or partly upset, varied, or amended by any Court of Appeal, it shall be lawful for the council forthwith to cause to be made when and as often as it shall be necessary, a fresh valuation, assessment, and rate, and for such purpose the various sections of the Kimberley Borough Act, 1883, in respect of the valuation, assessment, and rating of property within the borough shall be held to be as far as may be applicable to such proceedings.

Estimate and Assessment.

78. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes aforesaid, and shall assess the rate accordingly, and give public notice thereof in such of the local newspapers, if any, as the council may select, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council, in any one year, to levy any rates amounting in the aggregate to more than threepence in the pound on the assessed value of the immovable property, without first obtaining the consent of the majority of the burgesses present at any meeting specially called for the purpose of giving such consent.

When rates payable.

79. Every rate so assessed as aforesaid shall become due and payable upon a certain day to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in such of the local newspapers as the council may select: Provided that it shall not be necessary, in any suit or proceeding for the recovery of any such rates, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

Recovery of unpaid rates.

80. When the council shall have announced in the local papers the day on which any rate duly assessed under this Act will have become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorized to receive the same, on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, in the name and on behalf of the Kimberley Borough Council, or other duly authorized person for the recovery of the amount: Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be an agreement to the contrary.

Power to sue for rates due by absent owner.

81. The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the borough, his agent or the person receiving rents for him, or the occupier, either

separately or both of them, in one or the same action, each for the whole rate, in any competent Court, and may recover the same by the judgment and process of the Court; provided that any person who as occupier may have become liable for any rate as aforesaid, shall be liable for the payment of the same, although he may have ceased to occupy the property in respect of which the rate has been imposed; and provided, further, that nothing herein contained shall affect the liability of any owner of land in clause 5 mentioned in respect of any abandoned or unoccupied house, building, or other erection, but proceedings for the recovery of rates may be taken against such owner in respect of his interest in the land as well as of his interest in such unoccupied or abandoned house, building, or other erection.

82. The council shall, once in every year, publish in at least one of the local newspapers as the council shall deem fit, a statement of every sum in arrear, the names of the defaulters, and of the property in respect of which the same is due.

List of arrears to be published.

83. The first valuation to be made as aforesaid for the purpose of this Act shall subsist and be in force for one year from the date of the same; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as hereinbefore directed with regard to the first valuation.

Fresh Valuation.

Triennial.

84. The Treasurer shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received, and paid out, and of the several matters in respect whereof such sums shall have been received and paid. All such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof made up to the 31st day of December last past and including such day, shall at some time during the month of January in each year, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited, and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Town Clerk in one or more of the local papers.

Treasurer's accounts.

85. All fines or penalties imposed by this Act, or by any borough regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council, and shall, when recovered, be paid to the Treasurer of the borough for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded; and to avoid the provisions of any borough regulation being evaded, it shall be competent for any officer of the local constabulary force, or municipal officer, personally cognizant of the contravention of any such regulation by any person, or on production or delivery to him of an affidavit duly sworn before a Justice of the Peace by any individual containing information that any regulation has, to his

Fines to be applied to municipal purposes.

No. 11-1883.

knowledge, been contravened, and stating the date of such contravention, unless otherwise provided by any bye-law, to give notice verbally or in writing to such person to appear before the Court of the Resident Magistrate or Police Magistrate for the purpose of having such contravention immediately thereafter heard and determined: and unless such person shall give security for his appearance not exceeding the maximum penalty imposed in and by the said regulation for the offence, such officer shall be justified in detaining him until the hearing of the charge, or he may release such offender with the sanction of the Mayor, or the Town Clerk, or such other officer as the council may authorize, on payment of the penalty provided in such regulation, or such lesser sum as such Mayor, Town Clerk, or such duly authorized officer shall after due enquiry deem to be a sufficient penalty: Provided that in case any person, who shall have given security as aforesaid for his appearance, shall fail and neglect so to appear, then and in that case the said security shall *ipso facto* be and become forfeited and payable to the Treasurer of the borough.

Dynamite, &c., to be stored only in specially licensed places.

86. The storing of kerosene, dynamite, gunpowder, and other explosive material shall not be permitted, except by Her Majesty's Government, for public purposes in such places as may be approved by Her Majesty's officers, and no other person shall be allowed to keep on any premises or place within the borough a greater quantity of any such material than licensed so to do by the council.

Burial-grounds.

87. So soon as any burial-ground, or portion thereof, within the limits of the borough shall become so crowded as to be likely in the opinion of two-thirds of the council, to become dangerous to the public health, the council shall be empowered to give three months' notice that burials therein shall cease, and after the expiration of the said term of three months, any person causing any interment to be made therein shall be liable, on conviction, to a fine not exceeding fifty pounds, to be recovered in any competent Court.

Penalties for unfenced wells.

88. Any owner or occupier of land within the limits of the borough wherein is any well uncovered or unfenced so as to occasion danger to life, who shall fail, refuse, or neglect, to comply with any written orders from the council, directing him to fill in, cover or fence in such well within the time specified in such notice, shall be liable to a penalty not exceeding ten pounds for every day he shall so fail, neglect, or refuse to comply with such written orders as aforesaid, such penalty to be recovered by the council in any competent Court; and the said council shall be empowered to cause entry to be made on the said land, and to fill up, cover, or fence in such well or wells, and the cost of such works shall, in the first instance, be defrayed out of the funds of the borough, and shall be recoverable from such owner or occupier in addition to such penalty as aforesaid.



89. In every case in which it is by this Act provided that the consent of the majority of ratepayers shall be first had and obtained for the purpose of carrying out any of the provisions hereof, the word "burgesses" shall mean and be understood to refer only to such burgesses as are entitled to vote for councillors under the provisions of this Act; and for the purpose of recording their votes the said burgesses shall be summoned to appear at a public meeting, by notice published in such of the local newspapers, if any, published within the borough, as the council may deem fit, and also by notice affixed in some conspicuous place upon or near the Town-hall, at least twenty-one days previous to the holding of such meeting, which notice shall clearly set forth the object of such meeting and the time and place for holding the same; and at every such meeting it shall be lawful for any two or more of the duly qualified burgesses present to demand a poll of the burgesses entitled to vote, which poll shall be taken on a day to be fixed by the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in such of the local papers, if any, as the council may deem fit, which poll shall commence at 10 o'clock a.m. and be closed at 3 o'clock p.m. of such day.

No. 11—1883.  
How majority of votes of "Burgesses" to be obtained.

90. All rates assessed under the authority of this Act and of the Kimberley Borough Act, 1883, shall be and be deemed to be a charge upon the property and recoverable as against the present or any future owner or occupier thereof.

Recovery of rates.

91. Whenever any day is mentioned in this Act as one upon or before which any act is required to be done, or whenever any day which shall be mentioned in any notice issued under the authority of this Act shall happen to fall upon a Sunday or any public holiday, such day shall be read as if the day succeeding such Sunday or such public holiday had been named.

Sundays and public holidays.

92. The corporation created by this Act shall be subject and liable to every contract, engagement, debt and demand to which the present corporation is liable or subject at the time of the taking effect of this Act, and in like manner shall be vested with and entitled to all rates, assets, and claims, which the present corporation is vested with or entitled to at the time of the taking effect of this Act.

New Corporation liable for debts, &c., of old one.

93. The said borough shall not be excluded from the operation or benefits of any Act or Acts heretofore passed, or which may hereafter be passed, relative to Municipalities or Town Councils and of which Acts the said borough may desire to avail itself by reason merely that the words "borough" and "Borough Council" do not appear in such Acts.

Borough to have benefit of all Municipal Acts, &c.

94. This Act may for all purposes, be cited as the "Kimberley Borough Act, 1883."

Short title.

## ACT

To Explain and Alter certain Provisions of the Kimberley Borough Act, No. 11 of 1883, and to Increase the Powers of the Borough Council of Kimberley. <sup>(1)</sup>

## Preamble.

WHEREAS doubts have arisen, which it is desirable to remove, as to the validity of certain bye-laws passed by the Borough Council of Kimberley, and whereas it is desirable to alter and amend in certain particulars certain sections of Act No. 11 of 1883, known as the Kimberley Borough Act, 1883, and to fix and determine the powers of the said Borough Council, and to explain certain of the provisions of the said Act: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

## Repeal of former Ordinances.

1. The first section of the Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof the following shall stand as and be the first section of the said Act:

## Except rules made thereunder.

The Ordinance No. 17, 1879, and No. 10 of 1880, and the Ordinance No. 7 of 1876 of Griqualand West, so far as such last-mentioned Ordinance applies to the Borough of Kimberley, are hereby repealed; provided, however, that such repeal shall not affect the bye-laws of the corporation at the time of the passing of the said Act in force, but the said bye-laws shall continue to be of force and operation until such time as the same shall be altered or new ones are published under the provision of the Kimberley Borough Act, 1883, or this Act; and such bye-laws or borough regulations passed or purporting to have been passed under the authority of the Kimberley Borough Act, 1883, shall be taken to be and to have been of equal force and virtue as if the same had been published either under the authority of the various provisions of this Act or of the Kimberley Borough Act, 1883.

And provided, also, that the present Mayor, councillors, and officers shall, until other persons shall be elected or appointed in their places respectively be, and they are hereby declared to be and to have been the Mayor, councillors, and officers of the Borough of Kimberley created by the said Kimberley Borough Act, 1883, and this Act, and shall during the time aforesaid do and perform all such acts and things, and be vested with all the rights and powers, and be subject to all liabilities which are authorized or required to be done or performed by or are vested in or imposed on the Mayor, councillors, and officers respectively of the borough by the said Acts.

<sup>1</sup> Printed as amended by Act 10, 1886.

2. The forty-ninth section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof the following shall stand as and be the forty-ninth section of the said Act :

The council shall have power and authority to do the following acts on all land within the limits of the borough :

To make, alter, and keep in repair roads, tramways, streets, thoroughfares, dams, ditches, sewers, drains, and bridges ; to dig, deepen, preserve, fence in, and cover or fill up wells, to excavate, construct and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works supplying the borough with water ; and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, dig or deepen wells, or to execute any other like works ; to take means for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils ; to establish and maintain fire-brigades and salvage corps under the control of such officer or officers as may be from time to time appointed by the said Borough Council, with power to do all things necessary to save any building or buildings from destruction by fire ; to make regulations for the storing, carriage, and removal of gunpowder, dynamite, kerosene, and other explosives within the borough ; to order, establish, hold, alter or remove markets, outspans, and to lease or purchase any land, and to erect, lease, or purchase, or keep in repair any building for any municipal requirement or purpose ; to cause all buildings, bridges, and other erections which may be found to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings ; to lease, purchase, or erect and maintain such school buildings and manage such schools as the Borough Council shall from time to time think fit, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such school may be required under any Act in force for this purpose, and to grant annually, half-yearly, or quarterly sums of money in aid of any school now existing or which hereafter may be established within the borough, such sums to be determined in such manner and according to such system as to the Borough Council, from time to time may seem good ; to appoint an Inspector or Inspectors of Schools ; to grant such sums of money in aid of public libraries within the borough as may from time to time be voted by a majority of two-thirds of the Borough Council ; to cause all buildings used by the public, capable of containing more than three hundred persons, to be provided with sufficient and proper means of egress in case of fire or other casualty : to regulate from time to time the materials of which all future buildings shall be constructed, the distances, spaces, and character of party walls which shall be left between them, the height the foundation shall

No. 30—1884.

be above the level of the surrounding ground, and the height the floor shall be above the same; and no proprietor of any house or building found with insufficient foundations, or with floors lower than the height allowed after the taking effect of the Kimberley Borough Act, 1883, shall be entitled to any compensation for damages caused by flooding from heavy rains or thunderstorms; to assize weights and measures according to the standards in force by law, and to appoint an officer for that purpose; to grant permits and licences for any purpose to be defined by the borough regulations for the time being; to levy dues as hereinafter provided; and by borough regulations duly approved to do any of the following acts, that is to say:—To regulate the time and place for slaughtering cattle, and the state and condition of slaughter houses or slaughter places; to make due provisions for the licensing, confining or killing of dogs, the confining or killing of pigs, goats and fowls: to appoint one or more competent persons to examine meat, fish, or other provisions exposed for sale, and to test or analyse any drinks offered for sale, and who, in case such meat, fish, or other provisions, or beverages be unfit for human food or drink, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be for the advantage and convenience of the borough; to establish and provide for the management of public pounds within the borough limits; to make due provisions for the lighting of the streets, to regulate the width and direction of roads, streets, and thoroughfares, to make regulations for the licensing of carts, wagons, or other vehicles belonging to residents, whether plying for hire or not, within the limits of the borough; to fix a tariff of charges which the owners or drivers of vehicles plying for hire may make within the radius of four miles from the centre of the market-square; and to order, establish, alter, maintain, or remove, and to make regulations for the maintenance and control of Native Locations, and of locations for Indian immigrants commonly called "Coolies," at the time of the passing of the said Kimberley Borough Act, 1883, existing or thereafter to be created by the Borough Council; and for the good government and control of natives, coolies and immigrants within the borough; to regulate the proceedings of the council and the duties of their officers and servants, and to preserve order at council meetings; to regulate and licence market guides, market agents, porters, public carriers, carters; to regulate public sales, to suppress houses of ill-fame and gaming-houses; to restrain noisome or offensive trades; to compel residents to keep their premises free from offensive or unwholesome matters; to preserve public decency; to prevent the spread of contagious or infectious diseases, and to preserve the public health; to regulate the removal of night-soil, stable litter, filth and refuse from private premises, and from all

streets, roads, and public places; to prevent impure water being supplied to the inhabitants; to establish and maintain cemeteries; to plant and preserve trees and shrubs; to grant licences for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting grass upon municipal commonage or lands; to fix the number and description of live-stock any inhabitant shall be allowed to keep within the limits of the borough; to grant temporary grazing rights, to carriers, travellers, and others frequenting or passing through the municipality or attending the markets thereof; to establish, maintain, and regulate public libraries, museums, botanical gardens, parks, public baths, wash-houses, and places of public recreation to regulate traffic and processions; provided that no dues or charge for any permit or licence or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the fifty-fifth section of the Kimberley Borough Act, 1883, provided.

3. The fiftieth section of the said Act No. 11 of 1883, shall be and hereby is repealed, and the following shall stand as and be the fiftieth section of the said Act:

Powers of Council  
in Mining Areas.

Save and except as is hereinafter in this section and in section seventy-two of the Kimberley Borough Act, 1883, provided, nothing in this Act contained shall be construed so as to authorize the said Borough Council to exercise any of the powers vested in them within any mining area at the time of the passing of the Kimberley Borough Act, 1883, existing, or which may thereafter be created, so as to interfere with the rights and privileges of the claimholders of any mine at such time existing or which may thereafter be proclaimed on their depositing floors, or with the rights of the Government, or any mining board, proprietor or claimholder of any mine, or any tramways, tipping sites, roads or other works connected with such mine, whether the same at such time existed or shall thereafter be constructed or fixed; provided, nevertheless, that in case the said Borough Council shall deem it necessary for the proper municipal management of the said borough that drains or other public works should be constructed or carried out within such mining area, whether such works are or are not connected with any works situate without such area, or that any other of the duties or powers imposed or conferred upon the said council under the provisions of the Kimberley Borough Act, 1883, or of this Act, shall be performed and carried out within any such area, then and as often as the same shall happen the said Borough Council shall by writing notify to the mining board as is provided in the fifty-eighth section of Act 19 of 1883, or joint-stock company as aforesaid exercising jurisdiction over such mining area or mining works as aforesaid, the nature, accompanied by sufficient particulars, of the work or duty which the said Borough Council may desire to have done or performed,

No. 30—1884.

and such mining board or body of persons or joint-stock company as aforesaid shall, within seven days after receipt of such notice, notify its sanction or refusal to do or perform such work or duty as aforesaid; then and in case and as often as the said mining board shall refuse to do the work thought necessary by the said Borough Council, or to sanction the same being done, the matter at issue shall forthwith be referred to arbitration under the provisions of Act No. 6 of 1882, save and except that the period limited by the said Act within which the arbitrators or umpire shall make their or his award shall not exceed seven days from the date of reference: Provided, further, that all such works or duties within any such mining area as aforesaid as may be sanctioned, approved or directed as aforesaid, shall forthwith be performed and carried out by such mining board, or body of persons, or joint-stock company as aforesaid, or by the Borough Council at the expense of such mining board, or body of persons, or joint-stock company as aforesaid, as may be determined by mutual arrangement, or by the award of the said arbitrators or umpire; provided, further, that the said Borough Council shall in no case be or be held liable in damages or otherwise by reason of any injury to person or property within any mining area, whether the same shall arise from flooding, defective drainage, or any other cause whatever, or by reason of such injury outside any mining area, provided the same shall have been caused by accumulation of water, flooding, defective drainage, or other cause within such mining area; provided, further, that in case any mining board or body of persons, or joint-stock company as aforesaid, shall neglect to carry out proper sanitation within its mining area to the satisfaction of the sanitary inspector for the time being of the Borough Council nothing in this section contained shall be deemed to prevent the Borough Council from enforcing such sanitary regulations, and claiming and charging such sanitary dues within such mining area as aforesaid, either as against the mining board or the claimholders and residents in such mining area, as may have been framed by the Borough Council specially for application within such mining area, and duly sanctioned by His Excellency the Governor; and in the event of any mining board ceasing to exist from any reason whatsoever, and no such board of persons as is provided in the fifty-eighth section of Act 19 of 1883 being appointed, or any joint-stock company acquiring the said mine, and who shall have notified to the Borough Council its willingness to discharge the duties herein imposed on mining boards or body of persons, then and in that case the Borough Council shall be vested with the same power as the mining board to carry out the provisions of this section, and the expenses incurred in connection therewith shall be borne by such mining board, or if there be no mining board or such body of persons appointed as aforesaid, by the owners of claims and other property

in such mining area as aforesaid *pro rata*, according to the assessed value of the claim and other property in such mining area; and provided, further, that in such case as last aforesaid the Borough Council shall have the power from time to time, when necessary, to make an assessment of such claim and other property, and to levy rates thereon; and provided, further, that the proceedings in respect of the said assessment, levy and recovery shall be as far as possible in the manner provided for in respect of the assessing, levying and recovery of rates on other property within the borough, according to the provisions of this Act and of the Kimberley Borough Act, 1883.

No. 30—1884.

4. The seventy-second section of the said Act No. 11 of 1883 shall be and hereby is repealed, and instead thereof the following shall stand and be the seventy-second section of the said Act:

Repeal of 72nd Section of Act 11 of 1883.

For the purpose of raising the means for making and repairing the roads, streets, market-places, bridges, drains, sewers, water-courses, reservoirs, wells, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines and appurtenances, for the effecting of all other public works and improvements within the borough; for the purpose of raising the means for effecting the repairs of all such works as the council is hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other current expenses required to be borne by the borough, the council shall have the power to impose, levy, and recover all such market dues, water rates, pound fees, sanitary fees or charges, outspan fees, grazing fees, fees or charges for all such licences which may be granted by them, location fees, dog taxes, charges or expenses for services rendered in the extinction of fires, cemetery fees, and dues on all firewood not being delivered on contract, but being sold or hawked within the limits of the borough exclusive of the public market, and shall be authorized by the said borough regulations as aforesaid, and shall also have the power, as often as shall be deemed necessary and in manner hereinafter and in the Kimberley Borough Act, 1883, provided, to assess the value of all immovable property within the borough, and to levy a rate on such assessment; provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least eight members of the said council; and provided, also, that no rate shall be imposed on any immovable property belonging to Her Majesty the Queen and used for public purposes, nor on public prisons, or police stations, alms-houses or hospitals, nor any public building appropriated to public worship, nor upon burial-grounds, nor upon buildings and land solely appropriated to the purposes of education, nor upon any claim in

New section substituted.

Power to impose rates.

No. 30—1884.

the Kimberley or Old De Beer's diamond mines, nor upon any claim in any declared digging or mine within the borough, save and except in such manner and under such conditions as are in section three of this Act provided: provided, further, that notwithstanding anything in this section or in section three of this Act contained, the said Borough Council shall have the power to assess the value of and to levy and recover rates in respect of all houses and buildings within such mining area, whether the same are used for mining purposes or not; which assessment, levy and recovery shall be, as far as possible, in the manner provided for in respect to the assessment, levying, and recovery of rates on other property within the borough.

Ratepayers.

5. The seventy-third section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and the following shall stand for and be the seventy-third section of the said Act:

All persons owning or occupying properties within the limits of the borough, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property in such manner and to such extent as is hereinafter and in the Kimberley Borough Act, 1883, provided; and provided, further, that in any case where a house, building, or other erection shall have been erected on any land the property of any person not the owner of such house or building or erection, the owner of such land shall be liable to be separately rated in respect of the value of such land, which value shall be computed on the principle that the annual rental receivable by the landlord in respect of such land is six per cent. of such rateable value; and the owner of such house, building, or erection shall be liable to be separately rated in respect of the value of such house, building, or erection; and it shall not be lawful for the owner of such land to enter into any contract with the occupier of such house, building, or erection, whereby the liability of the owner of such land shall be in respect thereof transferred to the owner of such house, building, or erection. And in case such house, building or erection shall have become abandoned or unoccupied, then the owner of the land on which such building shall have been erected shall further be liable to be rated in respect of such house, building, or erection.

Power to appeal  
against Valuation  
Roll.

6. The seventy-seventh section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof the following shall stand for and be the seventy-seventh section of the said Act:

It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, to appeal within twenty-one days against such valuation from the decision of the Court in the last preceding section mentioned, to the Court of the Resident Magistrate, and such Court shall inquire into such valuation; 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 incumbent on such Resident Magistrate, at the request of the council or party objecting, instead of himself deciding such question, to record such question of law for the decision of the High Court of Griqualand, and such question shall be stated in the form of a special case, the terms of which shall be agreed upon between the respective parties, or, in case of their disagreement by such Resident Magistrate, and such case shall be argued before and determined by the said Court, and the said Court may make such order as to the costs of such special case as to it shall seem fit; provided no objection shall be taken to the principle of any such assessment, or rate, or to the amount payable in respect thereof by any person, unless such person shall have appealed against such assessment or rate; provided, also, that in case any assessment or rate shall have been either wholly or partly upset, varied, or amended by any Court of Appeal, it shall be lawful for the council forthwith to cause to be made when and as often as it shall be necessary, a fresh valuation, assessment, and rate, and for such purpose the various sections of the Kimberley Borough Act, 1883, in respect of the valuation, assessment, and rating of property within the borough shall be held to be as far as may be applicable to such proceedings.

7. The eighty-first section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and the following shall stand as and be as the eighty-first section of the said Act:

Power to sue for rates due by absent owner.

The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the borough, his agent or the person receiving rents for him, or the occupier, either separately or both of them, in one or the same action, each for the whole rate, in any competent Court, and may recover the same by the judgment and process of the Court; provided that any person who as occupier may have become liable for any rate as aforesaid, shall be liable for the payment of the same, although he may have ceased to occupy the property in respect of which the rate has been imposed; and provided, further, that nothing herein contained shall affect the liability of any owner of land in clause 5 mentioned in respect of any abandoned or unoccupied house, building, or other erection, but proceedings for the recovery of rates may be taken against such owner in respect of his interest in the land as well as of his interest in such unoccupied or abandoned house, building, or other erection.

8. The eighty-third section of the said Act No. 11 of 1883 shall be and hereby is repealed, and instead thereof the following shall stand and be as the eighty-third section of the said Act:

Repeal of 83rd Section of Act 11 of 1883.

The first valuation to be made as aforesaid for the purpose of this Act shall subsist and be in force for one year from the date of the same: at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made

Fresh Valuation.

Triennial.

1948 MUNICIPALITIES (KIMBERLEY BOROUGH).

- No. 30—1884. in the same manner as hereinbefore directed with regard to the first valuation.
- Repeal of 90th Section of Act 11 of 1883. 9. The ninetieth section of the said Act No. 11 of 1883 shall be and hereby is repealed, and the following shall stand and be as the ninetieth section of the said Act :
- Recovery of rates. All rates assessed under the authority of this Act and of the Kimberley Borough Act, 1883, shall be and be deemed to be a charge upon the property and recoverable as against the present or any future owner or occupier thereof.
- Further preamble. And whereas it is necessary for the proper management and good government of the Borough of Kimberley that the said Borough Council shall exercise uniform control and authority within the limits of the said borough.
- Bye-laws to be submitted to Borough Council and approved by Governor. Now, therefore, be it enacted as aforesaid as follows :—
10. Notwithstanding anything in any Act of Parliament to the contrary, no bye-law or regulation now made or hereafter to be made of any public water or lighting company carrying on business or established now or hereafter within the Borough of Kimberley, shall become binding on any person within the said borough till such bye-law or regulation shall have been submitted to the said Borough Council for consideration, and have been approved of by the Governor.
- Short title. 11. This Act may for all purposes be cited as “ The Kimberley Borough Amendment Act, 1884.”

No. 10—1886.]

[July 6, 1886.

ACT

To Declare Her Majesty's Appellate Jurisdiction under the “ Kimberley Borough Amendment Act,” No. 30 of 1884.

- Preamble. WHEREAS it is desirable to afford to the parties interested in the inquiry mentioned in the sixth section in the “ Kimberley Borough Amendment Act, 1884,” and to all Her Majesty's subjects, the right of appeal to Her Majesty the Queen in Council: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—
- Appeals to Privy Council. 1. Any limitation of the right of appeal now existing by the law of this Colony, contained in section six of the “ Kimberley Borough Amendment Act, 1884,” is hereby expunged, and the said section shall be read as if the words “ and the decision of such Court shall be final and conclusive,” and the further words “ and the decision of the High Court thereon shall be final and conclusive,” were not contained therein.
- Short title. 2. This Act may be cited as the “ Kimberley Borough Amendment Act, 1886.”

No. 14—1883.]

[September 27, 1883.

ACT

To Authorize the Borough Council of Kimberley to Raise a Loan for certain Municipal Purposes.

WHEREAS it is expedient to empower and enable the Borough Council of Kimberley to borrow money for the purpose of paying existing liabilities and effecting local improvements, and to levy rates for the repayment of the amount so borrowed with interest,

Preamble.

And whereas at a public meeting of the burgesses of Kimberley, convened for that purpose on the 11th day of June, 1883, it was resolved that the said council be authorized to borrow a sum not exceeding one hundred thousand pounds sterling for such purposes,

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Borough Council heretofore known as the Municipality of Kimberley is hereby authorized and empowered to borrow and take up at interest on debentures or otherwise from time to time such sum or sums of money as may be needed for the purposes in the preamble to this Act mentioned, not exceeding in the whole the sum of seventy-five thousand pounds sterling: Provided that after payment of existing debts the said council shall in all cases convene a meeting of ratepayers, by notice of not less than seven days (in at least one of the local papers), and obtain the sanction and approval of such ratepayers in manner as is now or hereafter may be provided by any Municipal Ordinance or Borough Act now in force or hereafter to be enacted, before expending on any public works any balance of the moneys to be raised under this Act.

Borough Council empowered to borrow to amount of £75,000.

2. It shall be lawful for the said council to impose, for the purpose of providing for the payment of the interest, and also for the payment of the annual contribution in repayment of the principal as hereinafter described of the money or moneys aforesaid, special rate or rates upon the immovable property situate within the borough or municipality of Kimberley, and liable to be rated for borough or municipal purposes; and every rate or tax so imposed by the said council shall be of the same force and effect, and be levied in the same manner as if it had been a tax or rate imposed under the provisions of the Kimberley Municipality Amendment Ordinance, 1879, or of any subsequent Act passed for the purpose of repealing or amending the said Ordinance, or in lieu thereof.

Special rates may be imposed.

3. As a fund for the payment of interest and gradual extinction of the loan or loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the special rate or rates as aforesaid, an annual sum sufficient to pay the interest on the amount of such loan or loans, or the balance thereof, and a further sum equal to four pounds per centum on the

Sinking fund provided for.

1950 MUNICIPALITIES (KIMBERLEY BOROUGH).

No. 14—1883.

total amount of the capital sum of such loan or loans, so long as any portion of the money to be raised as aforesaid shall remain unpaid, and the amount yielded by the said sum of four pounds per centum shall be applied annually in paying of the debentures (if debentures be issued), or otherwise in part discharge of the loan. Should debentures be issued the said debentures shall be numbered in rotation, and the selection of debentures for repayment shall be by an annual drawing to be made and determined by lot by the Mayor in public at a meeting of the Borough Council.

General funds may be used for paying interest or principal.

4. It shall be lawful for the said council to apply to the payment of the interest and principal, or interest or principal of the money or moneys aforesaid, any funds or moneys coming to the said council from any source whatever, and not specially appropriated or required for any other object.

Separate accounts of moneys raised.

5. The council shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act; and of the expenditure of such moneys for the purposes aforesaid: And the said council shall yearly, so long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the Town Office of Kimberley, for the inspection at all reasonable times of ratepayers, an account showing the particulars aforesaid, and giving any other information which the said council may deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said council not later than the first day of March in the year next succeeding.

Provisions of "Public Bodies Debts Act, 1867" to apply.

6. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867:" Provided, however, that it shall be lawful for the High Court of Griqualand, in case any petition shall be presented to such Court under the provisions of the said Act, for enforcing payment of any judgment for the recovery of money borrowed under the provisions of this Act, to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of the said "Public Bodies Debts Act, 1867," to the contrary notwithstanding.

Costs to be paid out of moneys borrowed.

7. The necessary costs, charges and expenses of obtaining this Act, and of obtaining suitable plans, drawings, designs and specifications, and all costs of raising the loans or other expenses incurred in carrying out the provisions of this Act, shall be paid by the said council out of the moneys so to be borrowed as aforesaid.

Short title.

8. This Act may be cited as the "Kimberley Borough Council Loan Act, 1883."

No. 17—1869.]

[October 18, 1869.

ACT

To Enlarge the Powers of the Borough Council of King William's Town to borrow Money.

WHEREAS it is expedient that money should be raised by the Borough Council of King William's Town for the purpose of paying off the existing debts of the council, raised on mortgage of borough lands and rates under and by virtue of the fifty-first and fifty-second sections of the Ordinance No. 9, 1864, of British Kaffraria, intituled "An Ordinance to repeal the Laws relating to the Corporation of King William's Town:" And whereas it is also expedient that the said council should be empowered to raise such sum or sums of money as may be necessary to enable them to pay and satisfy such liabilities as may from time to time be incurred by the said Borough Council: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the Ordinance No. 9, 1864, aforesaid, and especially the fifty-first and fifty-second sections thereof, and so much of any other ordinance, law, or proclamation as is repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Preamble.  
Repugnant portions of Ordinance No. 9, 1864, repealed.

2. The Borough Council of King William's Town may with the consent of the Governor, raise, in this Colony or elsewhere, by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, such sum of money as may be needed to pay and discharge the existing debts due and owing by the said council, contracted under and in terms of the fifty-first and fifty-second sections of the said Ordinance No. 9, of 1864. And the said council may further raise, in the manner before described, any other or further sum of money which shall be required for any purpose of a municipal nature which the Borough Council shall deem desirable, and the said Governor shall approve of: Provided, always, that nothing in this or the preceding section enacted shall prejudice any rights which may have been acquired by creditors or others under the said fifty-first and fifty-second sections respectively: Provided, further, that the said council shall, before applying to the said Governor for his consent, give public notice, at least two months previously, in one or more of the local newspapers, of their intention to make such application, in which notice so published shall be given a full and clear statement of the purpose or purposes for which the money is required: Provided, also, that as often as the said council shall raise money by the issue of debentures to be charged upon any such land or property as aforesaid, the council shall execute, to and in

Council may borrow money to pay off certain existing debts.

And may further borrow money for municipal purposes.

Rights of existing creditors not prejudiced.

Notice to be given of intention to apply for Governor's sanction to borrow.

Where debentures are charged on lands, mortgage to be executed.

No. 17—1869.

Mortgage, &c., not impeached through non-compliance with provisions of this section.

Council may borrow on security of rates.

But only with consent of majority of ratepayers.

Provisions of "Public Bodies Debts Act" applicable.

How borough may sue and be sued.

favour of any person or persons whom the said council shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage: Provided, lastly, that no mortgage, debenture, or other security, in regard to which the Governor shall have given his consent to the execution or issue thereof, shall be impeached or questioned by reason or upon the ground that any of the conditions or provisions of this section have not been complied with.

3. The council may, for any such purpose as is in the preceding section described, mortgage or charge by debentures the municipal rates of the Borough of King William's Town, in security for any sum of money to be borrowed by the said council, under the provisions of this Act: Provided that no sum of money shall be borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said borough present at a meeting to be convened by the council for the purpose of considering the subject; of the object, time, and place of holding which meeting not less than fourteen days' notice shall be given in one or more of the local newspapers as aforesaid.

4. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the Public Bodies Debts Act of 1867.

5. It shall be lawful for the borough of King William's Town to sue and be sued, in any action which may be brought under this Act by its corporate name, as the Mayor, Councillors, and Burgesses of King William's Town.

No. 21—1881.]

[June 25, 1881.

### ACT

To enable the Borough Council of King William's Town to provide the Inhabitants of that Town with Water, and for that purpose to take Water from the Buffalo River, and to acquire Government and other Lands required for the Construction of the necessary Water Works.

Preamble.

WHEREAS the present supply of water to the town of King William's Town is very defective, and it is desirable that a good and sufficient supply should be obtained, and the Borough Council of the said town has caused surveys to be made, and are advised

that the same can be obtained from the Buffalo River in the division of King William's Town: And it is expedient that the works necessary to accomplish that object should be constructed either by the said council or by a joint-stock company or co-partnership of individuals, or an individual with whom the said council may contract either for the whole or any portion of the said works, or the material therefor: And that to enable the said council to procure the necessary funds, the said council shall be empowered either under the provisions of the Act No. 8 of 1877, entitled "The Irrigation Act of 1877," Act No. 28 of 1879, entitled "An Act to assist Municipalities to carry out Irrigation Works," and the Act No. 7 of 1880, entitled "The Irrigation Amendment Act of 1880," or otherwise as the council may deem fit, to raise such sum or sums of money not exceeding in the aggregate the sum of thirty-five thousand pounds. And that in order that the said council may be enabled to pay the interest on the said loan the said council should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest as aforesaid:

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the said council, from time to time, to borrow and to take up at interest such sum or sums of money, not exceeding in the whole thirty-five thousand pounds sterling as may be required for the purposes of this Act, and to charge the borough rates of the said borough as security for any such sum to be borrowed by the said council.

Power to Council  
to borrow £35,000.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Buffalo River in the district of King William's Town, such a supply of water of the said river as they may require for the purposes of this Act. And for the purpose of enabling them so to do, it shall and may be lawful for the Governor of this Colony, and he is hereby authorized to give and grant to the said council in full and free property on such conditions as may be agreed upon such Government land as may seem to him desirable on which the said Buffalo River takes its rise, or all such Government land as is situate at or immediately adjoining the point on the said river from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or any right of water which he may, at the time of the taking effect of this Act, possess or be entitled to in reference to the said Buffalo River, or in any way interfere with, or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the eighth section of this Act provided: Provided, further, that

Power to take  
water from Buffalo  
River.

Governor may  
grant certain lands  
to the Council.

Compensation to  
persons injured by  
diversion of water,  
&c.

No. 21—1881.

no person to whom any Government land shall be sold or leased after the passing of this Act shall thereby acquire any water or right of water for the interference with or lessening of which by the works hereby authorized he shall be entitled to claim any recompense or compensation.

Power to make necessary works.

3. The said council is hereby empowered to construct and make all such works as may, in the opinion of the said council, be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town; and for such irrigation purposes, as the said council may deem necessary and expedient.

Power to appropriate Crown Lands.

4. The council is hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart for Church purposes, commonly called "Glebe lands," and also to enter upon, occupy, enclose, take, and use any land the private property of any person or persons whomsoever, which may be required for the purposes of this Act, and may agree as hereinafter provided for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works, upon such terms and conditions as may be mutually agreed to.

And lands of private owners on conditions provided for.

Power to take Crown and other lands to protect sources of the Buffalo River.

5. It shall be lawful for the said council to acquire and take possession in the manner hereinbefore and hereinafter provided of any land whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land belonging to private persons, that may be required for the purpose of protecting the sources of the said Buffalo River, or the sources of supply from whence the water may flow into the reservoirs, dams, places or place where the said works may take off the water of the said river.

Pipes and conduits may be laid in streets

6. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof.

Right of access along line of works.

7. It shall be lawful for the said council at all times, by themselves, their engineers, contractors, or workmen, and with carts or



carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council acquired under the provisions of this Act, for the purpose of adding to, repairing, re-laying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient by the said council in or about carrying out the purpose of this Act: Provided, however, that such right of way shall in no case exceed a space of six feet on each side of the line of works.

8. Any person or persons from whom any water or right of water, land, or any stone, gravel or other material, may be required to be taken for the purposes of this Act, such person or persons shall be bound and obliged to send in to the Mayor of the said council his, her, or their claim or claims for the purchase amount, hire, recompense or compensation which he, she, or they shall claim to be entitled to for such water or right of water, land, or any stone, gravel, or other material required, or taken, or which shall be required or taken for the purposes of this Act, within twelve months after any such taking as aforesaid, and for that purpose the necessary plans, specifications and reports in connection with the said works shall lie at the office in King William's Town of the Town Clerk of the said council, during his usual business hours for and during the period aforesaid, for the inspection of any person or persons who shall be interested therein: After which said period no further or any claim or claims, which shall not have been sent in, in manner hereinbefore provided for, shall be recognized, nor shall such claimants be entitled to recover the amount of their claims, or any portion thereof from the said council, by any means or proceeding whatever: And in case the said council shall not consent or agree to pay the amount of such or any claim or claims then the said council shall cause to be served upon the person or persons whose claim they shall reject, a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such person or persons to state, in writing, to the said council, or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not; and if such person or persons should refuse the sum offered, or neglect to reply to the said notice, then the said council or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council or other person as aforesaid, within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator; and the said council or other person as aforesaid, upon receiving the name of the person so selected shall

Arbitration provided for where water or land of private owners expropriated

No. 21—1881.

nominate a second arbitrator, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said council or other person aforesaid and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said council or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account of and at the risk of such person as aforesaid who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council or other person aforesaid, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Proceedings in case water on land of minors, absentees and others expropriated.

9. In case the said council or other person aforesaid shall require to take or use any water, or land, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorized in his capacity as such guardian or curator to treat and agree with the said council or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said council, or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorized to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited

interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisement shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and one or more local papers for four successive weeks, describing as accurately as may be, the land or materials which are required to be used or taken, and calling by name on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners or any person duly authorized by him or them, for the recompense or compensation to be made by the said council for the said land and materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession. And in case the owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly

No. 21—1881.

appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said council upon so paying the said sum, shall be authorized and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land or materials as aforesaid had been duly done and performed.

Penalties for injuring, &c., the works

10. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act, shall upon conviction, forfeit for the use of the said council a sum not exceeding one hundred pounds sterling, or be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally both under this Act and any other law for or in regard to one and the same act.

Penalties for washing, bathing in, and otherwise defiling the streams.

11. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipal council, or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the council, or shall wash, throw, or cause to enter therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, or reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, shall for every offence, on being convicted thereof, forfeit for the use of the said council a sum not exceeding five pounds sterling, and in failure of the payment of such fine the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

Tariff of charges for private water-leavings to be published.

12. The council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leavings and for the supply to industrial establishments shall be regulated, and the payment for all private water-leavings and for the supply to industrial establishments shall be in accordance with such tariff: Provided, nevertheless, that the said council, or any person duly authorized by them, shall have

access at all reasonable times to inspect and regulate all such private water-leadingings. No. 21-1881.

13. It shall be lawful for the said council, at any meeting at which a majority of the members shall be present, to frame from time to time such bye-laws as they shall deem necessary for regulating the system of water supply to the town, such bye-laws to be submitted for the approval of the Governor in manner provided by the Ordinance of British Kaffraria No. 9 of 1864, entitled "The King William's Town Borough Ordinance, 1864." Power to frame bye-laws.

14. In order to pay the interest on the amount of the said loan and to provide for all other claims arising under this Act, the council shall be empowered and compelled to impose, levy, and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the said Ordinance of British Kaffraria No. 9 of 1864, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof: Provided that it shall be lawful for the said council to apply for the payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said council from any source whatever and not specifically appropriated or required for any other object. Rates may be levied to pay interest on loan and other expenses.

15. The amounts for assessment entered on the tenants' assessment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purposes of this Act so far as the properties included in such tenants' assessment roll are concerned, but for any or all properties not included in such tenants' assessment roll, and for all properties not liable to assessment under the said Ordinance of British Kaffraria, No. 9 of 1864, the annual value shall be made and determined annually by some competent person to be appointed by the council: Provided that such valuation shall lie open for public inspection at the office of the council for the space of one calendar month from the levying of the said annual rate, and the council shall give notice in one or more of the newspapers published within the said municipality that the same lies open for inspection, and the provisions of the 65th section of the said Ordinance No. 9 of 1864 shall apply to the hearing and deciding upon objections to such valuation. Provisions for proper assessment of properties.

16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day, to be fixed by the said council, of which day and of the amount of the When rates payable.

1960 MUNICIPALITIES (KING WILLIAM'S TOWN).

- No. 21—1881. rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.
- Collectors to be appointed. 17. As soon as any rate shall be assessed as aforesaid the council shall appoint under the corporate seal a person to collect the same, and which rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court of the district in which such defaulter shall reside.
- "Public Bodies Debts Act, 1867," to apply. 18. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act shall be subject to the Public Bodies Debts Act, 1867.
- Separate accounts to be kept. 19. The council shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: And the said council shall yearly and every year, so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the borough for the inspection, at all reasonable times, of any householder of the borough, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year.
- Such accounts to be accessible to householders. 20. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid.
- Costs, &c., may be paid out of loan. 21. Nothing in this Act contained shall be taken to deprive the said council of any rights and privileges which it may possess, or of which it may be entitled to avail itself, under the provisions of the Acts No. 8 of 1877, entitled "The Irrigation Act, 1877," Act 28 of 1879, entitled "An Act to assist Municipalities to carry out Irrigation Works," and No. 7 of 1880, entitled "The Irrigation Amendment Act, 1880," the true intent and object of this present Act being to add to and increase and in no way to derogate or detract from such rights and privileges.
- Privileges under other Acts not to be affected by this Act. 22. The word "borough" in this Act shall mean the borough of King William's Town as established by the said Ordinance of British Kaffraria No. 9 of 1864; and the word "council" the Borough Council of King William's Town.
- Definition of terms. 23. This Act may be cited as the "King William's Town Water Supply Act, 1881."
- Short title.

No. 7—1876.]

[July 4, 1876.]

## ACT

For enabling the Municipality of Aliwal (Mossel Bay) to borrow a Sum not exceeding £5,000 sterling, for the purpose of providing a supply of Pure Water for the use of the Inhabitants of the Town of Aliwal and of the Shipping frequenting the Port of Mossel Bay, and for the better Drainage of the said Town.

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal (Mossel Bay), and the shipping frequenting the port of Mossel Bay, with a better supply of pure water than at present exists, and to provide a better system of drainage of the said town : And whereas at a public meeting of resident householders convened for the above purpose on the 22nd day of September, 1875, it was resolved by a majority of such householders then present that the commissioners of the said municipality of Aliwal (Mossel Bay) be authorized to carry out the objects before mentioned at an expense not exceeding the sum of five thousand pounds sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be lawful for the commissioners of the municipality of Aliwal (Mossel Bay) to borrow, from time to time, such sum or sums of money, not to exceed in the whole the sum of five thousand pounds sterling, for the purposes aforesaid, and to impose for the purpose of providing for the payment of the interest or principal or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed by the provisions of Ordinance No. 9 of 1836, section 28.

Municipality may borrow £5,000, and impose rates for extinction of debt.

2. The aforesaid sum of five thousand pounds sterling, or such lesser sum as shall have been borrowed for the purposes aforesaid, by the said commissioners, is hereby charged upon and made payable out of the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt, any funds or moneys coming to them from any source whatever and not specially appropriated or required for any other object: Provided also, that nothing in this section contained shall be construed to impair or affect the provisions of any of the next succeeding sections of this Act.

Money borrowed chargeable upon rates in last section authorized, or upon other available assets

3. The commissioners aforesaid shall grant to the party or parties, or company, society or co-partnership, from whom they

Acknowledgment for moneys borrowed to be given in form provided in schedule.

No. 7—1876.

shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the aforesaid sum on five thousand pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the Board of Commissioners shall be one.

“Public Bodies Debts Act, 1867,” to apply.

4. All moneys borrowed for the purposes of this Act shall be borrowed under the provisions of the “Public Bodies Debts Act, 1867.”

Separate accounts of moneys borrowed under this Act to be kept and submitted yearly for inspection of householders.

5. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes, or private watercourses, or from supplies of water for the shipping in the port, from sums received from rates imposed under the first section of this Act upon the rateable property of the municipality; and of all moneys expended upon the construction and maintenance of the waterworks and the construction and maintenance of the drains or sewers contemplated by this Act; and the said commissioners shall yearly and every year as long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Municipality of Aliwal (Mossel Bay) for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the municipality not later than the 1st day of March in the year next succeeding.

Provision for payment of costs of this Act.

6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys to be so borrowed as aforesaid.

Short title.

7. This Act may be cited for all purposes as “The Town of Aliwal (Mossel Bay) Water and Drainage Act, 1876.”

#### SCHEDULE.

We, the undersigned Commissioners of the Municipality of Aliwal (Mossel Bay), do hereby acknowledge that the said Commissioners in their said capacity are indebted to \_\_\_\_\_ in the sum of £\_\_\_\_\_ for so much money borrowed by the said Commissioners for the purposes set forth in the “Town of Aliwal (Mossel Bay) Water and Drainage Act, 1876,” and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage for and



on behalf of the said commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert, according to the agreement, the rate of interest and times of payment thereof and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands at Aliwal (Mossel Bay), this ——— day of ——— 18—.

A. B., Chairman of the Municipality.  
C. D., } Commissioners.  
E. F., }

Witnesses :

G. H.  
I. J.

No. 6—1878.]

[August 2, 1878.

### ACT

For enabling the Municipality of Aliwal (Mossel Bay) to borrow a Sum not exceeding Three Thousand Pounds Sterling for the purpose of Erecting a Town and Market-house for the use of the Inhabitants of the Town of Aliwal (Mossel Bay).

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal (Mossel Bay) with a suitable Town and Market-house : And whereas, at a public meeting of resident householders convened for that purpose on the 20th day of November, 1877, it was resolved, by a majority of such householders then present, that the commissioners of the said municipality of Aliwal (Mossel Bay) be authorized to carry out the object beforementioned at an expense not exceeding the sum of Three Thousand Pounds Sterling : Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be lawful for the commissioners of the municipality of Aliwal (Mossel Bay) to borrow, from time to time, such sum or sums of money, not exceeding in the whole the sum of three thousand pounds sterling, for the purpose aforesaid, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes ; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed by the provisions of the Ordinance No. 9 of 1836, section 28.

Municipality authorized to borrow not more than £3,000.

No 6—1878.

Money borrowed to be charged on rates

2. The aforesaid sum of three thousand pounds sterling, or such lesser sum as shall have been borrowed for the purpose aforesaid by the said commissioners, is hereby charged upon and made payable out of the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal, of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other object: Provided, also, that nothing in this section contained shall be construed to impair or affect the provisions of any of the next succeeding sections of this Act.

Written acknowledgment to be given to lenders.

3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purpose aforesaid, not exceeding in the whole the aforesaid sum of three thousand pounds sterling; which acknowledgment shall in substance be in the form annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Moneys borrowed subject to "Public Debts Act, 1867."

4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."

Separate accounts to be kept of moneys borrowed.

5. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys in the construction and maintenance of the said Town and Market-house: And the said commissioners shall yearly, and every year, as long as any part of the debt contracted under this Act shall be in existence, prepare and deposit in the office of the municipality of Aliwal (Mossel Bay) for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the municipality not later than the 1st day of March in the year next succeeding.

Costs of Act may be paid out of moneys borrowed.

6. The necessary costs, charges, and expenses of obtaining this Act and of obtaining suitable plans, drawings, designs, and specifications for the said Town and Market-house, may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid.

Short title.

7. This Act may be cited for all purposes as the "Town of Aliwal (Mossel Bay) Town and Market-house Act, 1878."

## SCHEDULE.

No. 6—1878.

We, the undersigned, commissioners of the municipality of Aliwal (Mossel Bay), do hereby acknowledge that the commissioners in their said capacity are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ for so much money borrowed by the said commissioners for the purpose set forth in the "Town of Aliwal (Mossel Bay) Town and Market-house Act, 1878," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage for and on behalf of the commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert according to the agreement the rate of interest and the times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands at Aliwal (Mossel Bay) this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B., Chairman of the Municipality.

C. D.,  
E. F., } Commissioners.

Witnesses:

G. H.

I. J.

No. 19—1882.]

[June 22, 1882.

## ACT

To enable the Commissioners of the Municipality of Aliwal (Mossel Bay) to provide the Inhabitants of the Town of Aliwal (Mossel Bay) with Water, and for that purpose to take Water from Kleinbosch River, *alias* Kleinberg River, and to acquire Government and other lands required for the Construction of the necessary Waterworks. <sup>(1)</sup>

WHEREAS it is desirable that the inhabitants of the town of Aliwal (Mossel Bay) should be supplied with good water, and the municipal commissioners thereof have caused surveys to be made and are advised that the same can be obtained from the Kleinbosch (*alias* Kleinberg) River in the district of Mossel Bay: and whereas it is expedient that the works necessary to accomplish that object should be constructed by the said commissioners or by a joint-stock company or co-partnership of individuals or an individual with whom the said commissioners may contract either for the whole or any portion of the said works or the materials therefor: And that to enable the said commissioners to procure the necessary funds the

Preamble.

<sup>1</sup> Printed as amended by Act No. 7, 1885.

No. 18—1882.

said commissioners should be empowered to issue debentures from time to time for any sum or sums of money not exceeding in the aggregate the sum of twenty-six thousand pounds: and that in order that the said commissioners may be enabled to pay the interest on the said debentures, as well as to contribute annually a sum not less than one per cent. on the said capital by way of a sinking fund in order to enable the said commissioners to pay off the said debentures, the said commissioners should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid:

Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Commissioners may borrow to extent of £24,000 on rates.

1. It shall be lawful for the said commissioners from time to time to borrow and to take up at interest by the issue of debentures such sum or sums of money not exceeding in the whole the said sum of twenty-six thousand pounds as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum to be borrowed by the said commissioners.

Power to impound certain water.

2. The said commissioners shall be empowered to take, impound, divert, appropriate, and convey from the Kleinbosch River, otherwise known as Kleinberg River, in the district of Mossel Bay, such a supply of the water of the said river as they may require for the purposes of this Act: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or right of water which he may, at the time of the taking effect of this Act, possess or be entitled to, in reference to the said Kleinbosch River, or in any way interfere with or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the eighth section of this Act provided.

To construct all necessary works.

3. The said commissioners are hereby empowered to construct and make or cause to be constructed and made all such works as may in the opinion of the said commissioners be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leading-pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town of Aliwal (Mossel Bay), and for the shipping visiting that port; and it shall and may be lawful for the Governor of this Colony, and he is hereby authorized to give and grant to the said commissioners in full and free property all such Government land as is situated on and along the line of the said works, and necessary to be acquired for the purposes thereof.

4. The commissioners are hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart for Church purposes, commonly called "Glebe lands," and also to enter upon, occupy, enclose, take, and use any land the private property of any person or persons whomsoever which may be required for the purposes of this Act, and may agree, as hereinafter provided, for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works, any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works, upon such terms and conditions as may be mutually agreed to.

No. 19—1882.  
To take Government and other lands, or to hire lands, &c.

5. It shall be lawful for the said commissioners to acquire and take possession in the manner hereinbefore and hereinafter provided of any land, whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land belonging to private persons, that may be required for the purpose of protecting the sources of the said Kleinbosch River, or the sources of supply from whence the water may flow into the reservoirs, dams, places or place where the said works may take off the water of the said river.

To take land necessary to protect sources of impounded water.

6. The said commissioners are hereby further empowered to lay down pipes or construct conduits under or along any public road, or street, or any bridge or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof, and to construct and maintain a telegraphic line along their works for the purpose of such works and to erect such telegraph stations as shall be necessary.

To lay down pipes and conduits.

7. It shall be lawful for the said commissioners at all times, by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said municipality acquired under the provisions of this Act, for the purpose of adding to, repairing, relaying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient by the said commissioners in or about carrying out the purpose of this Act.

To have right of access to the works.

8. If any person or persons from whom any water or right of water, land, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, and the said commissioners shall not agree upon the purchase money, or hire, or other recompense to be respectively given and accepted, then

Arbitration clause.

No. 19—1882.

the said commissioners shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such person or persons to state, in writing, to the said commissioners or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not, and if such person or persons shall refuse the sum offered, or neglect to reply to the said notice, then the said commissioners or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said commissioners or other person aforesaid, and for that purpose to transmit to the said commissioners or other person as aforesaid within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator, and the said commissioners or other person as aforesaid, upon receiving the name of the person so selected shall nominate a second arbitrator, and the said two arbitrators shall before proceeding to the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said commissioners or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said commissioners or other person aforesaid, and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said commissioners or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said commissioners or other person aforesaid, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said commissioners or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

No. 19—1882.

9. In case the said commissioners or other person aforesaid shall require to take or use any land or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorized in his capacity as such guardian or curator to treat and agree with the said commissioners or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said commissioners or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said commissioners or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorized to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisalment shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest shall be entitled to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in the like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said commissioners shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said commissioners, and they are hereby authorized, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and

In case of lands,  
&c., belonging to mi-  
nors and persons un-  
der curatorship.

No. 19—1882.

calling by name on the owner or owners of the said land or materials, if known, to take notice that the said commissioners are ready and willing to treat with the owner or owners or any person duly authorized by him or them, for the recompense or compensation to be made by the said commissioners for the said land and materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said commissioners stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession. And in case the owner or owners shall not apply to the said commissioners within the said period, then it shall be lawful for the said commissioners to appoint some competent person to be approved of by the Civil Commissioner of the division to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said commissioners to pay whatever sum such person shall have valued the land or materials in question at into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said commissioners, upon so paying the said sum, shall be authorized and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all Acts by law required for vesting in the said commissioners sufficient title to the use of or property in the land or materials as aforesaid, had been duly done and performed.

Penalties for injuring the works.

10. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, line of telegraph, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining, the works contemplated by this Act, shall, upon conviction, be liable to forfeit for the use of the said commissioners a sum not exceeding one hundred pounds, or to be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no



person shall be prosecuted both under this Act and any other law for or in regard to one and the same act.

No. 19—1882.

11. No cattle enclosure or kraal shall be constructed or allowed alongside the said river for the space of a thousand yards above the intake of the said works, or nearer the banks of the river within the said space than five hundred yards, and any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipality, or in any stream flowing into such dam or reservoir, or shall wash, throw, or cause to enter therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, or shall allow any drainage from any enclosure or kraal to flow into any such dam or stream, shall for every such offence, on being convicted thereof, be liable to forfeit for the use of the said commissioners a sum not exceeding ten pounds, and on failure of the payment of such fine, the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

No kraal, &c., allowed within 1,000 yards of intake or within 500 yards of stream.

12. The commissioners are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings and the supply of water to the shipping visiting the port of Mossel Bay shall be regulated, and the payment for all private water-leadings and for the supply of water to the said shipping shall be in accordance with such tariff: Provided, nevertheless, that the said commissioners or any person duly authorized by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

Tariff of charges to be published.

13. It shall be lawful for the said commissioners, at any meeting at which a majority of the members shall be present, to frame from time to time such by-laws as they shall deem necessary for regulating the system of water supply to the town of Aliwal (Mossel Bay), such by-laws to be submitted for the approval of the Governor in manner provided by the Ordinance No. 9 of 1836, and the various Ordinances and Acts amending the same or referring thereto.

Power to make by-laws.

14. In order to pay the interest on the said loan and to establish the sinking fund hereinafter mentioned, and to provide for all other claims arising under this Act, the commissioners shall be empowered and compelled to impose, levy and collect a sufficient annual rate or assessment over and above what the said commissioners are already empowered to impose and levy upon the annual rental, or if no rental be paid then upon the estimated annual value of the whole of the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said commissioners shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the Ordinance No. 9 of 1836,

How interest and principal of borrowed money to be paid.

No. 19-1882.

section 28, or under the provisions of section eleven of Act 13 of 1864, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof: Provided that it shall be lawful for the said commissioners to apply for the payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said municipality from any source whatever and not specifically appropriated or required for any other object.

Assessment roll.

15. The amounts for assessment entered on the assessment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purpose of this Act so far as the properties included in such assessment roll are concerned, but for any or all properties not included in such assessment roll, and for all properties not liable to assessment under the said Ordinance No. 9 of 1836, and the Act No. 13 of 1864, the value shall be made and determined annually by some competent person to be appointed by the commissioners: Provided that such valuation shall be open for public inspection at the office of the municipality for the space of one month from the levying of the said annual rate, and the commissioners shall give notice in one or more of the newspapers published within the said municipality that the same is open for inspection, and the provisions of the 28th section of the said Ordinance No. 9 of 1836, and the 10th, 11th and 13th sections of the said Act 13 of 1864, shall apply to the hearing and deciding upon objections to such valuation.

When rates payable.

16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day to be fixed by the said commissioners, of which day and of the amount of the rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.

Collection of rates.

17. As soon as any rate shall be assessed as aforesaid the commissioners shall appoint a person to collect the same, and such rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector, by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court within the jurisdiction of which such defaulter shall reside.

Acknowledgment to be given to lenders of money as in schedule.

18. The commissioners shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid, a written acknowledgment for the moneys borrowed by the said commissioners for the purposes aforesaid, not

exceeding in the whole the aforesaid sum of twenty-six thousand pounds sterling; which acknowledgment shall in substance be in the form contained in the schedule to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

No. 19—1882.

19. All moneys borrowed and debts lawfully incurred by the said municipality under the provisions and for the purposes of this Act shall be subject to the Public Bodies Debts Act, 1867.

Public Bodies Debts Act to apply.

20. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the operation of the sinking fund and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: and the said commissioners shall yearly and every year so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality for the inspection at all reasonable times of any householder of the municipality, an account showing the particulars aforesaid and giving any other information which the said commissioners shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year and be open for inspection at the office of the municipality on and after the 15th day of January next ensuing.

Separate account to be kept of borrowed moneys, sinking fund, &c.

21. In order to provide a fund for the payment of all moneys borrowed under the provisions of this Act, and for the gradual extinction of the debt to be incurred under the authority of this Act, there shall be set apart an annual sum equal to the interest of the whole amount of such debentures as shall be issued under authority of this Act, and a further sum of not less than one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act, and such last-mentioned sum shall be annually invested as and by way of a sinking fund, and applied towards the redemption of the said debt so long as any portion of the same or any interest thereon shall remain unpaid and unextinguished; unless the money shall be raised by loan from Government by any Act or Acts specially authorizing the same.

Sinking fund of one per cent. for extinction of debt.

22. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the moneys to be so borrowed as aforesaid.

Costs of Act.

23. The word "municipality" used in this Act shall mean the municipality of Aliwal (Mossel Bay), as established by the Proclamation of the 12th of July, 1852; and the word "commissioners," the municipal commissioners of Aliwal (Mossel Bay).

Interpretation clause.

No. 19—1882.  
Previous loans not  
affected.

24. Nothing herein contained shall affect or prejudice any loan already raised under the provisions of the Act 7 of 1876 and Act 6 of 1878.

Short title.

25. This Act may be cited for any purpose as "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882."

#### SCHEDULE.

We, the undersigned commissioners of the municipality of Aliwal (Mossel Bay), do hereby acknowledge that the said commissioners in their said capacity are indebted to \_\_\_\_\_ in the sum of £ \_\_\_\_\_ for so much money borrowed by the said commissioners for the purposes set forth in the "Town of Aliwal (Mossel Bay) Water Supply Act, 1882," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided. And we further covenant and engage for and on behalf of the said commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say [here insert according to the agreement, the rate of interest and times of payment thereof, and the date or dates, or other conditions upon which the principal of the debt shall become payable].

Given under our hands at Aliwal (Mossel Bay), this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

A. B., Chairman of the Municipality.

C. D.,  
E. F., } Commissioners.

Witnesses { G. H.  
                  I. J.

No. 7—1885.]

[July 31, 1885.

#### ACT

To Amend in certain respects Act No. 19 of 1882, intituled "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882."

Preamble.

WHEREAS it is expedient to amend in certain respects the Act No. 19 of 1882, intituled "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882:—" Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

In Act No. 19 of  
1882, £26,000 to be  
inserted instead of  
£24,000.

1. Anything in the provisions of Act No. 19 of 1882 or of Act No. 45 of 1882 to the contrary contained notwithstanding, the preamble to the said Act No. 19 of 1882, and sections one and eighteen thereof, shall be read as if the words "twenty-six thousand pounds" had been originally inserted in the said preamble and sections in place of the words "twenty-four thousand pounds" contained in the said preamble and in the said sections.

2. All and sundry the other provisions of the said Act No. 19 of 1882 shall be of the like binding force and effect as if the words "twenty-six thousand pounds" had been originally inserted in the said preamble and sections in place of the words "twenty-four thousand pounds."

No. 7—1885.  
Provisions of Act No. 19 of 1882 not affected.

3. The necessary costs, charges, and expenses of obtaining this Act may be paid by the municipal commissioners in the Act No. 19 of 1882 referred to, out of the moneys by them borrowed, or to be borrowed, under and by virtue of the provisions of that and this Act.

Costs, &c., of obtaining Act paid out of moneys borrowed.

4. This Act may be cited for any purpose as "The Town of Aliwal (Mossel Bay) Water Supply Act Amendment Act, 1885."

Short title.

No. 16—1885.]

[August 7, 1885.

### ACT

To Authorize the Municipality of Oudtshoorn to borrow a Sum not exceeding Four Thousand Five Hundred Pounds, for the purpose of paying the Colonial Government the Purchase Price of certain Two Pieces of Crown Land, for the purpose of paying existing Liabilities, and for other purposes.

WHEREAS it is expedient to empower and enable the Municipality of Oudtshoorn to borrow money for the purpose of paying the Colonial Government the purchase price of certain two pieces of Crown land called "Rhenoster Hoek" and "Doornkuil," for the purchase price of which certain mortgage bond was passed by the said municipality, and for the purpose of paying existing liabilities and effecting local improvements, and to levy rates for the payment of the amount so borrowed, with interest:

Preamble.

And whereas at a public meeting of the ratepayers of Oudtshoorn convened for that purpose on the second day of April, one thousand eight hundred and eighty-five, it was resolved that the commissioners of the said municipality be authorized to borrow the sum of four thousand five hundred pounds sterling for such purposes:

Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The Municipality of Oudtshoorn is hereby authorized and empowered to borrow and take up at interest on debentures or otherwise, from time to time, such sum or sums of money as may be needed for the purpose in the preamble to this Bill mentioned, not exceeding in the whole the sum of four thousand five hundred

Municipality authorized to borrow a sum not exceeding £4,500.

No. 16—1886.

pounds sterling: Provided that after payment of the aforesaid purchase money and interest and the existing debts the said municipality shall in all cases convene a meeting of ratepayers by notice of not less than fourteen days in at least one of the local newspapers and obtain the sanction and approval of such ratepayers in manner as is now or hereafter may be provided by any Municipal Ordinance now in force or hereafter to be enacted, before expending on any public works any balance of the moneys to be raised under this Act.

Power of Municipality to impose rates.

2. It shall be lawful for the said municipality for the purpose of providing for the payment of the interest, and also for the payment of the annual contribution in repayment of the principal, as hereinafter described, of the money or moneys aforesaid to levy a special rate or rates upon the immovable property situate within the Municipality of Oudtshoorn and liable to be rated for municipal purposes.

Payment of interest and gradual extinction of loan.

3. As a fund for the payment of interest and gradual extinction of the loan or loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the special rate or rates as aforesaid, an annual sum sufficient to pay the interest on the amount of such loan or loans, or the balance thereof, and a further sum equal to nine pounds per centum on the total amount of the capital sum of such loan or loans so long as any portion of the money to be raised as aforesaid, shall remain unpaid, and the amount yielded by the said sum of nine pounds per centum shall be applied annually in paying off the debentures (if debentures be issued), or, otherwise in part discharge of the loan. Should debentures be issued, the said debentures shall be numbered in rotation, and the selection of debentures for repayment shall be by an annual drawing to be made and determined by lot by the chairman of the municipality or Mayor in public at a meeting of the municipality.

Application of moneys.

4. It shall be lawful for the said municipality to apply to the payment of the interest and principal or interest or principal of the money or moneys aforesaid, any funds or moneys coming to the said municipality from any source whatever and not specially appropriated or required for any other object.

Accounts of all moneys to be kept.

5. The municipality shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act; and of the expenditure of such moneys for the purposes aforesaid, and the said municipality shall yearly as long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the municipal office at Oudtshoorn for the inspection at all reasonable times of ratepayers, an account showing the particulars aforesaid, and giving any other information which the said municipality may deem it necessary or expedient to impart: Provided that every such account so prepared shall be made up to the 31st day of December in each year, and shall be deposited in

the office of the said municipality not later than the 1st day of March in the year next succeeding.

No. 16—1885.

6. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867;" provided however that it shall and may be lawful for the Supreme Court in case any such petition shall be presented to such Court under the provisions of the said Act, for enforcing payment of any judgment for the recovery of money borrowed under the provisions of this Act, to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of the "Public Bodies Debts Act, 1867," to the contrary notwithstanding.

All moneys borrowed to be subject to provisions of Public Bodies Debts Act, 1867.

7. The necessary costs, charges and expenses of obtaining this Act, and all costs of raising the loans or other expenses incurred in carrying out the provisions of this Bill, shall be paid by the said municipality out of the moneys so to be borrowed as aforesaid.

Costs and expenses.

8. This Act may be cited as the "Oudtshoorn Municipality Loan Act, 1885."

Short title.

No. 8—1869.]

[October 18, 1869.

### ACT

For Enabling the Commissioners of the Municipality of the Paarl to borrow Moneys for increasing the Supply of Water for the Inhabitants of such Municipality.

WHEREAS it is expedient to extend and improve the water-works of the Municipality of the Paarl, by making a new reservoir and cleaning the existing pipes, in order to increase the supply of water to the town of the Paarl: And whereas it is expedient that the commissioners of the Paarl Municipality should be empowered to borrow for the purpose an amount of money which shall not exceed in the whole the sum of one thousand five hundred pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the said commissioners to borrow, from time to time, such sum or sums of money not exceeding in the whole the sum of one thousand five hundred pounds sterling for the aforesaid purpose, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, section 28.

Municipal commissioners empowered to raise loan, and to impose rates to provide for payment of principal and interest.

- No. 8—1869.
- Loan to be charged on rate levied.
- Other funds may be applied to payment of loan and interest.
- Not to affect succeeding sections.
- Commissioners to grant written acknowledgment of loan.
- Form of acknowledgment, and by whom to be signed.
- Provisions of "Public Bodies Debts Act, 1867," to apply.
- Separate and distinct accounts to be kept.
- Annual accounts to be deposited in office of municipality and be open for inspection.
- When to be closed and deposited.
- Expenses incurred in obtaining Act may be paid out of loan.
2. The sum aforesaid of one thousand five hundred pounds sterling, or such lesser sum as shall have been borrowed, for the purpose aforesaid by the commissioners, is hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal or interest and principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections of this Act.
3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership from whom they shall borrow such money aforesaid, a written acknowledgment of, or for, the moneys borrowed by the said commissioners for the purpose aforesaid, not exceeding, in the whole, the sum aforesaid of one thousand five hundred pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and shall be signed, on behalf of the said commissioners, by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.
4. All moneys borrowed for the purposes of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."
5. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes or private watercourses from sums received from rates imposed, under the first section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act; and the said commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality of the Paarl, for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the municipality not later than the first day of March of the year next succeeding.
6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid.



7. This Act may be cited for all purposes as "The Town of the Paarl Water Act, 1869."

No. 8—1869.  
Short title.

---

SCHEDULE.

We, the undersigned, Commissioners of the Municipality of the Paarl, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_, for so much money borrowed by the said commissioners for the purposes set forth in "The Town of the Paarl Water Act, 1869," and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say: (Here insert, according to agreement, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands at the Paarl, this \_\_\_\_ day of \_\_\_\_, 18 \_\_\_\_.  
A. B., Chairman of the Municipality.  
C. D., }  
E. F., } Commissioners.

Witnesses:

G. H. }  
I. J. }

No. 17—1879.]

[Sept. 11, 1879.

ACT

To Authorize the Commissioners of the Municipality of the Paarl to borrow a further Sum of Money for Increasing the Water Supply of that Municipality.

WHEREAS by "The Town of the Paarl Water Act (No. 8) of 1869," provision was made for enabling the commissioners of the town of the Paarl to borrow a sum not exceeding fifteen hundred pounds sterling, for the purpose of increasing the supply of water for the town of the Paarl: And whereas it is expedient to authorize the said commissioners to borrow a further sum of money, not exceeding three thousand five hundred pounds sterling, for the purpose of further increasing the water supply of the said municipality: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the commissioners of the municipality of the Paarl to borrow and take up such sum or sums of money, not exceeding in the whole the sum of three thousand five hundred pounds sterling, in addition to the sum previously borrowed for

Municipality of Paarl authorized to borrow £3,500.

No. 17—1879.

the same purpose, as shall be required for further increasing the water supply of the said municipality.

Certain provisions  
of Act 8 of 1869 to  
apply.

2. The provisions of the first section of the said Act No. 8, 1869, as to the assessment of rates for providing for the payment of principal as well as interest, and the provisions of the third, fourth, fifth, and sixth sections thereof, shall apply to the money borrowed under this Act, precisely as if the same were, *mutatis mutandis*, herein repeated.

Short title.

3. This Act may be cited for all purposes as the "Town of Paarl Water Act, 1879."

No. 6—1881.]

[June 25, 1881.

## ACT

To Authorize the Commissioners of the Municipality of the Paarl to borrow a further Sum of Money for Improving the Water Supply and Erecting a Town-house.

Preamble.

WHEREAS by "The Town of the Paarl Water Act (No. 8) of 1869," provision was made for enabling the commissioners of the town of the Paarl to borrow a sum not exceeding fifteen hundred pounds sterling for the purpose of increasing the water supply for the town of the Paarl: And whereas by the "Town of the Paarl Water Act, 1879," the said commissioners were authorized to borrow a further sum of money not exceeding three thousand five hundred pounds sterling for the purpose of further increasing the water supply of the said municipality: And whereas it is expedient to authorize the said commissioners to borrow a further sum of money not exceeding three thousand five hundred pounds sterling for the purpose of further increasing and improving the said water supply, and a sum not exceeding four thousand pounds for the purpose of building a Town-house in the said town.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to borrow  
£7,500.

1. It shall be lawful for the commissioners of the municipality of the Paarl to borrow, and take up such sum or sums of money not exceeding in the whole the sum of seven thousand five hundred pounds sterling in addition to the sums previously borrowed under the provisions of the aforesaid Acts, as shall be required for the purposes following, that is to say: for the purpose of further increasing and improving the water supply of the said municipality, a sum not exceeding three thousand five hundred pounds, and for the purpose of building a Town-house in the said town of the Paarl, a sum not exceeding four thousand pounds.

Provision of former  
local Acts to  
apply.

2. The provision of the first section of the said Act No. 8 of 1869, as to the assessment of rates for providing for the payment

of principal as well as interest, and the provisions of the third, fourth, fifth, and sixth sections thereof, shall apply to the money borrowed under this Act precisely as if the same were, *mutatis mutandis*, herein repeated.

No. 6—1881.

3. This Act may be cited for all purposes as the “Town of Paarl Loan Act, 1881.”

Short title.

No. 14—1868.]

[Sept. 2, 1868.

## ACT

## For Constituting the Town of Port Elizabeth a Municipality.

WHEREAS it is expedient to repeal the Act No. 31 of 1860, entitled “An Act for constituting the Town of Port Elizabeth a Municipality,” in order to re-enact, with amendments, the provisions of the said Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act aforesaid, No. 31 of 1860, is hereby repealed: Provided that the council of the said municipality which shall be in office at the time of the taking effect of this Act shall be deemed and taken to be in the same plight and condition, and have and possess the same powers and authorities in all respects, as if such council had been elected under this Act, and shall remain in office until the 1st day of January, 1869, but no longer, to be then succeeded by a council elected under this Act: Provided, also, that the provisions of this Act relative to casual vacancies occurring in the office of councillor for any ward shall extend and apply to such casual vacancies as may occur amongst the members of council who shall be in office as aforesaid at the time of the taking effect of this Act; and that as often as the office of councillor for a ward designated by a certain number shall so become vacant, such vacancy shall be filled up by the voters for the ward designated by the same number as such ward is defined by this Act.

Act No. 31, 1860, repealed.  
Existing council to remain in statu quo.

Term of office of existing council.

Act to apply to casual vacancies in existing council.

2. The town of Port Elizabeth, including all lands and property within the area circumscribed by the following boundary lines,—namely, on the south by a line from the sea drawn through the Roman Rock beacons to the south-east corner of Walmer farm: from thence in a northerly direction along the east boundary of said farm to the north-east corner of the same; from thence westward along the Walmer boundary to the beacon near Harries’ kraal; thence in a north-easterly direction, along the boundaries of Newcombe’s farm and Korsten, to the south-east beacon of Korsten, to the northward of the north creek; from thence, following the line of the Deal Party’s Graut, to the sea; and from thence

Limits of municipality.

//

No. 14—1868.  
 Style of town corporation.  
 Town Council.  
 Municipality divided into seven wards

along the sea beach at high-water mark to the first-mentioned point,—shall be, and the same is hereby constituted, a municipality.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "The Mayor, Councillors, and Ratepayers of Port Elizabeth," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges, which bodies corporate, as such, may in this Colony do and have.

4. The council of the said municipality shall consist of twenty-one councillors, one of whom shall be the Mayor.

5. The said municipality shall be divided into seven wards, to wit :

No. 1. Comprising all immovable property within the municipal limits south of the Baaken's River.

No. 2. Eastern boundary the sea ; northern boundary the southern side of Jetty-street, southern side of White's Road, southern side of Western Road in line through Saint George's Park, and southern side of the street between Lots Nos. 24 and 25 Park Lands, from thence northward of the Mill property to the western limits of the municipality ; western boundary the western limits of the municipality ; southern boundary the Baaken's River.

No. 3. Eastern boundary the sea ; northern boundary the southern sides of Rodney and Donkin-streets, the southern side of Parliament Road, and along the southern side of the Cape main road to the western limits of the municipality ; western boundary the western limits of the municipality ; southern boundary the boundary on the north of Ward No. 2.

No. 4. Eastern boundary the sea ; northern boundary the southern side of Saint Andrew's-street, and crossing Main-street, taking the southern side of Russell Road to the Cape main road ; western boundary a point being the junction of Russell Road with the Cape main road ; southern boundary the boundary on the north of Ward No. 3.

No. 5. Eastern boundary the sea ; northern boundary the southern side of Palmerston-street and Palmerston Road, through the Provincial Hospital lands, from thence northward of the Native Strangers' Location to the Cape main road, at the north-west corner of St. George's Park ; western boundary the north-west corner beacon of St. George's Park, southern boundary the boundary on the north of Ward No. 4.

No. 6. Eastern boundary the sea ; northern boundary from the sea, taking the southern side of South-street,

to Frederick-street, from thence following the water-course to Queen-street, the southern side of St. George's Road (formerly Cooper's Kloof) to the Cape main road; western boundary a point being the junction of St. George's Road with the Cape main road; southern boundary the boundary on the north of Ward No. 5.

No. 7. Eastern boundary the sea; northern boundary the limits of the municipality northward; western boundary the limits of the municipality on the west; southern boundary the boundary on the north of Ward No. 6.

6. The said council shall, from time to time, if they shall think fit, alter the boundaries of the said wards: Provided that the council shall, before making any such alteration, give, in the *Government Gazette* and one or more of the newspapers published in Port Elizabeth, public notice of the intention to make such alteration, and of the particular alteration intended to be made, which notice shall be published for not less than thirty-one days before any such alteration shall be made, and a copy of the same shall also be posted in some conspicuous place upon or near the Town-hall.

Council may alter boundaries of wards. But notice of intended alteration to be given.

7. Three councillors shall be elected for each ward, in manner hereinafter mentioned.

Three councillors to be elected for each ward.

8. Every male person of full age, who is the owner or occupier of any immovable property in any ward of the municipality, in regard to which property no municipal rate shall, at the time of any election of councillors, or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward: Provided that his name shall appear as a ratepayer in the assessment roll of such ward which shall have been made next or latest before the election at which such person shall be elected: Provided, also, that the assessment roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.

Who qualified to vote at elections.

9. The following persons shall be disqualified from voting at any such election:

Existing assessment roll to be taken as framed under this Act.

Who disqualified from voting.

Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

10. No person shall be eligible to be elected a councillor for any ward who has not been a rated owner or occupier of immovable property within the municipality for not less than twelve months next before the election, or who is the owner or occupier of any such property in regard to which any municipal rate shall, at the time of the commencement of such election, be due and in arrear: Provided that different premises or properties owned or occupied

Who may be elected councillor.

- No. 14—1868. in immediate succession shall satisfy this section as fully as if they had been one and the same premises or properties.
- Who shall be deemed a candidate. 11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.
- Names of candidates to be published. 12. The Town Clerk shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter in the seventy-fifth section mentioned.
- Annual election of councillors. 13. On the second Tuesday in the month of December in every year an election shall take place for councillors for the said municipality.
- How poll to be taken. 14. The poll in every ward shall be taken by some person to be appointed for that purpose by the Mayor, or, in case of his absence from the town of Port Elizabeth, by the Town Clerk: Provided that as often as the number of candidates nominated for any ward shall not exceed the number of councillors to be elected for such ward, no poll shall be necessary for such ward, but the candidates or candidate so nominated shall be deemed and taken to be duly elected: Provided, also, that the Mayor or Town Clerk, as the case may be, shall be the returning officer of the said municipality.
- When poll shall not be necessary. 15. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.
- Mayor or town clerk to act as returning officer. Candidate may appoint scrutineer. 16. The election shall take place in the following manner: Every ratepayer qualified as aforesaid may vote for any candidate for his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and description.
- Mode of election. 17. The polling officer shall receive such voting paper, and shall register each vote.
- Polling officer to receive and register votes. 18. The poll shall commence at ten o'clock in the forenoon, and shall finally close at two o'clock in the afternoon of the same day.
- Duration of poll. 19. No inquiry shall, at any election, be permitted to be made as to the right of any person to vote, except as follows,—that is to say the polling officer may, of himself, or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other:
- Certain questions may be put to voter. 1st. Are you the person whose name appears as "A. B." to the voting paper now delivered in by you?  
2nd. Has the last municipal rate assessed upon the immovable property now occupied or now owned by you been paid?

20. If any person shall wilfully make a false answer to either of these questions he shall be liable to a penalty not exceeding ten pounds, to be recovered in the Court of the Resident Magistrate.

No. 14-1868.

Penalty for false answers.

21. At the close of the election, the returning officer shall ascertain the number of votes given for each candidate; and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

Returning officer to declare result of election.

22. The polling officer shall then transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list thereof, with the numbers of the wards for which such persons are elected, to be published in manner hereinafter in the seventy-fifth section set forth.

Polling officer to transmit voting papers to returning officer, who shall declare candidates elected.

Names of candidates elected, with numbers of wards for which elected, to be published.

23. At the first election of councillors under this Act, the ratepayers shall elect, in manner hereinbefore provided, three councillors for each ward, who shall enter upon their office on the 1st of January following.

When first-elected councillors to enter upon office.

24. Of the persons so elected as in the last preceding section mentioned, the councillor in each ward who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the said 1st day of January: and in case, by reason of any such councillors having been elected by an equal number of votes, it shall be uncertain which of them shall vacate his seat, the returning officer shall cause such question to be determined by lot, and the remaining councillors for each ward shall successively vacate their seats in like manner at the expiration of two and three years respectively; and upon the retirement from office of such councillors respectively, they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every yearly election after the first there shall be elected one councillor for each ward who shall enter upon his office on the 1st day of January next after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

When and how to vacate office.

How when votes are equal.

25. If any councillor shall die, resign or become insolvent, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office.

What to constitute vacancy.

26. On the first Wednesday in the month of January in every year, the council shall appoint from among the ratepayers two

Council to appoint auditors.

- No. 14—1868. persons to be auditors of the municipality, who shall continue in office until the same day in the year following.
- Who disqualified from being auditor. 27. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality.
- How in case of vacancy. 28. If any auditor shall die, resign or be declared insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.
- How in case of equality of votes at election of councillor. 29. In case of an equality of votes at any election of councillors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both, or all of them, elected.
- Election of mayor for first year. 30. On the Thursday following the first general election under this Act, the councillors then elected under this Act, but none others, shall choose from among themselves, by a majority of votes, the Mayor of the municipality, who shall hold office for one year from the 1st day of January then next ensuing.
- How to be elected in after years. 31. That on the Thursday following every subsequent yearly election, those of the councillors then in office who shall have to continue in office for the following year in terms of section twenty-four, together with the newly-elected councillors, but none others, shall choose from amongst themselves, by a majority of votes, the Mayor of the municipality for the following year; and every such Mayor shall enter upon his office on the 1st day of January next after his election, and shall continue therein for one year, and shall during his year of office be exempt from serving on any jury summoned for the division of Port Elizabeth: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.
- Commencement and duration of office. 32. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.
- How when votes are equal. 33. That if any Mayor shall die, or resign, or shall become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be absent from the municipality, without the permission of the council for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.
- Mayor may resign office. 34. No person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water, or insuring against fire, any property belonging to the said municipality; and
- When mayor shall be deemed to have vacated office.
- Officers of council not to be interested in any contract with council.
- Penalty for contravention.



any person contravening the provisions of this section shall, upon conviction, be liable to a penalty not exceeding fifty pounds.

No. 14—1868.

35. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality, to excavate, construct, and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, <sup>(1)</sup> and for that purpose to provide and keep fire-engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and place for slaughtering cattle, and the state and condition of slaughter-houses, tanneries, and wool-washing establishments; to appoint one or more competent persons to examine meat, fish, and other provisions exposed for sale and who, in case such meat, fish, or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality, and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of public pounds: Provided that no toll, due, or fee or charge for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the next succeeding section mentioned.

Powers and duties of council in regard to general purposes of municipality.

No toll, charges, penalties, &c., to be imposed except under municipal regulation.

36. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Port Elizabeth at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act.

Council to frame municipal regulations.

Existing regulations not affected.

37. No municipal regulation shall be of force to subject any person to any fine, penalty, or payment until it shall have been, by the council submitted to the Governor, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

Regulations to be approved by Governor and Executive Council and published.

<sup>1</sup> See also § 28, *et seq.* Act 8, 1881, *infra*.

No. 14—1868.

Publication of regulation sufficient proof of validity.

38. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Penalties for contravening regulations limited.

39. It shall not be competent, by any municipal regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds: Provided that it shall be competent for any such municipal regulation to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period must not exceed three months.

All property vested in existing council, vested in council elected under this Act.

40. All property which shall at the time of the taking effect of this Act be vested in the council of Port Elizabeth, elected under the Act aforesaid, No. 31, 1860, shall upon and from and after the 1st day of January, 1869, become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred.

Council may sell lands with sanction of Governor.

41. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of: Provided that the said council shall, before applying to the said Governor for his consent, give public notice, in the manner hereinafter in the seventy-fifth section mentioned, of their intention to apply for such consent, in which notice so published shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required: Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold, and to none other; anything contained in the original grant of such land or property to the contrary notwithstanding: Provided, further, that the said council may, with such consent, as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

Notice of intention to apply for Governor's section to be given.

Lands may be sold subject to servitudes

Council may exchange lands.

Council may, with consent of Governor, raise loans on mortgage or by debentures.

42. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of

mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of: Provided that the provisions of the last preceding section requiring the publication of notice of an intended sale shall, *mutatis mutandis*, apply to the case of an intended mortgage, or issue of debentures: Provided, also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, and the Governor aforesaid shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

No. 14—1868.

But notice to be given of such intention.

Council to execute mortgage of property on which debentures shall be charged.

43. The sum of money to be raised under the last preceding section in any one year, reckoned from the first day of January till the 31st of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

Extent to which loans may be raised.

But mortgages or debentures issued not affected by limit being exceeded.

44. The council may, for any such purpose as is in the forty-second section described, mortgage or charge by debentures the municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council upon a notice of not less than twenty-one days, to be published in the manner hereinafter in the seventy-fifth section mentioned: And provided that it shall not be lawful for the said ratepayers to sanction or for the said council to borrow upon security of the said rates any sum or sums exceeding at any one time the sum of twelve thousand pounds sterling.

Council may raise loans upon security of rates.

But only with consent of majority of ratepayers.

And not to exceed £12,000.

45. Every mortgage aforesaid or power of attorney for authorizing the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and shall be executed by two councillors and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

Mortgages, how to be executed.

No. 14—1868.

Council may enter into fresh loan to pay off loans becoming payable without obtaining Governor's sanction.

46. As often as any mortgage granted or debenture issued under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section. And whereas by the Act aforesaid, No. 31 of 1860, certain borrowing powers akin to those in this Act mentioned were conferred upon the council created by the said Act: And whereas the said council, acting *bonâ fide*, and purporting to act under such powers, borrowed from the South African Mortgage and Investment Company (Limited) a sum of six thousand pounds upon mortgage of certain property of the said municipality, to wit, the property commonly called and known as the Town-hall: And whereas, owing to a failure to comply with certain of the powers or requirements of the Act aforesaid, in regard to such mortgage, doubts may be entertained whether the said mortgage is in law valid and sufficient: And whereas it is the desire of the said council and at the same time just and expedient, that all such doubts should be removed, and also that the said council should be authorized and empowered to secure by one or more first mortgages as may be found convenient the moneys needed to pay off the principal and interest of the said mortgage to the said South African Mortgage and Investment Company (Limited): Be it enacted as follows:

Provision for loans contracted previous to passing of this Act.

Mortgage in favour of South African Loan and Investment Company declared valid.

47. The mortgage aforesaid, bearing date the 27th day of June, one thousand eight hundred and sixty-three, and executed by the council aforesaid to and in favour of the company aforesaid, for six thousand pounds, with interest, is hereby ratified and confirmed, and declared to be and to have been from the date thereof a good, valid, and sufficient mortgage.

Council may grant one or more mortgages for paying off loan of above company.

48. It shall be lawful for the council of the municipality for the time being, at any time after the taking effect of this Act, to grant one mortgage, or more than one, as may be found convenient, for securing to any person or persons who shall have lent and advanced to the said council the amount required to pay off the mortgage aforesaid, or any part thereof, the amount so advanced; which mortgage or mortgages, as the case may be, shall hypothecate the same property which was hypothecated by the mortgage aforesaid, and none other, and shall not be granted for any greater sum upon

No. 14—1868.

the whole than the principal sum of six thousand pounds secured by the mortgage aforesaid, together with any interest which may be due upon the said sum; and such last-mentioned mortgage shall be cancelled before the granting of the mortgage or mortgages to be substituted therefor: Provided that if more mortgage bonds than one shall be granted under the provisions of this section, they shall each bear equal date, and, notwithstanding the order of time in which they may stand registered in the Deeds Registry, they shall all rank *pari passu* as if registered at the same instant: Provided, also, that the provisions of the forty-fifth and forty-sixth sections of this Act shall respectively apply to the mortgage or mortgages to be executed under the provisions of this section, and that the mortgage deed or deeds so executed shall state in some part thereof that the same is or are granted under the authority of this section of this Act.

Mortgages, where more than one shall be granted, how to rank.

Sections forty five and forty-six to apply to such mortgages.

49. The council may lease any portion of the lands belonging to the municipality for building purposes, for a period not exceeding thirty-three years, and for any other purpose for a period not exceeding twenty-one years: Provided that such leases shall be put up at auction to public competition, and that they shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Municipal lands may be leased for building purposes.

Mode of leasing and conditions of lease.

50. The council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

Mines and quarries.

51. No lessee of any such land, or of any mines or quarries, shall assign or sub-let the same without the previous consent of the council, testified in writing by the Town Clerk.

Lessee not to sub-let without sanction of council.

52. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, or to appropriate or make use of any springs, streams, or other supplies of water belonging to any person or persons who shall not be bound in law to allow the Town Council so to do, then, and in that case, it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or other supplies of water, as aforesaid, and generally to enter into such contract or contracts, relative to the obtaining of any such land, buildings, materials, springs streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon

Council may purchase or hire lands, buildings, or materials for public improvements.

How where parties disagree as to terms of sale or hire.

No. 14—1868.

Arbitration may be referred to.

such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for, or on account of, the same subject-matter. And in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorized to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, in its first notice in this section mentioned, for or on account, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, materials, springs, streams or other supplies of water aforesaid, had been duly done and performed.

How where owner of property neglects or refuses to name arbitrator.

How if owner of property be absent or not discoverable.

53. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon,

or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water, in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and one or more newspapers published in the town of Port Elizabeth, for four successive weeks, describing, as accurately as may be, the materials, land, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, materials, springs, streams, or other supplies of water, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorized by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before some Justice of the Peace, that he hath to the best of his judgment, fairly appraised such value; and, thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorized and entitled to take or to use the land, buildings, materials, springs, streams, or other supplies of water in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, materials,

Value to be paid in-  
to Guardian's Fund.

- No. 14—1868. springs, streams, or other supplies of water aforesaid, had been duly done and performed.
- All questions to be decided by majority of votes. 54. All acts hereby authorized or required to be done by the council, and all questions that may come before them, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-sixth and sixty-fourth sections of this Act.
- Sections thirty-six and sixty-four not affected. 55. An ordinary meeting of the council shall take place at least once in every week, and all such ordinary meetings shall be open to the public.
- Ordinary meetings of council. 56. The Mayor may at any time call a special meeting of the council; provided that he cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or by the Town Clerk, to be notified to every councillor, either personally or at his usual place of abode, twenty-four hours at least before such meeting.
- Special meetings. 57. At every meeting of the council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from among themselves.
- Who to preside. 58. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.
- Chairman to have casting vote. 59. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.
- Minutes of proceedings to be kept. 60. 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 consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided, always, that the proceedings of every such committee shall be submitted to the council for its approval. The Mayor to be *ex-officio* member of all such committees.
- Appointment of committees. 61. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or, in case of misconduct, without any notice.
- Mayor *ex-officio* a member. 62. The said council are hereby empowered, from time to time, to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night; and to provide all such street-keepers
- Appointment and removal of officers. 62. The said council are hereby empowered, from time to time, to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night; and to provide all such street-keepers
- Appointment of street-keepers, policemen, &c.



and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers and policemen and their duties, as shall be deemed fit.

No. 14—1868.

63. <sup>(1)</sup> For the purpose of raising the means for making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks, for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council, for the purchase of water-pipes, fire-engines, and appurtenances, and for the effecting of all other permanent public works and improvements within the municipality, the council shall have the power, as often as shall be deemed necessary, to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the limits of the municipality, such rate or assessment to be called the "landlords' rate," and to be made and levied on an estimate of the value of such property, to be made as hereinafter provided.

Landlords' rate to be levied.

64. <sup>(2)</sup> For the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to have made, for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds, for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, and pound fees as shall be deemed necessary and reasonable, and shall be authorized by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the municipality, such rate or assessment to be called the "tenants' rate," and to be made and levied on the annual value or rental of such property, to be ascertained in manner hereinafter provided: Provided that no such rate, whether "landlords' rate" or "tenants' rate" shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least fourteen members of the said council; nor on any immovable property belonging to Her Majesty the Queen, nor on public prisons or police stations, nor on any buildings appropriated to public worship, nor upon burial-grounds, nor upon any buildings solely appropriated to the purposes of education; and provided, also, that no tenants' rate or assessment shall be imposed upon unoccupied land.

Market dues, water-rates, pound fees.

Tenants' rate.

No rates to be levied unless fourteen members shall be present.

Certain property not rateable.

65. In order to to ascertain the value of the rateable property within the municipality for the purpose of assessing the landlords' rate, the council shall, on or before the 31st day of January next,

Valuation of property for landlords' rate.

<sup>1</sup> See also Act 25 of 1873, *infra*.

<sup>2</sup> See also Act 25, 1873, *infra*.

No. 14—1868.

and thereafter on or before the 31st day of January in every third year, cause a valuation to be made of all such property, which valuation shall lie open for public inspection at the office of the council for a space of not less than one calendar month, of which due notice shall be given for not less than one month in one or more of the newspapers published in the town of Port Elizabeth.

Appeal  
valuation. against

66. At any time within one calendar month from and exclusive of the day of the publication of such notice as aforesaid, it shall be lawful for any person who shall think himself aggrieved thereby, to appeal, in writing, against the same to the council, who shall hold a meeting or meetings, at which not less than five members shall be present, to hear all objections which may be urged against any valuation by any owner or occupier or other person on his behalf, and inquire into the merits of such objections, and shall confirm or correct any valuation objected to as truth and justice shall require: Provided that any such meeting may, if necessary, be adjourned from time to time upon the application of any person objecting who shall show reasonable ground for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall be partly heard. The decision of the council upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or revised by any Court or proceeding whatsoever: Provided that notice of the holding of any meeting as aforesaid shall be published in one or more of the Port Elizabeth newspapers, and posted in some conspicuous place upon or near the Town-hall, fourteen days before the day appointed therein for the holding of any such meeting.

How tenants' rate  
is to be assessed.

67. In order to ascertain the annual value or rental of the rateable property within the municipality for the purpose of assessing the tenants' rate, and also to procure the other information required under the provisions of this section, the council shall, in the month of January in each year, cause a printed schedule to be left at the house of every ratepayer, to be filled up by the occupier, under separate and distinct heads, setting forth the names of the proprietor, the occupier, and all inmates, also the annual rental, or, if no rent be paid, the estimated annual value of the property, and such other particulars as the council may, by any such municipal regulation as aforesaid, require; from which schedules, duly signed by the ratepayers, and to be returned or delivered by them, without demand, to the councillors of their respective wards, within seven days from the date of their being left as aforesaid, the council shall cause a roll of assessment to be made within one month from the said date, upon which the tenants' rate, or rates, of and for the current year shall be levied; and when, in any ward, any schedule shall not have been returned, or where any of the schedules shall appear to the council to misrepresent the value of the properties, or to be in any other

respect incorrect, it shall be competent for the council to cite, by due notice, all persons whom they shall think necessary, to appear before them on a certain day, not earlier than three clear days from the service of such notice, in order to afford any evidence or information in regard to any property or other matter relative to any schedule which shall not have been returned by the ratepayer, or of which the correctness of the return made shall be questioned or disputed; and if such persons shall then neglect to attend for the aforesaid purpose, the council shall fix such annual value on all such properties as may appear just and reasonable, and the valuation so fixed shall be binding on all concerned, and be incapable of being appealed against: And provided that the roll of assessment aforesaid shall be open for public inspection at the office of the council for the space of one month; and the council shall give notice, in one or more of the newspapers of the municipality, that the same lies open for inspection; and the provisions of the sixty-sixth section of this Act shall apply to the hearing and deciding upon objections against such roll.

No. 14--1868.

Assessment roll to be open for public inspection.

68. The council shall annually, in the month of February, make an estimate of the amount of money required for municipal purposes, and shall assess the landlords' rate and tenants' rate accordingly and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further landlords' or tenants' rate, or landlords' rate and tenants' rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any landlords' rate or rates amounting in the aggregate to more than one penny in the pound on the value of the immovable property subject to such rates, nor any tenants' rate or rates amounting in the aggregate to more than sixpence in the pound on the annual value or rental of the immovable property assessed, without obtaining the consent of the majority of the ratepayers present and entitled to vote, according to the eighth section of this Act at a public meeting to be called for the purpose of considering such rate or rates; of the object and the time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Port Elizabeth newspapers: Provided, also, that the landlords' and tenants' rates so to be assessed and levied as aforesaid shall always bear the relative proportion of one penny to sixpence; and provided that correct accounts shall be kept, showing separately the mode in which the landlords' rate and the tenants' rate shall have been respectively expended; and all rates assessed under the provisions of this Act shall be and be deemed to be a charge upon the property, and recoverable against the present or any future owner or occupier thereof.

Estimate to be published. More rates than one may be assessed.

But under certain limitations.

Separate accounts of expenditure to be kept.

Rates to be charged on property.

*mm*

No. 14—1865.  
Collection and re-  
covery of rates.

69. As soon as any rate or rates shall have been assessed as aforesaid, the same shall be payable, and the council shall appoint, under the corporate seal, fit persons to collect such rate or rates, which shall, on non-payment thereof, be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Port Elizabeth, or in case any person liable for any rate shall not reside within the district of Port Elizabeth, then either in the Court of the Resident Magistrate of Port Elizabeth, or in the Court of the Resident Magistrate of the district in which such ratepayer shall reside: Provided that as often as any ratepayer not resident in the district of Port Elizabeth shall be proceeded against in the Court of the Resident Magistrate of Port Elizabeth, the summons directed to such ratepayer shall be served upon the person, if any, in occupation of the premises in regard to which the rate alleged to be due is claimed.

Owner or occupier  
may be sued together  
or separately.

70. In case by reason of the non-payment of any rate, whether landlords' or tenants', it shall be necessary to sue for the same as in the last preceding section mentioned, the council may, through its collector, and it is hereby authorized, to sue the owner or the occupier, either separately, or both of them in one and the same action, each for the whole rate: Provided, however, that the occupier of any property who shall not at the same time be the owner thereof, and who shall not have entered into such occupation in pursuance of a contract or agreement for becoming the owner of the same, shall, in the absence of any written agreement to the contrary, be entitled to retain or recover from such owner the amount of any landlords' rate as aforesaid which such occupier shall have paid; and the owner of any such property shall in like manner be entitled to recover from the tenant thereof the amount of any tenants' rate levied during the occupancy of such tenant, which such owner may have paid.

Owner or occupier  
may recover, one  
from the other, land-  
lords' or tenants'  
rate.

Statement of rates  
in arrear to be pub-  
lished annually.

71. The council shall, once in every year, publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Council may impose  
tolls.

72. It shall be lawful for the council, by any such municipal regulation as aforesaid, to impose such toll or dues as may be reasonable upon all persons making use of any road, bridge, or market place within the municipality, which the council is hereby empowered to make and maintain; and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may by the municipal regulations be in that behalf provided.

Who exempt from  
tolls.

73. No toll shall be payable by any officer or soldier, or member of any volunteer corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant, whilst travelling on public duty; and, further, that no more than one

toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for or in respect of the same vehicle or animal.

No. 14—1868.

74. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter the accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

Treasurer to furnish books for inspection of auditors.

Annual balance sheet to be published

75. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall be so published by causing a copy thereof to be inserted in one or more of the newspapers of the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the Town-hall.

How notices to be published.

76. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council, by the name of "The Municipal Council of Port Elizabeth," and shall, when recovered, be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded.

How fines and penalties to be prosecuted for.

77. That the storing of gunpowder, or other explosive material, shall not be permitted, except in such places as may be approved of and licensed by the Town Council for that purpose.

Storing of gunpowder, &c.

78. That so soon as any burial-ground within the limits of the municipality, or portion thereof, shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and that, after the expiration of the said term of six months, any person or persons causing any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Council may close burial-grounds.

79. All lawful contracts, engagements, debts, and demands whatsoever, by or against the council in existence at the time of the taking effect of this Act, shall, upon and from and after the 1st day of January, 1869, be taken and judged of, and be of the same force and effect for or against the council created by this Act, as if such council had been elected under the Act aforesaid, No. 31 of 1861.

Effect of Act upon existing contracts, agreements, &c.

No. 14—1868.

Mayor and councillors substituted for municipal commissioners in management of Provincial Hospital and Grey Institute.

80. For the purpose of the second section of the Act No. 5, 1856, entitled "An Act for regulating the Provincial Hospital for Port Elizabeth," and of the second section of the Act No. 6, 1856, entitled "An Act for regulating the Public Schools of Port Elizabeth upon the Grey Foundation," and of any other former Act or Ordinance by which any office, duty, power, or function has been conferred or imposed upon the municipal commissioners of Port Elizabeth for the time being, the Mayor and councillors created by the Act aforesaid, No. 31 of 1860, and after their retirement from office, then the Mayor and councillors created by this Act, shall be deemed and taken to be the persons meant and intended, precisely as if the words "Mayor and councillors" were, in the said Acts, substituted for the word "commissioners."

No. 25—1873.]

[June 26, 1873.

## ACT

To Amend the Act No. 14 of 1868, for Constituting the Town of Port Elizabeth a Municipality.

Preamble.

WHEREAS by the sixty-third section of the Act No. 14 of 1868, for "Constituting the Town of Port Elizabeth a Municipality," the council therein constituted is empowered to make and levy in manner therein provided a rate or assessment upon all immovable property within the limits of the municipality for certain purposes therein mentioned, and *inter alia* for making watercourses, reservoirs, aqueducts, and other waterworks: And whereas the rate or assessment thereby authorized to be made has been found insufficient for the purposes aforesaid, and it is expedient to empower the said council to make and levy a further rate or assessment not exceeding the sum of one penny in the pound in any one year on the value of the immovable property within the said municipality, such rate or assessment to be applied solely for the purposes of providing a water supply for the municipality, by contracting with a company or companies, or with any corporate body, individual or individuals, for the same, and the taking over and purchase of such works, with the rights and privileges appertaining thereto, at a price to be named in such contract or contracts: Be it therefore enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Council authorized to levy water rate.

1. Notwithstanding any clause, matter, or thing in the said Act No. 14 of 1868 contained, it shall be lawful for the council of the said municipality to make and levy in each and every year a further and separate rate or assessment for the purpose of a water supply for the town of Port Elizabeth not exceeding one penny in the pound sterling, on the value of the immovable property within

the said municipality, and the modes of assessing, collecting, and recovering the same shall be such and the like as are provided for the levying, collecting, and recovering the landlords' rate in the said Act, so far as the same are applicable.

No. 25—1873.

2. It shall be lawful for the council to make and conclude any contract or contracts with any joint-stock company or co-partnership, or with any corporate body, or any individual or individuals, for supplying the town of Port Elizabeth with water: Provided that the council shall be at liberty from time to time, after twelve months' notice, to purchase and take over the works executed by and under such contract or contracts on the terms and at a price or prices to be therein named.

Council may make contracts for supplying town with water.

3. It shall be lawful for the council and it is hereby authorized and empowered to borrow and take up at interest on the security of the rate herein provided to be levied, such sum or sums of money as may from time to time be required for the purposes of this Act.

Council may borrow on security of said rate.

4. The word "municipality" used in this Act shall mean the municipality of Port Elizabeth, and the word "council," the municipal council of Port Elizabeth.

Interpretation of terms.

5. This Act may be cited for all purposes as "The Port Elizabeth Municipality Amendment Act."

Short title.

No. 8—1881.]

[June 25, 1881.]

## ACT

## To Increase the Powers of the Municipal Council of Port Elizabeth.

WHEREAS certain powers were conferred on the council of the municipality of Port Elizabeth by the Act No. 14 of 1868, entitled "An Act for constituting the Town of Port Elizabeth a Municipality:" And whereas it is found desirable to increase those powers and to authorize and enable the said Council

Preamble.

- a. To establish a Town Improvement Fund and to vote moneys out of the revenues of the town towards such fund;
- b. To purchase or acquire land and buildings for the purposes of town improvement;
- c. To erect buildings, and to sell, lease, or otherwise deal with land or buildings;
- d. To provide for the better ordering of streets and thoroughfares;
- e. To provide for the better protection of property from fire, and to recover from the owners or tenants of property all expenses incurred in saving life or property from fire, or in extinguishing fires:

Be it enacted by the Governor of the Cape of Good Hope, with the

- No. 8—1881. advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Establishment of Town improvement fund. 1. The council of the municipality of Port Elizabeth shall be, and is hereby authorized to establish a fund to be called "The Town Improvement Fund."
- Fund vested in Mayor. 2. The said Town Improvement Fund and all property acquired under this Act shall be vested in the Mayor of the municipality of Port Elizabeth for the time being as trustee, and all the accounts thereof shall be kept separate and distinct from any other funds of the municipality.
- Sums to be invested in fund to be placed on Municipal estimates. 3. The said council is hereby authorized to place on the estimates of any year any sum of money to be invested in the said Town Improvement Fund, and on the same being duly voted by the council shall pay over such sum out of the revenues of the municipality to the said trustee.
- Accounts to be published. 4. The said council shall cause to be published in one or more of the local papers, during the months of January and July in each year, an audited account made up to the 31st December and 30th June respectively, showing the details of income and expenditure; and also annually, in the month of January, a statement of the assets and liabilities of the said fund.
- Power to purchase land. 5. The said council is hereby authorized and empowered for the purposes of town improvement to purchase or acquire any land or buildings subject to the provisions hereinafter contained.
- Notice to be given of proposal to purchase. 6. When it is desired to acquire any land or buildings under this Act, notice of motion shall be given by a councillor to that effect at an ordinary meeting of the said council. Such motion shall be decided at the next ordinary meeting of the council, at which two-thirds of the councillors shall be present, and if agreed to by a majority of the councillors then present shall be advertised in the *Government Gazette* and one or more of the local papers, not less than twice a week during four consecutive weeks, and such advertisement shall appoint a day at or after the expiration of the said four weeks, before which objections may be sent in to the said council by any owner of such property or by any ratepayer, all whose municipal rates at the time have been duly paid.
- In absence of objections purchase to be made. 7. Should no objections be handed in to the council by any such owner or ratepayer, the vote or resolution passing the motion in the last preceding section hereof mentioned shall be binding and of full force and effect.
- Proviso for hearing objections. 8. Should any objection be sent in to the council by any such owner or ratepayer within the time limited as aforesaid, the council shall advertise in the local paper a date not earlier than one month from such objections being received on which the council will sit to hear such objections, and the council shall be and is hereby constituted a court for the consideration of such objections, and its decision thereon shall be binding. Always provided that such decision shall not be binding on the owner of



any property in so far as may relate to the amount of money or other consideration to be given to such owner for such property.

No. 9—1881.

9. On the council arriving at a decision to purchase or acquire any such property it shall be lawful for the council, and it is hereby authorized and empowered, to exercise in regard to such property all the powers and authorities set forth in the fifty-second section of the said Act No. 14 of 1868.

Purchase being decided on 52 Sec. of Act 14 of 1868 to apply.

10. In case the said council shall in the exercise of the powers conferred on them by this Act determine to purchase or acquire any land or buildings, the owner or owners whereof shall be absent from this Colony and not represented by any agent duly accredited, or shall not be discoverable, then the said council shall take the same proceedings in respect thereof as are set forth in the fifty-third section of the said Act No. 14 of 1868.

In cases of absent proprietors of lands to be purchased.

11. In all cases in which the said council shall acquire any property by virtue of the ninth and tenth sections of this Act, or by virtue of the provisions of the fifty-second and fifty-third sections of the Act No. 14 of 1868, if the said council shall be unable by reason of the absence or refusal of the owner or owners of such property or their lawful representatives to obtain transfer thereof in the usual form, the following proceeding shall be taken :

Mode of proceeding in case of Council being unable to obtain transfer by reason of absence or refusal of owners.

- a. A certified copy of the original grant and diagram of the particular piece of ground required as aforesaid, and in case such land shall be a sub-division, a diagram in duplicate prepared by a Government land surveyor, shall be lodged and remain in the municipal office for inspection of all persons concerned during the whole time of the several advertisements and other proceedings in connection therewith prescribed by this Act.
- b. Such diagram shall contain all such information as is required by the rules of the office of the Registrar of Deeds, and shall be subject to examination in accordance with those rules.
- c. On completion of all the proceedings required for the acquisition of the said property, it shall be lawful for the said council to apply under the provisions of the "Titles Registration and Derelict Lands Act, 1881," for an order upon the Registrar of Deeds to transfer to the said council the property so acquired.

12. Should any property acquired by the said council under the provisions of this Act or otherwise include or constitute the whole of the properties on both sides of any street, lane, or passage, the council is hereby invested with authority to close such street, lane or passage, provided that no such street, lane, or passage shall be closed until a notice shall have been published for the period, in the manner and for the purpose hereinbefore in the sixth section provided; and thereupon the like proceedings shall be had and taken as are in the seventh and eighth sections provided: and

When Council may close streets, &c., lying between properties purchased.

No. 8—1881.

provided further that any person aggrieved by the decision of the council, may within three months thereafter apply to any competent Court for relief, and failing any such application the decree of the council shall be final and binding and conclusive as against all persons; and the council shall have full authority to deal with such ground as hereinafter provided, as though no street had previously existed thereon.

When Council desires to sell or lease lands.

13. When the council desire to sell, let, lease or otherwise deal with any property acquired by them under this Act, including any such street, lane or passage, as in the last preceding section mentioned, or to erect any buildings thereon, notice of motion shall be given by a councillor stating the precise manner in which it is proposed to act.

Quorum of Members to decide any motion under this Act.

14. No motion relating to any matter arising under the provisions of this Act shall be decided at any meeting of the council at which there shall be less than two-thirds of the members thereof present. As often as the required number of members shall not be present, and as often as the votes shall be equal, such motion shall and may be postponed from time to time until decided. And upon every such motion the Mayor or person presiding at any meeting shall not, in case of an equality of votes, have a second or casting vote, anything in the said Act No. 14, 1868, to the contrary notwithstanding.

No motion to be repeated in the same year.

15. No motion which has been negatived shall be repeated in the same year of our Lord, but after the first of January of the ensuing year any matter that has been negatived in the previous year may be revived after due notice.

Upon motion passed, power to sell lease, &c.

16. The said council is hereby authorized upon the passing of any motion to that effect in manner hereinbefore provided, to sell, let, or lease any property acquired by them under this Act, or to remove buildings or erect new buildings thereon; or to mortgage the same, or to issue debentures on account thereof for any sum not exceeding the cost thereof, including the cost of any buildings that may be erected thereupon by the council.

Rent, &c., after payment of incumbrances to be paid into town improvement fund.

17. After payment of the interest on such mortgage or debentures and the due payment of all repairs or other charges on such property, the rent or other proceeds derived from any letting, leasing, or other use of any such land or buildings acquired or erected under this Act, as also the proceeds of any such land or buildings as may be sold, after payment of the cost thereof, shall be paid into the Town Improvement Fund.

Public Bodies Debts Act, 1867, to apply.

18. Over and above the claim on the said property by virtue of any such mortgage, the holder of such mortgage or of any debentures issued under this Act shall be entitled to the full benefit of the provisions of the Public Bodies Debts Act, 1867.

Transfer and mortgages to be in name of the Mayor.

19. All transfers to and from the said council, and all mortgages passed by them under the provisions of this Act, shall be made in favour of or by the Mayor for the time being as trustee.

20. The said Mayor as trustee shall, in all matters relating to the Town Improvement Fund or any property acquired under this Act, obey the instructions of the council as expressed and recorded from time to time in the minutes of the said council, and copies of all such minutes shall be forwarded to the Mayor, in writing, by the Town Clerk immediately after the same have been passed.

No. 8—1881.  
Mayor to obey instructions of Council.

21. The Mayor as such trustee shall not by acting on any minutes or instructions so received from the council through the Town Clerk incur any personal responsibility whatever, nor shall he be answerable for any irregularity or error in the passing or recording of such minutes, nor for any act, negligence, or omission on the part of the council or its officers.

Mayor not to be personally responsible.

#### STREETS AND THOROUGHFARES.

22. All persons who may be desirous of selling lands within the said municipality in sub-divisions, shall submit a plan of the same for the approval of the said council, and no transfer of any such land sold in sub-divisions after the taking effect of this Act shall be passed in the office of the Registrar of Deeds until a certificate shall be produced to the said Registrar under the hand of the Mayor or Town Clerk certifying that the plan of such sub-divisions has been submitted to and approved by the said council.

Persons desirous of selling lands to Municipality to submit plans.

23. It shall be the duty of the said council to see that due provision is made in every plan so submitted for the efficient drainage thereof; that the streets or passages reserved are of sufficient width to accommodate the traffic that may be expected thereon, and that all streets or thoroughfares shall be clear throughout and open into existing streets or thoroughfares.

Drainage to be provided for.

24. The owners of such property shall before the sale thereof, form and level the proposed streets or thoroughfares, and shall make over the same to the council in proper condition for use, and the council shall thereafter be bound to keep and maintain the said streets and thoroughfares.

Owners of property to make streets.

25. When the ratepayers in any ward, district or street desire to have special paving or other works effected therein, or to have a larger proportion of police, sanitary, or other officers employed therein, or a larger supply of gas or other light or water or other service than can be allotted to such ward, district, or street, out of the general rates of any year, such ratepayers or any number of them may propose and conclude any agreement with the said council whereby, in consideration of certain additional payments over and above the ordinary rates, such works or services may be supplied.

Agreement may be made with council for special paving, water and gas supply, &c.

26. In the event of any of the owners of property in any such ward, district, or street desiring such special works or services of a nature chargeable on the landlords' rate, the said council shall on requisition of not less than ten of such owners call a meeting of all the owners of

For the purposes in last section mentioned, meetings to be called and special rates assessed.

No. 8—1881.

rateable property in such ward, district, or street by notice to be published in one or more local papers for not less than twice a week during two successive weeks immediately preceding the day appointed for such meeting; and if it be decided at such meeting by the votes of such owners who are entered in the valuation roll of the municipality as owners of not less than two-thirds of the aggregate value of the assessed property in such ward, district, or street, that a rate shall be passed for the purpose of defraying the cost of such works or services, such rate as they may agree upon, not exceeding one penny in the pound on the assessed value of the property in the said ward, district, or street, shall be binding upon the whole of the owners of such property, and shall be levied as provided in the Act No. 14 of 1868, for the levying and collection of the landlords' rate, and in like manner the said council shall and may, by similar notice, convene a meeting of the tenants or occupiers of rateable property in any such ward, district, or street, on requisition of not less than ten of such tenants, for the purpose of voting a rate for any such special works or services of a nature chargeable on the tenants' rates, and if at such meeting it shall be decided by the votes of persons who are entered in the valuation roll of the municipality as tenants or occupiers of property to the extent of two-thirds of the aggregate annual value or rental of the assessed property in such ward, district, or street, that a rate shall be passed for the purposes aforesaid, such rate as they shall agree on, not exceeding sixpence in the pound on the assessed annual value or rental of all the property in such ward, district, or street, shall be binding upon all the ratepayers in such ward, district, or street, and shall be recoverable as provided in the said Act No. 14, 1868, for the levying and collection of the tenants' rate.

“Meaning of word  
“district.”

27. The word “district” in the last two preceding sections of this Act shall mean any group of streets or thoroughfares, the principal owners or tenants whereof may desire to co-operate in the demand for such extra works or services, and on application from such persons it shall be the duty of the council to define in any agreement as in the twenty-sixth section hereof mentioned, or in the notice convening any meeting as provided in the twenty-seventh section hereof, the precise boundaries of such district.

#### FIRE.

Power to acquire  
stations for fire en-  
gines.

28. In addition to the powers conferred on the said council by the Act No. 14, 1868, <sup>(1)</sup> with regard to the prevention and extinguishment of fires, the said council shall have power to take on lease, purchase or otherwise acquire stations for engines and such other houses, buildings, or land, as they may think requisite for the storing of engines and apparatus or the accommodation of

<sup>1</sup> See § 35, Act 14, 1868.

the persons charged with the management thereof; and may from time to time sell any property acquired by or vested in them for these purposes.

No. 8—1881.

29. The council shall engage and organize a force of firemen, to be called "the municipal fire brigade," which shall be under the command of an officer to be appointed by the council under the name of the superintendent of the municipal fire brigade: and the council shall pay the superintendent and men of such fire brigade such salaries or other remuneration as they think expedient.

Fire Brigade to be organized.

30. The council may by bye-laws make regulations for the training, discipline, and good conduct of the men belonging to the said fire brigade, for their speedy attendance with engines, fire-escapes, and other necessary implements and apparatus on the occasion of any alarm of fire, and generally for the maintenance in a due state of efficiency of the said brigade, and may annex to such regulations penalties for any breach thereof: Provided that all such bye-laws shall be made, approved of, and confirmed in manner directed by the Act No. 14, 1868.

Power to frame regulations for such brigade.

31. On the occasion of any fire the superintendent or other officer in charge of the fire brigade may, in his discretion, avail himself of the assistance and take the command of any persons who may voluntarily place their services at his disposal, and may remove or order any fireman to remove any persons who interfere, by their presence or otherwise, with the operations of the fire brigade; and generally he may take any measures that may appear expedient for the protection of life and property; with power by himself or his men to break into or through, or take possession of, or pull down, any premises for the purpose of saving life or property or putting an end to a fire, doing as little damage as possible; and for these purposes he shall have free right of access to and liberty to draw water from all tanks, cisterns, pipes, or other supplies of water, whether on municipal or private property.

Powers given to officers in charge of the brigade in case of fire.

32. All police constables shall be authorized to aid the fire brigade in the execution of their duties, they may close any street, passage or thoroughfare in or near which a fire is burning, and they may on their own motion or on the request of the superintendent or other officer of the fire brigade, remove any persons who interfere by their presence or otherwise with the operations of the fire brigade.

Police to assist Brigade.

33. The council, the Mayor, the superintendent and men of the fire brigade, as also all police constables and other persons acting under the orders of such superintendent or other officer in charge of the fire brigade, are hereby indemnified and exempted from all claims or demands whatsoever by reason of any damage done to property in the execution of their duties.

Indemnity against damage caused in execution of duty.

34. In every case of fire the council shall be authorized to charge on every shop, store, warehouse, station, hotel, manufactory,

Charges to be made for services of Brigade.

No. 8—1881.

timber or store-yard, carpenter's shop, or block of offices, in which fire breaks out, the sum of ten pounds sterling for the services of the fire brigade, and also the sum of two pounds sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said premises, or upon the neighbouring premises, to prevent the extension of the fire; and on every dwelling-house or other building, not above specified, in which fire breaks out, the council shall be authorized to charge the sum of five pounds sterling for the services of the fire brigade, and also the sum of one pound sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said dwelling-house or other building, or upon the neighbouring premises, to prevent the extension of the fire.

By whom to be paid.

35. The amounts charged as aforesaid shall be paid by the tenant of the property on which the same shall be charged, or on his default by the owner thereof, and shall be recoverable from either by action in the name of the council in the Court of the Resident Magistrate or any Court of Law having jurisdiction.

Expenses incurred may be recovered.

36. Whenever the council has incurred any expenses in saving or removing or attempting to save or remove merchandize, furniture, or other goods or articles from any fire, or in pulling down or destroying any buildings in order to prevent the spread of the fire, or otherwise in saving, or attempting to save, buildings or property adjacent to a fire, the said council shall be entitled to recover the amounts so expended from those interested in equitable proportions, whether the said buildings or property be ultimately saved or not.

Town Clerk to ascertain value of properties dealt with in order to proportion payment of expenses

37. In order to decide on the equitable distribution of such expenses, the Town Clerk shall ascertain as near as may be the values of the properties dealt with, and divide the outlay accordingly, and the amounts so apportioned shall be paid by the several owners of the properties dealt with, and shall be recoverable from such owners, respectively, in any competent Court after seven days notice of such apportionment, unless within such seven days they shall intimate to the Town Clerk their objections to the same, and agree to submit the whole apportionment of expenses to arbitration, as in the next succeeding section provided.

Arbitration in case of dispute.

38. Should any of such owners object to the distribution as arranged by the Town Clerk, or dispute his liability to contribute to such expenses, the whole matter shall be referred to the arbitration of three persons, whereof the council shall appoint one, the persons objecting to the Town Clerk's distribution or a majority of them shall appoint another, and these two shall nominate a third. These three arbitrators shall sit and take all such evidence as may be tendered, and frame a distribution account and award, which, when signed by the arbitrators or any two of them, shall be final and binding on all parties concerned, and recoverable from the

respective persons therein named by action in the Court of the Resident Magistrate or any other Court having jurisdiction.

No. 8—1881.

39. Any damage occasioned by the fire brigade in the due execution of their duties, and all expenses incurred by them or by the other parties empowered by this Act, in the removal or attempted removal of goods, or in operations to save property and extinguish fire, and charged to the owners or occupiers of property under this Act, including the charges mentioned in section thirty-four of this Act, shall be deemed to be loss or damage by fire within the meaning of any policy of insurance of such property or goods against fire.

What shall be deemed "loss or damage by fire."

40. In the several clauses of this Act the word "municipality" shall mean the Municipality of Port Elizabeth; the words "Mayor," "council," "councillors," and "Town Clerk," shall respectively mean the Mayor, council, councillors, and Town Clerk of the said Municipality; and the words "insurance company" shall include any persons corporate or unincorporate or any person carrying on the business of fire insurance.

Interpretation of terms.

41. This Act may be cited for all purposes as the "Port Elizabeth Town Improvement Act, 1881."

Short title.

No. 31—1877.]

[August 8, 1877.]

### ACT

To enable the Municipal Council of Port Elizabeth to provide the Inhabitants of the Town of Port Elizabeth with Water, and for that purpose to take Water from the Van Staden's River, to acquire Government and other Lands required for the Construction of the necessary Waterworks, and to Erect a line of Telegraph along or near to the Line of such Waterworks.

WHEREAS it is desirable that the inhabitants of the town of Port Elizabeth should be supplied with good water, and the municipal council thereof have caused surveys to be made, and are advised that the same can be obtained from the Van Staden's River, in the district of Uitenhage: And it is expedient that the works necessary to accomplish that object should be constructed either by the said council or by a joint-stock company or co-partnership of individuals or an individual with whom the said council may contract either for the whole or any portion of the said works, or the material therefor: And that to enable the said council to procure the necessary funds, the said council shall be empowered to issue debentures from time to time for any sum or sums of money not exceeding in the aggregate the sum of one hundred and fifty thousand pounds. And that in order that the said council may be

Preamble.

No. 31—1877.

enabled to pay the interest on the said debentures as well as to contribute annually a sum not less than one per cent. on the said capital by way of a sinking fund in order to enable the said council to pay off the said debentures, the said council should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Borrowing powers conferred.

1. It shall be lawful for the said council, from time to time, to borrow and to take up at interest such sum or sums of money, not exceeding in the whole one hundred and fifty thousand pounds sterling as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum to be borrowed by the said council.

Powers conferred on Council in regard to Van Staden's River.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Van Staden's River in the district of Uitenhage, such a supply of the water of the said river as they may require for the purposes of this Act. And for the purpose of enabling them so to do, it shall and may be lawful for the Governor of this Colony, and he is hereby authorized, to give and grant to the said council in full and free property all Government land on which the said Van Staden's River takes its rise, or all such Government land as is situate at or immediately adjoining the point on the said river from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or right of water which he may, at the time of the taking effect of this Act, possess or be entitled to, in reference to the said Van Staden's River, or in any way, interfere with, or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the ninth section of this Act provided.

Council may construct necessary works for securing supply of water.

3. The said council is hereby empowered to construct and make all such works as may in the opinion of the said council be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town of Port Elizabeth and for the shipping visiting that port.

May construct line of telegraph.

4. The said council is hereby further empowered to construct and maintain a line of telegraph between Port Elizabeth and the source of the said water supply in such manner as the said council may determine, and to enter into any contract or contracts with



any joint-stock company or co-partnerships of individuals, or an individual, for the performance of the whole or any portion of the works in this and the preceding section mentioned and set forth.

No. 31—1877.

5. The council is hereby empowered to enter upon, occupy, enclose, take and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart for church purposes, commonly call "Glebe Lands," and also to enter upon, occupy, enclose, take and use any land the private property of any person or persons whomsoever which may be required for the purposes of this Act, and may agree as hereinafter provided for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works upon such terms and conditions as may be mutually agreed to.

Powers of council in regard to lands and materials for carrying on works.

6. It shall be lawful for the said council to acquire and take possession in the manner hereinbefore and hereinafter provided of any land, whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land belonging to private persons that may be required for the purpose of protecting the sources of the said Van Staden's River, or the sources of supply from whence the water may flow into the reservoirs, dams, places or place where the said works may take off the water of the said river.

Lands may be taken for protecting sources of rivers, &c.

7. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof.

May lay down pipes, &c.

8. It shall be lawful for the said council at all times by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council acquired under the provisions of this Act, for the purpose of adding to, repairing, relaying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient by the said council in or about carrying out the purpose of this Act.

Right of way over lands.

9. If any person or persons from whom any water or right of water, land, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given and accepted, then the said council shall

Mode of acquiring lands or materials.

No. 31—1877.

cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such person or persons to state, in writing to the said council, or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not,—and if such person or persons should refuse the sum offered, or neglect to reply to the said notice, then the said council or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council, or other person as aforesaid, within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator,—and the said council, or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said council or other person aforesaid, and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said council or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council or other person aforesaid, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

As to lands or materials of minors or persons under curatorship.

10. In case the said council or other person aforesaid shall require to take or use any land or to dig out or carry away any materials

belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorized in his capacity as such guardian or curator to treat and agree with the said council or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said council or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorized to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisalment shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and calling by name on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners or any person

m

No. 31—1877.

duly authorized by him or them, for the recompense or compensation to be made by the said council for the said land and materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession: And in case the owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said council, upon so paying the said sum, shall be authorized and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land or materials as aforesaid had been duly done and performed.

Penalty for injuring, &c., buildings or other works.

11. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, line of telegraph, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act, shall, upon conviction, forfeit for the use of the said council a sum not exceeding one hundred pounds, or be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted both under this Act and any other law for or in regard to one and the same act.

Penalty for polluting water.

12. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipal council, or in any stream

flowing into such dam or reservoir, or shall wash, throw, or cause to enter therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, shall for every offence, on being convicted thereof, forfeit for the use of the said council a sum not exceeding five pounds, and in failure of the payment of such fine, the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

13. The council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings and the supply of water to the shipping visiting the port of Port Elizabeth shall be regulated, and the payment for all private water-leadings and for the supply of water to the said shipping shall be in accordance with such tariff: Provided, nevertheless, that the said council, or any person duly authorized by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

Tariff of charges.

14. It shall be lawful for the said council, at any meeting at which a majority of the members shall be present, to frame from time to time such bye-laws as they shall deem necessary for regulating the system of water supply to the town of Port Elizabeth, such bye-laws to be submitted for the approval of the Governor in manner provided by the Act No. 14 of 1868, entitled "An Act for Constituting the Town of Port Elizabeth a Municipality."

Bye-laws.

15. In order to pay the interest and to establish the sinking fund hereinafter mentioned, and to provide for all other claims arising under this Act, the council shall be empowered and compelled to impose, levy, and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the annual rental, or if no rental be paid then upon the estimated annual value of the whole of the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the said Act No. 14 of 1868, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof: Provided that it shall be lawful for the said council to apply for payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said council from any source whatever and not specifically appropriated or required for any other object.

Annual rate may be levied.

16. The amounts for assessment entered on the tenants' assess-

Assessment of rate.

No. 31--1877.

ment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purposes of this Act so far as the properties included in such tenants' assessment roll are concerned, but for any or all properties not included in such tenants' assessment roll, and for all properties not liable to assessment under the said Act No. 14 of 1868, the annual value shall be made and determined annually by some competent person to be appointed by the council: Provided that such valuation shall lie open for public inspection at the office of the council for the space of one calendar month from the levying of the said annual rate, and the council shall give notice in one or more of the newspapers published within the said municipality that the same lies open for inspection, and the provisions of the 66th section of the Act No. 14 of 1868 shall apply to the hearing and deciding upon objections to such valuation.

When rate to be payable.

17. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day to be fixed by the said council, of which day and of the amount of the rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.

Collector to be appointed.

18. As soon as any rate shall be assessed as aforesaid the council shall appoint under the corporate seal a person to collect the same, and which rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court in which such defaulter shall reside.

Applying Public Bodies Debts Act, 1867.

19. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act shall be subject to the "Public Bodies Debts Act, 1867."

Council to keep accounts of revenue and expenditure.

20. The council shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: And the said council shall yearly and every year, so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality, for the inspection at all reasonable times of any householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year.

21. In order to provide a fund for the payment of all moneys borrowed under the provisions of this Act, and for the gradual extinction of the debt to be incurred under the authority of this Act, there shall be set apart an annual sum equal to the interest of the whole amount of such debentures as shall be issued under authority of this Act, and a further sum of not less than one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act, and such last mentioned sum shall be annually invested as and by way of a sinking fund, and applied towards the redemption of the said debt so long as any portion of the same or any interest thereon shall remain unpaid and unextinguished.

No. 31—1877.  
Fund for payment  
of moneys borrowed.

22. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid.

Costs of this Act.

23. The word "municipality" used in this Act shall mean the municipality of Port Elizabeth as established by the said Act No. 14 of 1868; the word "council" the municipal council of Port Elizabeth.

Interpretation of  
terms.

24. This Act may be cited for any purpose as "The Port Elizabeth Water Supply Act, 1877."

Short title.

No. 15—1886.]

[July 6, 1886.

### ACT

To Authorize the Municipal Council of Port Elizabeth to sell certain Land reclaimed from the Baaken's River.

WHEREAS on the 10th June, 1864, a grant was made by His Excellency Sir Philip Wodehouse, the then Governor of the Colony of the Cape of Good Hope, in freehold, unto the Mayor, councillors and householders of Port Elizabeth, of an area of 8 morgen 99 square rods and 113 square feet, situate in Ward No. 1 in the town of Port Elizabeth, being portion of the Baaken's River, with the unappropriated land on the south side thereof, on condition that portion of the land thereby granted should be converted into gardens for the use of the public, by diverting the course of the said river and reclaiming the land, and that portion thereof to the value of £700 (seven hundred pounds) sterling, should be disposed of by the grantees towards defraying the expense of laying out the said gardens and for no other purpose or purposes whatsoever, it being understood that without the sanction of the Governor first had and obtained, no land beyond the said value should be disposed of: And whereas the grantees disposed of a portion of the said land to the value of £466 in terms of the said grant, which said sum has been expended on the reclamation of the said Baaken's River land, and thereafter on the 4th November,

Preamble.

No. 15—1886.

1880, applied to His Excellency the Governor for permission to make a public park or gardens in a more suitable part of Ward No. 1 than on the land reclaimed from the Baaken's River, the same having been found by the inhabitants of that part of the town to be totally unsuitable, especially as to situation, and also for permission to dispose of such further portion of the land contained in the said grant, as might be necessary to provide funds for the above purpose, beyond the sum stipulated in the said grant, to which application His Excellency the Administrator, with the advice of the Executive Council, was pleased, on the 28th December, 1880, to give his consent.

And whereas the said grantees, afterwards disposed of a further portion of the said land, to the nett value of £1,911 3s. 10d., which they intended to apply towards payment of the purchase price of a piece of ground, situate in the village of Walmer, purchased by them for the purpose of making a public park and gardens, but were on the 21st August, 1883, interdicted, at the instance of the ratepayers and residents of Ward No. 1, by an order of the Eastern Districts Court, "from spending on the Walmer ground, purchased by the grantees, any of the moneys specially set apart for the purpose of providing a park in Ward No. 1." Whereupon the said moneys, arising from the second sale of land, were placed as a fixed deposit in the Standard Bank of South Africa (Limited), where the same still remains, with interest accumulated thereon, amounting to the sum of £2,160 1s.

And whereas it is expedient and desirable that the grantees should be empowered to dispose of the remainder of the reclaimed land, with the exception of that portion now used for storage and stable purposes, or land in lieu thereof, and to apply the proceeds arising from such sale, as well as the proceeds of the previous second sale, now on fixed deposit in the said Standard Bank, for the purpose of purchasing a piece of land elsewhere in Ward No. 1 for a public park or garden.

Be it enacted by the Governor the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Council authorized  
to sell land reclaimed  
from Baaken's River

1. The said Municipal Council of Port Elizabeth shall be empowered, and are hereby authorized, to sell such portions of the remainder of the land reclaimed from the Baaken's River (save and except that portion now used for storage and stable purposes, or land in lieu thereof, provided the same shall not exceed 200 yards in length by 50 yards in breadth) as are included in the freehold grant of the 10th June, 1864, referred to and recited in the preamble of this Bill, and as the said Municipal Council may from time to time deem expedient for that purpose.

Disposal of pro-  
ceeds of sale.

2. The proceeds arising from such sale, as well as the proceeds arising from the previous second sale, hereinbefore referred to amounting with interest to £2,160 1s., and now on fixed deposit,



in the Standard Bank of South Africa (Limited), shall be appropriated, in the first instance, towards defraying the costs of reclamation of the said land, and the costs and charges of this Bill, and incident thereto, and secondly, to the purchase of land in the said Ward No. 1 suitable for the purpose of a public park or gardens, and the enclosing and planting thereof.

No. 39—1879.

3. This Act may be cited for all purposes as the "Port Elizabeth South End Park Improvement Act, 1886."

Short title.

No. 39—1879.]

[Sept. 11, 1879.

## ACT

For the Incorporation of the Municipality of Queen's Town. <sup>(1)</sup>

WHEREAS it is expedient that the Municipality of Queen's Town shall be incorporated and shall have perpetual succession, and possess, exercise, and enjoy all the rights and privileges which municipal corporations can or may possess, exercise, or enjoy in this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, No. 5 of 1852, and the Act No. 13 of 1864, in so far as the same are applicable to the municipality of Queen's Town, shall continue to be of legal force and operative as heretofore, until after the first election of councillors, as provided for in and by this Act; and immediately upon and after the names of the councillors shall have been published, as hereinafter provided, the said Ordinances and Act, in so far as the same apply as aforesaid, and also so much of the Act No. 8 of 1877, or any other law, as is inconsistent with this Act, shall be, and the same are hereby repealed: Provided that the municipal regulations in force at the time of taking effect of this Act shall continue to be in force and operation until such time as the same shall be altered or new ones published under this Act; And provided also, that the commissioners and officers of the municipality who may be in office at the time of the taking effect of this Act shall, until after the first election of councillors under this Act, remain in office, and exercise all such powers and authorities as previous to the taking effect of this Act were vested in them; And provided also, that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act, and the assessment roll in use at the time of the taking effect of this Act shall continue to be used until a new one shall be completed under this Act.

Repeal of repugnant laws.

<sup>1</sup> Printed as amended by Act 19 of 1885.

No. 39—1879.  
Area of municipal-  
ity defined.

2. The area of the municipality of Queen's Town shall comprise all lands within the limits bounded by the following farms, namely, Providence, Long Vale, Cathcart Place, Queen's Park, Roydon, Rathwick, Maidenhead, and Weltevreden. The town or municipality proper of Queen's Town shall comprehend the lands situate within the beacons 1—10, both inclusive, as shown on the plan signed by the chairman of the committees of the Legislative Council and House of Assembly, counterparts of which plan are also deposited in the office of the Registrar of Deeds in this Colony at Cape Town, of the Civil Commissioner for the division of Queen's Town, and of the Town Clerk of Queen's Town: And all ungranted lands within the municipal boundaries aforesaid beyond the limits of the town or municipality proper shall be the common pasturage lands of the town or municipality.

Municipality creat-  
ed.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor, Councillors, and Townsmen of Queen's Town," and by that name shall have perpetual succession, and sue and be sued, and shall have a common seal; and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such may do and have.

Council to consist  
of twelve members.

4. The council of the said municipality shall consist of twelve members, one of whom shall be the Mayor.

Wards—their bound-  
aries defined.

5. The said municipality proper shall consist of four wards, as follows:

Ward No. 1—or north-east ward—bounded south by Ebden-street, west by Robinson-road and Shepstone-street; north by town boundary; east by town boundary.

Ward No. 2—or south-east ward—bounded north by Ebden-street; west by Robinson-road and Bowker-street; south by town boundary; west by town boundary.

Ward No. 3—or south-west ward—bounded east by Robinson-road and Bowker-street; north by Cathcart-road; south by town boundary; east by town boundary.

Ward No. 4—or north-west ward—bounded east by Robinson-road and Shepstone-street; south by Cathcart-road; west by town boundary; north by town boundary.

Power to alter  
boundaries of wards.

6. The said council may, from time to time, if they think fit, alter the boundaries of all, or any, or either, of the said wards, and extend the limits of the town or municipality proper, and may for that purpose purchase and hold adjoining properties for the purpose of extending the common pasturage lands, provided that the council shall, before making any such alteration, increase, extension, or purchase, give in one or more of the newspapers published in Queen's Town, public notice of the alteration, increase, extension, or purchase intended to be made; which notice shall be published for not less than thirty-one days before any such alteration, increase, extension, or purchase shall be made; and a copy of

the same shall also be posted in some conspicuous place upon or near the municipal office or market-place: And in case six townsmen, or more, or any other person who may consider that his rights will be interfered with by the proposed purchase, shall, within the time aforesaid, object to the same in writing, or to the objects, terms, and conditions thereof, the notice and the objections shall be forwarded to the Governor for his consideration and decision; and in case such decision shall be in favour of the council, but not otherwise, the council may complete the proposed purchase aforesaid.

7. Three councillors shall be elected for each ward in manner hereinafter mentioned. Three councillors for each ward.

8. Every male person of full age not disqualified as by the eleventh section of this Act mentioned, who for six months at least immediately preceding the day of election of councillors or a councillor for any ward, has resided within the limits of the said municipality, and been the owner of any immovable property therein of the assessed value of not less than £300, in regard to which property no municipal rate shall at the time of such election be due and in arrear, and no other person, shall be eligible to be elected a councillor for any ward; provided that different properties owned as aforesaid, in immediate succession, shall satisfy this section as fully and effectually as if they had been one and the same property: Provided, further, that no person shall be eligible to be a candidate or qualified to be elected a councillor for any ward unless he shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such a ward, and shall have transmitted such requisition, with his acceptance thereof, to the Town Clerk, at his office, between the hours of ten a.m. and three p.m. on some day at least fourteen days before such election is appointed to take place. Who eligible to be elected councillors.

9. Every male person of full age, not disqualified as in the said eleventh section mentioned, who is the owner or occupier of any immovable property in any ward, valued on the assessment roll of the municipal commissioners in force at the time of the taking effect of this Act at the sum of £150, or upwards, in regard to which property no municipal rate shall be due and in arrear, shall be qualified and entitled to vote at the first election of councillors for such ward to be held under this Act, and at every public municipal meeting to be held either for the municipality or such ward until lists as hereinafter mentioned shall have been settled under this Act. After such last-mentioned lists shall have been settled, every male person of full age, not disqualified as in the said eleventh section mentioned, whose name shall appear as the person liable to pay rates in respect of immovable property of the value of £150 and upwards in the lists of the ward which shall have been settled next immediately preceding the then election or meeting as aforesaid, and in respect of which property no municipal rate shall Who entitled to vote at election.

No. 39—1879.

be due and in arrear, and no other person shall be qualified and entitled to vote at the election of a councillor or councillors for such ward, or at any such meeting as aforesaid.

Joint occupiers.

10. When any property as aforesaid is occupied by more persons than one, each of such co-occupiers may claim to have his name enrolled in the list of the ward in which such property is situated and subject to the provisions in the preceding section mentioned, shall be entitled to vote in respect of such property, provided the value of such property, when divided by the number of such co-occupiers, shall be equal to the sum of £150 for each such co-occupier.

Persons disqualified.

11. The following persons shall be disqualified from voting or being elected as councillors at any election under this Act: Persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon.

Lists of voters to be made.

12. On or before the first Monday in November next after the passing of this Act, and afterwards on or before the first Monday in November, but not earlier than the fifteenth October, in every year, the Town Clerk shall cause a list to be made in alphabetical order, for each ward, of all male persons qualified to vote at the election of councillors for each ward, setting forth the christian and surname of each at full length, the place of his abode, and the nature of his qualification.

Publication of such lists.

13. The chairman of the commissioners for the municipality of Queen's Town, until the appointment of a Mayor, and afterwards the Mayor, shall forthwith cause such lists to be published by affixing the same to some conspicuous place upon or near the municipal office or market-place; and to every list so published shall be subjoined a notice, signed by such chairman or Mayor, that all objections thereto and claims to be inserted therein will be heard and determined at some time or place to be named in such notice and to be fixed by the said chairman or Mayor.

Court to be held to hear objections to lists.

14. On the day named in the notice in the last preceding section mentioned, the said chairman of the commissioners for the municipality of Queen's Town, and two commissioners, until the appointment of a Mayor and council under this Act, and afterwards the Mayor and two councillors, to be selected for that purpose by the commissioners or councillors, as the case may be, shall have the power, after hearing objections and claims in open court, to strike out of any list the names of persons not entitled to be therein, and also to insert in any list the names of all persons entitled to be, but not appearing in, such list.

"The Townsmen's Roll of Queen's Town."

15. The list so settled shall be called "The Townsmen's Roll of Queen's Town," and shall be brought into use on the first day of January in each year, and shall continue to be used until the next succeeding list shall be brought into use.

16. The said chairman of the commissioners, and afterwards the Mayor, shall immediately, after the settlement of such roll, publish the same, in accordance with the sixty-second section of this Act.

No. 39—1879.

Roll to be published in manner provided in Section 62.

17. On the last Monday in February next, after the passing of this Act, an election shall be held for twelve councillors, being three for each ward, and thenceforth on the last Monday in February in each succeeding year an election shall take place for four councillors, being one for each ward. All occasional vacancies shall be filled up as after mentioned.

When elections to take place.

18. The said chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor, shall, at least twenty-eight days before the day appointed for the election of a councillor or councillors, by notice to be published as hereinafter provided, notify the times and places at which, and the ward or wards for which the election or elections will be held, and shall by such notice, require that all requisitions and acceptances thereof under the eighth section of this Act be sent in to him fourteen days at least before the day appointed for such election.

Twenty-eight days' notice of elections.

19. The said chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor, shall, at least ten days before the day appointed for any election, cause the names of the candidates and the names of the persons who have signed the requisitions to them, as aforesaid, to be published in one or more of the local newspapers, and by affixing the same on some conspicuous place upon or near the municipal office or market-place.

Ten days' publication of names of candidates.

20. Every meeting for the election of a councillor or councillors shall be presided over by a polling officer, to be appointed for that purpose by the Mayor, or, before the appointment of a Mayor under this Act, by the said chairman of the commissioners. The poll shall commence at eight o'clock in the forenoon, and close at three o'clock in the afternoon of the same day.

Polling officer to be appointed.

21. At every election of a councillor or councillors, every person whose name appears on the Townsmen's Roll for any ward then in use (a copy of which shall be furnished to each polling officer for his guidance at such election), shall be entitled to vote in such ward in person for any candidates not being more than the number to be elected for such ward, but not elsewhere or otherwise.

Each elector may vote for the number of councillors required in his ward.

22. The votes shall be taken by ballot in manner following: that is to say, every voter shall, in the polling booth, in the presence of the polling officer, set his name on a paper provided by the returning officer, against the name of the candidate or candidates for whom he intends to vote, and hand the same to the polling officer, who shall forthwith deposit such paper in a locked up box to be provided for the reception of such papers, and such box shall not be opened until after the close of the poll, and then

Voting by ballot.

No. 39—1879.

only by the said chairman of the commissioners, or Mayor, as the case may be, in the presence of the polling officer only. No voter shall be allowed to give more than one vote to one candidate.

The only enquiries to be made of person tendering his vote.

23. No inquiry shall, at any election, be permitted to be made as to the right of any person to vote, except as follows, that is to say, the polling officer may, of himself, or at the request of any qualified voter, put to any voter the following questions, or either of them, and no others :

1st. Are you the person whose name appears as A.B. on the Townsmen's Roll of Queen's Town, and on the voting paper now handed in by you ?

2nd. Have all municipal rates assessed upon the immovable property now occupied by you been paid ?

And in case it shall be proved to the satisfaction of the polling officer, before accepting the voting paper, or of the chairman or Mayor, as the case may be, before declaring the poll, that the person has made a false answer to either of such questions, the polling officer shall reject, and the Mayor expunge the vote of such person.

Penalty for false answers.

24. If any person shall wilfully make a false answer to either of the above questions, he shall, in addition to the disqualifications before mentioned, be liable to a penalty not exceeding £10, to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for a period not exceeding one month.

Candidates may be present.

25. All candidates shall be entitled to be present, either personally, or by one proxy for each candidate, in the polling booth (but not at the polling table, which shall be properly isolated), during the time the polling is going on, but shall not interfere in any manner in the election. Any person interfering in the election, or holding intercourse in the polling booth with any voter previous to such voter recording his vote, may be forthwith removed from the polling booth, and prohibited from entering the same during the hours of election; and any person so interfering and refusing to obey the orders of the polling officer to leave the booth, or re-entering the same during the hours aforesaid, shall for each act of interference be liable to a penalty of not more than five pounds, to be recovered in the Court of the Resident Magistrate.

When number of candidates only equal to number of vacancies.

26. In the event of the number of duly qualified candidates invited to stand as councillors for any particular ward, and accepting the requisition mentioned in section eight, being the number required to fill the vacancies in the representation of such ward, the Mayor, or, before the appointment of a Mayor, the said chairman of the commissioners, shall forthwith declare such candidate or candidates duly elected.

In case of equality of votes, result to be determined by lot.

27. On the opening of the ballot box, as hereinbefore mentioned, the person or persons having the greatest number of votes duly recorded shall be taken to be duly elected; but if at any election

the ballot shall, by reason of an equality of votes, be rendered indecisive, the returning officer shall thereupon publicly determine by lot which of the persons for whom an equality of votes has been given shall be elected.

No. 39—1879.

28. When the said chairman of the commissioners, or the Mayor, as the case may be, has ascertained the names of the persons so elected, he shall forthwith cause a list thereof, with the names of the wards for which they are respectively elected, to be published in one or more of the local newspapers.

Names of successful candidates to be published.

29. Of the persons so elected as before-mentioned, the councillor for each ward respectively who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the first day of March next, after the passing of this Act; and the councillor who shall have been elected by the next smallest number of votes shall vacate his seat at the end of two years from the said first day of March; and the councillor who shall have been elected by the greatest number of votes shall vacate his seat at the expiration of three years from the said first day of March; and upon the retirement of such councillors respectively, they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, who shall enter on his office on the 1st day of March in each year, and continue therein for three years thereafter; and every retiring councillor shall be eligible for re-election,—provided that in case, by reason of any two or more councillors in any ward having been elected by an equal number of votes, or in the event of the election having been an uncontested one, it shall be uncertain in what rotation they shall vacate their seats, the Mayor shall, at the first meeting of councillors, decide by lot the rotation in which such persons shall retire.

How seats to be vacated in rotation.

30. On the day following the first general election of councillors under this Act, the councillors shall choose by ballot from among themselves, by a majority of votes of the councillors present, the Mayor of the town who shall hold office for one year; and thereafter at the first ordinary meeting of the council annually, in the month of March, the councillors for the time being shall in like manner choose from among themselves the Mayor of the town for the ensuing year, and such Mayor shall forthwith enter upon his office, and shall continue therein for the year next ensuing, or subject to the provisions of the thirty-second section, until such time as his successor in office has been appointed, provided that the chair at any meeting of the council for the election of Mayor shall be taken by some member of the council chosen by a majority of votes of the councillors present, and in case of equality of votes, by lot, who is not a candidate for the office of Mayor: And provided also, that any person who may have filled, or may hold, the office of Mayor, may be re-elected to such office. In case of an

Choice of mayor.

No. 39—1879.

equality of votes at any election of Mayor, the question between the candidates having such an equal number of votes shall be determined by the presiding councillor by lot.

Appointment of  
auditors.

31. At the second ordinary meeting after the annual election of councillors, the council shall appoint from amongst the townsmen two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the following year, subject to the provisions of section thirty-three of this Act: Provided that no person shall be eligible to be an auditor who shall be a Councillor, Treasurer, Clerk, or other officer of the municipality; and in case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot both be elected.

In case of death,  
resignation, &c., of  
councillors.

32. If the Mayor or any councillor shall die, resign, become insolvent, assign his estate for the benefit of his creditors, or be absent from the ordinary meetings of the council for a period of one calendar month without the leave of the council (such leave in no case to be for more than three months during the year of office), his office shall be declared vacant, and another Mayor or councillor, as the case may be, shall be chosen or elected in his place in manner aforesaid, and shall hold office for the remainder of the term for which the Mayor or councillor, who has vacated office, would otherwise have remained in office: And provided that the Mayor shall in no case resign his office without giving one month's notice to the council.

The like of auditors.

33. If any auditor shall die, resign, assign his estate, become insolvent or incompetent, or in any way disqualified, his office shall at once become and be declared vacant, and the council shall, at the first ordinary meeting thereafter, appoint another auditor to fill the vacancy.

No councillor to be  
a contractor with the  
municipality except  
as shareholder in a  
public company.

34. No member of the council, or person holding any office in the gift or disposal thereof, shall, directly or indirectly, have any share or interest in any contract with or employment by the council otherwise than as a shareholder in any bank or fire insurance company, with which such council may transact business, or shall receive any fee, reward, or compensation for any vote given, or act performed, in his capacity as councillor or officer. Any such councillor or officer who shall contravene the provisions of this section shall thenceforward cease to be a member of the council, or to hold such office as aforesaid, and in case of an officer, shall not be entitled to any pension or compensation for loss of office, and shall further be liable to a penalty not exceeding fifty pounds: Provided that nothing herein contained shall apply to the case of a lease *bonâ fide* entered into between the council and a councillor or officer, as landlord and tenant, or to the case of an officer of the council receiving the ordinary salary or remuneration for the performance of the duties of his office.



35. The council shall have power and authority to do the following acts :

- To make, construct, alter, keep clean and in repair, the roads, streets, dams, furrows, sewers, drains, culverts, and bridges, within the limits of the municipality.
- To excavate, construct, and lay down within the limits of the municipality, watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells, and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons, to lay down pipes or to execute any other like works.
- To make provision for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with hose, pipes, and all necessary utensils, and to establish and to maintain a fire brigade.
- To establish, alter, regulate, and maintain markets and fairs, and to set apart places for that purpose.
- To light or provide for the lighting of the streets.
- To hold, occupy, lease, or purchase any land, and to erect, lease, or purchase, maintain and keep in repair, any building or buildings for any municipal requirement or purpose.
- To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper, and the exigencies of the times may render necessary and advisable; and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now be or may hereafter be in force for this purpose: Provided always that the ordinary revenue of the town be not used in the erection of any school buildings.
- To cause all buildings, which shall be certified in writing by any three master builders to be unsafe to the public, to be placed in a state of security, and, if necessary, removed at the expense of the owners of such buildings: Provided that notice in writing shall have been first given by the council to the owner or owners of such buildings that such buildings are in a state of insecurity, and that the same must be removed or placed in a state of security within a reasonable time.
- To cause all buildings used by the public capable of containing more than four hundred persons to be provided with sufficient and proper means of egress in cases of fire or panic.
- To erect and maintain proper weighing machines for ascertaining the weight of wagons and other carriages and their loads.

No. 29 -1879.

To grant permits or licences for any purposes to be defined by the municipal regulations, and to make such charges for the same as may be so defined.

To levy tolls and dues, as hereinafter provided.

To make such provisions for the isolation of cases of dangerous contagious diseases affecting persons or animals within the municipality, and for the suppression and prevention of the same as shall be necessary from time to time and according to law.

To define the width and direction of such streets as may be made on private property by the owners thereof; which streets, when so defined, shall thereupon, upon application by the owners of the property, become public streets.

To make provision for the removal and disposal of all night soil, stable litter, excrement, filth, slops, and refuse, from public and private premises and from the streets, and to construct and maintain cemeteries, and generally to devise and carry out all such measures as shall appear to the council to the advantage and convenience of the townsmen.

To establish and provide for the management of public pounds within the said municipal limits.

To assize weights and measures according to the standard in force.

Provisions of Act  
15 of 1857 to apply.

36. The provisions of Act No. 15 of 1857, entitled "An Act for enabling Municipalities to obtain Additional Police by contributing towards the expense thereof," shall, *mutatis mutandis*, continue applicable to the Municipality of Queen's Town hereby constituted; the words "Town Council" being read in place of the words "municipal commissioners" or "commissioners."

How bye-laws and  
regulations to be  
framed.

37. It shall be lawful for the council at any meeting at which not less than nine of the members shall be present, by resolution agreed to by a majority of not less than two-thirds of those so present, to frame bye-laws, rules, and regulations as to the registration of births and deaths within the municipality,—the inspection of public and private wells, tanks, cisterns, and reservoirs, and the temporary or permanent closing of any such in which the water is so polluted as to be injurious to public health,—the inspection, construction, and cleaning of ashpits, privies, cesspools, and middens, and of stables, kraals, and enclosures wherein horses, horned cattle, sheep, goats, pigs, or other livestock may be stabled, kraaled, or kept,—the times and places for slaughtering cattle, sheep, or goats, within the municipality, and the state and condition of slaughter-houses or enclosures, skin stores, tanneries, and wool-washeries within the municipality,—the confining or killing of dogs, pigs, goats, and fowls,—the appointment of one or more competent persons to examine meat and other provisions, milk,

spirituous, and other drinks offered for sale, and who, in case such meat, provisions, or drinks, be found unfit for human food or drink, shall be empowered to cause the same to be destroyed,—the prevention, abatement, and removal of nuisances, and the recovery of the expenses thereby incurred from the person or persons committing or permitting such nuisances,—the undue obstruction of the public streets and footpaths by carriages or otherwise, and securing that the footpaths shall be for the use and enjoyment of foot passengers,—as to the registration, rates of charges, and conduct of coolies,—to make all such sanitary and other regulations for the preservation of the health of the inhabitants of the town, and of natives and others residing or staying within the Native Location, as may be deemed advisable,—as to the management of the common pasturage lands of the municipality,—as to the portion or portions of the commonage upon which carriers and others frequenting or passing through the municipality, or attending the markets thereof, may depasture their stock,—as to the establishment, continuance, management and regulation of public pounds within the municipality,—the erection of toll bars and the imposition of tolls for the maintenance and repairs of the public streets and roads within the municipality,—as to the user or non-user of the streets and public places within the municipality for holding of public auctions, and the imposition of reasonable tolls and dues to be paid to the council in respect of such use,—the granting of licences or permits for digging or getting brick-clay or gravel, or quarrying stone, or cutting firewood on the commonage,—as to the duties of any servant, any police or other officer of the council, or any officer or member of any fire brigade when there shall occur any fire by which any house, building or property shall be in danger of being destroyed or injured,—as to determining the amount of all occupation rents, fees for residence, permits, water taxes, health board rates, or special taxes for any sanitary purpose that shall be due and payable from time to time by the inhabitants of the Native Location, and for the recovery of the same by the council or its agents,—as to the procedure which may be adopted by the council in the case of any inhabitant of the Native Location who shall make default in respect of the payment of any house duty, hut or other tax made and levied by the Colonial Government,—as to the recovery of all rates lawfully made and levied on rateable property,—as to the amount of any water or other tax which may from time to time be lawfully demanded by the council from inhabitants within the municipality or within any particular area of the municipality and for the collection and recovery of the same by the council or its agents,—as to the fees for grazing licences which shall be payable to the council by butchers and by other inhabitants and by travellers depasturing any animals on the common pasturage lands and for the impounding of any animals that may be depastured on the same the owners of

No. 39—1879.

which have not obtained such licence,—as to the inspection, approval, and registration of all plans for buildings within the municipality or within any area of the municipality, and for preventing persons proceeding with the erection of any building the plans of which have not been so inspected, approved and registered,—as to the measure which may lawfully be taken in respect of buildings certified by competent authority and in the opinion of the council believed to be dangerous to the safety of the public,—as to the duties of owners or persons in charge of any cattle or other animals affected with any contagious disease, or of any animal that may be found in a dying state, or of any carcase of any animal that may be found dead on any public place or near any public watercourse, or on the common pasturage lands,—and generally as may seem meet for the good rule and government of the municipality, and as may be expedient for the proper working of the powers thereby given, and as may appear necessary for the purpose of carrying out all such measures as shall appear to the council to be for the benefit, convenience, or improvement of the municipality, and of the health and comfort of the inhabitants thereof, with power, from time to time, to alter, vary, or rescind all or any of such bye-laws, rules and regulations, and to frame such others as may, from time to time, appear expedient: Provided that no such bye-law, rule, or regulation, nor any alteration, variation, or rescindment thereof, shall be of force until the same has been published, as is in the sixty-second section of this Act provided, for twenty-eight days (together with a notice calling upon all townsmen who may have any objections to the same, to lodge such objections in writing within the period aforesaid), and thereafter shall have been submitted by the council to the Governor (together with the objections, if any, that may have been so lodged), and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

Not necessary to prove quorum present at framing bye-laws.

38. After any municipal bye-law, rule, or regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that the required number of members of the council was present at the meeting at which such bye-law, rule, or regulation was framed.

Provisions for punishment of contravention of bye-laws.

39. It shall be competent for the council by any such bye-law, rule, or regulation, as aforesaid, to provide for punishing the contravention thereof by a fine in certain cases of not exceeding five pounds, and in default of payment of such fine by imprisonment for any period prescribed by such regulation, not exceeding three months, unless such fine be sooner paid: Provided the bye-laws, rules, and regulations, the breach of any one of which shall render the persons so contravening liable to a penalty, shall be specially enumerated, stating the penalty attaching to the breach of such bye-law, rule, or regulation.

40. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such toll or dues as may be reasonable on all persons making use of any road, street, bridge, or marketplace within the municipality, which the council is hereby empowered to make or maintain, and in case of non-payment thereof, to recover the same by legal process, or in such other manner as may by any such municipal regulation be in that behalf provided; but no toll shall be payable by any officer or private of Her Majesty's forces, or any colonial police, volunteer or other force, or by any judicial or civil officer, mail carrier, or other Government servant, while travelling on public duty; and no more than one toll shall be payable in any one day, to be computed from twelve o'clock in one night to twelve o'clock the next succeeding night, for or in respect of the same vehicle or animal.

No. 39—1879  
Power as to establishing tolls and dues

41. From and after the passing of this Act, and by virtue thereof, the benefit of the servitudes in favour of the municipal commissioners of Queen's Town in times of drought and scarcity of water in the river Komani at Queen's Town contained in the original grants of the following farms abutting on the river Komani, namely: Clifton Vale, Prospect, Rockwood, Groenfontein, Everton, Aloe Grove, Long Vale, Cathcart Place, and Queen's Park, shall be vested in the said commissioners.

Water servitudes to be vested in municipality.

42. All property and servitudes heretofore or by this Act vested in the said commissioners, or chairman of the commissioners, and all unsold erven within the municipality's limits, and all municipal pasturage lands shall, after the taking effect of this Act, and by virtue thereof, are hereby and shall be transferred to and vested in the corporation hereby created, or to and in the Mayor respectively, upon the like trusts and purposes for which the same were originally granted or transferred, and, as to such erven and pasturage lands, subject to the provisions for the sale, leasing, or other disposition thereof hereinafter contained; and in like manner all liabilities or debts lawfully incurred, and contracts lawfully entered into by the aforesaid commissioners, acting for and on behalf of the said municipality, shall become the liabilities, debts, contracts, and engagements of the said corporation, and all expenses, incurred in the passing of this Act shall also in like manner be charged to the corporation herein created.

All other servitudes of late municipality transferred to the one now created.

Also debts and liabilities.

43. It shall be lawful for the council, by virtue of a resolution to that effect passed at any ordinary meeting, at which at least nine members are present, by resolution assented to by a majority of not less than two-thirds, and with the consent of the Governor, to be duly certified by writing under the hand of some proper officer, to raise by public sale or by mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be necessary to carry on any important public work or other municipal purpose which the council shall deem desirable,

Power to raise money on mortgage or debentures with Governor's authority

No. 39—1879.

and the Governor shall approve of : Provided that the said council shall, before applying to the Governor for his consent, give continuous public notice of at least one month of their intention to apply for such consent, in which notice shall be given a full and clear statement of the situation, nature and extent of the land or property proposed to be sold or mortgaged, or charged by these debentures or other securities, and of the object or purpose for which the money to arise from such sale, mortgage, or issue of debentures or other securities is required ; and which notice shall further call for objections to such sale, mortgage, or issue of debentures, or to such object or purpose to be lodged with the council in writing ; which objections, *mutatis mutandis*, shall be dealt with in manner provided for objections according to section six of this Act.

How mortgages and debentures to be granted and issued.

44. As often as the said council shall raise money by the issue of debentures to be charged upon any land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in the mortgage. Every mortgage aforesaid, or power of attorney for authorizing the execution of a mortgage of any land or property under this Act, and every debenture issued under this Act, shall be under the common seal of the said corporation, and shall be executed by the Mayor and countersigned by the Town Clerk. The debentures herein mentioned shall be as near as is material to Form No. 1 annexed to this Act ; and all transfers of such debentures shall be registered in the books of the corporation herein created.

In cases of mortgages and debentures becoming payable.

45. As often as any mortgage granted or debenture issued under the two last preceding sections of this Act shall be called up or become payable, it shall be lawful for the said council to raise by fresh mortgage of the same land or property mortgaged, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off, and the council may raise upon debentures moneys to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land and property which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security, provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Powers of leasing pasture lands.

46. The council, by virtue of a resolution of not less than nine members present at any ordinary meeting and agreeing thereto,

may from time to time lease any portions of the municipal pasturage lands for agricultural, garden, building or trading purposes, for any period not exceeding fourteen years; provided that continuous public notice shall have been given of not less than twenty-one days previous to the intended leasing, setting forth the objects, terms and conditions of the proposed lease, and requiring any person objecting to the proposed leasing to lodge with the council within fourteen days after the first publication of such notice his objection thereto in writing; and in case six townsmen or more, or any other person who may consider that his rights will be interfered with by the proposed leasing shall, within the time aforesaid, object to the same, or to the objects, terms and conditions thereof, the notice and objections shall be forwarded to the Governor for his consideration and decision; and in case such decision shall be in favour of the council, but not otherwise, the council may enter into such lease notwithstanding such objections.

47. The council may, by public tender, after public notice of not less than twenty-one days, grant from time to time privileges of working any quarries belonging to the council, or beneath the municipal pasturage lands, for any term not exceeding five years, upon such terms as to the council may seem fit.

Tenders for working quarries.

48. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or to carry away any materials belonging to any person within the municipality, then in that case it shall be lawful for the said council, by virtue of a resolution of ten members present at any ordinary meeting and agreeing thereto, and it is hereby authorized and empowered, to treat and agree with every such person for the purchase or hire, as the case may be, of any such land, buildings, materials, as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings or materials, upon such terms and conditions as may be mutually agreed upon between the council and the said proprietors, and in case any such person and the said council shall not agree upon the purchase money, hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council may cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state, in writing, to the said council, or to some person by it appointed, within fourteen days of the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall neglect or refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council shall, by another notice in writing, call upon such person to refer to arbitration the

Powers of acquiring property of private persons resident in Queen's Town for the public purposes of the municipality.

No. 39—1879.

amount of recompense or compensation to be paid to him by the said council, and for that purpose to transmit to the said council, within a certain reasonable time, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said municipality by the Town Clerk for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, previous to entering upon the reference, to appoint an umpire, and the decision of the arbitrators, or in case of difference, the decision of the umpire shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony, or of the Court of the Eastern Districts, or of any Circuit Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject matter; provided, however, that unless the amount so settled by the arbitrators or umpire as the value of any property so required by the council, or such hire or other recompense shall not be less than three-fourths of the amount demanded by the owner of such property or materials, the council shall be bound to pay the amount of such owner's demand in full, together with the whole costs of and incidental to the reference; And provided further, that all expenses incurred by such arbitration, fees of arbitrators, and legal assistance of whatever kind shall, except in the case above provided, be considered costs in the case, and shall be paid by the parties, or one or other of them, in such manner as the arbitrators or umpire shall direct; and in case such person as aforesaid claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, on its first notice in this section mentioned, for and on account of, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire, under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, or materials aforesaid, had been duly done and performed.



49. In case the said council shall, for any purpose in the last preceding section, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, the owner of which shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and in one or more newspapers published in the town of Queen's Town, once in each week for twelve successive months, describing as accurately as may be, the materials, land, or buildings which are required to be taken or used, and calling by name on the owner of the said land, buildings, or materials, if known or, if not known, upon the owner, whoever he may be, to take notice that the said council is ready and willing to treat with the owner or any persons duly authorized by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner to apply, within twelve months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, the like proceeding in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner had from the first been in actual occupation, and in case such owner shall not apply to the said council within the said period, it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay whatever sum the said land, building, and materials shall have been valued at by such person, into the Guardian's Fund, to the credit of the person or persons entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105 of 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorized and entitled to take or use the land, buildings, or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, or materials aforesaid, had been duly done and performed.

50. All acts, matters, and things hereby authorized or required to be done by the council, and all questions that may come before

No. 39—1879.

Powers of acquiring property of persons absent from the colony for the same purposes.

Majority of meeting to decide on what shall be done.

- No. 39—1879.  
Quorum. it shall be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend : Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-seventh, forty-third, forty-fifth, forty-sixth, forty-eighth, and fifty-eighth sections of this Act.
- Date of holding ordinary meetings. 51. The ordinary meeting of councillors following the first general election of councillors under this Act shall be held on the first Monday following such election, and all subsequent, ordinary, and special or extraordinary meetings of the council shall be held as directed by the municipal regulations, and all meetings of the council shall be open to the public.
- Mayor to preside, chairman to be elected in his absence. 52. At every meeting of council subject to the exception provided for in the thirty-second section of the said Act, the Mayor, if present, shall preside, and, in case of his absence, the councillors present shall elect a chairman from among themselves, who shall thereupon and during such absence have authority to sign all documents and do all such acts as herein is provided shall be done by the Mayor. In all cases of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote.
- Minutes to be kept. 53. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and signed by the person presiding thereat, and shall be read and confirmed at the next succeeding meeting. All such minutes shall be deemed and taken to be original minutes, and such books shall and may be produced and read as *prima facie* evidence of all the proceedings therein recorded in any proceeding, civil or criminal, in any Court.
- Committees to be appointed. 54. It shall be lawful for the council from time to time to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which in the judgment of the council would be better managed by means of a committee : Provided always, that the proceedings of every such committee shall be regularly entered in a minute book and submitted to the council for its approval, and the Mayor shall *ex-officio*, be a member of all such committees.
- Appointment of officers. 55. It shall be lawful for the council from time to time to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer ; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable, and to demand of all such officers such security as the council may deem sufficient ; and unless it shall otherwise be stipulated in the contract of service, to remove all such officers upon notice of not less than three months, or, in case of misconduct, without any notice.

56. The said council are hereby empowered, from time to time, to appoint and employ such number of street-keepers, policemen, and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition, and weapons, and appoint to them such duties and hours or time of duty, and shall make such rules, orders, and regulations, relative to such street-keepers, policemen, and special constables, and their duties, as shall be deemed fit. All such street-keepers and policemen shall act as constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures, as ordinary constables are invested with, or shall or may have, or enjoy, or are or may be subject or liable to by law.

No. 39—1879.  
Appointment of  
streetkeepers, police-  
men, and constables.

57. For the purpose of raising the means for making new roads, streets, market-places, and conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts and other waterworks; for the purchase of such lands or the erection of such buildings, as may be required in or about the execution of the powers hereby given to the council; for the purchase of water pipes, fire-engines, and appurtenances; for the effecting of all other public works and improvements within the municipality; for lighting the streets and public places in the municipality, and for providing proper and necessary plant for the same; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, dog and carriage tax, and other fees and licence moneys as shall be deemed necessary and reasonable, and shall be authorized by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy a rate upon all immovable property within the municipality, the value of such property to be ascertained as hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least nine members of the council present at the meeting at which such rate shall be imposed and consenting thereto by a majority: And provided also, that no rate shall be imposed upon any almshouses or hospitals; nor on any buildings solely appropriated to public worship; nor upon any burial-grounds; nor upon any building solely appropriated to the purposes of gratuitous education, provided the exemption last mentioned shall not be construed to extend to any separate or adjoining

Power to levy rates,  
and for what pur-  
poses.

No. 39—1879.

building or buildings in which the teacher or teachers, or his or their family, or any other person or persons, dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils; and all persons owning or occupying property within the limits of the municipality, except such property exempted, shall be liable to be rated on account of such property to any municipal rate in such manner and to such extent as is in this Act provided; but nothing in this Act contained shall be taken to authorize the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.

58. [Repealed by § 6 Act 19, 1885, *infra*, and §§ 125 and 126 of Act 45, 1882, substituted.]

Mode of valuation of property to be settled by regulations.

59. The mode of valuing the immovable property within the municipality for rating purposes; of objecting to the valuation; of conducting and hearing of appeals against the valuation; the time during which any valuation shall be in force and how often the same shall be renewed, and the effect of the valuation shall be as directed by municipal regulations to be from time to time made in conformity with the powers hereinbefore contained.

60. [Repealed by Act 19 of 1885, § 7, and §§ 127-143 inclusive of Act 45 of 1882 substituted.]

Treasurer to lodge moneys in a bank.

61. The Treasurer of the said municipality shall be bound, within a reasonable time, to lodge with some joint-stock bank within the municipality, to be ordered by the council, all moneys from time to time entrusted to him or received by him, and shall, in books to be kept for that purpose, enter true accounts of all sums of money by him to be received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, on the last day of February, or at such other times as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, if found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality: Provided, always, that in no case shall any payment of municipal moneys be made to any person or persons whomsoever, without a warrant in that behalf being first granted under the hand of the Mayor, which warrant shall be in substance and form according to the schedule hereto annexed, marked No. 2.

Abstract and balance sheet to be prepared and audited.

How notices to be published.

62. Every notice calling a public meeting of the townsmen, and every notice or other document or thing required by this Act to be published, shall, where no other mode is prescribed, be published by causing a copy thereof to be posted or affixed in some conspicuous place upon or near the municipal office or market-

place, and, when practicable, in one or more of the local newspapers.

No. 39—1879.

63. All public meetings of townsmen shall be called by the Mayor of the town by notice under his hand, published in accordance with the sixty-second section of this Act; and no public meeting of townsmen shall be so called by the Mayor except upon a resolution of the council to that effect, and at all public meetings called by the council the Mayor, if present, shall preside: Provided always, that the Mayor, upon receiving a requisition signed by not less than twenty-five townsmen, shall call such public meeting within a reasonable time; and provided further, that the expenses incurred by the council through the Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such a character as in the opinion of the council would warrant it in charging the same expenses to the municipality.

How public meetings to be called.

64. The storing of gunpowder, or other explosive material, shall not be permitted within the municipality, except in such places as may be approved of and licensed by the council for that purpose.

Gunpowder, &c.

65. No burial-ground shall be established within the municipality without the permission of the council; and so soon as any burial-ground within the municipality, or any portion thereof, shall become so crowded as to be, in the opinion of the council, dangerous to the public health, the council shall be empowered to give six months' notice that the burials therein must cease, and after the expiration of such six months it shall not be lawful to continue burials in such grounds, and any persons, after the expiration of such period, who shall inter, or cause any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Burial-grounds.

66. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall and may be prosecuted for in any competent Court, and in the name of the Mayor, councillors, and townsmen, and shall, when recovered, be paid to the Treasurer of the Municipality for municipal purposes: Provided that no such prosecution shall be commenced later than three months from and after the date of the act or omission upon which the same shall be grounded.

How fine to be recovered.

67. Every warrant and power of attorney, deed, contract, or other document to be given, made, or entered into by the said council shall, when no other mode is prescribed, be under the common seal of the corporation, to be affixed thereto by the Mayor, and countersigned by the Town Clerk. And the said common seal of the corporation shall be and remain in the care and custody of the Mayor of the town for the time being.

Deeds, &c., to be under common seal of Council.

68. This Act may be cited as "the Queen's Town Municipality Act, 1879."

Short title.

No. 39—1879.

## SCHEDULE No. 1.

## MUNICIPALITY OF QUEEN'S TOWN.

## Debenture Certificate.

No. \_\_\_\_\_.

£\_\_\_\_\_.

This is to certify that the Town Council of Queen's Town is indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_, for so much money borrowed for the purpose of [here state the object for which the loan has been raised] under and by virtue of the provisions of the Municipality Act, 1879, and that the said money is secured by mortgage on [here state the nature of the mortgage or security as contemplated in the forty-third and forty-eighth sections of the said Act]; and further, that the said debt will be payable and paid by the said Town Council to the said \_\_\_\_\_ or assigns in the manner following, that is to say [here insert the rate of interest, time of payment, and other conditions agreed upon.]

Given under my hand and the seal of the Corporation, at Queen's Town, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

( C.D. )

Town Clerk.

( A.B. )

Mayor.

## SCHEDULE No. 2.

The Treasurer of the Municipality of Queen's Town is hereby authorized to pay to \_\_\_\_\_ the sum of \_\_\_\_\_ being for [here state the object of the payment], which money was voted by the council at its meeting on \_\_\_\_\_ [or being for fixed salary, as the case may be].

Queen's Town, \_\_\_\_\_ day of \_\_\_\_\_, 18—.

( A.B. )

No. \_\_\_\_\_.

Mayor.

No. 39—1885.]

[August 11, 1885.

## ACT

To Amend in certain respects Act No. 39 of 1879, entitled  
“An Act for the Incorporation of the Municipality  
of Queen's Town.”

Preamble.

WHEREAS it is expedient to amend in certain respects the Act No. 39 of 1879, entitled “An Act for the Incorporation of the Municipality of Queen's Town,” and whereas it is expedient that the council for the municipality of Queen's Town should exercise and possess powers other and further than those conferred on the council by the said Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Certain words in  
section 9 of Act 39,  
1879, omitted;

1. The ninth section of the said Act shall be read and construed as if the words “Provided that for the purposes of this section owner and occupier shall not both be entitled to vote in respect of

one and the same property, and that the occupier shall at all times be entitled to exercise the right of voting," had not been included in the said section and had been entirely omitted therefrom.

No. 19—1885.

2. The tenth section of the said Act shall be read and construed as if the word "shall," after the words "each of such co-occupiers," had not been inserted therein, and as if the words "may claim to have his name enrolled in the list of the ward in which such property is situated and" had been substituted; also as if the word "shall" had been inserted after the word "mentioned."

And in section 10 of same Act: and other words substituted.

3. The thirtieth section of the said Act shall be read and construed as if the words "At the first ordinary meeting of the council annually in the month of March," had been substituted therein for the words "on the day following every annual election of councillors," also as if the words "or subject to the provisions of the thirty-second section until such time as his successor in office has been appointed," had been inserted after the word "ensuing."

Section thirty amended.

4. The thirty-seventh section of the said Act shall be read and construed as if after the words "or cutting firewood on the commonage," there had been inserted the following words:

Additional powers for making regulations.

As to the duties of any servant, any police or other officer of the council, or any officer or member of any fire brigade when there shall occur any fire by which any house, building or property shall be in danger of being destroyed or injured.

Regulations as to fires.

As to determining the amount of all occupation rents, fees for residence, permits, water taxes, health board rates, or special taxes for any sanitary purpose that shall be due and payable from time to time by the inhabitants of the Native Location, and for the recovery of the same by the council or its agents.

Location rents, &c.

As to the procedure which may be adopted by the council in the case of any inhabitant of the Native Location who shall make default in respect of the payment of any house duty, hut or other tax made and levied by the Colonial Government.

Location inhabitants in default of house duty, &c.

As to the recovery of all rates lawfully made and levied on rateable property. As to the amount of any water or other tax which may from time to time be lawfully demanded by the council from inhabitants within the municipality or within any particular area of the municipality and for the collection and recovery of the same by the council or its agents.

Rates. Taxes.

As to the fees for grazing licences which shall be payable to the council by butchers and by other inhabitants and by travellers depasturing any animals on the common pasturage lands and for the impounding of any animals that may be depastured on the same the owners of which have not obtained such licence.

Grazing licences.

As to the inspection, approval, and registration of all plans for buildings within the municipality or within any area of the municipality, and for preventing persons proceeding with the erection of any building the plans of which have not been so inspected, approved and registered.

Inspection of plans.

- No. 19—1885. As to the measure which may lawfully be taken in respect of buildings certified by competent authority and in the opinion of the council believed to be dangerous to the safety of the public.
- Dangerous buildings. As to the duties of owners or persons in charge of any cattle or other animals affected with any contagious disease, or of any animal that may be found in a dying state, or of any carcase of any animal that may be found dead on any public place or near any public watercourse, or on the common pasturage lands.
- Animals affected with contagious diseases, or dying or dead.
- Section fifty-two amended. 5. The fifty-second section of the said Act shall be read and construed as if the words "subject to the exception provided for in the thirty-second section of the said Act," had been inserted therein after the word "council."
- Section fifty-eight repealed. 6. The fifty-eighth section of the said Act is hereby repealed and the hundred and twenty-fifth and hundred and twenty-sixth sections of the "Municipal Act, 1882," shall be read and substituted in its place as if, *mutatis mutandis*, such section had been incorporated in the said Act 39 of 1879.
- Section sixty repealed. 7. The sixtieth section of the said Act is hereby repealed, and in its place there shall be substituted and read the hundred and twenty-seventh, hundred and twenty-eighth, hundred and twenty-ninth, hundred and thirtieth, hundred and thirty-first, hundred and thirty-second, hundred and thirty-third, hundred and thirty-fourth, hundred and thirty-fifth, hundred and thirty-sixth, hundred and thirty-seventh, hundred and thirty-eighth, hundred and thirty-ninth, hundred and fortieth, hundred and forty-first, hundred and forty-second, and hundred and forty-third sections of the Municipal Act, 1882, as if such sections, *mutatis mutandis*, had been incorporated with the said Act 39 of 1879.
- Raising money by debentures. 8. The council may with the consent of the majority of the ratepayers as provided in section ten and of His Excellency the Governor first had and obtained, raise by debentures (or otherwise), any sum and sums of money which shall be necessary in order to liquidate the capital and interest or interest alone of any debt or debts at present due, or which hereafter may become due and payable by the municipality of Queen's Town. The debentures herein mentioned shall be as near as is material to form in schedule No. 1 to Act 39 of 1879, and all transfers of such debentures shall be registered in the books of the municipality: Provided that in respect of any sum and sums of money which at the time of the passing of this Act have already been taken up by the council from the Colonial Government for the construction of a storage reservoir, or from any bank for paying the cost of public works and improvements, it shall not be necessary to have the further consent of the majority of the ratepayers or of His Excellency the Governor, as herein set forth.
- Hypothecation of rates and other revenues. 9. The council may for any of the purposes of this Act, hypothecate or charge by debentures the municipal rates and other sources of revenue of the said municipality for a period not



No. 19--1885.

exceeding twenty-four years in security for any sum and sums of money borrowed by the said council: Provided that no sums of money other than those referred to in the last preceding section of this Act as having been borrowed by the municipality at the time of the passing of this Act, and to which this provision shall not be applicable, shall be capable of being borrowed under the provisions of this Act, except with the previous consent of a majority of the said ratepayers first obtained as provided in section ten as aforesaid: Provided also that it shall be lawful for the said ratepayers to sanction, and after such sanction, for the said council to borrow upon the security of the said rates or other revenues or property of the municipality any sum and sums of money which may be found necessary not exceeding in the aggregate the sum of one thousand pounds in any one year.

10. In every case in which it is by the Act provided that the consent of the majority of ratepayers shall be first had and obtained for the purpose of any of the provisions hereof, the word "ratepayers" shall mean and be taken to refer and apply only to such ratepayers as are entitled to vote at the election of councillors, under the provisions of section nine of Act 39 of 1879: and for the purpose of recording their votes the said ratepayers shall be summoned to appear at a public meeting, by notice published in such of the local newspapers, if any, published within the municipality as to the council may seem fit, or by a notice affixed on some conspicuous place, upon or near the municipal office or market place, for at least twenty-one days previous to the holding of such meeting, which notice shall clearly set forth the object of such meeting, and the time and place for holding the same: and at every such meeting it shall be lawful for any two or more of the duly qualified ratepayers present to demand a poll of the ratepayers entitled to vote, which poll shall be taken on a day to be fixed by the Mayor not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in such manner as is hereinbefore provided for the publishing of notices,—which poll shall begin at 10 o'clock a.m. and be closed at 3 o'clock p.m. on such day, and the result of such polling shall be final and conclusive: Provided that when by such polling the consent of the ratepayers has not been obtained, it shall not be lawful for the council to submit the same proposal for the consent of the ratepayers at any time within twelve months thereafter except upon the receipt of a requisition in that behalf signed by twenty-five qualified ratepayers.

11. The council may defray any costs incurred in the passing of this Act out of the ordinary revenues of the council or out of the proceeds of any special rate levied for this purpose.

12. This Act may for all purposes be cited as the "Queen's Town Municipality Act Amendment Act of 1885."

Who to vote.

Meeting of voters  
how summoned.Poll may be de-  
manded.Cost of Act how to  
be defrayed.

Short title.

No. 2—1882.]

[May 25, 1882.

## ACT

For enabling the Commissioners of the Municipality of Stellenbosch to borrow Funds wherewith to increase the Water Supply of the said Municipality.

## Preamble.

WHEREAS it is desirable to extend and otherwise improve the waterworks of the municipality of Stellenbosch, by making a new and large reservoir and cleaning and renewing the existing water pipes: and whereas it is desirable that the commissioners of the said municipality should be empowered to borrow for such purpose an amount of money which shall not exceed in the whole the sum of three thousand pounds sterling: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Sums not exceeding altogether £3,000 may be borrowed on security of rates.

1. It shall be lawful for the commissioners of the municipality of Stellenbosch to borrow from time to time such sum or sums of money, not exceeding in the whole the sum of three thousand pounds sterling, for the purpose of improving the water supply of the said village, and in order to provide for the payment of the interest or principal of the moneys so to be borrowed, to impose rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, and the several Acts amending the same.

Borrowed sums charged on the rates.

2. The sum aforesaid of three thousand pounds sterling, or such lesser sum as shall have been borrowed for the purpose aforesaid by the said commissioners, is hereby charged upon and made payable out of all and singular the rates in the last preceding section mentioned, and the revenues presently arising from the existing waterworks of the said municipality: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated or required for any other object: Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections.

Receipt to be given as in schedule.

3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such money as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purpose aforesaid, which acknowledgment shall in substance be in the form contained in the schedule annexed to this Act, and shall be signed

on behalf of the said commissioners by three of the commissioners for the time being.

No. 2--1882.

4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867." "Public Bodies Debts Act, 1867" to apply.

5. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes from sums received from rates imposed under the first section of this Act; and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: and the said commissioners shall yearly, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in their office for the inspection, at all reasonable times, of any resident householder of the municipality, an account shewing the particulars aforesaid and made up to the 31st day of December in each year. Special accounts to be kept of moneys borrowed.

6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid. Expenses may be paid out of borrowed moneys.

7. This Act may be cited for all purposes as "The Municipality of Stellenbosch Water Act, 1882." Short title.

#### SCHEDULE.

We, the undersigned, commissioners of the municipality of Stellenbosch, do hereby acknowledge that the said commissioners in their said capacity are indebted to \_\_\_\_\_ the sum of \_\_\_\_\_ for so much money borrowed by the said commissioners for the purposes set forth in "The Municipality of Stellenbosch Water Act, 1882," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert as agreed upon, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal shall become payable.)

Given under our hands at Stellenbosch, this \_\_\_\_\_ day of \_\_\_\_\_, 188 —.

A. B. }  
C. D. } Commissioners of Municipality.  
E. F. }

Witnesses :

G. H.  
I. J.

*pp*

No. 13—1872.]

[July 31, 1872.

## ACT

For enabling the Municipality of Swellendam to borrow Moneys for the Improvement of the Drainage and Waterworks of the Town of Swellendam and its Neighbourhood.

Preamble.

WHEREAS it is expedient to improve the drainage of certain lands lying within and belonging to the Municipality of Swellendam, and to extend and improve the waterworks of the said municipality: And whereas it is expedient that the commissioners of the said municipality should be empowered to borrow for that purpose a sum of money which shall not exceed in the whole the sum of five hundred pounds sterling: And whereas the commissioners of the said municipality have already borrowed a sum of five hundred pounds sterling for the purposes of draining the said lands and reclaiming certain waste lands within the said municipality: And whereas it is expedient that the said commissioners should be authorized to borrow a further sum of five hundred pounds sterling for the purpose of paying off the said debt: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Borrowing powers.

1. It shall be lawful for the commissioners for the time being of the municipality of Swellendam to borrow from time to time such sum or sums of money as the said commissioners shall, by a duly constituted meeting of the householders of the said municipality, of which meeting two weeks' previous notice shall have been publicly given, be authorized to borrow, not exceeding, however, the sum of five hundred pounds sterling, for the purpose of improving the drainage of certain lands known as the Vley, situated within the said municipality, and leading water by means of pipes out of a certain river called Cornlands River, into the town of Swellendam, and doing all such other matters or things as shall or may be required for improving and extending the waterworks of the said municipality, and to borrow a further sum of five hundred pounds sterling, for the purpose of paying off a certain debt of five hundred pounds sterling, heretofore incurred by the commissioners of the said municipality for the purposes aforesaid.

Application of loan.

Power to levy rate for payment of principal or interest.

2. It shall be lawful for the commissioners of the said municipality to impose, for the purpose of providing for the payment of the principal or interest, or principal and interest, of the moneys aforesaid, rates upon the immovable property situate within the said municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if

it had been a rate imposed under the provisions of Ordinance No. 9 of 1836.

No. 13—1872.

3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of interest or principal, or interest and principal, of the moneys aforesaid, any funds or moneys coming to the said commissioners from any source whatever, and not specifically appropriated or required for any other object.

Loan chargeable on rate so levied; but may be paid from other sources.

4. The said commissioners shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the sum of one thousand pounds sterling, which acknowledgment shall in substance be in the form given in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, appointed for that purpose by a resolution of the board of commissioners of the said municipality, and of which three the chairman of the said board shall be one.

Mode of effecting loan.

5. All debts lawfully incurred by the said commissioners for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Public Bodies Debts Act, 1867, to apply to debts of municipality.

6. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall yearly and every year so long as any part of any debt contracted under and by virtue of this Act shall be in existence, prepare and deposit in the office of the said municipality for the inspection, at all reasonable times, of any resident householder of the said municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the said municipality not later than the first day of March of the year next succeeding.

Separate accounts to be kept, and be open for inspection.

7. It shall be lawful for the said commissioners to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect out of the money or moneys to be received under the provisions of this Act.

Date when account shall be made up.

Expenses of Act.

8. This Act may be cited for all purposes as "The Municipality of Swellendam Loan Act, 1872."

Short title.

#### SCHEDULE.

We, the undersigned, commissioners of the municipality of Swellendam, duly authorized thereto by the board of commissioners

*pp 2*

No. 30—1877.

of the said municipality, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_, for so much money borrowed by the said commissioners for the purposes set forth in the "Municipality of Swellendam Loan Act," and certify that the said sum is secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say: (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Swellendam, this \_\_\_\_\_ day of \_\_\_\_\_.

A. B., Chairman.

C. D. }  
E. F. } Commissioners.

Witnesses:

G. H.

I. K.

No. 30—1877.]

[August 8, 1877.]

### ACT

#### For Constituting the Town of Uitenhage a Municipality.

Preamble.

WHEREAS it is expedient to repeal so much of the Ordinance No. 9 of 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony," of the Ordinance No. 2 of 1844, entitled "An Ordinance for Amending Ordinance No. 9 of 1836," of the Ordinance No. 8 of 1848, entitled "An Ordinance for enlarging in certain respects the powers of Municipal Commissioners in regard to the common Pasture Lands of the Municipality," and of the Ordinance No. 5 of 1852, entitled "An Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9 of 1836, to purchase or hire immovable property for Municipal purposes," in so far as such Ordinances severally and respectively shall apply to the Municipality of Uitenhage, and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. The said Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, and No. 5 of 1852, in so far as the same are applicable to the Municipality of Uitenhage, shall continue to be of legal force and operative as heretofore until after the first election of councillors as provided for in and by this Act; and immediately upon and after the declaration of the names of the said councillors shall have been published as hereinafter provided, the said Ordinances, in so far as the same apply as aforesaid, shall be and are hereby repealed.

2. The Municipality of Uitenhage shall comprehend the town and township of Uitenhage, including all common lands and property within the area formed by the following boundary lines,—namely: On the north by the farms Kruis River, Kamees and Hiltwacht; on the south by the farms Cuyler Manor and Little Grass Ridge; on the east by the farm Sandfontein; and on the west by the farms Mimosa Dale and Narroes.

No. 30—1877.  
Boundary of municipality.

3. There shall be in the said municipality a body corporate which shall take and bear the name of “The Mayor, Councillors, and Ratepayers of Uitenhage,” and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges, which bodies corporate, as such, may in this Colony do and have.

Creating a body corporate.

4. The council of the said municipality shall consist of fifteen councillors, one of whom shall be the Mayor.

Constitution of council.

5. The said municipality shall be divided into seven wards, to wit:

Municipality divided into seven wards.

No. 1. An area bounded by a part of Caledon-street and the Cuyler Manor road on the north-east; by Market-street and a line in continuation thereof on the north-west; and shall include the town commonage to the boundary of the municipality in every other direction.

No. 2. An area bounded by a part of Caledon-street on the north-east; by Baird-street and a line in continuation thereof on the north-west; by Market-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops, between the said lines, to the boundary of the municipality to the south-west.

No. 3. An area bounded by a part of Caledon-street on the north-east; by John-street and a line in continuation thereof on the north-west; by Baird-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops between the said lines, to the boundary of the municipality to the south-west.

No. 4. An area bounded by a part of Caledon-street on the north-east; by Cuyler-street and a line in continuation thereof on the north-west; by John-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops, between the said lines, to the boundary of the municipality to the south-west.

No. 5. An area bounded by a part of Caledon-street on the north-east, that is to say, from the Malay Mosque (in a north-westerly direction) to the entrance to Bain's-road; and on the south-east, by Cuyler-street and Bain's-road,

No. 30—1877.

respectively, and lines in continuation of them (taking Bain's Graaff-Reinet-road, towards and up to the north-east boundary of the municipality, to be the line of extension for Bain's-road; and a straight line in continuation of Cuyler-street, towards and across the river Zwartkops, up to the south-west boundary of the municipality, to be the line of extension for Cuyler-street), and shall include the town commonage to the boundary of the municipality in every other direction.

No. 6. An area bounded by a part of Caledon-street on the south-west; by the Cuyler Manor-road on the west and south-west; by Church-street and the old Graaff-Reinet-road on the north-west; and shall include the town commonage to the boundary of the municipality in every other direction.

No. 7. An area bounded by a part of Caledon-street on the south-west; by Bain's-road to Graaff-Reinet on the north-west; by Church-street and the old Graaff-Reinet-road on the south-east; and shall include the town commonage between the lines of Bain's-road and the old Graaff-Reinet-road, up to the boundary of the municipality on the north-east.

Boundaries of wards may be altered.

6. The said council may, from time to time, if they shall think fit, alter the boundaries of the said wards: Provided that the council shall, before making any such alteration, give, in the *Government Gazette*, and one or more of the newspapers published in Uitenhage, public notice of the intention to make such alteration, and of the particular alteration intended to be made, which notice shall be published for not less than thirty-one days before any such alteration shall be made, and a copy of the same shall also be posted in some conspicuous place upon or near the Town-hall.

Ward No. 1 to have three councillors and each of the others two.  
Qualification of voters at elections.

7. Three councillors shall be elected for Ward No. 1, and two for each of the other wards in manner hereinafter mentioned.

8. Every person of full age, who is the owner or occupier of any immovable property in any ward of the municipality of the yearly value of ten pounds sterling, in regard to which property no municipal rate shall, at the time of any election of councillors, or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward; provided that his name shall appear as a ratepayer in the assessment roll of such ward which shall have been made next or latest before the election at which such person shall be elected: Provided, also, that the assessment roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.



9. The following persons shall be disqualified from voting at any such election: Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

No. 30—1877.  
Disqualification of voters.

10. Every male person of full age who shall have been the owner or occupier of immovable property of the yearly value of twenty pounds sterling and upwards within the limits of the said municipality, for a period of not less than twelve months next before such election, and in regard to which property no municipal rate shall at the time of the commencement of the election be due and in arrear, shall be eligible to be elected a councillor: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully and effectually as if they had been one and the same premises or properties.

Qualification of councillors.

11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, until he shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

Candidates to be invited by requisition.

12. The Town Clerk shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Names of candidates to be published

13. On the second Wednesday in the month of September in every year, an election shall take place for councillors of the said municipality.

Day of election.

14. The poll in every ward shall be taken by some person to be appointed for that purpose by the Mayor, or, in case of the first election, by the Resident Magistrate: Provided that as often as the number of candidates nominated for any ward shall not exceed the number of councillors to be elected for such ward, no poll shall be deemed necessary for such ward, but the candidate or candidates so nominated shall be deemed and taken to be duly elected: Provided, also, that the Resident Magistrate or Mayor, as the case may be, shall be the returning officer of the said municipality.

By whom polls to be taken.

15. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

16. The election shall take place in the following manner:— Every ratepayer, qualified as aforesaid, may vote for any candidate for his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates, and

Mode of voting.

- No. 30—1877. signed by the person voting, or by the polling officer at his request, and stating his place of abode and description.
- Votes to be registered. 17. The polling officer shall receive such voting paper, and register the vote.
- Duration of poll. 18. The poll shall commence at eight o'clock in the forenoon and shall finally close at five o'clock in the afternoon of the same day.
- Questions which may be put to voters. 19. No inquiry shall at any election be permitted to be made as to the right of any person to vote, except as follows;—that is to say, the polling officer may, of himself, or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other :
- 1st. Are you the person whose name appears as A. B. to the voting paper now delivered in by you ?
  - 2nd. Has the last municipal rate assessed upon the immovable property now occupied or owned by you been paid ?
- Penalty for false answers. 20. If any person shall wilfully make a false answer to either of these questions he shall be liable to a penalty not exceeding ten pounds, to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for any period not exceeding one month.
- Polling officer to transmit voting papers to returning officer. 21. The polling officer shall, at the close of the election, transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list thereof, with the numbers of the wards for which such persons are elected, to be published in manner hereinafter mentioned.
- Equality of votes to be determined by lot. 22. In case of an equality of votes at any election of councillors the returning officer shall cause to be determined by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.
- Election of councillors and duration of office. 23. At the first election of councillors under this Act, the ratepayers shall elect, in manner hereinbefore provided, three councillors for Ward No. 1, and two for each of the remaining six wards, who shall enter upon their office on the first day of October following, and shall hold office as such councillors until the expiration of one year from the said date.
- How office of councillor to become vacant. 24. If any councillor shall die, resign, or become insolvent, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office until the next annual election.
- Election of mayor by first council. 25. On the Wednesday following the first general election under

this Act, the councillors then elected under this Act shall choose from among themselves, by a majority of votes, the Mayor of the municipality, who shall hold office for one year from the date of the councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor the question between the candidates so equal shall be determined by lot.

No. 30—1877.

26. On the Wednesday following every subsequent yearly election, the newly-elected councillors shall choose from among themselves, by a majority of votes, the Mayor of the municipality for the following year; and every such Mayor shall hold office for one year from the date of the newly-elected councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.

Election of mayor by subsequent council.

27. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do, whereupon the council shall forthwith elect one of their own number as his successor in office for the remainder of his term of office.

Mayor may resign.

28. If any Mayor shall die, become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be absent from the municipality, without the permission of the council, for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.

How office of mayor may become vacant.

29. On the Wednesday following the first and every succeeding yearly election, the council shall appoint from among the rate-payers two persons to be auditors of the municipality, who shall continue in office until the same day in the year following.

Appointment of auditors.

30. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality.

Disqualifications for auditor.

31. If any auditor shall die, resign, or be declared insolvent, or shall assign his estate for the benefit of his creditors, or compound with his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.

Death, resignation, &amp;c., of auditor.

32. No person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for any purpose. And any person contravening the provisions of this section shall, if a councillor, be deemed to have *ipso facto* vacated office, and if a person holding any office in the gift or disposal of the council, he may be summarily dismissed from such office without notice and without any claim for compensation for loss of office.

Officers of council to have no interest in contracts.

No. 30—1877.  
Powers of council.

33. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality; to excavate, construct, and lay watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and places for slaughtering sheep and cattle, and the state and condition of slaughter-houses, tanneries, and wool-washing establishments; to appoint one or more competent persons to examine meat and other provisions exposed for sale, and who, in case such meat or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality, and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of tolls and public pounds: Provided that no toll, due, or fee, or charge, for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the thirty-fifth section mentioned.

Certain powers  
vested in the council.

34. The provisions of Act No. 3 of 1867, entitled "An Act for enabling the Commissioners of the Municipality of Uitenhage to procure a better and purer Supply of Water for the Inhabitants of such Municipality;" Act No. 27 of 1874, entitled "An Act to authorize and empower the Municipality of Uitenhage to borrow a further sum under Act No. 3 of 1867," and Act No. 14 of 1876, entitled "An Act for enabling the Commissioners of the Municipality of Uitenhage to appropriate and dispose of certain Lands for the purpose of Raising Funds for building a Town-hall, Library, Reading-room, Town Office, Market Office, and other necessary buildings, for the use of the resident Householders and Inhabitants of the said Municipality," shall apply to the municipality constituted under this Act, and all powers and duties therein vested in or given to the commissioners for the municipality of Uitenhage are hereby vested in and given, *mutatis mutandis*, to the councillors elected under this Act.

35. (1) It shall be lawful for the council, at any meeting, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Uitenhage at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act, and shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act.

No. 30—1877.  
Council may frame municipal regulations.

36. No municipal regulation shall be of force to subject any person to any fine, penalty, or payment, until it shall have been submitted to the Governor by the council, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

Regulations to be approved by Governor.

37. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Matters not necessary to be proved in regard to regulations

38. It shall not be competent, by means of any municipal regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds: Provided that it shall be competent for any such municipal regulation to provide that, if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period shall not exceed three months.

Limitation of punishment under regulations.

39. All property which shall at the time of the taking effect of this Act be vested in the commissioners for the municipality of Uitenhage, elected under and by virtue of Ordinance No. 9 of 1836, shall from and after the taking effect of this Act become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into, by the said commissioners, or their predecessors in office, on behalf of the municipality of Uitenhage, shall be taken over by the council.

Certain property vested in the council

40. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of: Provided that the said council shall, before applying to the said Governor for his consent, give public notice, in the manner hereinafter mentioned, of their intention to apply for such consent, in which notice so published

Council may sell certain lands.

<sup>1</sup> Printed as amended by Act 12, 1883.

No. 30—1877.

shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required: Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold: Provided, further, that the said council may, with such consent as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

Powers of council  
as to borrowing  
money.

41. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of: Provided that the provisions of the last preceding section requiring the publication of notice of an intended sale shall *mutatis mutandis*, apply to the case of an intended mortgage or issue of debentures; Provided, also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, and the Governor aforesaid shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

Limitation as to  
amount.

42. The sum of money to be raised under the last preceding section in any one year, reckoned from the 1st day of January till the 31st day of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

Security for loans.

43. The council may, for any such purpose as is in the forty-first section described, mortgage or charge by debentures the

municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council, upon a notice of not less than twenty-one days, to be published in the manner hereinafter mentioned: And provided that it shall not be lawful for the said ratepayers to sanction or for the said council to borrow upon security of the said rates any sum or sums exceeding at any one time the sum of three thousand pounds sterling.

No. 30—1877.

44. Every mortgage aforesaid or power of attorney for authorizing the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and shall be executed by two councillors and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

How mortgages or powers of attorney to be executed.

45. As often as any mortgage granted, or debenture issued, under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

When mortgages or debentures are called in fresh ones may be issued.

46. The council may lease with the consent of the Governor any portion of the common pasture lands belonging to the municipality for the purpose of erecting woolwashing establishments, for building, and for any other purpose, for a period not exceeding thirty-three years: Provided that no such lease shall be granted by the council until a notice in writing of the proposals of the council to grant such lease shall have been posted for general information at some conspicuous place of public resort, within the municipality, for a period of not less than fourteen days, and shall cause the same to be published in a local paper for the same period, which notice shall in some part thereof describe the part or portion of land proposed to be leased, and the object, terms, and conditions of the proposed lease, and shall require any person objecting to the proposed lease to lodge with the council within fourteen days from and after the posting and publication of such notice his objection thereto in writing, whereupon the council shall receive

Council may let certain lands on lease for certain purposes.

No. 30—1877.

and consider the objections, if any, and shall grant or refuse the said lease as they shall think fit: Provided, also, that all such leases shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Quarries.

47. The council may, by public sale or tender, lease the privilege of working any quarries belonging to the corporation.

Power of lessee to sub-let.

48. No lessee of any such land, or of any quarries, shall assign or sub-let the same without the previous consent of the council testified in writing first had and obtained.

Powers of council to treat for lands, buildings, &amp;c., required for making, widening or improving streets, &amp;c.

49. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, then, and in that case, it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, and generally to enter into such contract or contracts for the obtaining of any such land, buildings, or materials, upon such terms and conditions as the said council shall deem expedient, and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator, upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire,



as the case may be, shall be made a rule of the Supreme Court of this Colony or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for, or on account of, the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned, for or on account, and at the risk, of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, or materials aforesaid, had been duly done and performed.

50. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and one or more newspapers published in the town of Uitenhage, for four successive weeks, describing as accurately as may be the materials, land, or buildings which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorized by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner or owners to apply, within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some

Procedure in case  
owner of such land  
cannot be found.

No. 30—1877.

competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, or materials in question at into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorized and entitled to take or to use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the said land, buildings, or materials aforesaid, had been duly done and performed.

**Quorum.** 51. All acts hereby authorized or required to be done by the council, and all questions that may come before them, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than five members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-fifth and sixtieth sections of this Act.

**Meetings of council.** 52. An ordinary meeting of the council shall take place at least once in every fortnight, and all such ordinary meetings shall be open to the public.

**Special meetings.** 53. The Mayor or any two councillors may at any time call a special meeting of the council, provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them or by the Town Clerk, to be notified to every councillor, either personally, or at his usual place of abode, twenty-four hours at least before such meeting.

**Chairman.** 54. At every meeting of the council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from amongst themselves.

**Casting vote.** 55. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.

**Minutes of proceedings.** 56. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

**Committees.** 57. 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 consisting of such number of members as may

seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always, that the proceedings of every such committee shall be submitted to the council for its approval: the Mayor to be *ex-officio* member of all such committees.

No 30 -1877.

58. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or in case of misconduct, without any notice.

Town clerk and treasurer, and other officers.

59. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers, location constables, policemen, overseers, labourers, and others as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night, and for other purposes; and to provide all such street-keepers, constables, and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers, constables, policemen, and others, and their duties, as shall be deemed fit.

Street-keepers constables, police men, &amp;c.

60. For the purpose of raising the means of making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water pipes, fire-engines, and appurtenances; and for the effecting of all other permanent public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets and pounds; for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have the power to impose, levy, and recover all such market dues, water rates, and pound fees as shall be deemed necessary and reasonable, and shall be authorized by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the municipality, the value of such property to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed, at

Rates may be assessed for certain purposes.

- No. 30—1877. least ten members of the said council; <sup>(1)</sup> and provided also, that no rate or assessment, excepting water rates, shall be imposed upon any immovable property belonging to Her Majesty the Queen, nor on public prisons, or police-stations, alms-houses, or hospitals, nor on any buildings appropriated for public worship, nor upon burial-grounds, nor upon buildings and lands attached thereto solely appropriated to the purposes of education.
- Who liable to be rated. 61. All persons owning or occupying property within the limits of the municipality, excepting such property as is hereinbefore excepted, shall be liable to be rated on account of such property to the municipal rate in such manner and to such extent as is hereinafter provided: Provided that nothing in this Act contained shall be taken to authorize the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.
- Appraisers to be appointed. 62. Within three months after the passing of this Act the council shall appoint one or more competent appraisers, not being members of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.
- Valuation to be open to inspection, &c. 63. As soon as any valuation as aforesaid shall be completed, it shall lie in the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days and at reasonable times, inspect the same and take extracts therefrom, and the council shall, by public notice, announce for general information that it will, upon some day and at some hour and place to be fixed by such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court, and provided, also, that it shall not be necessary in any suit or action for the recovery of any rate to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in one or more of the local newspapers.
- Objections may be made. 64. Upon the day and at the place and hour mentioned in such notice the council shall hold a court, and shall hear all objections which may be urged to any valuation, by any owner, or occupier, or other person on his behalf, and shall inquire into the merits of such objections, and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.
- Court to be held to hear objections. 65. The decision of the said court upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatever.
- Decision of court to be final.

<sup>1</sup> Explained by § 2, Act 12 of 1883, *infra*.

66. The council shall annually, in the month of September, make an estimate of the amount of money required for municipal purposes, and shall assess the rate accordingly, and give public notice thereof in one or more of the newspapers within the municipality; and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rate or rates amounting in the aggregate to more than one penny in the pound, exclusive of any rate that may be assessed and levied under and by virtue of the provisions of Acts No. 3 of 1867 and No. 27 of 1874, <sup>(1)</sup> on the value of the immovable property subject to such rates, without obtaining the consent of the majority of the ratepayers present and entitled to vote at a public meeting, to be called for the purpose of considering such rate or rates; of the object and the time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Uitenhage newspapers: Provided, also, that it shall be lawful for any two or more ratepayers, entitled to vote at such meeting, to demand a poll, which poll shall be taken on a day to be fixed by the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in one or more of the local papers, and which poll shall commence at eight o'clock a.m., and be closed at five o'clock p.m. of such day.

No. 30—1877.  
Annual estimate to be framed.

67. Every rate so assessed as aforesaid shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers: Provided that it shall not be necessary in any suit or proceeding for the recovery of any such rate to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

When rate to become due.

68. When the council shall have announced in one of the local papers the day on which any rate duly assessed under this Act will become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorized to receive the same, on or before the day fixed in the said announcement for the payment of the same, which shall on non-payment thereof be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Uitenhage. Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be any agreement between them to the contrary.

Payment of rate.

69. The council may, in suing for the recovery of rates, proceed

Who may be sued for rate.

<sup>1</sup> *Infra*

No. 30—1877.

against the owner, or in the case of his absence from the district of Uitenhage, his agent or the person receiving the rents for him, or the occupier, either separately or together in one and the same action, each for the whole rate, in any competent Court, and recover the same by the judgment and process of such Court: Provided that no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered on the occupation thereof; and provided, further, that any person who as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate although he may have ceased to occupy the property in respect of which the rate had been imposed.

Statement of arrear rates to be published.

70. The council may once in every year publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Valuations to be triennial.

71. The first valuation to be made as aforesaid, for the purposes of this Act, shall subsist and be in force for three years from the date of the first assessment under this Act; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as is hereinbefore directed with regard to the first valuation.

New buildings and additions to buildings may be valued.

72. In case any new buildings shall be erected during any such period of three years, or in case of any addition to, or alteration of, any buildings then already rated, increasing the value thereof, it shall be lawful for the council to proceed to have the land and such buildings thereon valued or re-valued as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.

Tolls.

73. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable upon all persons making use of any road, bridge, or market-place within the municipality, which the council is hereby empowered to make and maintain; and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may be by the municipal regulations be in that behalf provided.

Exemptions from payment of tolls.

74. No toll shall be payable by any officer or soldier, or member of any volunteer corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any member of the Frontier Armed and Mounted Police Force, of any burgher force, of any police force appointed under the Divisional Police Act, 1873, or any judicial or civil officer, mail carrier, or other Government servant, whilst travelling on public duty; and further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock in

the next succeeding night, for and in respect of the same vehicle or animal.

No. 30—1877.

75. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

Treasurer to keep proper books and accounts.

76. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall (except when otherwise provided) be so published by causing a copy thereof to be inserted in one or more of the newspapers within the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the Town-hall: Provided, always, that the Mayor shall call a meeting on receiving a requisition to that effect signed by not less than twenty duly qualified ratepayers.

Publication of notices.

77. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council in the name of the "Municipal Council of Uitenhage," and all such penalties and fines, when recovered, shall be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be founded; and provided, also, that in all such prosecutions the Town Clerk may appear on behalf of the council.

Recovery of fines and penalties.

78. The storing of kerosene, gunpowder, or other explosive material shall not be permitted, except by Her Majesty's Government for public purposes in such places as may be approved by Her Majesty's officers, or by other persons in such places as may be approved of and licensed by the said council for that purpose.

Storing of gunpowder, &c.

79. So soon as any burial-ground or portion thereof within the limits of the municipality shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and after the expiration of the said term of six months, any person or persons causing any interment to be made therein shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Burial-grounds.

80. This Act may for all purposes be cited as "The Uitenhage Municipality Act, 1877."

Short title

No. 12—1883.]

[September 19, 1883.

## ACT

To Explain and Alter certain Provisions in the Uitenhage Municipality Act, 1877.

Preamble.

WHEREAS, it is desirable to alter in some respects section 35 of Act No. 30 of 1877, called the "Uitenhage Municipality Act, 1877," and to explain a certain proviso in section 60 of the same Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Amendment of  
Sec. 35 of Act 30 of  
1877.

1. The words "at which two-thirds of the members shall be present," in section 35 of Act No. 30 of 1877, shall be expunged, and such section shall be read as if the said words had never been inserted therein.

Amendment of  
Sec. 60 of same Act.

2. The proviso in the 60th section of the said Act No. 30 of 1877, exempting from rating and assessment any immovable property belonging to Her Majesty the Queen, shall be deemed and taken to refer to land or buildings the property of Her Majesty, or the Colonial Government, other than such property as may be beneficially occupied by individuals in their private capacity.

Short title.

3. This Act may be cited as the "Uitenhage Municipality Amendment Act, 1883."

No. 3—1867.]

[August 16, 1867.

## ACT

For enabling the Commissioners of the Municipality of Uitenhage to procure a better and purer Supply of Water for the Inhabitants of such Municipality.

Preamble.

WHEREAS the inhabitants of the Municipality of Uitenhage have for some years past experienced great inconvenience in consequence of a deficient supply of water for the proper irrigation of the lands within the Municipality: And whereas the present supply of water is derived from a stream having its rise from a spring or springs lying between certain rugged hills situate within and forming part of the commonage lands of the Municipality of Uitenhage, in the neighbourhood of the farm Sandfontein: And whereas there is no reservoir in existence for the storage of the water aforesaid, which is conducted to and distributed in the town of Uitenhage from the said spring or springs by means of open sluits, and the waters conveyed in such sluits are constantly polluted by decayed vegetable and animal matter continuously accumulating therein: And whereas it will be very beneficial to the inhabitants that one or more reservoirs should be constructed



and provided, and that the water should be conveyed to the town in an improved manner as hereinafter mentioned: And whereas, to enable the said commissioners to construct one or more reservoirs and otherwise improve the present water service for the said municipality, it is proposed that a special rate should be laid on all immovable property within the Municipality of Uitenhage, to be called the water rate: And whereas it is proposed that the said commissioners should be empowered to borrow money on the security of the intended water rate, to enable them to construct the intended works, but such objects cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

1. The commissioners are hereby empowered to cause to be made, provided, and constructed in or upon any part of the commonage lands, all such reservoirs, dams, watercourses, drains, and ditches as may be deemed necessary for the impounding of an adequate and proper supply of water for the said inhabitants for domestic, irrigating, and other purposes, and also to provide and lay down, Power to construct reservoirs, dams, &c. on commonage lands

in or under any commonage land, street, or thoroughfare, any pipe or pipes for the conveyance of water from such reservoir or reservoirs to and throughout the township for the supply of the inhabitants, and from time to time to maintain and keep such reservoir or reservoirs, dams, watercourses, ditches, and pipes in repair. And to lay down and maintain water pipes.

2. The commissioners shall erect within the township public fountains for the gratuitous supply of water, with suitable drinking troughs for the convenient use of horses, cattle, sheep, and other animals, and shall from time to time maintain and keep in repair such fountains and troughs. The number and situations of such fountains and troughs shall from time to time be determined by the commissioners. Public fountains to be erected.

3. Every ratepayer shall be entitled at his own expense to have a private service pipe laid on to the main or branch pipe for the supply of water for domestic, irrigating, or other purposes, on payment of such special or extra rate as the commissioners may think fair and reasonable, such special or extra rate to become due and payable in advance. Ratepayers entitled to private water-leading.

4. The commissioners shall determine and publish the tariff by which the supply of water by private water-leading shall be regulated, and the payment for all private water-leading shall be in accordance with such tariff. Tariff of charges for private water-leading to be published.

5. Before proceeding with the works hereinbefore authorized, the commissioners shall cause a plan, specification, and estimate of such intended works to be placed in the Town-office in Uitenhage, for the inspection of the inhabitants, and shall cause a notice in the form number one in the schedule hereto to be given to the inhabitants as hereafter is directed. After the publication of such notice, the Plans, &c., of proposed works to be open to inspection for twenty-one days after notice given.

No. 3—1867.

How objections thereto may be lodged.

Plans, &amp;c., to be submitted for Governor's approval.

plans, specification, and estimate shall remain open for inspection in the Town-office aforesaid for the period of twenty-one days. Any ratepayer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within the said period of twenty-one days leave with the secretary of the said commissioners a statement in writing, setting forth clearly and concisely his objections to the same. On the expiration of the said period of twenty-one days, the plan, specification, and estimate, together with a duplicate of the notice given by the commissioners and all notices of objection lodged with the said secretary, shall be deposited in the office of the Colonial Secretary, for the purpose of being laid before the Governor for the time being, for his approval; and in the event of the Governor not dissenting from such plans within forty-two days from the time of their being so deposited, the commissioners may proceed with the contemplated works.

No commissioner to contract for or derive profit from any work performed under this Act.

Penalty for contravention.

Not to extend to commissioner by reason of his being a shareholder in any joint-stock company contracting for such work.

6. No commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, or in any manner to participate in any profit to be derived from any work to be performed for the said commissioners in pursuance of this Act, on pain of forfeiture of all his interest in such contract for the benefit of the municipality; and any commissioner acting in contravention of this section shall also be considered to have vacated his office of commissioner *ipso facto*, and be ineligible to be elected at any future period to serve as commissioner: Provided that no commissioner shall be deemed or taken to have vacated his office or to have incurred any forfeiture whatever by reason merely that the commissioners shall have entered into such contract or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder; nor shall any shareholder or person otherwise interested in any joint-stock company, with which company the commissioners shall have entered into any executed or still subsisting contract, dealing, or transaction, be deemed or taken to be ineligible to be elected or to act as a commissioner by reason merely of such contract, dealing or transaction.

Commissioners to frame regulations for supply of water.

And to impose water rate.

7. It shall be lawful for the said commissioners, from time to time, to make regulations touching and concerning the terms and conditions upon which the inhabitants of the municipality may obtain, by means of private service pipes or other channels or watercourses, a supply of water for domestic use, irrigation, or other purposes, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys to be borrowed under this Act, special rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every such rate so imposed by the said commissioners for the purposes of this Act shall be of

the same force and effect, and be levied in like manner, as if it had been a rate imposed in accordance with the provisions of the Ordinance No. 9 of 1836 or of the Act No. 13 of 1864 : Provided that no such rate shall at any one time, or within any one calendar year, exceed one penny in the pound on the value of such immovable property as aforesaid.

No. 3 -1867.

Rate limited.

8. (1) The commissioners are hereby empowered, with the consent of the Governor, from time to time, subject to the proviso hereinafter contained, to borrow and take up at interest upon the security of the water rate any sum of money not exceeding in the aggregate the principal sum of two thousand five hundred pounds, and to mortgage the rate for securing the repayment of such moneys : Provided that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of such two thousand five hundred pounds.

Loan may be raised, not to exceed £2,500, irrespective of loans for paying off existing mortgages.

9. The sum aforesaid of two thousand five hundred pounds sterling, or such lesser sum as shall be lent and advanced for the purpose aforesaid, to the commissioners aforesaid, shall be and is hereby charged upon and made payable out of all and singular the rates and revenues in the seventh section of this Act mentioned : Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated to or required for any other object : Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of the preceding or following sections of this Act.

Loan chargeable on rates levied.

Other funds also applicable to payment of loans or interest.

Preceding or following sections not affected.

10. The commissioners, before applying to the Governor for his consent to borrow and take up at interest any such moneys as mentioned in the eighth section, shall cause a notice in the form number two in the schedule hereto to be given as hereinafter is directed. Any ratepayer objecting to the raising of such money shall, within the period of fourteen days from the publication of such notice, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections, and the evidence to be adduced in support of such objections. On the expiration of such period of fourteen days the commissioners shall deposit in the office of the Colonial Secretary a duplicate of the notice given by them, with a statutory declaration verifying the due publication thereof and all notices of objection lodged with the secretary of the said commissioners, in order that the validity of such objections may be taken into consideration by the Governor; and in the event of the Governor not dissenting from the proposed taking up of such moneys within the period of forty-two days from the time of such notice being deposited as aforesaid, the consent of the Governor

Notice to be given of intention to apply for Governor's sanction to raise loan.

How objections may be lodged.

Duplicate of notice with declaration of due publication and objections lodged, to be deposited with Colonial Secretary.

Should Governor's dissent not be signified within forty-two days, commissioners empowered to effect loan.

<sup>1</sup> See Act 27, 1874, *infra*.

- No. 3—1867. shall be assumed, and the commissioners shall be empowered to take up such moneys as shall have been specified in their notice.
- Form of mortgage under this Act. 11. All mortgages to be granted in pursuance of this Act shall be in the form number three in the schedule hereto, and shall be signed by the commissioners for the time being, or any three of them.
- Mortgages to be registered, and registry to be produced annually for inspection. 12. The commissioners shall cause all mortgages granted by them to be registered, and such registry shall be produced annually, for the inspection of the inhabitants, at a meeting to be held every year, in the month of March, for that purpose.
- Form of transfer of mortgage. 13. All transfers of mortgages by deed shall be in the form number four in the schedule hereto, and shall be registered with the commissioners, and a fee of two shillings and sixpence in respect of such registry shall be paid to the said commissioners.
- Funds to be applied only for purposes of this Act. 14. All moneys received from the water rate or land to be sold or leased (with consent of the Governor previously obtained under Ordinance No. 8 of 1848) for the purposes of this Act, and from special or extra water rates in respect of private supplies or leadings, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.
- Separate and distinct accounts to be kept. 15. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys; and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes or private watercourses from sums received from rates imposed under the second section of this Act, upon the rateable property of the municipality, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act; and the commissioners shall yearly, and every year, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Civil Commissioner of Uitenhage, for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the Civil Commissioner not later than the first day of March of the year next succeeding.
- Annual accounts to be deposited in civil commissioner's office. 16. The necessary costs, charges, and expense of obtaining this Act may be paid by the said commissioners out of the moneys to be borrowed as aforesaid.
- Expenses incurred in obtaining Act may be paid out of loan. 17. In case it should at any time appear by the return of the Sheriff to any writ of execution sued out by any creditor or creditors under this Act against the commissioners for the time being of the municipality aforesaid for the recovery of the debt aforesaid, or any
- Supreme or Eastern Districts Court may be applied to on return of no goods to writ of execution against Municipality

part thereof, that the Sheriff had not found any goods or chattels of the said commissioners wherewith to satisfy the said judgment, it shall be lawful for such creditor or creditors to apply to the Supreme Court or Eastern Districts Court by motion, for an order that it be referred to the Master of the Court, to inquire and report the amount due to the said creditor or creditors by the said commissioners for principal, interest, and costs: Provided that notice of the said motion shall be given to the said commissioners at the Town-office.

No. 3—1867.

Commissioners entitled to notice of motion.

18. Upon the hearing of the said motion, then, unless the said commissioners shall satisfy the said Court that the said commissioners will be prepared within a reasonable time, to be approved by the said Court, to satisfy from rates assessed, or to be assessed, or other assets, the debt of the said creditor or creditors, together with costs and all interest accrued due thereupon, the said Court shall, unless the said commissioners shall admit the amount claimed by the said creditor or creditors, make an order, referring it to the Master to inquire and report the amount due to the said creditor or creditors.

Proceedings on such motion.

19. When, by report of the Master, the Court shall be informed of the whole amount of the debt due and owing by such commissioners to the said creditor or creditors, it shall be lawful for the said Court, and it is hereby required, to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable property within the municipality of Uitenhage, as shall appear to be sufficient to satisfy, from and out of the net proceeds of such rate, the debt due by the said commissioners to the said creditor or creditors, together with all costs and interest legally chargeable thereon: Provided that if a single rate of one penny per pound, as aforesaid, shall be insufficient to satisfy the whole of the said debt, interest, and costs, then a second rate not exceeding one penny per pound shall be assessed; and so on, until the said debt of the said commissioners, and all interest and costs legally chargeable thereupon, shall be finally discharged: Provided that not less than twelve months shall elapse between the day on which any preceding rate became due and payable and the day upon which any such succeeding rate shall become due and payable.

Court may impose rate to be applied to liquidation of debt with interest and costs.

More than one rate may be assessed.

But not before expiration of twelve months from date of previous levy.

20. As often as the Court shall assess any rate for the purpose of paying such debt as aforesaid, such Court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said Court shall fix, and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said Court shall from time to time issue for his guidance. Notice shall be given in the *Government Gazette* and in some one other paper circulating in the town of Uitenhage, if any such

Court to appoint receiver of rate levied to liquidate debt.

Notice of rate assessed and when due.

No. 3—1867.

there be, of every rate assessed as aforesaid, and of the day upon which such rate shall become due and payable, and such notice shall be, in substance, as follows :

## Municipality of Uitenhage.

## RATE UPON IMMOVABLE PROPERTY.

Form of notice.

Notice is hereby given that the ——— Court has this day assessed, under the provisions of the “ Uitenhage Water Act, 1867,” a rate of — per pound upon the value of every rateable fixed property within the municipality of Uitenhage, which rate will become due and payable on the ——— day of ———, and of which rate A.B. of ———, has been appointed the receiver.

Dated at ——— this — day of ———.

——— Registrar of the ——— Court.

Publication of notice.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Recovery of rate.

21. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court : Provided that every such rate shall be recoverable from the same persons who would be liable to be sued for the same in case it were a rate assessed in and for the municipality of Uitenhage, in accordance with Ordinance No. 9, 1836, or of the Act No. 13 of 1864.

Disposal of surplus after liquidation of debt.

22. Any surplus of the amount of any such rate as aforesaid which shall happen to exist after the discharge of the debt which it was assessed to liquidate shall be paid to the commissioners aforesaid.

Service of summons for recovery of debt should no commissioners be in office.

23. In case there should happen to be no commissioners of the said municipality in office when a creditor or creditors under this Act shall desire to proceed by legal process for the recovery of the debt, acknowledged in manner aforesaid, or of any part of such debt, then the publication in the *Government Gazette* of the summons issued by such creditor or creditors against the commissioners of the said municipality shall be deemed to be good service of such summons, and be of the same force and effect as if on the day of such publication the said summons had been duly served at the Town-office upon commissioners in office : Provided, also, that in case there should not, at any time when an application shall be made for the assessment of a rate under this Act, be any valuation of the immovable property within the said municipality in force for municipal purposes, then the valuation of such property for municipal purposes which last expired shall be deemed to be still in force for the purpose of any rate to be assessed under this Act.

Assessment of rate when municipal valuation has ceased to be of force.

Governor in Executive Council to decide on approval or

24. When the Governor shall receive from the commissioners any plan, specification, or estimate as aforesaid, he shall consider

the same, and should they or any of them appear to him to be imperfect, or not to give sufficient information in regard to the proposed works, he may call upon the commissioners for such further information as may appear to him to be required, and shall then, with the advice of the Executive Council, decide whether the proposed works shall or shall not be approved of by him: Provided that before approving of any proposed works, the Governor shall cause to be published in the *Government Gazette* and in some one or other paper circulating in the town of Uitenhage, if any such there be, for not less than twenty-eight days a notice which shall contain all such particulars regarding the said works as shall be deemed necessary, and, amongst other particulars, the names of the owner or owners of any private property in or upon which the said works, or any part of them, shall be proposed to be constructed.

25. If the commissioners shall, for the purpose of any proposed works under this Act, require to take or use any land belonging to any private person, such commissioners may treat and agree with every such person for the purchase or hire, as the case may be, of any such land, and may enter into any contract relative to the obtaining of such land, upon such terms and conditions as the said commissioners shall judge expedient; and if any such person and the said commissioners should not agree upon the purchase money, hire, or other recompense to be respectively given and accepted, then the said commissioners shall cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money the said commissioners shall deem sufficient, and requiring such person to state in writing to the said commissioners, or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not; and if such person should refuse to accept the sum offered, or neglect to reply to said notice, then the said commissioners shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said commissioners, and for that purpose to transmit to the said commissioners, within a certain reasonable time to be specified in the said lastmentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said commissioners, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed by the said commissioners and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain amongst other things, a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final, and the award of such arbitrators or umpire, as the case may be, shall be binding and conclusive, and may be pleaded in

No. 3—1867.

otherwise of proposed works.

Notice of intended approval to be given.

Commissioners empowered to purchase or hire private lands.

How, when unable to agree regarding purchase money, hire, &amp;c.

Arbitration.

No. 3—1867.

How, if party claiming compensation refuses or neglects to proceed to arbitration, or rejects award

bar of any action or proceeding at law brought for or on account of the same subject-matter; and if such person as aforesaid claiming such recompense or compensation should neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then the said commissioners may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in the first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said commissioners upon so lodging the said sum shall be authorized and entitled to take and use the land in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire under the provisions of this section, and as if all acts by law required for vesting in the said commissioners a sufficient title to the use of or property in the land aforesaid had been duly done and performed.

How to proceed if owner be a minor.

26. In case the commissioners shall require to take or use any land belonging to any minor or other person under guardianship or curatorship, the guardian or curator, as the case may be, shall be authorized, in his capacity as such guardian or curator, to treat and agree with the said commissioners for the purchase or hire of the land required, and to execute any contract which may be needful for carrying out any agreement which may be made; and in case of non-agreement, to refer the matter in difference to arbitration, as in the last preceding section mentioned; but all moneys which shall either by agreement or by arbitration be payable by the said commissioners for or on account of any land in this section mentioned shall be paid by the said commissioners to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorized to receive the same and to place the same to the credit of the minor or other person entitled to such moneys; and if in any case any person of full age shall by way of fidei-commissary limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land as aforesaid, in which a minor or other such person as aforesaid under guardianship or curatorship shall also be interested in remainder or expectancy, then the whole value of the land, as fixed by contract or by arbitration, shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest in the land shall be entitled for life, or for the other period limited, to draw the interest payable upon the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said

Moneys in such case to be paid to Master of Supreme Court.

How, if land be partly under fidei-commissary trust.



sum, and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered; subject, however, at all times to such orders as the Supreme Court aforesaid may, upon the motion of any person having an interest, see fit to make in regard to such moneys.

No. 3—1867.

27. The commissioners may for the purpose of any proposed works under this Act, at any place within the municipality of Uitenhage, dam up or otherwise collect the water of any river or stream: Provided that such commissioners shall do so in such manner as not to impair or injure any servitude upon or other lawful right or title to any of the water of such river or stream: Provided, also, that no person entitled to any such servitude or other right shall, in regard to such servitude or other right, be held to come under the provisions of the twenty-fifth section aforesaid, or to be deprived of the same or of any part thereof, except with his own consent.

Commissioners empowered to dam up rivers or streams.

Existing rights protected.

28. In the construction of this Act, the following words and expressions have the several meanings assigned to them over and above their several ordinary meanings, unless there be something in the context repugnant to such construction, namely: the expression "commissioners" shall mean commissioners of the municipality of Uitenhage; the expression "inhabitants" shall mean householders of the municipality of Uitenhage; the expression "street or public thoroughfare" shall mean street or public thoroughfare situate within the municipality of Uitenhage; and the expression "ratepayers" shall mean parties paying the special rate to be levied by this Act: and the word "person" shall mean any person, or his agent lawfully authorized.

Interpretation of terms.

29. This Act may be cited as the Uitenhage Water Act, 1867, and shall take effect from and after the promulgation thereof.

Short title.

---

THE SCHEDULE BEFORE REFERRED TO.

[No. 1.]

## IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Notice is hereby given that the plans, specification, and estimate of the works proposed to be constructed by the commissioners of the municipality under the authority of the above Act have been this day placed in the Town-office in Uitenhage for the free inspection of the inhabitants, and that the same may be inspected on any day (Sundays excepted) up to and including — the — day of — (next or instant) between the hours of ten a.m. and four p.m. Any ratepayer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within twenty-one days from

No. 3—1867.

this date leave with the secretary of the commissioners a statement in writing, setting forth clearly and concisely his objections to the same, in order that such objections may accompany the plans, specification, and estimate, and be laid with them before the Governor for his consideration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

[No. 2.]

IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Notice is hereby given that the commissioners of the municipality of Uitenhage, in pursuance of the above Act, intend to make application to the Governor of the Colony for his consent to their borrowing and taking up at interest, under the provisions of the above Act, a sum of money not exceeding two thousand five hundred pounds, on the security of the water rate: Any party liable to such rate objecting to the raising of such money must, within the period of fourteen days from this date, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections and the evidence to be adduced in support of such objections, in order that such notice may accompany the application to the Governor, and be laid before him for his consideration.

Dated at Uitenhage, this \_\_\_\_\_ day of \_\_\_\_\_, 18—

[No. 3.]

FORM OF MORTGAGE.

We, the undersigned, being commissioners of the municipality of Uitenhage, in consideration of the sum of \_\_\_\_\_ pounds sterling lent and advanced to us for the purposes of the Uitenhage Water Act, 1867, by \_\_\_\_\_ do hereby, in pursuance of the powers contained in the said Act authorizing us in this behalf, charge the water rate of \_\_\_\_\_ in the pound imposed by the said Act with the repayment to the said \_\_\_\_\_, his heirs, executors, administrators, or assigns, of the said sum of \_\_\_\_\_ by the instalments and in manner following; the principal sum of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, and the like principal sum of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every subsequent year, until the whole of the said principal sum of \_\_\_\_\_ shall have been paid and discharged; and also with the payment of interest after the rate of \_\_\_\_\_ pounds per centum per annum on all principal moneys, continuing secured hereon by equal half-yearly payments, on the \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_ in each year.

As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_

[No. 4.]

FORM OF TRANSFER.

I, the undersigned, \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ sterling money paid to me by \_\_\_\_\_ do hereby assign unto \_\_\_\_\_ his heirs, executors, administrators, and assigns, all principal moneys and interest secured by a certain deed bearing date the \_\_\_\_\_ day

of ——— 18— under the hands of ——— commissioners of the municipality of Uitenhage, with power for the said ——— heirs, executors, administrators, and assigns, or his or their substitute or substitutes, in the name or names of the said ——— heirs, executors, or administrators, to sue for, receive, and give receipts for the same.

No. 3—1867.

As witness my hand this — — day of ——— 18—

[No. 5.]

## IN THE MATTER OF THE UITENHAGE WATER ACT, 1867.

Account of all moneys received and paid by the commissioners of the Municipality of Uitenhage, under or by virtue of this Act, between the 1st day of January, 18—, and the 31st day of December, 18—, both inclusive:

*Moneys Received.*

To amount received from water rate .. .. .	£
„ amount received from water leading .. .. .	..
„ amount received from sale or leasing of lands .. .. .	..
„ amount received upon loan .. .. .	..
„ amount taken up from any other source .. .. .	..

*Moneys Expended.*

By amount expended on works.. .. .	£
„ „ „ in salaries .. .. .	..
„ „ „ in repairs .. .. .	..
„ „ „ in interest of debt .. .. .	..
„ „ „ in repayment of debt .. .. .	..
„ „ „ on any other account .. .. .	..

## SUMMARY OF RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT UP TO THE 31ST DAY OF DECEMBER, 18—.

To amount realized on sale or leasing of lands .. .. .	£
„ amount taken up on loan .. .. .	..
„ amount received from rates after payment of interest and working expenses, as under:	
Water rate .. .. .	..
Private water leading .. .. .	..
By amount expended on works .. .. .	..
„ repayment of loans .. .. .	..

## STATEMENT OF LIABILITIES AND ASSETS ON THE 31ST DECEMBER, 18—.

*Liabilities.*

To amount due on loans .. .. .	£
„ outstanding accounts.. .. .	..
„ cash balance .. .. .	..

*Assets.*

Arrears of rate .. .. .	£
Cash Balance .. .. .	..

## ESTIMATE OF INCOME AND EXPENDITURE FOR THE CURRENT YEAR.

*Income.*

To cash balance .. .. .	£
„ amount to be received from arrears of rate .. .. .	..
„ amount to be received from private water leading .. .. .	..
„ amount to be received from water rate .. .. .	..

rr

No. 27—1874.

*Expenditure.*

By cash balance .. .. .	£
„ new works .. .. .	..
„ interest on advances .. .. .	..
„ repayment of advances .. .. .	..
„ salaries .. .. .	..
„ repairs .. .. .	..
„ any other account .. .. .	..

No. 27—1874.]

[July 31, 1874.

## ACT

To Authorize and Empower the Municipality of Uitenhage to borrow a further Sum under Act No. 3 of 1867.

Preamble.

WHEREAS by the Uitenhage Water Act, No. 3 of 1867, the Commissioners of the Municipality of Uitenhage are empowered, subject to the several conditions and provisions in the said Act contained, to borrow and take up at interest any sum or sums of money not exceeding in the aggregate the principal sum of Two Thousand Five Hundred Poundssterling, for the purpose of enabling the said commissioners to construct and provide one or more reservoirs, and to convey water from the Uitenhage spring or springs near Sandfontein to the town of Uitenhage in an improved manner, upon the security of a special rate or rates, not to exceed in any one calendar year the amount of one penny in the pound sterling on the value of all the immovable property situate within the said municipality liable to assessment, and to mortgage the said rate, for securing the repayment of such moneys :

And whereas the said sum of Two Thousand and Five Hundred Pounds sterling will be sufficient only for storing and filtering the water in reservoirs close to the town, and for leading the same through the streets (for household purposes), but insufficient to provide for certain necessary works to be constructed between the said Uitenhage spring or springs and the town of Uitenhage, and for husbanding the water for irrigation purposes, in accordance with the said Uitenhage Water Act, No. 3 of 1867 :

And whereas such works as were authorized by the said Act No. 3 of 1867, both for irrigation and household purposes, can be no longer delayed, in consequence of the increased and increasing requirements of the said municipality, the storing and husbanding of the said water having become a necessity :

And whereas such necessary works between the said Uitenhage spring or springs and the town of Uitenhage (to be constructed wholly within the boundary of the said municipality and in and over the town lands of the same) cannot be undertaken without further borrowing powers on the security of such intended special

water rate or rates as aforesaid, and such further borrowing powers cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 27—1874.

1. A further sum or sums than is already authorized by the Uitenhage Water Act No. 3 of 1867, that is to say, a further principal sum of ten thousand pounds sterling is hereby authorized to be raised, in like manner as the sum of two thousand five hundred pounds is authorized to be raised by the said Act, and such further principal sum of ten thousand pounds sterling, or any part thereof, shall be used and expended in the manner and for the purposes set forth in the said Uitenhage Water Act, or some or any of them.

Further loan authorized under Act No. 3 of 1867.

2. All and several the provisions of the said Act No. 3 of 1867, empowering the said commissioners to borrow and take up at interest the amount authorized by that Act, shall apply *mutatis mutandis* to the provisions of this Act, and to the increased loan thereby authorized.

Act No. 3 of 1867 to apply.

3. This Act may be cited as the “Uitenhage Water Service Increased Loan Act, 1874,” and shall take effect from and after the promulgation thereof.

Short title.

No. 14—1876.]

[July 4, 1876.]

## ACT

For enabling the Commissioners of the Municipality of Uitenhage to appropriate and dispose of certain Lands for the purpose of raising Funds for Building a Town Hall, Library, Reading-room, Town Office, Market Office, and other necessary Buildings, for the use of the Resident Householders and Inhabitants of the said Municipality.

WHEREAS by a certain title deed, bearing date the first day of March, One Thousand Eight Hundred and Fifty-four, certain two pieces of land situated within the municipality of Uitenhage, measuring together three morgen, sixty-seven square roods, six square feet, and seventy-six square inches, were granted in freehold to the commissioners of the said municipality, and unto the commissioners of the said municipality for the time being, on condition that the said land should not be appropriated for any other use than for that of a market-place: And whereas it is expedient that the said condition, in the said title deed contained should, for the purposes of this Act be annulled, and that a part of the before-mentioned site for the said market-place, bounded on the north-east by Caledon-street, south-west by Constitution-street,

Preamble.

rr 2

No. 14—1876.

north-west by Market-street, and south-east by Chase-street, for many years planted with trees and known as the "Park," being in length four hundred and fifty-six feet and in breadth two hundred and forty feet, and containing about one morgen and one hundred and sixty square roods should be sold (with power to the aforesaid commissioners to reserve a portion thereof at their discretion for a building site) in order to raise funds towards building in conjunction with the committee for the time being of the Public Library at Uitenhage, a town-hall, library, reading-room, town-office, market-office, and other necessary buildings, on such reserved portion of the said "park" land, for the use of the resident householders and inhabitants of the said municipality, and the subscribers of the said Public Library: And whereas the said condition cannot be annulled, nor the proposed sale of the said land be effected for the purpose aforesaid, without the aid of Parliament: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Conditions of title deed annulled as to portion of land to be sold.

1. The condition contained in the said title deed, with regard to the particular and exclusive use of the said land, is hereby annulled as to the said part of the said land so to be sold as aforesaid.

Commissioners may sell land and apply proceeds to building of town-hall, &c., on reserved land.

2. It shall be lawful for the commissioners for the time being of the said municipality, to cause to be sold, by public auction, the said part of the said land beforementioned, the proceeds thereof, together with the proceeds to arise from the sale of certain land with a building thereon now vested in the committee of the said library, to be applied exclusively for the purpose of building on such reserved portion of the said land, a town-hall, library, reading-room, town-office, market-office, and other necessary buildings, for the use of the resident householders and inhabitants of the said municipality for ever; and the said library committee, on behalf of the subscribers and others entitled to the use of the said library, shall have exclusive and independent control over the said library and reading-room proposed to be erected as aforesaid in conjunction with the other public buildings beforementioned, the remainder of such buildings to be under the control of the said commissioners.

Repairs to buildings to be erected to be paid for out of general revenue of municipality.

3. The necessary repairs that may be required to be made to the buildings about to be erected, from time to time, shall be made by, and at the discretion of, the commissioners of the said municipality, and may be paid for out of the general revenue and rates of the said municipality, save and except any repairs that may be required to be made, from time to time, to the interior of the library and reading-room so to be erected as aforesaid, which repairs shall at all times be effected by the said library committee, at their own proper cost and charges.

Short title

4. This Act may be cited as the "Uitenhage Municipal Buildings Act, 1876."

No. 23—1873.]

[June 26, 1873.

No. 23—1873.

## ACT

For enabling the Municipality of Worcester to borrow a Sum of Money not exceeding Four Thousand and Two Hundred Pounds (£4,200) Sterling, for the purpose of providing a Supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester and the Locations of the Poorer Classes adjoining thereto ; and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose. <sup>(1)</sup>

WHEREAS it is expedient to provide the inhabitants of the town of Worcester and the locations of the poorer classes adjoining thereto with a supply of pure water, and to extend and improve the waterworks of the municipality of Worcester : And whereas at a public meeting of the resident householders convened for the above purpose on the 21st day of August, 1872, it was resolved by a majority of such resident householders then present that the commissioners of the said municipality of Worcester be authorized to carry out the object as before mentioned, at an expense not exceeding the sum of two thousand and two hundred pounds sterling : Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be lawful for the commissioners for the time being of the municipality of Worcester to borrow from time to time such sum or sums of money, not to exceed in the whole the sum of four thousand and two hundred pounds sterling, for the purpose of erecting a reservoir and filtering bed, and providing and laying certain pipe or pipes from the main watercourse flowing to the town of Worcester, and issuing from the Hex River, for the conveyance of water to any house, building, or other place situated within the said municipality ; and to construct dams, tanks, drinking fountains, and fire plugs wherever the same may be required within the said municipality ; and, further, for doing all such other matters or things as shall or may be required for improving and extending the waterworks of the said municipality, and leading the water from the Hex River as aforesaid into the town of Worcester.

Commissioners authorized to borrow £2,200 for waterworks.

2. It shall be lawful for the commissioners of the said municipality to impose, for the purpose of providing for the payment of the principal or interest or principal and interest of the moneys aforesaid, a certain rate or tax upon any private waterleadings

Rate to be imposed.

<sup>1</sup> Printed as amended by Act 34—1877, *infra*.

No. 23—1873.

Rate to be levied as in Ordinance No. 9 of 1836 directed.

Ratepayers entitled to have a private service pipe laid on, on payment of an extra rate.

Commissioners to make regulations as to water supply and levy of rate.

Loan to be charged upon general revenue

Acknowledgment for loan to be in form given in schedule.

To be signed by the chairman and two commissioners.

Debts to be subject to the Public Bodies Debts Act, 1867.

Manner in which moneys received under this Act shall be applied.

Separate account to be made up annually of moneys borrowed under this Act, and submitted for inspection of resident householders.

which may be required by any of the inhabitants as aforesaid; and every rate or tax so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner as if it had been a rate or tax imposed under the provisions of Ordinance No. 9 of 1836.

3. Every ratepayer shall be entitled, at his own expense, to have a private service pipe laid on to the main or branch pipe, for the supply of water for domestic purposes, on payment of such special or extra rate as may be fixed by the commissioners aforesaid, such special or extra rate to become due and payable in advance.

4. It shall be lawful for the commissioners of the said municipality from time to time to make such regulations as regards the quantity of water to be supplied to the inhabitants, and the time or times at which such supply is to be received, and further to make such arrangements as they the commissioners may deem expedient for levying and enforcing the payment of any rate or tax for any private waterleadings as aforesaid.

5. The aforesaid sum of four thousand and two hundred pounds sterling is hereby charged upon and made payable out of all and singular the rates and general revenues of the said municipality: Provided that it shall be lawful for the said commissioners to apply to the payment of interest or principal or interest and principal of the moneys aforesaid, any funds or moneys coming to the said commissioners from any source whatever, and not specially appropriated for any other object.

6. The said commissioners shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the sum of four thousand and two hundred pounds sterling, which acknowledgment shall in substance be in the form given in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, appointed for that purpose by a resolution of the board of commissioners of the said municipality, and of which three the chairman of the said board shall be one.

7. All debts lawfully incurred by the said commissioners for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

8. All moneys received from the water rate, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.

9. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall yearly and every year, so long as any part of any debt contracted under and



by virtue of this Act shall be in existence, prepare and deposit in the office of the said municipality for the inspection, at all reasonable times, of any resident householder of the said municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said municipality not later than the 1st day of March of the year next succeeding.

No. 23—1873.

10. It shall be lawful for the said commissioners to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect, out of the general revenues of the said municipality.

Costs of this Act to be paid out of general revenue.

11. This Act may be cited for all purposes as "The Municipality of Worcester Loan Act, 1873."

Short title.

---

SCHEDULE.

We, the undersigned, commissioners of the Municipality of Worcester, duly authorized thereto by the board of commissioners of the said municipality, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_, for so much money borrowed by the said commissioners for the purposes set forth in the "Municipality of Worcester Loan Act, 1873," and certify that the said sum is secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage, in our said capacity, that the principal and interest of the said debt shall be payable and paid in manner following, that is to say: (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Worcester, this —day of — 187—.

A. B., Chairman.  
 C. D., } Commissioners.  
 E. F., }

Witnesses :

G. H.  
 I. K.

---

No. 34—1877.]

[August 8, 1877.

## ACT

To Legalize the Loan of Twelve Hundred and Fifty Pounds Sterling borrowed by the Municipality of Worcester, and expended in the Construction of Waterworks, for the purpose of providing a supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester, and the Locations of the Poorer Classes adjoining thereto, and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose; as also for enabling the said Municipality to borrow a further Sum of Seven Hundred and Fifty Pounds Sterling, required for completing the Waterworks aforesaid; and to amend Act No. 23 of 1873.

Preamble.

WHEREAS by Act 23 of 1873, entitled "An Act for enabling the Municipality of Worcester to borrow a sum of money not exceeding two thousand and two hundred pounds sterling, for the purpose of providing a supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester and the Locations of the Poorer Classes adjoining thereto, and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose," the Municipality of Worcester was empowered to borrow moneys for the purposes aforesaid, which said sums were to be charged upon, and made payable out of, all and singular the rates and general revenues of the said municipality:

And whereas the said municipality was, in and by said Act, authorized and empowered to raise by way of loan, from time to time, such sum or sums of money, not to exceed in the whole the sum of two thousand and two hundred pounds sterling, for the purposes aforesaid, which said sum was to be charged upon, and made payable out of, all and singular the rates and general revenues of the said municipality:

And whereas the cost of constructing and completing the waterworks aforesaid having been estimated to exceed the said sum of two thousand and two hundred pounds sterling, the said municipality has borrowed on credit the further sum of twelve hundred and fifty pounds sterling, which sum has been expended on the construction of the said waterworks:

And whereas a further sum of seven hundred and fifty pounds sterling will be required by the said municipality to complete the said waterworks:

And whereas it is just and right that the said sums of twelve hundred and fifty pounds sterling and seven hundred and fifty pounds sterling respectively (making together the sum of two thousand pounds sterling), borrowed and required for completing the said waterworks, should also be made a charge upon, and payable out of, all and singular the rates and general revenue of the said municipality :

No. 17—1857.

Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. The said Act No. 23 of 1873 shall be and hereby is amended by substituting in the title and in the first, fifth, and sixth sections thereof the sum of four thousand and two hundred pounds sterling, in lieu and stead of the sum of two thousand and two hundred pounds sterling in the said title and sections mentioned : Provided always that any loan already contracted or which may hereafter be contracted, under the terms and provisions of said Act No. 23 of 1873, and of this present Act, shall not exceed the sum of four thousand and two hundred pounds sterling.

Act 23 of 1873 amended.

2. This Act may be cited for all purposes as “The Municipality of Worcester Loan Amendment Act of 1877.”

Short title.

No. 17—1857.]

[June 29, 1857.]

## AN ACT

## To Incorporate the South African Museum.

WHEREAS the specimens of natural history and other public property deposited in the South African Museum have now become of considerable value : And whereas it is deemed expedient for public convenience, and the promotion of literature and science, that the books, coins, specimens of natural history, and other objects which this Colony now possesses, or may hereafter acquire by gift, bequest, purchase, or exchange, should be deposited in the custody of trustworthy persons : And whereas His Excellency the Governor has already appointed a committee for the management and guardianship of the said museum, and of the collections therein, and it is now deemed necessary that the members of the said committee should be incorporated as a board of trustees : Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. A board of trustees, composed as hereinafter mentioned, shall be, and is hereby, constituted a body politic and corporate, by the name of “The Trustees of the South African Museum,” by which name such body corporate shall have perpetual succession, and shall have a common seal, and shall, by the same name, from time

Board of trustees appointed.

- No. 17—1857. —
- To hold fixed and other property.
- May raise money on loan.
- Not sell, or otherwise alienate, lands without consent of Governor.
- Museum, when to be open free of charge.
- Who to be trustees.
- Vacancies, how to be filled.
- Quorum.
- to time sue and be sued, implead and be impleaded, answer and be answered unto, in all Courts of the said Colony, and shall be able and capable, in law, to take, purchase, and hold to them and their successors all goods, chattels, and personal property whatever, either now deposited within the precincts of the South African Museum, or hereafter to be acquired by gift, bequest, purchase, or exchange, and shall also be able and capable, in law, to take, purchase, and hold to them and their successors, not only such lands, buildings, hereditaments, and possessions as may from time to time be exclusively used and occupied for the immediate requirements of the said "South African Museum," but also any other lands, buildings, hereditaments, and possessions whatever, situated in the said Colony or elsewhere; and they and their successors shall be able and capable, in law, to grant, demise, alienate, and otherwise dispose of all or any of the property, real or personal, belonging to the said museum; and also shall be able and capable to borrow and take up moneys for the use and purpose of the said museum upon mortgage of the lands, tenements, books, coins, specimens of natural history, and other said objects belonging to the said museum, and upon the security of the moneys granted and payable to the said museum under this present or any future Act; and also to do all other matters and things incidental to, or appertaining to, a body politic and corporate.
2. Provided, always, that it shall not be lawful for the said trustees to alienate, mortgage, lease, charge, or demise any lands, tenements, or hereditaments to which they may become entitled by grant, purchase, or otherwise, unless with the approval of the Governor of the said Colony for the time being.
3. The said South African Museum shall be kept open free of charge, to visitors, during at least four days in the week.
4. The said body corporate shall consist of three trustees, and shall consist of the following gentlemen,—The Honourable Rawson William Rawson, Esq., Colonial Secretary, Thomas Maclear, Esq., Astronomer Royal, Ludovic Pappé, Esq., Doctor of Medicine,—being members of the present committee for the management of the said museum.
5. All vacancies which may occur by death, resignation, absence from the Colony, removal from office by the Governor, or otherwise, in the trustees aforesaid, or in the trustees for the time being, shall be filled up, as they may occur, by the said Governor, who shall announce every appointment by him of any trustee as aforesaid, by proclamation in the *Government Gazette*.
6. At every meeting of the said trustees, two trustees shall form a quorum, and all questions shall be decided by the majority of votes of the trustees present, and in all cases of difference of opinion between the trustees, when only two trustees are present, the question shall be deferred till another meeting, when all the trustees shall be present.

7. The said trustees shall have the entire management and superintendence of the affairs, concerns, and property of the said museum; and in all cases not provided for by this Act, it shall be lawful for the said trustees to act in such manner as shall appear to them best calculated to advance the objects of the said institution.

No. 17—1857.  
Duties of trustees.

8. The said trustees shall have power and authority to make, and also repeal or alter, all such bye-laws, rules, and orders, touching and concerning the management and good government of the said museum, and the income and property thereof, and any other matter or thing relative to the same, as to them may seem fit for the effectual attainment of the objects of the institution, the security of its property, and the administration of its concerns; and all such bye-laws, rules, and orders shall be presented to the Governor; and on confirmation and allowance thereof by His Excellency, shall come into force, and be binding; and all such bye-laws, rules, and orders shall, within one month from the date thereof, be published in the Cape of Good Hope *Government Gazette*.

May frame rules and bye-laws.

To be approved by Governor, and published in Gazette.

9. The said trustees shall, once at least in every year, and also whenever the pleasure of the Governor shall be signified in that behalf, report their proceedings and the progress of the said institution to the said Governor; and a copy of every such report shall be laid before the Parliament within one month after the commencement of each session thereof.

Trustees to furnish annual reports, to be laid before Parliament.

10. Accounts of the expenditure of the museum shall be furnished annually by the trustees to the Government for examination and audit, and in order that an abstract thereof may be published in the *Government Gazette*.

Accounts of expenditure.

### NATIVES.

- |   |  |
|---|--|
| 1. Ord. 2—1837, §§ 3-6, (Armed Natives entering Colony).  | 9. Act 17—1883, (Port Elizabeth Location).       |
| 2. Act 22—1857, (Native Children, Introduction of).       | 10. „ 8—1883, (Stockenstrom Locations).          |
| 3. „ 26—1857, (Native Emissaries).                        | 11. „ 17—1864, (Natives', Pass Law).             |
| 4. „ 29—1864, do.   | 12. „ 22—1867, do.                               |
| 5. „ 18—1864, (Estates of, Administration).               | 13. „ 24—1886, (Native Territories, Penal Code). |
| 6. „ 40—1879, (Native Locations).                         |  |
| 7. „ 37—1884, do.   |  |
| 8. „ 28—1883, §§ 20-22, (Native Areas, Liquor Licensing). |  |

No. 2.—Sd. B. D'Urban.] [June 21, 1837.

Ordinance for the more effectual prevention of Crimes against Life and Property within the Colony. <sup>(1)</sup>

\* \* \* \* \*

3. And be it further enacted that it shall not be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Boschjesman, Bechuana,

Native tribes not to enter the colony with arms.

<sup>1</sup> As to Pass Law see Act 22, 1867, *infra*. For full text of this Ord. see under Criminal Procedure."

2088 NATIVES (ARMED—ENTERING THE COLONY).

Ord. 2—1837.

Mantatee, Namaqua, or other Natives of Africa not being natives of the Colony to cross from without to within the boundary line of the Colony armed with any assegai, spear, battle-axe, fire-arms, or other weapon, or to be found in the Colony so armed; and all Justices of the Peace, Field-commandants, Field-cornets, and military officers are hereby authorized and required to prevent any such person as aforesaid, so armed as aforesaid, from entering the Colony; and to disarm or cause to be disarmed any such persons so found within the Colony; and in case such persons shall resist when an attempt is made to disarm them it shall be lawful to kill or disable them if they cannot be disarmed by other means: Provided, always, that nothing herein contained shall be construed to prevent any such foreigner as aforesaid actually in the service or employment of any inhabitant of the Colony from being armed in such manner as his employer may think proper.

Natives not to be without passes.

4. And be it further enacted that if any such foreigner as aforesaid shall be found within the Colony without a pass, or if under contract without a written authority from his employer, on being required by any Justice of the Peace, Field-commandant, Field-cornet, constable, or landholder to show the same, or after receiving a pass for the purpose of procuring employment in the Colony shall be discovered wandering without any certain occupation or honest means of livelihood having received his pass as aforesaid, or having been absent from his last employer for a longer period than fourteen days, then in any and in each of such cases it shall be lawful for any Justice of the Peace, Field-commandant, or Field-cornet immediately to apprehend such person and inquire summarily into the case, and for any constable or landholder immediately to apprehend and convey such person to the Resident Magistrate of the district or to any Justice of the Peace, Field-commandant, or Field-cornet within the district in which such person was so apprehended, who shall inquire summarily into the case; and if such foreigner be under contract of service shall forthwith direct him to be returned to the service of his employer, or shall place such person with his consent in the employment of some creditable inhabitant under contract of service for twelve calendar months in the manner directed by the Ordinance No. 49, or shall otherwise cause him to be removed beyond the limits of the Colony, resuming any pass that may be found in his possession, and notifying or causing to be noted such removal in the registry of the district wherein the pass was originally granted; and if any such foreigner as aforesaid so removed beyond the limits of the Colony shall return again and be found wandering within the same, such person shall on conviction thereof be sentenced to imprisonment with hard labour for any period not exceeding twelve calendar months.

Arrest of natives.

5. And be it further enacted that when any officer of the law or private person who in virtue of the provisions of this Ordinance

is authorized and required to arrest or remove or to assist in arresting or removing any such foreigner as aforesaid shall attempt to make such arrest or removal, and such foreigner so attempted to be arrested or removed shall resist, it shall be lawful for such officer or person if such arrest or removal cannot be effected by other means to kill or disable such foreigner so resisting as aforesaid.

Ord. 22—1857.

6. And be it further enacted that if any body of such armed foreigners as aforesaid consisting of three or more shall enter the Colony under any pretext whatever they shall be deemed and taken to be enemies, and it shall be lawful for any person to repel them by force of arms.

Armed natives entering the colony in numbers to be enemies.

\* \* \* \* \*

No. 22—1857.]

[June 29, 1857.

AN ACT

For more effectually preventing the improper Introduction into this Colony of Children belonging to Native Tribes, resident in Territories beyond the Land Boundaries thereof.

WHEREAS, in some instances, persons visiting the territories lying beyond the land boundaries of this Colony have there procured, and have thence brought into the Colony, to be made servants of, children of tender age, belonging to Native tribes resident in the territories aforesaid: And whereas there is reason to believe that if the practice of procuring such children were suffered to grow up, evil consequences may arise therefrom: And whereas the existing laws of the Colony do not sufficiently provide against the introduction of such children, under such circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. No person, except as hereinafter excepted, shall, without the previous sanction of the Governor of this Colony for the time being, first had and obtained, bring into this Colony, across the land boundary thereof, any child under the age of sixteen years, belonging to any Native tribe or people in Africa, resident beyond the said land boundary. Any person contravening this section of this Act shall, upon conviction, be liable, for and in respect of every child so brought into this Colony, to a fine not exceeding twenty pounds, together with, and in addition to, the sum of one shilling per day for every day during which any such child shall have been harboured or kept by such person within this Colony:

Native children under sixteen years of age not to be brought within the colonial land boundary without previous sanction of the Governor.

No. 22—1837.

Except by the parent of the child; or by persons delivering the same to a resident magistrate within fourteen days

Such child to be under the guardianship of the Governor, and may not be apprenticed to the person by whom it is brought in.

Children may accompany visitors from beyond the land boundary for a temporary purpose, upon a certificate from a competent authority.

Any resident magistrate receiving such certificate, to note the date of its production.

Penalty for keeping or harbouring any child brought into this colony in contravention of the last preceding section.

How to judge of the age of such children.

Provided that nothing in this section contained shall extend to any parent of any such child as aforesaid, lawfully entering this Colony, and bringing such child into the same, nor to any person whomsoever bringing into the Colony any such child as aforesaid, who shall deliver over such child to any Resident Magistrate of the Colony within the space of fourteen days next after the day upon which such child shall have been brought into the Colony: Provided, however, that every such last-mentioned child shall be placed under the guardianship of the Governor of the Colony, for the time being, as in the fifth section of this Act provided, and that no such child shall be apprenticed to or left with the person by whom such child shall have been brought into the Colony, as in the sixth section of this Act provided: Provided, also, that nothing herein contained shall apply to any inhabitant of any territory beyond the land boundaries of this Colony, visiting this Colony for a temporary purpose, and bringing into this Colony any such child or children as aforesaid, in case such inhabitant shall produce and exhibit to some Resident Magistrate of this Colony, within one calendar month next after the date of his arrival in this Colony, a certificate in writing, signed by some Magistrate of the territory in which such inhabitant usually resides, certifying that the child or children brought into the Colony by such person is or are lawfully in the service of such person, and that the services of such child or children are required by such person during or upon his journey: Provided, also, that the Resident Magistrate to whom such certificate shall be produced or exhibited shall endorse thereon the date at which the same was so produced to him.

2. If any child brought by any person into this Colony, in contravention of the last preceding section, shall, without the previous sanction of the Governor of this Colony for the time being, be received, kept, or harboured, whilst under the age of sixteen years, by any other person within this Colony, such last-mentioned person knowing, when so receiving, keeping, or harbouring such child, that such child had been brought into this Colony, without the previous sanction of the said Governor, from beyond the land boundary thereof, then such lastmentioned person shall, upon conviction, be liable to the same penalty as that in the last preceding section mentioned: And any person receiving, keeping, or harbouring, within this Colony, any child brought into this Colony by any such inhabitant of another territory, as in the first section mentioned, shall be liable to the same penalty.

3. In every prosecution for a contravention of any of the sections of this Act, the Court in which such prosecution shall be pending shall judge from the appearance of the child in question in such prosecution, and also, if needful, from the opinions, given under oath, of persons skilled in ascertaining the age of such children, and from any other evidence which may be adduced on



the subject, whether the child referred to in such prosecution was, when brought into this Colony, or received, kept, or harboured therein (as the case may be), under the age of sixteen years or not.

No. 26—1857.

4. When by reason of the death of such child, before the hearing of such criminal case as aforesaid, or other cause, the Court in which such case shall be pending shall be unable to inspect the child in question, in such case, then such Court shall judge of the age of such child when it was brought into the Colony, or received, kept, or harboured therein (as the case may be), by the knowledge or opinion of persons acquainted with such child.

How to judge of the age, if child has died.

5. Every child brought into this Colony in contravention of the first section of this Act, whether the person who brought such child into the Colony be convicted or not, and every child brought into this Colony, by any inhabitant of another territory, as in the first section mentioned, which child shall be received, kept, or harboured by any other person within this Colony, is hereby placed under the guardianship of the Governor of the Colony for the time being, and may, by any person acting under the authority of the said Governor, be apprenticed in like manner as is, or shall be, by law provided in regard to destitute children, or the said Governor may, without, or before, apprenticing such child, cause such child to be placed at any industrial school within this Colony, and to be there maintained and instructed so long as may be necessary, or as the said Governor shall think fit: Provided that the guardianship of the Governor aforesaid shall not extend to, nor shall he cause to be apprenticed, or placed at an industrial school as aforesaid, any person who shall be of the age of eighteen years or upwards.

Every child brought into the colony in contravention of the first section, placed under the guardianship of the Governor, and may be apprenticed or placed at an industrial school.

6. No such child as aforesaid shall, in any case, be apprenticed to or left with the person by whom, in contravention of the first section of this Act, such child was brought into this Colony, or any person by whom, in contravention of the second section of this Act, such child was received, kept, or harboured, after being brought into this Colony.

Guardianship not to extend beyond the age of eighteen.

No such child to be apprenticed or left with the person by whom introduced or harbored in the colony.

7. [The remaining sections of this Act relate to children brought into the Colony prior to its promulgation, and have no further applicability].

No. 26—1857.]

[June 29, 1857.

AN ACT

For Punishing Emissaries from Kafirland and others, delivering, in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.

WHEREAS many Kafirs have been, and now are, employed as servants in the frontier districts of this Colony: And whereas,

Preamble.

No. 26—1857.

owing to recent events in Kafirland, it is likely that the number of Kafirs who shall find employment in this Colony will be much increased: And whereas, from time to time, heretofore, Kafirs have come from Kafirland into this Colony, charged or pretending to be charged, with messages from the chiefs of the Kafirs resident in this Colony, ordering such lastmentioned Kafirs to quit this Colony, and repair to Kafirland, there to aid or meet their chiefs: And whereas such messages, and the obedience ordinarily yielded to them, tend to create and keep up alarm and excitement throughout the frontier districts aforesaid, and seriously to endanger the public peace: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Any person conveying or delivering a message to a Kafir within the colony, tending to entice him beyond the boundary, shall be imprisoned.

1. If any Kafir, or other person, whether ordinarily resident in this Colony or not, shall, within this Colony, deliver, by word of mouth, or otherwise convey to any Kafir or other person belonging to, or reputed to belong to, any Native tribe or people resident beyond the land boundary of this Colony, any message, order, or request, purporting to have been sent by any Native chief, or other person belonging to any such Native tribe or people, and calculated and intended to induce the Kafir or other person to whom such message, order, or request shall be delivered or conveyed, to quit this Colony, and repair to any place beyond the land boundary thereof, in order to aid, visit, or meet any Native chief, or to attend any meeting of any Native tribe or people,—such Kafir or other person delivering or conveying such message, order, or request, shall, upon conviction, be liable to be imprisoned and kept at hard labour for any period not exceeding two years: Provided that nothing in this Act contained shall extend to any message, order, or request which any Kafir or other person shall, by any writing under the hand of any Magistrate or other functionary, in British Kaffraria, appointed by Her Majesty's High Commissioner, or other the Chief Governor of British Kaffraria, for the time being, to grant passes to Kafirs or other Natives to come into this Colony, be authorized to deliver.

Excepting any message or order authorized to be delivered by an officer competent to grant native passes.

Duration of Act.

2. (1) This Act shall continue in force until the 31st December, 1858, and no longer.

---

<sup>1</sup> Continued by subsequent Acts and made perpetual by No. 29, 1864.

No. 29—1864.]

[July 26, 1864.

AN ACT

For Continuing the Act No. 26, 1857, “An Act for punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.”

WHEREAS the Act No. 26, 1857, entitled “An Act for punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace,” was limited so as to continue in force until the thirty-first December, 1858: and whereas the said Act was, by other Acts, further continued until the thirty-first December, 1864, and no longer; and whereas it is expedient that the said Act should be made perpetual: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act aforesaid, No. 26, 1857, shall be and continue in force until Parliament shall otherwise provide.

Act No. 26 of 1857 continued.

2. This Act shall commence and take effect from and after the expiration of the Act No. 5, 1863, and no sooner.

Commencement of Act.

3. This Act may be cited for any purpose as the “Kafir Emissaries Act, 1864.”

Short title.

No. 18—1864.]

[July 26, 1864.

ACT

To Provide for the Mode in which the Property of certain descriptions of People resident in this Colony shall, when abandoned by their Death, be administered and distributed.

WHEREAS there are Native Locations in this Colony occupied by Natives who are gradually becoming civilized, but to whom and to whose circumstances the laws of inheritance in force in this Colony are at present unsuitable: And whereas the said laws of inheritance are also unsuitable to the Fingo people, certain of whom have acquired, and are acquiring, property: And whereas it is believed that all Fingoes who are likely to leave any property behind them at their death will have taken out certificates of citizenship, as they are by law entitled to do, and that the same will be the case with regard to all Natives not resident in a Native Location: And whereas it is expedient that the property of all persons holding, at the time of their death, certificates of citizenship, and of all Natives resident in any Native Location, should after their death, be administered and

Preamble.

No. 18—1864.

distributed according to their own customs and usages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Ordinance No. 104 and of all other laws, repealed.

1. So much of the Ordinance No. 104 and so much of any former law or ordinance as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Property left by any person holding certificate of citizenship to be administered according to usage of tribe to which he belonged.

2. As often as any person shall depart this life who shall, at the time of his death, be the holder of a certificate of citizenship, all property belonging to such deceased person at the time of his death shall be administered and distributed according to the customs and usages of the tribe or people to which the deceased person belonged, relative to the administration and distribution of property left by deceased persons at their death: Provided that nothing in this section contained shall restrict or interfere with the power and authority hereinafter by the fifth section of this Act conferred upon the Governor.

Not to interfere with power to Governor by 5th section of this Act.

Letters of administration or interference of Master unnecessary.

3. No letters of administration from the Master of the Supreme Court shall be necessary in regard to the administration of any such property, nor shall the said Master be called upon to interfere with such administration; but if any controversies or questions should arise between the relatives or reputed relatives of such deceased person regarding the distribution of the property left by him at his death, such controversies or questions shall be determined according to Native usages and customs by the Resident Magistrate of the district in which such deceased was domiciled at the time of his death.

Questions arising to be decided according to native law by resident magistrate.

Succession duty may be claimed by civil commissioner.

4. If it shall, in any case, come to the knowledge of the Civil Commissioner of the division in which any such deceased person was domiciled at the time of his death that any succession which, from its amount or value, is liable to succession duty under the "Successions Duty Act, 1864," has accrued to any successor of any such deceased person, then such Civil Commissioner shall claim and recover such succession duty, and he is hereby, for that purpose, invested with the powers and functions which, by the said Act, are conferred or imposed upon the Master of the Supreme Court, and such duty shall be paid over by such Civil Commissioner into the Colonial Treasury.

Governor may by proclamation define usages and customs to be observed.

5. It shall be lawful for the Governor, should he see cause so to do, to define or describe from time to time, by proclamation, the customs and usages to be observed in the administration and distribution of such properties as aforesaid, and the customs and usages defined by any such proclamation shall be observed, whether the same be in conformity with Native customs and usages or not; and the Governor may also, by any such proclamation lay down rules and regulations as to the course of procedure to be observed in regard to the administration and distribution of the property left by any such deceased person at the time of his death.

6. The provisions of this Act shall apply to all Natives resident in any Native Location as from time to time described by the Governor by proclamation, in like manner as if every deceased Native who was domiciled in any such location at the time of his death had been at that time the holder of a certificate of citizenship: Provided that it shall be lawful for the Governor, by proclamation, to declare and establish in regard to any such location that the determination of any such controversies or questions as are in the third section of this Act mentioned shall devolve upon and belong to the superintendent of such location, instead of the Resident Magistrate of the district.

No. 18—1864.  
Act to apply to native residents in locations to be described by proclamation.

Governor may empower superintendent of location to decide disputes instead of magistrate.

7. This Act may be cited for all purposes as “The Native Successions Act, 1864.”

Short title.

No. 40—1879.]

[Sept. 11, 1879.

ACT

To Provide for the Disposal of Lands forming Native Locations.

WHEREAS it is expedient in several districts of the Colony to form Native Locations on Government waste lands, and whereas it is desirable that portions of the land in such locations shall be granted on personal and individual tenure: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Whenever any Native Location has already been or shall be formed or established on land the property of the Government, under the provisions of Act No. 8 of 1878, it shall be lawful for the Governor to divide a portion of such land into lots and to grant titles to such lots to separate individuals, being in such locations, upon quitrent tenure upon such annual rent, and upon and subject to such conditions and provisions as to the said Governor shall seem fit and proper, and as shall have been approved of by the two Houses of Parliament, anything in Act No. 14 of 1878, or in any other act, ordinance, law, or custom, to the contrary notwithstanding: Provided always that the grantees of such lands shall be and remain subject to all existing regulations, and to all such regulations as may from time to time be lawfully made, for the proper government and conduct of Native Locations in this Colony.

Power to divide lands in native locations, and grant titles on individual tenure.

2. In addition to the land so divided into lots, as in the preceding section provided, it shall be lawful for the Governor to set aside and reserve a sufficient quantity of land in the vicinity of, or adjoining, such lots as and for commonage land or lands for the common pasturage of stock, the property of the several occupiers of the said lots, and to make from time to time such regulations

Power to set aside lands adjoining such lots as commonage.

No. 40—1879.

as to the said Governor shall seem fit, for fixing the number of live-stock which each owner of a lot shall be entitled to depasture on such commonage lands, and for generally regulating and preserving the use of the said lands for the common benefit of the said holders of lots.

Short title.

3. This Act may be cited as the "Native Locations, Lands, and Commonage Act."

No. 37—1884.]

[July 25, 1884.

## ACT

To provide for the better and more effectual supervision and management of Native Locations, and for the more easy collection of Hut-tax. <sup>(1)</sup>

Preamble.

WHEREAS it is desirable that the existing laws relating to Native Locations should be repealed, and other provisions made for the better and more effectual supervision and management of Native Locations, and for the more easy collection of hut-tax: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Acts repealed.

1. The following Acts are hereby repealed, that is to say, the Act No. 2 of 1869, the Act No. 6 of 1876, and the Act No. 8 of 1878.

Definition of Native Locations.

2. By Native Location on private property is meant any number of huts, or dwellings, on any one farm occupied by three or more male adults, being Kafirs, Fingoes, Basutos, Hottentots, Bushmen, and the like such occupants not being in the *bonâ fide* and continuous employment of the owner of such land, either as his domestic servants, or in or about the farming operations, or any trade, business, or handicraft by him carried on upon such land.

Private proprietors must get Government permission to establish location.

3. Any private proprietor of land who is desirous of establishing a Native Location upon his property shall apply, the concurrence of the Divisional Council having been first obtained through the Civil Commissioner of the district in which such land is situate, to the Governor for leave so to do; and it shall be the duty of such Civil Commissioner to forward such application to the Secretary for Native Affairs, with his report or remarks thereon.

No location to continue without licence

4. No Native Location, as defined in section two shall be established, nor if already established, shall be allowed to continue, without the express leave and licence of the Governor, acting under the advice of the Executive Council, first had and obtained, which licence the Governor, acting as aforesaid, may from time to time revoke or suspend, as occasion may require: Provided, however, that Native Locations which are in existence at the time of the

<sup>1</sup> As to sale of Intoxicating Liquors in Native Locations see §§ 20-22, Act 28, 1883, *infra*.

passing of this Act shall be deemed and taken to have been established, and to continue with such leave and licence, unless the Governor, with the advice aforesaid, shall give notice in the *Government Gazette*, that any such Native Location shall cease and be removed from a date to be named in such notice: Provided, moreover, that until the issuing of such notice, all such now existing Native Locations shall be subject to the conditions and provisions hereinafter in the fifth section of this Act contained: Provided, further, that nothing in this section contained shall be construed as giving any power to remove any occupant of a Native Location from any land of which he is the registered proprietor.

No. 37—1884.

Existing locations presumed to be licensed.

5. It shall be lawful for the Governor, by and with the advice of the Executive Council, to point out or cause to be pointed out, within any Native Location, the place, or area, or limits upon or within which alone the huts or dwellings of such location shall be erected; and to limit the number of huts or dwellings which it shall be lawful to erect upon the place, or within the area or limits so pointed out; and the erecting of any hut or dwelling upon any other part of the location than that so pointed out, and the erecting or suffering to be erected any greater number of huts or dwellings than the number so limited, shall be deemed to be offences against this Act to be punished as hereinafter provided.

Governor may have limits of locations pointed out, and may limit number of huts, &amp;c., therein.

6. Any person establishing a Native Location without the leave and licence hereinbefore mentioned, or continuing any such Native Location after the publication of the notice for its discontinuance and removal in the fourth section of this Act provided, and after notice thereof to such person, or after the revocation or suspension of the licence as aforesaid, any person contravening any of the provisions in the last preceding section of this Act shall be liable to a penalty of not exceeding £25 for the first offence, and to double the amount of the last inflicted fine or penalty for each subsequent offence.

Penalty for establishing location without licence.

7. By Native Location on Crown land is meant any number of huts or dwellings, occupied by any of the Native races, such as Kafirs, Fingoes, Basutos, Hottentots, Bushmen, and the like, on certain Crown lands reserved for the purpose of Native tribes within the Colony, commonly known as Native Locations.

Definition of Crown Lands Locations.

8. It shall be lawful for the Governor, from time to time, to appoint a fit and proper person, to be called an inspector, to supervise and manage every Native Location: Provided that no inspector shall be appointed over less than one hundred huts or dwellings, unless the huts or dwellings are situated on land belonging to a private person; and provided also that the same person may be appointed as inspector of more than one location.

Government Inspectors to be appointed.

9. Every such inspector shall be paid from and out of the general revenue of the Colony, such salary as may from time to time be fixed by the Governor.

Salaries of Inspectors.

- No. 37—1884.  
Hut-tax.  
Liability therefor  
of proprietor of land.
10. A fixed annual amount of ten shillings each shall be chargeable as hut-tax on all such huts on private property as in the second section of this Act defined, and the proprietor of the land on which such huts are situate shall be liable for the payment thereof.
- Hut-tax on Crown  
Lands.
11. A fixed annual amount of ten shillings as hut-tax shall be payable by the occupiers of each hut or by the persons using or claiming such hut, situate on Crown land as defined in the seventh section of this Act.
- Powers of Inspectors.
12. Every inspector appointed under this Act shall have the same powers and authorities, and it shall be lawful for him to perform all such duties within the location or locations over which he has been appointed as if he were a field-cornet or police constable.
- To keep a register.
13. It shall be the duty of every such inspector as aforesaid to keep a true and correct register of the number of huts or dwellings within every location over which he is inspector, together with the names and occupation of the occupants of such huts or dwellings, and the number, marks, and other description of the horses, horned cattle, sheep, and goats belonging to every such occupier, and such register shall be open to inspection at all reasonable times.
- Inhabitants to give  
information.—  
Penalty for refusing.
14. For the purpose of enabling every such inspector to keep such register as aforesaid, it shall be the duty of every inhabitant of such location to give to the inspector of such location such information as he may require for the purpose, and every such person who shall, upon being required so to do by any such inspector, neglect or refuse to give any such information, shall be liable to a fine not exceeding two pounds, and in default of payment thereof, to be imprisoned with or without hard labour, and with or without spare diet, for a period not exceeding one month.
- Notice to be given  
to Inspector of new  
huts, &c.
15. It shall also be the duty of every such inhabitant as aforesaid, without any request so to do, forthwith to give notice to the said inspector of any new hut or building erected by him in such location, of any horses, horned cattle, sheep or goats, which from time to time have come into the possession of such inhabitant, and of the way by which they came into his possession, and of the death of any person in the hut or dwelling of such inhabitant, and any such person who shall neglect to give any such notice as aforesaid shall be liable to the same penalties as in the last preceding section mentioned.
- Inspector may seize  
and impound unre-  
gistered cattle, &c.
16. All horses, horned cattle, sheep or goats, which may be found in any location, and which have not been so registered as aforesaid, or of whose arrival thereof no notice has been given to the inspector of such location, and of the right to or ownership of which no satisfactory account shall be given to such inspector, may be seized and taken possession of by him and impounded in the nearest accessible pound; and shall thereupon be dealt with and treated as other impounded animals in the said pound: Provided that no animals so impounded as aforesaid by any inspector



shall be delivered up by the poundmaster to any inhabitant of any such location without a written order for such delivery signed by the said inspector.

No. 37—1884.

17. It shall be lawful for any person who may feel himself aggrieved by any seizure so made by the said inspector or by his refusal to grant any such written order as aforesaid to complain to the Resident Magistrate of the district, who shall enquire into and summarily adjudicate upon the matter of such complaint, and make such order thereon as to him shall seem proper.

Aggrieved persons may complain to Resident Magistrate.

18. Any person who shall obstruct any inspector as aforesaid in the execution of this duty shall, on conviction, be liable to a fine not exceeding five pounds, and in default of payment thereof to imprisonment with or without hard labour, and with or without spare diet, for a period not exceeding three months, or to such imprisonment without the option of paying a fine.

Penalty for obstructing Inspector.

19. In case any inhabitant of any Native Location as aforesaid shall be charged with having stolen any horse, head of horned cattle, sheep, or goat, or with having received any such animal, knowing it to have been stolen, the fact of the animal in respect of which the charge is made having been found in the possession of such person without the same having been registered as aforesaid (a reasonable time to enable such person to have had such animal registered as aforesaid having elapsed from the time he became possessed of the same) shall be *prima facie* evidence of the guilt of such person, and the onus of proving that he is not guilty shall be thrown upon him.

Persons in possession of unregistered cattle, &c., presumed to have stolen them.

20. Any person having no right or authority to be in any Native Location as aforesaid may be directed to remove therefrom, by order in writing signed by the Resident Magistrate of the district in which such location is situated, such person having been first summoned before the Court of such Resident Magistrate to show cause why he should not remove from such location, and no sufficient cause to the contrary having been proved to the satisfaction of such Court, and any person who may be so ordered to remove as aforesaid, who shall disobey such order, shall be liable to be summarily removed from such location by the inspector of such location, or by any police constable.

Persons unlawfully in location may be removed.

Process provided.

21. All horses, horned cattle, sheep, and goats belonging to residents within any Native Location, shall be branded or otherwise marked in such manner as the inspector of such Native Location may require; and any resident within a Native Location who shall refuse to brand or mark, or to suffer to be branded or marked, any of his horses, horned cattle, sheep, or goats when thereto required by the said inspector, or who shall have in his possession or custody any horse, horned beast, sheep, or goat which shall not be branded or marked as aforesaid, shall be liable to imprisonment with or without hard labour for a period not exceeding one month, or to a fine not exceeding £2, and in default of payment to impri-

Branding of cattle, &c.

No. 37—1884.

sonment with or without hard labour for a period not exceeding one month, unless the said fine be sooner paid.

Unbranded cattle to be dealt with under section 16.

22. All horses, horned cattle, sheep, and goats, which may be found in any Native Location, and which have not been branded or marked as aforesaid, may be dealt with in the same manner as by law is now provided for dealing with horses, horned cattle, sheep, and goats which have not been registered, and for that purpose the provisions of the sixteenth section of this Act shall be taken to apply also to cases of horses, horned cattle, sheep, and goats which have not been branded or marked as aforesaid.

Recovery of hut-tax.

23. It shall be lawful for the Civil Commissioner of the division within which any such Native Location as aforesaid shall be situate, or for any other person thereto authorized by the Governor by publication of such authority in the *Government Gazette*, to demand and sue for the amount of hut-tax payable under the provisions of this Act.

Proceedings in case of default of payment of hut-tax.

24. In case default shall be made by the person liable to pay any such hut-tax in any year within three calendar months after the same shall become due and payable, as hereinafter by the twenty-sixth section provided, it shall be lawful for such Civil Commissioner or other person authorized to demand the same as aforesaid, in addition to the ordinary remedy by action for the recovery of such sum to attach and seize, to answer the same, and the costs of such levy and seizure and subsequent proceedings, a sufficient amount of the cattle, stock, and other movable property of the person liable to pay the same, and if payment shall not be made within fourteen days after such seizure, sufficient of such cattle, stock, and other movable property to answer the demand and the costs of levy and seizure and sale, shall be sold by public auction, unless before such sale shall have been actually made, the person claiming such cattle, stock, and movable property, shall commence in some competent Court an action for the recovery of such cattle, stock, and movable property, and shall also find and give sufficient security to prosecute such action without delay, and abide and perform the judgment thereof in the premises, which judgment, if adverse to the plaintiff, may be not only for the amount of hut-tax for which such seizure as aforesaid shall have been made, but also for the costs of such levy and seizure lawfully incurred up to the time of such security as aforesaid being duly given, as well as for the costs of the action itself.

Seizure of cattle.

Restoration thereof on security.

25. Upon such security as in the last clause mentioned being given and approved of by the Court in which the action for the recovery of the said cattle, stock, and movable property shall have been commenced, the said cattle, stock and movable property shall be re-delivered to the person claiming the same.

Sums payable under sections 10 and 11, to be due on 31st December.

26. The annual sum of ten shillings fixed under the tenth and eleventh sections of this Act, respectively, shall become due and payable in each year on the thirty-first day of December in respect

of the year ending on such day, and shall thereupon be paid by the person liable to pay the same, to the Civil Commissioner of the division in which the location or locations containing the huts are situated, or to such other person duly authorized to receive the same, without the necessity of any demand being made.

No. 37—1884.

27. In case no person can be found who shall claim or shall have occupied or used any hut chargeable under this Act at any time during the year ending with the thirty-first day of December in any year, the Civil Commissioner, or such other person so authorized as aforesaid, may cause such hut to be destroyed.

Abandoned huts to be destroyed.

28. Whenever any occupier of such hut or dwelling on private property as defined in this Act, shall be convicted of the theft of any cattle, sheep, goats, horses, or ostriches, the proprietor of the land on which such hut or dwelling is situated, shall be liable for so much of the value of the property stolen as the rightful owner thereof shall fail to recover, after due process of law taken for such recovery, from the person guilty of such theft.

Liability of landed proprietor for value of stolen cattle.

29. It shall be lawful for the Governor, with the advice of the Executive Council, by notice to be published in the *Government Gazette*, from time to time, to make, alter, and amend all such regulations not inconsistent with the provisions of this Act as may appear to be necessary and expedient for the better carrying the same into effect, and to provide that persons contravening any such regulations may, on conviction, be sentenced to imprisonment with or without hard labour, and with or without spare diet, for any term provided by such regulations, not exceeding one month, or to pay a fine not exceeding five pounds, and in default of payment thereof to such imprisonment, hard labour, and spare diet as aforesaid, and all fines so levied shall be paid into the Public Treasury, and all such regulations and any alterations and amendments of the same when so published as aforesaid shall have the force of law for all purposes mentioned therein and allowed thereby.

Power to Governor to make, alter, and amend regulations under this Act.

30. This Act shall not apply to any Native Locations situate within the limits of any municipality: Provided, however, that it shall be lawful for any municipality by any municipal regulations made as by law required to apply the provisions of this Act, or any of them, to any such Native Location, so far as they can be so applied.

Regulations may provide penalties for infraction of the same.

Act not to apply to municipal native locations.

31. All proceedings for any contravention of this Act or of any regulations made thereunder shall be had and taken in the Court of the Resident Magistrate of the district in which the offender resides, and may be instituted and carried on by the inspector of the location in which the offence has been committed.

Magistrates to have jurisdiction.

32. This Act may be cited for all purposes as the "Native Locations Act, 1884."

Short title.

No. 28—1883.]

## NATIVE LOCATIONS AND AREAS.

\* \* \* \* \*

No licence in Native Locations without permission of Governor.

20. No licence shall be issued for the sale of liquor within the limits of any Native Location established or to be established under the provisions of the "Native Locations Act, 1876," or the "Native Locations Amendment Act, 1878,"<sup>(1)</sup> or any Act hereafter to be passed for regulating Native Locations except with the permission of the Governor.

Governor may define area within which no licence shall issue.

21. In districts where aboriginal Natives of South Africa are located or resident, or are congregated upon public or other works or mines, the Governor may define areas within the limits of which it shall not be competent for any Licensing Court to authorize the grant of a licence for the sale of liquor except with the permission of the Governor. Any licence issued in contravention of this and the last preceding section shall be void.

Liquor not to be supplied to Native Locations, &c.

22. Save and except as to any liquor administered medicinally no person shall sell, supply, or give to any aboriginal Native any liquor within the limits of any Native Location or area proclaimed as aforesaid. Any person who shall sell, supply, or give liquor in contravention of this section shall be liable upon conviction to the same penalties and forfeiture of licence, respectively, as are provided for selling liquor without a licence.

\* \* \* \* \*

No. 17—1883.]

[September 27, 1883.]

## ACT

To enable the Municipal Council of Port Elizabeth to remove the Native Strangers' Location from its present site, and to sell the Ground forming the said site.

Preamble.

WHEREAS on the 27th June, 1855, a grant was issued to the Board of Commissioners of the Municipality of Port Elizabeth for the time being, created under and by virtue of the provisions of the Ordinance No. 9, 1836, entitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the local regulations of each shall be founded," of a certain piece of land situate within the limits of the said municipality, containing five morgen and three hundred and five square roods and eighty square feet, bounded, at the date of the said grant, on the south-east by an open space between the said land and the Hottentots' Location, and on all sides by the Town Grazing

<sup>1</sup> Both these Acts are repealed by Act 37, 1884, *supra*. For full text of this Act see under "Liquor."

Grounds, as per diagram attached to the said grant, with full power and authority thenceforth to possess the same in perpetuity, and with permission to dispose of or alienate the same, or any part or parts thereof, on lease for any time not exceeding twenty-one years, in such manner and in all respects as to the trustees for the time being should seem best fitted to promote the object of the said grant, on condition that the said land be held in trust as a site for a Strangers' Location, where Hottentots, Fingoes, Kafirs, and other strangers visiting Port Elizabeth may temporarily reside, and for no other purpose; and that the rents, issues, and profits of the same be paid into the municipal chest at Port Elizabeth, and be applied for the municipal purposes of the said town, and that no part of the said land be leased for a term exceeding twenty-one years, subject, however, to all such duties and regulations as were then or should in future be established with regard to such lands.

And whereas by Act No. 31 of 1860, entitled "An Act for constituting the Town of Port Elizabeth a Municipality," the said Ordinance No. 9, 1836, so far as the same related to the municipality of Port Elizabeth, was repealed; and by the fortieth section of the said Act it was enacted that all land or immovable property theretofore vested in the commissioners of the municipality should, after the passing of the said Act, be transferred to and vested in the council of the municipality of Port Elizabeth.

And whereas by Act No. 14 of 1868 the aforesaid Act No. 31 of 1860 was repealed; and by the fortieth section of the said first mentioned Act it is enacted that all property which should, at the time of the taking effect thereof, be vested in the Town Council of Port Elizabeth, elected under the said Act No. 31 of 1860, should, upon and from and after the 1st January, 1869, be vested in the council elected under the aforesaid Act No. 14 of 1868, upon the like trusts and purposes for which the same was originally granted or transferred.

And whereas the Town Council of Port Elizabeth, elected under the said Act No. 14 of 1868, who are now by virtue of the provisions of the fortieth section of the said Act the lawful trustees of the said piece of land, are desirous of having the condition upon which the same is now held by them removed, and authority given to them to sell the said land, and to remove the present site for a Strangers' Location to another and more convenient site in the vicinity thereof, which has already been granted for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Town Council of Port Elizabeth are hereby authorized to remove the Natives at present residing on the piece of land or location in the preamble to this Act described to the site granted for a new Native Strangers' Location by the Governor of this Colony,

Removal of natives from existing Strangers' Location to new location authorized.

No. 17—1883.

by virtue of a title deed with a diagram annexed bearing date the twelfth day of March, one thousand eight hundred and eighty-three; and any Native occupying a hut or other dwelling on the said location who shall refuse to remove after a written notice of ninety days, signed by the Town Clerk, for the time being, of the Town Council of Port Elizabeth calling upon him to do so, has been duly served upon him, shall and may be ejected by process of law, to be sued out in the Court of the Resident Magistrate for the district of Port Elizabeth, at the suit of the said Town Clerk, provided that such removal shall be to suitable ground on the new site, of an equal area to that occupied at the time of such removal.

In case of refusal may be ejected by process of law.

Natives on new site to be subject to municipal regulations.

2. All Natives who shall erect or reside in any hut or other building upon the said new site, or who shall occupy the same, shall be subject to all such municipal regulations as are now in force, or which shall hereafter become and be of force or effect with reference to such site, and shall be liable to pay to the Town Council such ground rent as may be fixed by the municipal regulations, except as hereinafter provided.

Privileges claimable by residents on existing locations.

3. Every head of a family who shall have resided upon the now existing location for a period of not less than three years, shall be entitled to have granted to him a separate and individual title to land within the new site as a building plot of forty feet by sixty feet at an annual quitrent instead and in lieu of the ground rent mentioned in the last section, not exceeding thirty shillings; the holder of any such title shall be entitled to sell and transfer the land held under it to any other person being a Native but to none others: Provided, however, that no such sale or transfer shall be made without the consent of the said council of the municipality thereto being first had and obtained in writing: Provided further that the plot or portion of ground in the present location occupied by the Native so removing shall after his removal become the property of the Town Council, and cease to be liable to any claim or condition under the grant.

Compensation to owners of huts, houses, or other buildings.

4. The Town Council shall make compensation to the owners of any huts, dwelling-houses, or other buildings on the present site or location which shall be pulled down or removed by the said council, for the value of the same, to be ascertained by a competent appraiser, to be approved of by the Civil Commissioner of the division, and in case the owners of such huts, dwelling-houses, or other buildings shall refuse to accept payment of the value so ascertained, the amount of compensation to be paid to such owners shall be settled by arbitration. For the purpose of every such arbitration the provisions of the "Lands and Arbitration Clauses Act, 1882," shall apply: Provided, however, that no compensation shall be awarded to strangers who shall have come upon, or in respect to any huts or buildings which shall have been erected upon the present site or location after the passing of this Act.

Arbitration.

5. Should it happen, by reason of the enforced removal of any of the Natives described in the first section of this Act, that in the opinion of the trustees or other proprietary body owning any church or school building to which such Natives may have been attached, any loss or damage may accrue, such trustees or other proprietary body may, if they think fit, claim compensation therefor from the Town Council, and unless the amount of such compensation be mutually agreed upon, it shall be ascertained by arbitration, as provided in the fourth section of this Act.

No. 17—1883.  
Compensation for churches and school buildings.

6. In case the Town Council shall exercise the authority hereby in the first section of this Act bestowed on them, the condition upon which the said piece of land is now held in trust by the said council, namely, as a site for a Strangers' Location, where Hottentots, Fingoes, Kafirs, and other strangers visiting Port Elizabeth may temporarily reside, shall be cancelled and revoked, and the said council shall thenceforth hold the said piece of land free and discharged from the said condition, and may sell and alienate the same, or any part thereof, as if the condition contained in the grant of the said piece of land had never existed.

Town Council empowered to sell and alienate existing location.

7. The proceeds arising from the sale of any portion of the said piece of land, after payment of the amount of compensation aforesaid, shall be applied to the erection, by the Town Council, on the new site, of buildings or dwellings suitable for the occupation of Native strangers.

Proceeds of sale to be applied, after compensation, to erection of new buildings.

8. This Act may be cited for all purposes as the "Port Elizabeth Native Strangers' Location Act, 1883."

Short title.

No. 8—1883.]

[Sept. 12, 1883.

ACT

To provide for the Management of Locations in the Division of Stockenstrom.

WHEREAS, it is desirable to make better provision for the management of locations in the division of Stockenstrom, not being municipalities: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. In any location in the division of Stockenstrom in which the "Villages Management Act, 1881," shall now be in operation, it shall be lawful for the Governor to declare this Act to be in operation; and in every such location, and in every location in which the "Villages Management Act" shall hereafter be put in operation, the said "Villages Management Act" shall be read and construed as amended by this Act.

Where Act may be proclaimed.

2. In any location in the division of Stockenstrom, in which the provisions of this Act and the said "Villages Management Act"

Who eligible to vote for members of the Board.

No. 8--1883.

shall together be in operation, every person who is the owner or lessee, under a lease in writing for the space of not less than one year, of an erf or erven within the said location, and whose name shall appear in the list of voters hereinafter provided for, shall be entitled and qualified to vote for the election of members of the Boards of Management.

Field-cornets to  
prepare lists of vo-  
ters.

3. The Field-cornet of the ward in which such location is situated shall, as soon as possible after the taking effect of this Act, and in the month of May in every year thereafter, prepare or cause to be prepared, a true list, in alphabetical order, of such owners and lessees as in the last section is mentioned, and shall forthwith transmit the said list to the Resident Magistrate of the district: Provided that it shall not be necessary to frame any such list for any location in which the said "Villages Management Act" has already been put in force before the month of May, 1884.

Lists to be posted.

4. The said Resident Magistrate shall cause the said list to be affixed to the door of his Court-room, with a notice appended thereto to the effect that at a time and place therein mentioned, which time shall not be less than fourteen days from the date of such notice, a court will be held by him for the purpose of hearing and adjudicating upon objections to the said list and claims to have names added thereto.

Resident Magis-  
trate to determine  
claims.

5. The said Resident Magistrate shall at such court hear and determine all claims and objections as aforesaid, and may insert the names of persons omitted therefrom, and strike out the names of persons not entitled to appear therein, and the list when so settled and amended shall be the list of voters for the purposes of election of members of the said boards.

In absence of Ma-  
gistrate, any quali-  
fied voter may pre-  
side at meeting.

6. At any meeting of voters held for the purposes mentioned in the fifth section of the "Villages Management Act, 1881," any person qualified to vote at such meeting may be elected to preside in the event of no Resident Magistrate or Justice of the Peace being present thereat, and the person so presiding shall have and may exercise all the powers which any Resident Magistrate or Justice of the Peace would have and exercise if present.

Number of votes  
equal to number of  
erven possessed.

7. Every person entitled to vote as aforesaid who shall be the proprietor or lessee of more than one erf in any such location shall be entitled to a number of votes in the election of members of the Board of Management for that location, equal to the number of the erven possessed or leased by him.

Owners of part only  
of an erf.

8. No person who shall be the lessee of a portion of an erf only shall be entitled to be registered as a voter under this Act: but the owner of the erf of which a portion shall be leased shall not, by reason of such lease, be disqualified from being registered.

Lessees.

9. In case the whole of an erf shall be leased under such a lease as in this Act is mentioned, the lessee, and not the owner, shall be entitled to have his name inserted in the said list, and to vote;



but in all other cases the owner, and not the lessee, shall be so entitled.

No. 17—1864.

10. If two or more persons shall be joint proprietors or lessees of any erf, such one of them as may be chosen or deputed for that purpose by the other or others shall appear and vote in respect of such erf; and in case such persons cannot agree, the person to vote shall be determined by lot.

Joint owners.

11. This Act may be cited as the "Stockenstrom Locations Management Act, 1883."

Short title.

No. 17—1864.]

[July 26, 1864.

AN ACT

For amending the Law regarding Certificates of Citizenship.

WHEREAS it is expedient to repeal the Act No. 24, 1857, entitled "An Act for preventing Colonial Fingoes and certain other subjects of Her Majesty from being mistaken for Kafirs, and thereby aggrieved," and to make other provisions in its room and stead: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act aforesaid, No. 24, 1857, is hereby repealed.

2. From and after the taking effect of this Act certificates of citizenship as hereinafter mentioned shall be issued to Fingoes entitled to the same by such Resident Magistrates and by such superintendents of Fingoes as shall be specially appointed for that purpose by the Governor, but by no other officers or persons.

Act No. 24 of 1857 repealed.  
Special officers to be appointed to issue certificates.

3. Every certificate of citizenship shall be written or printed upon parchment or paper, both in the English and in the Dutch language, and shall be signed by the Resident Magistrate or superintendent issuing the same, and shall be in the following form:

Form of certificate.

CERTIFICATE.

Know all men who shall see this that the bearer (name him) a Fingo residing at (name the place and division), and whose description is hereunder given, is an inhabitant of this Colony, and a subject of Her Majesty the Queen, and is not to be obstructed or impeded by any person upon the ground or supposition that he is a Kafir without a pass.

Description of (name him)

Age  
Height  
Marks

Dated at — this — day of —, 18—

(Signed) A.B., Resident Magistrate of — (or Superintendent of Fingoes at —, as the case may be).

No. 17—1864  
Certificate how to  
be registered.

4. Every Resident Magistrate and every superintendent of Fingoes issuing any such certificate to any Fingo shall enregister such certificate in such a manner as to show the date of certificate and the name, age, height, and marks of the Fingo.

Case for holding  
certificate to be sup-  
plied.

5. Every Fingo who shall be supplied with such a certificate as aforesaid shall also be supplied with a case or other receptacle or covering for the purpose of carrying his certificate about his person safely and conveniently.

6. [§§ 6-10 relate to the annual revision and renewal of certificates, and are therefore repealed by § 10 Act 22, 1867.]

Certificate to be re-  
turned for cancella-  
tion on death of hol-  
der.

11. As often as any Fingo shall die who at the time of his death was the holder of any such certificate as aforesaid, such certificate shall be forthwith delivered up to the superintendent of the location (should such Fingo have died in a location), or to the Resident Magistrate of the district (should such Fingo have died elsewhere than in a location), and the superintendent or Resident Magistrate receiving any such certificate shall cancel the same and enregister such cancellation.

Penalty for retain-  
ing certificate after  
death of holder.

12. Any person who shall take possession of the certificate which belonged to any deceased Fingo at the time of his death for any other purpose than to deliver up the same to the superintendent of Fingoes or Resident Magistrate aforesaid, or who shall retain the same in his possession for any space of time longer than was reasonably necessary for the delivery up thereof to such Resident Magistrate or superintendent, shall be guilty of the offence of contravening the twelfth section of this Act, and shall upon conviction be, if a male, imprisoned with hard labour for the term of six months, and if a female, be imprisoned, with or without hard labour, for any term not exceeding three months, or such offender shall be liable to a fine not exceeding five pounds and not less than five shillings, instead of such imprisonment.

Penalty for using  
certificate after death  
of holder.

13. Any male person who shall use or attempt to use any such certificate as is in the twelfth section of this Act mentioned as a certificate issued to such person himself shall be guilty of the offence of contravening this section of this Act, and shall upon conviction be imprisoned with hard labour for the term of two years.

Examination of  
certificates at uncer-  
tain times may be  
authorized by magis-  
trate.

14. It shall be lawful for the chief or any other constable who shall, by the Resident Magistrate of the district, be authorized in writing so to do, to visit from time to time, and at uncertain times, any Fingo Locations in such district, and to demand from all Fingoes resident in such location, who shall have received certificates of citizenship, the production of such certificates, and if any such Fingo shall not upon demand made to him in person produce his certificate, the constable who demanded the same shall report such failure to the superintendent of such location, if such there be, and such superintendent shall inquire into the circumstances of the case, and shall report thereon to the Resident Magistrate of the district, for his information. And as often as there shall not be

any superintendent of the location to which such Fingo shall belong, the constable aforesaid shall report such failure as aforesaid direct to the Resident Magistrate by whom such constable was authorized to demand the production of such certificates.

No. 17—1864.

15. The Resident Magistrate aforesaid, upon receiving any such report as aforesaid from the superintendent of the location or the constable aforesaid, shall summon the Fingo who failed to produce the certificate issued to him to appear before such Magistrate, at some convenient time to be fixed by such Magistrate, and unless such Fingo shall prove or make it probable that his failure to produce the said certificate was not caused by any wilful act or gross neglect upon his part, he shall be declared incapable of ever again obtaining a certificate of citizenship, and shall never again obtain such a certificate unless by the express authority of the Governor of the Colony.

Fingo wilfully refusing or neglecting to produce to be incapable of again obtaining certificate unless by Governor's authority.

16. As often as any Fingo shall allege to the Resident Magistrate of the district in which such Fingo resides that the certificate of citizenship issued to such Fingo has been stolen from him, or has, without any wilful act or gross neglect on his part, become lost, such Magistrate shall take all such evidence upon the subject as shall be obtainable by him, and transmit the same for the consideration of the Governor, and if the Governor shall, under the circumstances, approve of the issue to such Fingo of a fresh certificate, the same shall be issued to him, but it shall be lawful for the Governor to refuse or delay the issue of any such fresh certificate as the circumstances of the case may seem to him to require.

Where certificate has been stolen or lost, Governor may authorize issue of a fresh one.

But he may refuse

17. As often as any Fingo shall, under section sixteen <sup>(1)</sup> of this Act, be declared incapable of ever again obtaining a certificate of citizenship, and as often as any Fingo shall, as in the seventeenth <sup>(1)</sup> section mentioned, allege that his certificate has been stolen from him or lost, then the Resident Magistrate in the said sections mentioned, in case he be not the Resident Magistrate by whom the missing certificate was last countersigned, shall certify to the Resident Magistrate or superintendent who last countersigned such certificate that such certificate no longer exists: Provided that, should the Governor at any time afterwards authorize or approve of the issue of a fresh certificate, the Resident Magistrate issuing the same shall certify thereof to the same officer to whom he before certified the non-existence of the previous certificate, which no longer exists: Provided, also, that the respective officers aforesaid by whom and to whom any such matter as aforesaid shall have been certified shall enregister such matter in the register of certificates.

Notice of incapability to hold or of loss of certificate to be given to officer who last countersigned.

Similar notice to be given in case Governor authorizes issue of fresh certificate.

Such particulars to be entered in register of certificates.

18. If any person shall wilfully and unlawfully deprive any Fingo of his certificate of citizenship, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any period not exceeding three months.

Penalty for wilfully depriving Fingo of certificate.

<sup>1</sup> So in original—should obviously be “fifteen” and “sixteen” respectively.

No. 17—1864.

Penalty for apprehending Fingo after production of certificate.

19. If any person shall, upon the allegation or pretext that any Fingo who shall produce for inspection his certificate of citizenship is nevertheless a Kafir without a pass, apprehend or obstruct such Fingo after he shall have produced such certificate aforesaid for inspection, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any period not exceeding three months, and shall, moreover, pay to such Fingo his reasonable damages, to be assessed and adjudged in a summary manner by the Court in which the criminal prosecution shall be brought; and unless such damages, as well as the fine, shall be forthwith paid, the person convicted shall be liable to be imprisoned as aforesaid until the same shall be paid, or until the term of imprisonment shall expire, whichever shall first happen: Provided that nothing herein contained shall be construed so as to prevent any such Fingo from being apprehended for or on account of any crime which he may be charged with having committed, and for which alleged crime or offence any other subject of Her Majesty might, by the same person and in the like case, have lawfully been apprehended.

Except on criminal charge.

Fingo not producing certificate may be lawfully apprehended.

20. If any Fingo who shall have neglected to supply himself with, so as to be able to produce, such a certificate of citizenship as aforesaid, shall be apprehended by any Justice of the Peace, Field-cornet, constable, or land-owner, acting in pursuance of the twelfth section of the Ordinance No. 49, (<sup>1</sup>) such last-mentioned person acting *bonâ fide* without malice, and having reasonable and probable cause for mistaking such Fingo for a Kafir without a pass, such Fingo shall be deemed and taken to have been lawfully apprehended, and shall not be entitled to have or maintain any action or suit, civil or criminal, against the person by whom he shall have been so apprehended: Provided that no certificate of citizenship of which the latest date mentioned therein or thereon, whether the date of its issue or the date of its being last countersigned, shall be more than thirteen months before the day on which the same shall be produced for inspection to such Justice of the Peace, Field-cornet, constable, or land-owner as aforesaid, shall be deemed and taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo and not a Kafir without a pass.

No certificate the date of issue or counter-signature of which shall be more than thirteen months before the day of inspection to be valid.

Fingo transferring certificate and person receiving it liable to penalty.

21. If any Fingo who shall have received a certificate of citizenship as aforesaid shall deliver such certificate, or cause or procure the same to be delivered, with intent that the same should be used as a certificate of citizenship by any other person, whether a Kafir or an inhabitant of the Colony, then such Fingo so delivering the said certificate or causing the same to be delivered, as also the person, if any, who shall have received the same with intent to make use of it as a certificate of citizenship, shall each be liable to

<sup>1</sup> Repealed by Act 22, 1867.

a fine not exceeding fifty pounds, or to imprisonment with or without labour for any term not exceeding twelve months.

No. 17—1864.

22. All certificates of citizenship granted to Fingoes at any time before the taking effect of this Act shall, within six months next after the taking effect of this Act, be delivered up to the Resident Magistrate of the district, or superintendent of the location, in which the holders thereof shall reside, in order that the same may be cancelled, and new certificates, under this Act, issued in their stead; and no such certificate shall at any time after the expiration of such period of six months be deemed or taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo and not a Kafir without a pass.

Existing certificates to be delivered up and cancelled within six months of Act coming into operation.

And whereas it is expedient to continue, in regard to the people called Tambookies, the restrictions which were imposed by the Act No. 24, 1857, hereinbefore repealed: Be it enacted as follows:

23. [§§ 23 and 24 repealed by Act 22, 1867.]

25. All certificates of citizenship which may at any time before the taking effect of this Act have been granted to Tambookies or other Kafirs shall, within six months next after the taking effect of this Act, be delivered up, for cancellation, to the Resident Magistrate of the district in which the holders thereof shall reside, and no such certificate shall at any time after the expiration of such period of six months be deemed or taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo, and not a Kafir without a pass.

Certificates issued to Tambookies to be delivered up and cancelled within six months after Act shall come into operation.

26. The fourteenth section of the Act No. 27, 1857, entitled "An Act for regulating the terms upon which Natives of Kafirland and other Native Foreigners may obtain employment in this Colony," is hereby repealed.

Section 14 of Act No. 27, 1857, repealed.

27. Any Kafir or other Native Foreigner, whether one who may have formerly received a certificate of citizenship or not, who shall prove to the satisfaction of the Resident Magistrate of the district in which he resides that he has for not less than ten consecutive years next before his application to such Magistrate been constantly in service in this Colony, and who shall not during such ten years have been convicted of the crime of theft, or of any other crime for or in regard to which he shall have been sentenced to any punishment exceeding one month's imprisonment, shall be entitled to receive a certificate of citizenship under this Act; and all and singular the provisions of this Act relating to such certificates when issued to Fingoes shall extend and apply to such certificates when issued to Kafirs or other Native Foreigners: Provided that any such Kafir or other Native Foreigner shall be deemed to have been constantly in service as often as not more than one month shall during ten years have intervened between any one contract of service and one next succeeding: Provided, also, that the term "Kafir or other Native Foreigner" shall, for the purpose of this section, include Tambookies and other Kafirs, as also Basutos,

Kafir or native foreigner entitled to certificate after ten years' service in the colony.

Interval between leaving one service and entering another not to exceed one month.

Definition of terms Kafir and native foreigner.

No. 17—1864.

Stipulation of ten years' service not to extend to Kafir or native foreigner in possession of and entitled, under Act No. 24, 1857, to hold certificate.

Baralongs, Mantatees, and all other Natives commonly regarded and spoken of as belonging to the Kafir family: Provided lastly, that nothing in this section contained regarding a service of not less than ten years shall extend or apply to the case of any Kafir or Native Foreigner who shall, at the time of the taking effect of this Act be already in possession of a certificate of citizenship, in case such person shall be a person who was, according to the true intent and meaning of the Act No. 24, 1857, entitled to receive such certificate of citizenship under that Act.

Penalty for false statement.

28. If any Fingo, Kafir, or other Native Foreigner, applying to any officer authorized and appointed to issue certificates of citizenship shall make to such officer any statement wilfully and knowingly false touching the right or claim of such Fingo, Kafir, or other Native Foreigner to obtain such certificate, such Fingo, Kafir, or other Native Foreigner shall upon conviction be liable to be imprisoned and kept at hard labour for any period not exceeding six months.

Governor empowered to grant certificate in certain cases where applicant shall not be able to show ten years' service.

29. It shall be lawful for the Governor, upon the application of any Native Foreigner who may not be able to give the proof of service in the last preceding section mentioned, but who shall yet be able to show that he has by industry and good conduct during a residence in the Colony of not less than ten years, merited the privilege, to direct that such Native Foreigner may receive a certificate of citizenship under the provisions of this Act.

Certificate to be forfeited on holder being convicted of crime.

30. Any person whomsoever who shall have obtained a certificate of citizenship shall, if convicted of any crime for or in regard to which he shall be sentenced to any punishment exceeding six months' imprisonment, shall *ipso facto* forfeit his certificate.

Penalty for issuing certificate to person not entitled to hold one.

31. If any superintendent or other officer authorized to issue certificates of citizenship shall wilfully and knowingly issue a certificate of citizenship to a person not entitled by law to receive or demand the same, or shall wilfully or knowingly issue a pass to any Tambookie, which pass shall not be in pursuance of the provisions required by section twenty-four, every such superintendent or other officer shall, on conviction, forfeit a sum not exceeding fifty pounds sterling.

Act to apply to both males and females.

32. Whenever the word Fingo, Tambookie, Kafir, or Native Foreigner occurs in this Act, it shall extend to and mean both male and female for the purposes of this Act.

Short title.

33. This Act may be cited for all purposes as "The Certificate of Citizenship Amendment Act, 1864."

No. 22—1867.]

[August 16, 1867.

ACT

To Amend the Law relating to the issue of Passes to, and Contracts of Service with Natives, and to the issue of Certificates of Citizenship, and to provide for the better protection of Property.

WHEREAS it is necessary further to amend the laws relating to the issue of passes and to contracts of service with Native Foreigners, and relating to issue of certificates of citizenship; and likewise to provide better protection for property: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance No. 49 of the year 1828, intituled "An Ordinance for the admission into the Colony, under certain Restrictions, of Persons belonging to the Tribes beyond the Frontier thereof, and for regulating the manner of their employment as Free Labourers in the service of the Colonists;" the Act No. 23 of the year 1857, intituled "An Act for more effectually preventing Kafirs from entering into the Colony without Passes;" the Act No. 27 of the same year, intituled "An Act for regulating the terms upon which Natives of Kafirland and other Native Foreigners may obtain employment in this Colony;" the Act No. 24 of 1859, intituled "An Act to amend the Laws for regulating the admission of Kafirs and other Native Foreigners into the Colony;" the Act No. 23 of 1860, intituled "An Act for preventing unauthorized Persons from granting to Kafirs or other Native Foreigners Passes or Papers pretending or supposed to be such, and for preventing Kafirs or other Native Foreigners from being harboured on the Premises of Persons who do not employ such Kafirs or other Native Foreigners;" and the twenty-third and twenty-fourth sections of the Act No. 17 of the year 1864, intituled "An Act for amending the Law regarding Certificates of Citizenship;" shall be, and the same are hereby repealed.

Certain laws repealed.

2. From and after the passing of this Act all contracts of service made between employers and Natives or Native Foreigners, in conformity with the provisions of the Act No. 15 of the year 1856, commonly known as the "Masters and Servants Act," shall be good and valid in law; but the existence of any such contract shall not be allowed to protect any Native Foreigner who may be a party thereto from being prosecuted and punished for entering or being within the Colony without a pass, as hereinafter provided.

Contracts under Masters and Servants Act to hold good.

But not to protect person infringing subsequent provisions of Act.

3. It shall not be lawful for any Native Foreigner to enter this Colony without a pass <sup>(1)</sup> signed by some officer or functionary

No native foreigner to enter Colony without pass.

<sup>1</sup> See also § 4, Ord. 2, 1837 (Criminal Procedure).

No. 22—1867.

Form of pass, and by whom to be signed.

Penalties for contravention.

How period mentioned in pass may be extended.

After expiration of sentence, pass may be granted to native foreigner desiring to complete or enter into contract of service.

In default of such contract, pass to return to his country to be issued.

Definition of term "native foreigner."

named in some notice in the *Government Gazette* as empowered to grant such passes; and every such pass shall be framed according to the schedule A hereunto annexed; and every Native Foreigner who shall enter into or shall be in the Colony without such pass, or who, having a pass shall violate the conditions of the same, shall, upon conviction thereof, be liable to imprisonment for any period not exceeding one month, with or without hard labour, and with or without spare diet, or to a fine not exceeding one pound sterling, and, in default of payment thereof, to such imprisonment, with or without hard labour, and with or without spare diet.

4. It shall be lawful for any Resident Magistrate or other person thereto duly authorized by the Governor, if such Magistrate or other person shall think fit so to do, to grant to any Native Foreigner who shall have already entered the Colony, or who shall hereafter enter the same, with a pass, permission to remain therein for such time in excess of that mentioned in the pass, as to such Magistrate or other person shall seem expedient; and such Magistrate or other person shall endorse such permission on the pass that shall have been granted to such Native Foreigner, and such endorsement shall thereupon be deemed and taken to be of the like force and effect as if the substance thereof had been inserted in such pass at the time of the issue thereof; and any Native Foreigner violating the conditions of such endorsement shall be liable, on conviction, to the punishment prescribed by the preceding section hereof.

5. If after payment of any fine imposed, or at the expiration of any sentence passed upon any Native Foreigner who may be convicted under the provisions of either of the two preceding sections, such Native Foreigner shall desire to return to the performance of the contract of service, if any, under which he shall have been employed at the time of his arrest, or if such Native Foreigner shall be desirous of entering into a contract of service, and shall be able to find an employer, then the Resident Magistrate of the district in which such Native Foreigner shall have been imprisoned shall grant to him a pass to remain in the Colony for the performance of such contract of service. But in default of any such contract of service, such Resident Magistrate shall grant such Native Foreigner a pass to enable him to return to his own country within such period as shall be named in such pass; and any Native Foreigner to whom any pass shall have been issued under the provisions of this section, who shall be found in the Colony in violation of the same, shall be liable, on conviction, to the punishment prescribed by the third section hereof.

6. For the purposes of this Act the term "Native Foreigner" shall be taken to mean any member of any tribe, other than a Fingo, of which the principal chief shall live beyond the borders of the Colony.



7. For the purposes of this Act, all Kafirs belonging to any Native Location within the divisions of King William's Town and East London, and the Tambookies of the Tambookie Location within the division of Queen's Town, shall, unless provided with certificates of citizenship, be taken to be Native Foreigners; and if any such Kafir or Tambookie not so provided as aforesaid with a certificate of citizenship shall be found in any other part of the Colony than such location, or shall proceed beyond the borders of the Colony without a pass from the proper officer, he shall be liable, on conviction, to be punished in manner provided by the third section hereof. Provided, always, that in those cases within the divisions of King William's Town and East London in which the officer in charge of any such location, and authorized to issue passes to the Kafirs thereunto belonging, shall not reside within the limits thereof, no such Kafir as aforesaid shall be liable to be apprehended on any road leading from such location to the residence of such officer, in consequence of his not being in possession of a pass as aforesaid: Provided, further, that (any law now in force to the contrary notwithstanding) any such Kafir or Tambookie shall be entitled to receive a certificate of citizenship who may be a proprietor of any land, or the owner of any house or building, of the value of not less than ten pounds sterling; and it shall be lawful for the Governor to direct that a certificate of citizenship shall be issued to any such Kafir or Tambookie as aforesaid, who may to the Governor appear to merit that privilege in consequence of his industry and good conduct, and who shall have resided in the Colony for a period of not less than seven consecutive years: Provided, moreover, that all the provisions of the twenty-seventh section of Act 17 of 1864, intituled "An Act for amending the Law regarding Certificates of Citizenship" as are not repugnant to this section of this Act shall apply and extend to the certificates of citizenship issued under this section: And provided, also, that, for the purposes of this section, residence in British Kaffraria previous to the incorporation of that Colony with the Cape of Good Hope shall be deemed to have been residence in this Colony.

8. It shall be lawful for any Justice of the Peace, officer of police, field-cornet, constable, or any owner or occupier of land to demand of any such Native Foreigner the production of his pass; and if any such Native Foreigner shall fail or refuse to produce the same and show that he is acting in conformity with the conditions thereof, then it shall be lawful for such Justice of the Peace, officer of police, field-cornet, constable, owner or occupier of land to apprehend such Native Foreigner, and to convey him, or cause him to be conveyed, before the Resident Magistrate of the district, to be dealt with according to law.

9. No Fingo or other person who shall be lawfully in possession of, and shall, when required to do so by any officer named in the

No. 22—1867.  
Act to apply to certain Kafir and Tambookie locations

Exception where officer in charge of location shall not reside within its limits.

Proprietor of land or building entitled to certificate of citizenship.

Governor may grant certificate to deserving Kafir or Tambookie.

Section 27 of Act 17 of 1864 to apply.

Residence in British Kaffraria to be taken as residence in Colony.

Who may demand production of pass.

On failure or refusal to produce pass, native foreigner may be apprehended.

Certificate issued under Act 17 of 1864 to hold good.

No. 22—1867.

preceding section hereof, produce a certificate issued under the provisions of the Act No. 17 of 1864, shall be liable to be apprehended by reason of his not possessing a pass to enter the Colony in conformity with the third section hereof.

Annual revision  
and renewal of certi-  
ficates not necessary.

10. So much of the hereinbefore-mentioned Act No. 17 of the year 1864 as relates to the annual revision and renewal of certificates shall be, and the same is hereby repealed, and every certificate of citizenship which shall have been or shall be hereafter issued in conformity with the provisions of the said Act shall be and continue of full force and effect, notwithstanding that the same shall not have been revised or renewed, so long as the same shall lawfully remain in the possession of the person to whom it shall have been issued.

11. [Repealed by § 1 Act 23, 1879].

Penalty on wrong-  
ful arrest.

12. Any one who shall, under colour of this Act, wrongfully and maliciously and without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding one pound sterling, and to pay to the arrested person such amount as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award.

#### SCHEDULE. A.

##### PASS GRANTED UNDER ACT NO. — OF 1867.

No. — Time allowed ——— days.

Permission is hereby granted to A B, of ——— tribe, to enter the Colony of the Cape of Good Hope for the purpose of ———.

This pass to protect A B in proceeding to and returning from (name the district or place), provided he does so within ——— days, and to and from such other place and for such further time as the Resident Magistrate of such district shall, by endorsement hereon, authorize; provided the said A B shall comply with all the conditions stipulated for and expressed in such endorsement; provided, also that no stock shall be removed by him without a written authorization to that effect, and that this pass shall be endorsed by the Magistrate, Field-cornet, or other officer to whom the bearer is directed.

##### DESCRIPTION OF A B.

Name,  
Father's name,  
Head of village,  
Sex,  
Age (about),  
Height,  
Marks (if any),  
Particulars of family and stock (if any),

This certificate was issued by me ——— at ——— on the ——— day of 186—.

No. 24—1886.]

[July 9, 1886.

## ACT

To Provide for a Penal Code for the Transkeian Territories.

WHEREAS it is desirable to provide a Penal Code for the Transkeian Territories as the same are hereinafter in this Act defined: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

## TITLE I.

## CHAPTER I.

## PRELIMINARY.

*Short Title and Operation of Code.*

1. This Act shall be called "The Native Territories Penal Code," and shall take effect on and from the first day of January, 1887, throughout the whole of the territories known as The Transkei (including Gcalekaland), Griqualand East, Tembuland (including Emigrant Tembuland, and Bomvanaland), and the port and territory of St. John's River, which are hereby styled the "Transkeian Territories." The said port and territory of Saint John's River shall for the purposes of this Code form part of the Chief Magistracy of Tembuland.

Short title and operation of Code.

*Offenders liable under the Code.*

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be found guilty within the said territories on or after the said first day of January, 1887, and every person who shall be charged or chargeable on or after that day with any offence committed before such day shall be liable to be tried and punished by the Courts hereinafter established in the same manner as if this Act had not been passed.

Offenders liable under the Code.

*Criminals from Extra-Colonial Native Territories.*

3. Every person shall be subject to trial and punishment under this Code for every act or omission of which he shall be guilty on or after the said first day of January, 1887, within the territory of any Native chief, and which act or omission is punishable within the Colony of the Cape of Good Hope or its dependencies, by virtue of any treaty or engagement heretofore entered into, or which may hereafter be made, between such Native chief and the Governor of the Colony of the Cape of Good Hope.

Criminal Fugitives from Extra-Colonial Native Territories.

No. 24—1886. *Offence committed when and where Offender has Property in possession or control.*

Offence committed when and where offender has property in possession or control.

4. Every offence consisting in unlawful taking or obtaining or appropriating property, or in knowingly receiving property so taken, obtained, or appropriated, or in forging any document, or in using any forged document, is committed as long as, and at every place where, the offender has the property or document so unlawfully dealt with in his possession or under his control, whether the original offence was committed within the territories to which the Code applies, or without.

*Interpretation of terms.*

Interpretation of terms.

5. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:

- (a) The pronoun "he" and its derivatives are used of any person, whether male or female. Words importing the singular include the plural, and words importing the plural include the singular number. The word "man" denotes a male human being of any age. The word "woman" denotes a female human being of any age. The word "person" includes any person or association or body of persons, whether incorporated or not. The word "public" includes any class of the public or any community. The word "Government" denotes the person or persons authorized by law to administer executive government in any part of the said territory. The word "Court" denotes a judge who is empowered by law to act judicially alone, or a body of judges empowered by law to act judicially as a body when such judge or body of judges is acting judicially. The word "Judge" denotes every person who is empowered by law to give, in any legal proceeding, criminal or civil, a definitive judgment, or a judgment which if not appealed against would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or who is one of a body of persons empowered by the law to give such a judgment.
- (b) The word "public servant" denotes a person falling under any one of the following descriptions, namely:—
- (1). Every servant of the Queen.
  - (2). Every commissioned officer of the military or naval force of the Queen.
  - (3). Every judge.
  - (4). Every officer of a Court of Justice whose duty it is to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or take charge or dispose of any property, or to execute any judicial process, or to administer any

oath, or interpret or preserve order in the Court. (5). Every jurymen or assessor assisting a Court of Justice. (6). Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement. (7). Every officer of Government whose duty it is as such officer to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience. (8). Every officer in the service or pay of the Government, or remunerated by fees or commission for performance of any public duty.

- (c) The words "movable property" include corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.
- (d) In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done, extend also to illegal omissions. The word "act" denotes as well a series of acts as a single act. The word "omission" denotes as well a series of omissions as a single omission; and an offence may be committed partly by an act and partly by an illegal omission.
- (e) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone. Whenever an act which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act, with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.
- (f) Whenever an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence, by doing any one of those acts, either singly or jointly with any other person, commits that offence. When several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.
- (g) The word "offence" denotes anything made punishable by this Code. The word "illegal" is applicable to anything which is an offence, or which is prohibited by law, or which furnishes grounds for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit. The word "injury" denotes any harm whatever illegally caused to any person in mind, reputation, or property.

No. 24—1886.

- (h) The words "life" and "death" denote the life or death of a human being unless the contrary appears from the context. The word "animal" denotes any living creature other than a human being. The words "year and month" denote a calendar year and month. The word "section" denotes a portion of a chapter of this Code distinguished by prefixed numerals.
- (i) "Oath" and all expressions relating to "the taking of oaths" include all such affirmations and declarations as may by law be substituted for an oath, and the making of such affirmations and declarations.
- (j) Nothing is said to be done or believed "in good faith" which is done or believed without due care and attention.
- (k) The word "kraal" denotes any hut, houses, or enclosure occupied by any single family, or member of a family, or any aboriginal tribe, or any collection of huts, houses, or enclosures, occupied by several families of any aboriginal tribes, with a recognized head known as *umninimzi*.
- (l) The word "spoor" denotes any mark or impression on, or disturbance of, the surface of any ground, or any mark or impression on or disturbance of any grass, herbage, or wood on such ground, or any matter or substance left or found upon such ground, grass, herbage, or wood, indicating that any person or persons or any cattle have passed along in any particular direction.
- (m) The word "cattle" shall comprise horses, mules, asses, horned cattle, sheep, goats, or ostriches.

---

*CHAPTER II.*

PUNISHMENTS.

Punishments.

6. The following punishments may be inflicted under this Act:

Death.

Imprisonment with or without hard labour, and with or without spare diet.

Flogging and whipping.

Detention in a reformatory institution.

Fine.

Putting under recognizances.

*Punishment of Death.*

Punishment of death

7. The punishment of death shall be awarded for murder, and shall in all cases, where the circumstances will admit of it, be carried into effect within the gaols and in the manner prescribed by Act No. 3 of 1869: provided, however, that the omission to comply

with any provision of the said Act shall not make the execution of the judgment of death illegal, in any case where such execution would otherwise be or have been legal. The punishment of death shall be inflicted by hanging the offender by the neck until he is dead: Provided always that no sentence of death shall be carried into effect without the warrant of the Governor authorizing the same.

No. 24-1886.

*Commutation of Punishment of Death.*

8. In any case in which sentence of death shall have been passed, the Governor for the time being may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of punishment of death.

*Imprisonment.*

9. The punishment of imprisonment consists in the detention of the offender in prison, and in his subjection to the discipline appointed for prisoners, during the period expressed in the sentence. Imprisonment shall be with or without hard labour or with or without spare diet. If it is with hard labour, the sentence shall so direct. No prisoner shall be sentenced to or suffer solitary confinement for any part of the term of his imprisonment, except the same may be unavoidable or necessary for the purpose of carrying out any sentence of spare diet. No female shall be sentenced to hard labour on any road, street, or public place. No offender sentenced to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed; and in regard to the infliction of spare diet, the Courts in their sentences shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary, to prevent injurious consequences, and be by the Governor prescribed for the guidance of such Courts; and shall in their sentences fix the particular days or times during which the offender shall be subject to spare diet.

Imprisonment.

No person shall be put to hard labour during any period he may undergo spare diet.

When any person shall be sentenced to imprisonment, it shall be lawful for the Governor to order, from time to time, the removal of such person during the period prescribed for his imprisonment, from any gaol in which he is confined to any other gaol or place of imprisonment within the territories to which this Code applies or within the Colony of the Cape of Good Hope.

*Flogging and Whipping.*

10. Flogging shall consist of the infliction on a male person, who shall have attained the age of sixteen years, of a number of strokes, not exceeding at any one time fifty, with an instrument specified by the Court, and in default of such specification, with such instrument as the Governor shall direct.

Flogging and whipping.

No. 24—1886.

Whipping shall consist of the infliction on a male person, who shall not have attained the age of sixteen years, of a number of strokes or cuts, not exceeding at one time twenty-five, with a cane or rod, which last correction shall be administered by such person in such private place as the Court shall appoint, and in case the father or reputed father shall in person express a desire to correct such offender himself in the manner adjudged by the Court, it shall be lawful for the Court to permit him to do so in the presence of any suitable person selected by the Court to witness the infliction of such correction. Should the age of any such offender be unknown it shall be lawful for the Court before which he shall be tried to judge of the offender's age by his appearance, or according to such other materials for forming a judgment upon the subject as shall exist; and no error which shall be *bonâ fide* made by any Court in judging of the age of any such offender shall vitiate or affect the sentence by which such offender shall be sentenced to receive, and shall have received, any such correction as aforesaid.

In each case, whether of whipping or flogging, the Court shall in its sentence specify the number of strokes to be inflicted. No flogging or whipping shall take place after the expiration of six months from the passing of the sentence. The period of imprisonment is to be calculated from the date on which such sentence is passed: Provided, however, that the period during which the sentence may be suspended, pending appeal, is not to be reckoned in calculating the term of imprisonment if the appeal be rejected.

No female shall be liable to be flogged or whipped.

*Offenders under 16 years may be whipped in lieu of imprisonment.*

Offenders under 16 years may be whipped in lieu of imprisonment.

11. Any male, whose age shall not exceed sixteen years, convicted of any offence punishable with imprisonment in the first instance, may, in lieu of such imprisonment, receive a whipping; and wherever an offence in this Code is punishable with flogging, any male whose age shall not exceed sixteen years may be sentenced to a whipping in addition to any term of imprisonment, with or without hard labour, but shall not be flogged.

*Reformatories.*

Reformatories.

12. Upon the conviction of any person under the age of sixteen years, and whenever reformatory institutions for the reception and custody of youthful criminals are established within any of the territories to which this Code applies, the Court shall have all the powers conferred by the Reformatory Institutions Act of 1879.

*Fines.*

Fines.

13. Where no sum is expressed to which a fine may extend, the amount of fine to which an offender is liable is unlimited, but shall not be excessive.



14. Where the Court has power to fine without imprisonment, the Court may, if it thinks fit, direct that the person sentenced to fine be imprisoned, with or without hard labour, until the fine be paid: Provided that the Court may, at its discretion, suspend such imprisonment in such terms as it thinks fit, or may limit the period of such imprisonment: Provided also that in no such case shall anyone be imprisoned for non-payment of a fine for more than one year.

15. Where the Court has power to fine and imprison, the term for which the Court may direct the offender to be imprisoned in default of payment of a fine shall not in any case exceed the maximum term of imprisonment fixed for the offence; and where such fine is given in addition to any term of imprisonment which the Court may have the power to impose, the term of imprisonment in default of payment of the fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence; and in such case this last term of imprisonment shall take effect from and after the termination of the imprisonment which may have been awarded in addition to fine.

*Portion of Fines may be paid to Persons assisting in bringing Offenders to justice.*

16. The Courts empowered to pass sentence on any persons for any offence under this Code may order and direct that a portion of any fine imposed by the Court shall be paid to the person or persons on whose information the conviction of any offender may have been obtained, or who materially assisted in bringing such offender to justice.

Portion of fines may be paid to persons assisting in bringing offenders to justice.

*Fines to be levied in restitution of, or as compensation for, Property stolen or injured.*

17. Any Court empowered to pass sentence under the provisions of this Code on any person for any offence may, in passing such sentences, include therein, under the punishment of fine, a sufficient amount to cover reasonable compensation for loss, costs, damages, or injury caused by the offence for which the offender shall have been convicted; such fine, if not paid, to be levied on the movable property of the said offender, under and by virtue of a warrant under the hand of the Judge or Magistrate imposing such fine, together with the costs of levy; and out of such fine aforesaid, when paid or levied, it shall be competent for the Judge or Magistrate to direct payment to be made to the person injured for such reasonable compensation as aforesaid; and any balance shall be paid into the Public Treasury: Provided that any Magistrate may suspend the levying of any fine imposed as above until the record of the proceedings in the case shall have been reviewed by the Chief Magistrate of the territory who shall be empowered to reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice.

Fines to be levied in restitution of, or as compensation for property stolen or injured.

No. 24—1886.

*Fines recoverable in Money, Stock, Grain, or other Produce.*

Fines recoverable in money, stock, or grain.

18. All fines which may be imposed under this Code may be imposed, paid or recovered in money, or in cattle, or in grain, or other produce of the soil, at the discretion of the Judge or Magistrate who shall determine the number of cattle or quantity of grain or other produce of the soil to be paid in lieu of money.

*Discharge without Verdict.*

Discharge without verdict.

19. In any case in which the Court considers that the offence deserves no more than a nominal punishment, the Court may in its discretion direct the discharge of the accused, and such discharge shall have all the effects of an acquittal.

*Placing under Recognizances.*

Placing under recognizances.

20. Every one who under any provision of this Code is convicted of any offence, for which he is liable to be sentenced to imprisonment, may in addition to any term of imprisonment or instead of any punishment hereby authorized, be required to enter into his own recognizances or to find sureties or both for such amount and for such time as the Court by which he is tried considers reasonable, that he shall keep the peace and be of good behaviour. Every one required to find sureties as aforesaid shall be liable, if the Court thinks fit, to be imprisoned till he find such sureties: Provided the Court may in its discretion suspend such last mentioned imprisonment on such terms as it thinks fit, or may limit the period of such imprisonment: Provided also that no one shall be imprisoned for not finding sureties for more than one year, exclusive of any other period for which he may be imprisoned by the sentence of the Court.

*Sentences may be cumulative.*

Sentences may be cumulative.

21. When an offender is convicted of more offences than one before the same Court, at the same sitting, or when any offender undergoing punishment for one offence is convicted of another, the sentences passed upon him for his several offences shall take effect one after the other, or after the expiration of the punishment which he is undergoing at the time of his last conviction.

*Limit of punishment of offence made up of several offences.*

Limit of punishment of offence made up of several offences

22. When anything which is an offence is made up of parts, any of which part is itself an offence, defendant shall not be punishable with a punishment for more than one of such offences, unless it be so expressly provided.

*Punishment of Person guilty of several offences.*

Punishment of person guilty of several offences.

23. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided; if the same punishment is not provided for all.

## CHAPTER III.

No. 24—1886.

JUSTIFICATION AND EXCUSE FOR ACTS WHICH  
WOULD OTHERWISE BE OFFENCES.*Common Law Principles.*

24. All rules and principles of the law in force in the Cape Colony which render any circumstance a justification or excuse for any act or a defence to any charge, shall be in force and be applicable to any defence to a charge under this Code, except in so far as they are thereby altered or are inconsistent therewith. The matters hereby provided for are declared and enacted to be justifications and excuses for all charges to which they apply.

Common Law principles.

*Children exempted.*

25. No one whose age does not exceed seven years shall be convicted of any offence.

Children exempted.

No one whose age exceeds seven and does not exceed fourteen years, shall be convicted of any offence, unless it appear that at the time he committed the offence he had sufficient intelligence to know the nature and consequences of his conduct, or to appreciate that it was wrong.

*Insanity.*

26. If it be proved that a person who has committed an offence was, at the time he committed it, insane, so as not to be responsible for that offence, he shall not therefore be simply acquitted, but he shall be found not guilty on the ground of insanity, and in such case the Court before which such trial shall take place shall order such person to be kept in strict custody in such gaol, lunatic asylum, or other place of confinement either in the said territories or in the Cape Colony, and in such manner as to the Court shall seem fit, until the pleasure of the Governor shall be known, and the Governor may thereupon give such order for the safe custody of such person in such place, in such manner, and for such time as to the Governor shall seem fit.

Insanity.

To establish a defence on that ground it must be proved that the offender was at the time he committed the act labouring under natural imbecility or disease of or affecting the mind to such an extent as to render him incapable of appreciating the nature and quality of the act or that the act was wrong. A person labouring under specific delusions but in other respects sane, shall not be found guilty on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which if it existed, would justify or excuse this act: Provided that insanity before or after the time he committed the act, and insane delusions though only partial, may be evidence that the offender was at the time that he committed the act in such a condition of

uu

No. 24—1886

mind as to entitle him to be found not guilty on the ground of insanity.

Everyone committing an offence shall be presumed to be sane until the contrary is proved.

*Intoxication.*

Intoxication.

27. Nothing is an offence which is done by a person who, at the time of doing it, is by reason of intoxication incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

28. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will: Provided, however, that if the existence of a specific intention is essential to the commission of a crime the fact that an offender was drunk when he did the act which if coupled with that intention would constitute such crime shall be taken into account by the Judge or Magistrate in deciding whether he had that intention.

*Compulsion.*

Compulsion.

29. Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of an offence, shall be an excuse for the commission of any offence other than high treason, murder, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson: Provided that the person under compulsion believes that such threat will be executed: Provided also that he was not a party to any association or conspiracy, the being party to which rendered him subject to such compulsion. No presumption shall be made that a married woman committing an offence in the presence of her husband does so under compulsion.

*Ignorance of Law.*

Ignorance of Law.

30. The fact that an offender is ignorant of the law is not an excuse for any offence committed by him; but nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, believes himself to be justified by law in doing it.

*Act of Judicial Officer.*

Act of Judge.

31. Nothing is an offence which is done by a Judge, or any other judicial officer, when acting judicially in the exercise of any power which is or which in good faith he believes to be given him by law.

*Execution of Lawful Sentence.*

32. Every officer of any Court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such officer or gaoler, is justified in executing such sentence. Execution of lawful sentence.

*Execution of lawful Process and Warrants.*

33. Every officer of any Court duly authorized to execute any lawful process of such Court, whether of a civil or criminal nature, and every one duly authorized to execute a lawful warrant issued by any Court or Justice of the Peace, or other person having jurisdiction to issue such warrants, and every person lawfully assisting them respectively, is justified in executing such process or warrant respectively, and every gaoler who is required under such process or warrant respectively to receive and detain any person, is justified in receiving and detaining him. Execution of lawful process and warrants.

*Execution of erroneous Sentence or Process.*

34. If a sentence is passed or process issued by a Court having jurisdiction under any circumstances to issue such warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person authorized to execute such warrant, and every gaoler and person lawfully assisting, although the Court passing the sentence or issuing the process had not in the particular case authority to do so, or although the Court or the person in the particular case had no jurisdiction to issue or exceeded its or his jurisdiction in issuing the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district for which such person was entitled to act. Execution of erroneous sentence or process.

*Effect of Sentence or Process without jurisdiction.*

35. Every officer, gaoler, or person executing any process, sentence, or warrant, and every person lawfully assisting such officer, gaoler, or person, shall be protected from criminal responsibility, if he acts in good faith under the belief that the sentence or process was that of a Court having, or that the warrant was that of a Court, Justice of the Peace, or other person having authority to issue warrants, and if it be proved that the person passing the sentence, or issuing the process acted as such a Court, under colour of having some appointment or commission lawfully authorizing him to act as such Court, or that the person issuing the warrant acted as a Justice of the Peace or other person having such authority, although in fact such appointment did not exist or had expired, or although in fact the Court or the person passing the sentence or issuing the process was not the Court or the person authorized by the commission to act, or the person issuing the warrant was not duly authorized so to act. Effect of sentence or process without jurisdiction.

*Arresting the wrong Person.*

36. Every one duly authorized to execute a warrant to arrest, who thereupon arrests a person, believing in good faith and on Arresting the wrong person.

No. 24—1886.

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 is 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.

*Effect of irregular Warrant or Process.*

Effect of irregular warrant or process.

37. 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 or negligence believed that the warrant or process was good in law, shall be protected from criminal responsibility to the same extent, and subject to the same provisions, as if the warrant was good in law, and ignorance of the law shall in this 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.

*Arrest by Peace Officer in case of major offence.*

Arrest by peace officer in case of major offence.

38. Every peace officer who on reasonable and probable grounds believes that one of the offences as to which it is provided in this Code that the offender may be arrested without warrant has been committed, whether it has been committed or not, and who on reasonable and probable grounds believes that any person has committed that offence, is justified in arresting such person without warrant whether such person is guilty or not.

*Persons assisting Peace Officer arresting in case of major offence.*

Persons assisting peace officer arresting in case of major offence.

39. Every one called upon to assist a peace officer in the arrest of a person suspected of having committed any such offence as last aforesaid, is justified in arresting if he knows that the person calling on him to assist him is a peace officer and does not know that there is no reasonable ground for the suspicion.

*Arrest of person found committing major offence.*

Arrest of person found committing major offence.

40. Every one is justified in arresting without warrant any person whom he finds committing any offence as to which it is provided by this Code that the offender may be arrested when found committing.

*Arrest after commission of major offence.*

Arrest after commission of major offence.

41. If any offence as to which it is provided in this Code that the offender may be arrested without warrant has been committed,

any one who on reasonable and probable grounds believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not.

No. 24—1886.

*Arrest of Persons believed to be committing major offence.*

42. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes he finds committing any offence as to which it is provided by this Code that offenders may be arrested without warrant.

Arrest of persons believed to be committing major offence at night.

*Arrest by Peace Officer of Person found committing any offence.*

43. Every peace officer is justified in arresting without warrant any person whom he finds committing any offence against this Code.

Arrest by peace officer of person found committing any offence.

*Arrest of Person found committing any offence at night.*

44. Every one is justified in arresting without warrant any person whom he finds committing in the night time any offence against this Code.

Arrest of person found committing or about to commit any offence at night.

45. Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any kraal, enclosure, cattle yard, premises, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

Arrest of persons lying or loitering in any kraal, &c.

*Arrest during flight.*

46. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes to have committed an offence against this Code and to be escaping from and to be pursued by those whom on reasonable and probable grounds he believes to have lawful authority to arrest that person for such offence.

Arrest during flight.

*What force may be used in executing Process or in Arrest.*

47. Every one is justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making an arrest, and every one lawfully assisting him is justified and protected from criminal responsibility as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner.

What force may be used in executing process or in arrest.

*Duty of Persons arresting.*

48. It is the duty of every one executing any process or warrant to have it with him and to produce it if required.

Duty of persons arresting.

It is the duty of every one arresting another, whether with or without warrant, to give notice where practicable of the process or warrant under which he acts, or of the cause of the arrest.

No. 24—1886.

A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant or his assistants, or the person arresting of protection from criminal responsibility, but shall be relevant to the enquiry whether the process or warrant might not have been executed or the arrest effected by reasonable means in a less violent manner.

*Peace Officer preventing Escape from Arrest for major offence.*

Peace officer preventing escape from arrest for major offence.

49. Every peace officer proceeding lawfully to arrest with or without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, and every one lawfully assisting in such arrest is justified, if the person to be arrested takes flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight unless such escape can be prevented by reasonable means in a less violent manner.

*Private Person preventing Escape from Arrest from major offence.*

Private person preventing escape from arrest for major offence.

50. Every private person proceeding lawfully to arrest without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner.

*Preventing Escape from Arrest in other cases.*

Preventing escape from arrest in other cases.

51. Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner.

*Preventing Escape or Rescue after Arrest for major offences.*

Preventing escape or rescue after arrest for major offences.

52. Every one who has lawfully arrested any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested, as he believes on reasonable grounds to be necessary for that purpose.

*Preventing Escape or Rescue after Arrest in other cases.*

Preventing escape or rescue after arrest in other cases.

53. Every one who has lawfully arrested any person for any cause other than one of the offences as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes on reasonable grounds to be necessary for that purpose.



*Homicide of Persons flying and resisting to be justifiable.*

No. 24—1886.

54. If any officer of the law or private person authorized and required to arrest, or assist in arresting, any person who has committed, or who is on reasonable grounds suspected to have committed, any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goats, or any other crime of equal degree of guilt with any of the crimes aforesaid, or desertion or attempted desertion from a gaol or convict station, 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 or private person killing the person so flying or resisting, such homicide shall be deemed in law to be justifiable homicide.

Homicide of persons flying and resisting to be justifiable.

*Suppression of Breach of the Peace.*

55. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal of such breach of the peace, and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace.

Suppression of breach of the peace.

56. Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he on reasonable and probable grounds believes to be about to join in or renew such breach of the peace.

57. Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace, by one who has, or whom such peace officer upon reasonable and probable grounds believes to have, witnessed such breach of the peace.

*Suppression of Riot by Magistrates, &c.*

58. Every Justice of the Peace is justified in using and ordering to be used, and every peace officer is justified in using, such force as he in good faith and on reasonable and probable grounds believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

Suppression of riot by magistrates, &c.

*Suppression of Riot by Persons acting under lawful orders.*

59. Every one, whether subject to military or police law or not, acting in good faith in obedience to orders given by a Justice of the Peace for the suppression of a riot, is justified in obeying the

Suppression of riot by persons acting under lawful orders.

No. 24—1886.

orders so given, unless such orders are manifestly unlawful; and he is protected from criminal responsibility in using such force as he on reasonable and probable grounds believes to be necessary for carrying into effect such orders.

It shall be a question of law whether any particular order is manifestly unlawful or not.

*Protection of Persons subject to Military Law.*

Protection of persons subject to military law.

60. Every one who is bound by military or police law to obey the lawful command of his superior officer, is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

It shall be a question of law whether such order is manifestly unlawful or not.

*Prevention of major offences.*

Prevention of major offences.

61. Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of any offence for which if committed the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or in order to prevent any act being done which he upon reasonable grounds believes would, if committed, amount to any of such offences.

*Self-defence against unprovoked Assault.*

Self-defence against unprovoked assault.

62. Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

*Self-defence against provoked Assault.*

Self-defence against provoked assault.

63. Every one who has without provocation assaulted another, or has provoked an assault from that other, may nevertheless justify force, subsequent to such assault, if he uses such force under reasonable apprehension of death, or grievous bodily harm from the violence of the party first assaulted or provoked, and in the belief on reasonable grounds that it is necessary for his own preservation from death or grievous bodily harm: Provided that he did not commence the assault with intent to do grievous bodily harm, and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided, also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

Provocation within the meaning of this and the last preceding section may be given by blows, or words.

*Defence of Movable Property against Trespasser.*

Defence of movable property against trespasser.

64. Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified

in resisting the taking of such property or thing by any trespasser, or in retaking it from such trespasser, if in either case he does not do grievous bodily harm to such trespasser: and if, after any one having peaceable possession as aforesaid has laid hands upon any such property or thing, such trespasser persists in attempting to keep it, or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

*Defence of Movable Property by one having claim of right.*

65. Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he does not do grievous bodily harm to such person; and if the person so entitled by law to the possession thereof attempts to take it from or otherwise assaults the possessor, or any one acting under his authority, such assault shall be deemed to be without justification or provocation.

Defence of movable property by one having claim of right

*Defence of Movable Property by Person not having claim of right.*

66. Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing; and if the person so entitled attempts to retake any such thing, and the possessor resists and the person entitled thereto thereupon assaults the possessor, such assault shall be deemed to have been provoked, although the possessor may not have assaulted the person entitled by law to the possession.

Defence of movable property by person not having claim of right.

*Defence of House or Kraal.*

67. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him, or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal either by night or day, by any person with the intent to commit any indictable offence therein.

Defence of house or kraal.

*Defence of Dwelling-house or Kraal at night.*

68. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal by night by any person, if he believes on reasonable and probable grounds that such breaking and entering is attempted with the intent to commit any indictable offence therein.

Defence of dwelling-house or kraal at night.

No. 24—1886.

Defence of im-  
movable property.*Defence of Immovable Property.*

69. Every one who is in peaceable possession of any house, or other building, kraal, or land, or other immovable properties, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he does not do grievous bodily harm to such trespasser; and if such trespasser resists such attempt to prevent his entry or to remove him, such trespasser shall be deemed to commit an assault without justification or provocation.

*Assertion of right to House or Land.*Assertion of right  
to house or land.

70. Every one is justified in peaceably entering in the day time to take possession of any house, or other building, kraal, or land, to the possession of which he or some other person under whose authority he acts is lawfully entitled.

71. If any person, not having or acting under the authority of one having peaceable possession of any such house, building, kraal, or land, with a claim of right assaults any one peaceably entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

72. If any person having peaceable possession of such house, building, kraal, or land, with a claim of right or any person acting by his authority, assaults any one entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering.

*Surgical Operations.*Surgical opera-  
tions.

73. Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, with such person's consent, if in a fit state to give such consent, or, in the case of a minor, with the consent of the parents or guardians of such minor: Provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case

*Act done in good faith for the benefit of a Person without consent.*Act done in good  
faith for the benefit  
of a person without  
consent.

74. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

*Excess.*

Excess.

75. Every one authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

*Consent to Death.*

No. 24—1886.

76. No one has a right to consent to the infliction of death upon himself, or of any injury likely to cause death, unless it be an injury in the nature of a surgical operation upon himself; and if such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused.

Consent to death.

*CHAPTER IV.*

## OF PARTIES TO THE COMMISSION OF OFFENCES.

*Parties to Offences.*

77. Every one is a party to and guilty of an offence who

Parties to offences.

- (a) Actually commits the offence, or does or omits any act, the doing or omission of which forms part of the offence, or
- (b) Aids or abets any person in the actual commission of the offence, or in any such act or omission as aforesaid; or
- (c) Directly or indirectly counsels or procures any person to commit the offence, or to do or omit any such act as aforesaid.

78. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been, known to be a probable consequence of the prosecution of such common purpose.

*Offence committed other than the Offence intended.*

79. Every one who counsels or persuades another to be a party to an offence of which that other is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

Offence committed other than the offence intended.

80. Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

*Accessory after the fact defined.*

81. An accessory after the fact to an offence is one who receives, comforts, or assists any one who has been a party to such offence, in order to enable him to escape, knowing him to have been a party thereto: Provided that no married woman whose husband has been a party to an offence, shall become an accessory after the fact by receiving, comforting, or assisting her husband, or by receiving,

Accessory after the fact defined.

No. 24—1886.

comforting, or assisting, in his presence and by his authority, any other person who has been a party to such offence, in order to enable her husband or such other person to escape.

*Attempts to commit Offences.*

Attempts to commit offences.

82. An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to commit the offence or by some other cause.

83. Every one who, believing that a certain state of facts exists, does or attempts an act the doing or omitting of which would, if that state of facts existed, be an attempt to commit an offence, attempts to commit that offence, although its commission in the manner proposed was by reason of the non-existence of that state of facts at the time of the act or omission impossible.

84. The question whether an act done or omitted with intent to commit an offence, is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

TITLE II.

CHAPTER V.

OFFENCES AGAINST THE PUBLIC ORDER.

*High Treason, or waging or attempting to wage War against the Queen.*

High treason, or waging or attempting to wage war against the Queen.

85. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, may be punished with death, or with imprisonment for a term which may extend to his natural life, with or without hard labour, and with or without fine, and with or without flogging or whipping, or with any two or more of such punishments.

*Conspiracy against the Queen or Government of the Territories.*

Conspiracy against the Queen or Government of the Territories.

86. Whoever within or without the said Transkeian territories conspires to commit any of the offences punishable by the last section, or to deprive the Queen of her sovereignty in the said territories, or any of Her Majesty's dominions, or conspires to overawe by means of criminal force, the Queen in her government of the said territories or dominions, shall be punished with imprisonment with or without hard labour for a term which may extend to fifteen years, to which fine may be added, or with fine only, or with flogging or whipping, or with any two or more of such punishments.

*Collecting Arms with the intention of waging War.*

No. 24—1886.

87. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punishable as in the last section is provided.

Collecting arms with the intention of waging war.

*Concealing with intent to facilitate a design to wage War.*

88. Whoever by any act or by any illegal omission conceals the existence of a design to wage war against the Queen, knowing that it may be likely that he may by such concealment facilitate the waging of such war, shall be punishable as in the eighty-sixth section of this Code is provided.

Concealing with intent to facilitate a design to wage war.

*Waging War against Allies.*

89. Any British subject who wages war against the Government of any power in South Africa in alliance or at peace with the Queen, or attempts to wage such war or abets the waging of such war, shall be also punishable as in the said eighty-sixth section is provided.

Waging war against allies.

*Abetting Mutiny and Desertion or attempting to seduce a Soldier or Policeman from his duty.*

90. Whoever by instigation, conspiracy, or aid, abets the committing of mutiny, or desertion by any person in the military or police service of the Queen, or attempts to seduce any such person from his allegiance or duty, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, to which fine may be added, or with fine only.

Abetting mutiny and desertion or attempting to seduce a soldier or policeman from his duty.

## CHAPTER VI.

## OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

*Unlawful Assemblies.*

91. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons comprising that assembly is :

Unlawful assembly.

- (1) To overawe, by criminal force, or show of criminal force, any officer of the Government or any public servant in the exercise of the lawful power of such public servant, or
- (2) To resist the execution of any law, or any legal process.

*Being member of unlawful Assembly.*

92. Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being member of unlawful assembly.

No. 24—1886.

*Punishment.*

Punishment.

93. Every member of an unlawful assembly shall be liable to be imprisoned, with or without hard labour, for a term which may extend to one year, to which a fine may be added.

*Fighting in a public place an Affray.*

Fighting in a public place an affray.

94. When two or more persons by fighting at any gathering at any kraal or after such gathering away from any kraal or in a public place, disturb the public peace, they are said to commit an affray, and shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment, with or without hard labour for a term which may extend to three months.

*Dispersing an Assembly after an Affray has begun.*

Dispersing assembly after an affray has begun.

95. Whenever any five or more persons are assembled together, from whose conduct a breach of the peace may be reasonably apprehended, or when any affray has actually begun, any Justice of the Peace or other peace officer may command such persons to disperse, and on failure so to do they shall each be liable to a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to three months.

*Obstructing or assaulting Magistrates.*

Obstructing or assaulting magistrates

96. If after such command as is mentioned in the last preceding section, five or more persons fail to disperse, the Justice of the Peace or other peace officer may use force to compel them so to do, and whoever by force wilfully and knowingly opposes, obstructs, hinders or hurts any such Justice of the Peace or other peace officer or persons authorized by him to compel such dispersion, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

*Indemnity of Persons authorized to disperse Assembly.*

Indemnity of persons authorized to disperse assembly.

97. If any person, assembled as in the last two preceding sections mentioned, is killed or hurt in the apprehension of such persons, or in the endeavour to apprehend or disperse them by reason of their resistance, every person ordering them to be apprehended or dispersed and every person executing such orders shall be indemnified against all proceedings of every kind in respect thereof.

*Liability of Members of unlawful Assembly.*

Liability of members of unlawful assembly.

98. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing that offence is a member of that assembly is guilty of that offence.



*Punishment for drunken, riotous and indecent conduct.*

No. 24—1886.

99. Any person drunk in any street, road, lane, or public place, or in or near any shop, store, hotel or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station-house, shall be punished with a fine not exceeding two pounds, and in default of payment, with imprisonment, with or without hard labour, and with or without spare diet for any period not exceeding fourteen days; and in case of a second or subsequent conviction, shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment with or without hard labour and with or without spare diet for any period not exceeding thirty days, unless the fine in any case be sooner paid.

Punishment for drunken, riotous and indecent conduct.

*For threats, abusive language, &c.*

100. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, in any street, road, public place, or licensed public-house, shall be punished with a fine not exceeding three pounds, or with imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be sooner paid, and such person may further be required to find sureties to keep the peace for such period not exceeding three months, as the Court before which such person is tried may deem necessary.

For threats, abusive language, &c.

*For accepting from Seamen and others Ships' Stores, &c.*

101. Every person who shall, in any port knowingly purchase or take in exchange from any seaman or other person, not being the owner or master of any vessel, anything belonging to such vessel lying in such port, or any part of the cargo of any such vessel, or any stores or articles belonging to the same, shall be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months, but nothing herein contained shall prevent the trial of such person for any other crime of which but for the passing of this Code he would have been guilty.

For accepting from seamen and others ships' stores, &c.

*For Seamen and others removing Ships' Boats.*

102. If any seaman belonging to any vessel lying in any port, or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same without having obtained permission so to do from the master or some officer of the said vessel, such seaman or other person shall (although such taking or removal may not have been with intent to steal), be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months.

For seamen and others removing ship's boats.

No. 24--1886.

## TITLE III.

## CHAPTER VII.

## OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

*Judicial Corruption.*

Judicial Corruption. 103. Whoever, holding any judicial office, corruptly accepts, or obtains, or agrees to accept, or attempts to obtain for himself or any other person any money or valuable consideration, office, place, or employment whatever, on account of anything already done or omitted, or to be afterwards done or omitted by him in his judicial capacity, or corruptly gives to any person holding any judicial office, or to any other person, any money or valuable consideration, office, or place of employment, whatever, on account of such act or omission as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

*Corruption of Public Officers.*

Corruption of Public Officers. 104. Whoever, being a Justice of the Peace, or public officer appointed in any capacity for the prosecution or detection or punishment of offenders, or whoever, being an interpreter in any Court of Justice, corruptly accepts, or obtains, or agrees to accept, or attempts to obtain for himself or any other person, any money, valuable consideration, office, or place whatever, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any offence, or to protect from detection or punishment any person having committed, or intending to commit any such offence, or corruptly gives or offers to any such officer as aforesaid, with any such intent as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

*Threatening any Person in order to induce him to refrain from applying for legal protection.*

Threatening any person in order to induce him to refrain from applying for legal protection. 105. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any Magistrate or other public officer or servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with a fine not exceeding ten pounds, and in default of payment thereof, with imprisonment with or without hard labour for a term which may extend to three months.

*Perjury and Subornation of Perjury.*

Perjury and subornation of perjury. 106. Perjury is an assertion as to a matter of fact, opinion, belief or knowledge made by a witness in a judicial proceeding as

part of his evidence, either upon oath, or in any form allowed by law to be substituted for an oath, whether such evidence is given in open Court or by affidavit or otherwise, such assertion being known to such a witness to be false.

Every person is a witness within the meaning of this section who actually gives his evidence upon oath, or in such form as aforesaid, whether he was competent to be a witness or not. Subornation of perjury is counselling any person to commit any perjury which is actually committed.

107. Whoever is guilty of perjury, or subornation of perjury, shall be punished with imprisonment for a term which may extend to seven years, or fine, or flogging or whipping, or any two of such punishments; and if an innocent person be convicted and executed in consequence of any false evidence, the person who gives or counsels such evidence shall be punished with imprisonment, with or without hard labour, for a term which may extend to the term of his natural life, or with such term of imprisonment and flogging or whipping.

*False Statement on Oath.*

108. Whoever being required or authorized by law to make a statement, either on oath or in any form permitted to be substituted for an oath, thereupon makes a statement which would amount to perjury if made in a judicial proceeding, shall be deemed to be guilty of perjury, and punished accordingly.

False statement on oath.

*False Declaration.*

109. Whoever makes a statement as to any matter of fact, opinion, or belief, which would amount to perjury if made on oath upon any occasion on which he is permitted by law to make any statement or declaration in lieu of an oath before any officer authorized by law to permit it to be made before him, shall be punished in the same manner as if he had committed the crime of perjury.

False declaration.

*Fabricating Evidence.*

110. Whoever, with intent to mislead any Court of Justice or person holding any such judicial proceeding as aforesaid, fabricates or contrives evidence by any means other than perjury and subornation of perjury, shall be punished with imprisonment, with or without hard labour, for a term of not exceeding seven years, or with fine, or both.

Fabricating evidence.

*Conspiring to bring False Accusations.*

111. Whoever conspires with any person to prosecute any one for any offence, knowing such other person to be innocent thereof, shall be liable upon conviction to be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or with fine, or any two or more of such punishments: Provided, however, that where such

Conspiring to bring false accusations.

ww

No. 24—1886. innocent accused is convicted and executed, such conspirator may be punished with death, or imprisonment with or without hard labour, for a period which may extend to the term of his natural life.

*Conspiring to defeat Justice.*

Conspiring to defeat justice.

112. Whoever conspires with any person to obstruct, prevent, or defeat the course of justice, or who wilfully attempts in any way, not otherwise criminal, to obstruct, prevent, pervert or defeat the course of justice or the administration of the law, shall be punished as in the last section provided.

*Bribery or Corruption of Witnesses, Jurors, Assessors, or Interpreters.*

Bribery or corruption of witnesses, jurors, assessors, or interpreters.

113. Every one shall be liable to the punishment provided in section 104 of this Code who (a) dissuades or attempts to dissuade any person by threats, bribes, or other corrupt means, from giving evidence in any cause or matter, civil or criminal; or (b) influences or attempts to influence by threats or bribes or other corrupt means any jurymen, assessor, or interpreter in his conduct as such, whether such jurymen, assessor, or interpreter has been sworn or not; (c) or accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as jurymen, assessor, or interpreter.

CHAPTER VIII.

ESCAPES AND RESCUES.

Escapes and rescues

114. Whoever by force or violence breaks any gaol or prison with intent to set at liberty himself or any other person lawfully confined therein on any criminal charge, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years.

115. Whoever, being convicted of any offence, escapes from gaol or prison, or from any lawful custody in which he may be under such conviction, or attempts or conspires to make his escape from such custody, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or flogging or whipping.

116. Whoever, being in lawful custody on any criminal charge, escapes from such custody, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

117. Whoever rescues any prisoner, or assists any prisoner in escaping or attempting to escape from lawful custody, whether in gaol or prison or not, or being a gaoler or other officer having the lawful custody of such prisoner, voluntarily and intentionally permits him to escape, or aids him in escaping or attempting to

escape, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

118. Whoever, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom, shall be punished with imprisonment for a term which may extend to six months, or fine, or both.

119. It shall be lawful for the Governor to make such rules and regulations for the several gaols and prisons of the territories to which this Code applies, and for the discipline therein, as shall to him seem expedient, and thereby to impose any punishment for the breach of such regulation, under a penalty of imprisonment, with or without hard labour, or with or without spare diet, or flogging, or whipping: Provided that in no case shall any unconvicted person be sentenced to flogging or whipping.

No. 24—1886.

#### TITLE IV.

#### CHAPTER IX.

### OFFENCES AGAINST RELIGION, MORALITY, DECENCY, AND THE PUBLIC HEALTH.

#### *Disturbing a Religious Assembly.*

120. Whoever wilfully and without lawful justification or excuse, the proof whereof shall be on him, disquiets or disturbs any meeting, assembly, or congregation of persons lawfully assembled for religious worship, and whoever in any way disturbs, molests, or misuses any preacher, teacher, or person lawfully officiating at such meeting, assembly, or congregation, or any persons there assembled, shall be punished with a fine not exceeding ten pounds sterling, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to three months, unless such fine be sooner paid.

Disturbing a religious assembly.

#### *Unnatural Offences.*

121. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with flogging, or whipping, or fine, or with any two or more of the said punishments. This offence is complete upon penetration.

Unnatural offences.

122. Whoever attempts to have carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or flogging, or whipping, or fine, or to any two or more of such punishments.

ww 2

No. 24--1886.

*Incest.*

Incest.

123. Incest is the carnal connection of persons related by consanguinity within the third degree.

Incest shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or any two or more of these punishments combined.

*Indecent Acts.*

Indecent acts.

124. Whoever commits any nuisance in any street or public place, or in view of any dwelling-house whereby public decency may be offended, shall be punished with a fine not exceeding two pounds, and in default of payment thereof with imprisonment with or without hard labour for a term which may extend to one month, unless such fine be sooner paid.

*Insufficient Clothing in Towns and other Public Places.*

Insufficient clothing in towns and other public places.

125. Whoever indecently exposes his person or appears in any street or public thoroughfare without such articles of clothing as decency requires shall be punished with a fine not exceeding two pounds, and in default of payment with imprisonment for a term which may extend to one month, unless such fine be sooner paid.

*Burial, Disinterment, or Indignity to Human Remains.*

Burial, disinterment, or indignity to human remains.

126. Whoever neglects to perform any legal duty, either imposed upon him by law, or undertaken by him, with reference to the burial of any dead human body or human remains, or without lawful authority disinters a dead body, or improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not, shall be liable to a fine of twenty pounds, or in default of payment, to imprisonment with or without hard labour for a term which may extend to six months, unless such fine be sooner paid.

*Common Nuisances.*

Common nuisances.

127. Whoever is guilty of an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, or health of the public, or which occasions injury to the person of any individual, may be convicted and punished with a fine not exceeding twenty pounds, and in default of payment thereof with imprisonment, with or without hard labour, for a term which may extend to six months, unless such fine be sooner paid.

*General Police Provisions.*

General Police provisions.

128. Any person guilty of any of the following acts or offences shall, upon conviction in respect of each act or offence, be punished with a fine not exceeding five pounds, or in default of payment be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine be sooner paid :

- (1) Any driver of any vehicle injuring any person or property by negligence or driving on the wrong side of the road.
- (2) Any driver of any vehicle being away from his horse or cattle so as to be unable to have the full control of them.
- (3) Driving any vehicle or riding any animal, and when meeting any other vehicle or animal being ridden not keeping on the left or near side of the road or street, or when passing any other vehicle or animal going in the same direction, not going or passing or not allowing any person desirous so to do to pass when practicable on the right or off side of such other vehicle or animal being ridden.
- (4) Leaving upon any street, public road or thoroughfare, any stone, timber, bricks, or other thing, calculated to damage or endanger any animal or vehicle ridden or driven thereon.
- (5) Any driver or guard of a public vehicle for the conveyance of passengers wilfully delaying on the road, using any abusive or insulting language to any passenger, or by reason of intoxication, negligence, or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.
- (6) Leaving upon any public road or thoroughfare any vehicle, plough or harrow without any horse or animal harnessed thereto, unless in consequence of some accident having occurred.
- (7) Having any timber, iron, or boards laid across any vehicle going along any public road so that either end projects more than two feet beyond the wheels or sides of such vehicle.
- (8) Slaughtering or skinning any beast upon any public road or thoroughfare, or leaving any dead beast on any such road or thoroughfare.
- (9) Setting or urging or permitting any dog or other animal to attack or worry any person, horse or other animal, or by ill-usage or negligence in driving any cattle causing any damage or hurt to be done by such cattle.
- (10) Wilfully breaking any pane of glass in any building.
- (11) Wilfully breaking or extinguishing or injuring any lamp, or damaging any lamp-post.
- (12) Wilfully trespassing in any place, and neglecting or refusing to leave such place after being warned to do so by the owner or occupier, or any person authorized by or on behalf of the owner or occupier.
- (13) Playing or betting in any street or other open and public place, at or with any table or instrument of gaming or pretended game of chance.

No. 24—1886.

129. Any person guilty of any of the following acts or offences shall upon conviction in respect of each act or offence be punished with a fine not exceeding twenty pounds, or in default of payment be imprisoned with or without hard labour, for a period not exceeding six months, unless such fine be sooner paid, or either to such penalty or such imprisonment, that is to say :

- (1) Any person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, crow, or other implement of housebreaking.
- (2) Any person found by night, having his face blackened or wearing felt or other slippers, or being dressed or otherwise disguised with a criminal intent.
- (3) Any person found by night, without lawful excuse (the proof of which excuse shall be on such person) in or upon, or loitering in the neighbourhood of any dwelling-house, warehouse, coach-house, stable, cellar, or out-house, or in or loitering in the neighbourhood of any enclosed yard, garden, or area, or in any kraal, or in or on board any ship or other vessel when lying or being in any port, harbour, or place in these territories.
- (4) Any person found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with a criminal intent, and who being thereto required shall not assign a valid and satisfactory reason for being so armed.
- (5) Any person who shall resist, or incite, or aid, or encourage any person to resist, and any person who shall hinder or disturb any constable, policeman, or officer of any local authority in the execution of his duty.

---

TITLE V.

CHAPTER X.

OFFENCES AGAINST THE PERSON.

*Duties tending to the Preservation of Life.*

*Duty to provide Necessaries.*

Duties tending to the preservation of life.

Duty to provide necessaries.

130. Whoever has charge of any other person, unable either by reason of detention, age sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform it, if death is caused thereby ; or if the life of such person is endangered, or his health permanently injured, whether such charge is imposed upon him by law, or if undertaken by him under any contract, or by reason of any unlawful act.



*Duty of Persons doing dangerous acts.*

No. 24—1886.

131. Every one who undertakes, except in cases of necessity, to administer surgical or medical treatment, or to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, care, and caution in doing any such act, and is criminally responsible for omitting to discharge that duty, if death is caused thereby.

Duty of persons doing dangerous acts.

*Duty of Persons in charge of dangerous things.*

132. Every one who has in his charge, or under his control, anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever which, in the absence, of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting without lawful excuse to take such precautions or to use such care.

Duty of persons in charge of dangerous things.

*Duty to avoid omissions dangerous to Life:*

133. Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to discharge that duty.

Duty to avoid omissions dangerous to life.

*Homicide defined.*

134. Homicide is the killing of a human being by another directly or indirectly by any means whatsoever.

Homicide defined.

A child becomes a human being within the meaning of this Code, when it has completely proceeded in a living state from the body of its mother, whether in a case of suspended respiration, it has breathed or not, and whether it has an independent circulation or not, and whether the navel string is severed or not; and the killing of such a child is homicide when it dies after birth in consequence of injuries received before, during, or after birth.

*Culpable Homicide.*

135. Homicide is culpable when it consists in the killing of any person either by an unlawful act or by a culpable omission to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

Culpable homicide.

Homicide which is not culpable is not an offence.

*Death must be within a year.*

136. No one is criminally responsible for the killing of another unless the death take place within a year of the cause of death. The period of a year shall be reckoned inclusive of the day on

Death must be within a year.

No. 24—1886.

which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened first.

*Acceleration of Death.*

Acceleration of death.

137. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death, while labouring under some disorder or disease arising from some other cause.

*Causing Death which might have been prevented.*

Causing death which might have been prevented.

138. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although death from that cause might have been prevented by resorting to proper means.

139. Every one who causes a bodily injury to any person from which death results shall be deemed to kill that person, although the immediate cause of such death be treatment applied in good faith for the purpose of cure, even if such treatment was improper: Provided that if the injury was not in itself of a dangerous character, and the improper treatment was the cause of death, that shall be a defence to a charge of murder or culpable homicide.

*Murder, &c.*

Murder, &amp;c.

140. Culpable homicide becomes murder in the following cases:

- (a) If the offender means to cause the death of the person killed.
- (b) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and if the offender, whether he does or does not mean to cause death, is reckless whether death ensues or not.
- (c) If the offender means to cause death or such bodily injury as aforesaid to one person, so that if that person be killed the offender would be guilty of murder, and by accident or mistake the offender kills another person, though he does not mean to hurt the person killed.
- (d) If the offender for any unlawful object does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one.

*Provocation.*

No. 24—1886.

Provocation.

141. Homicide which would otherwise be murder may be reduced to culpable homicide if the person who causes death does so in the heat of passion occasioned by sudden provocation.

Any wrongful act or insult of such a nature as to be sufficient to deprive any ordinary person of the power of self-control may be provocation, if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

Whether any particular wrongful act or insult, whatever may be its nature, amounts to provocation, and whether the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be deemed to give provocation to another only by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person: Provided also that an arrest shall not necessarily reduce the offence from murder to culpable homicide because the arrest was illegal, but if the illegality was known to the offender, it may be evidence of provocation.

*Punishment for Murder, &c.*

142. Every one who commits murder shall, upon conviction thereof, be sentenced to death. Punishment for murder, &c.

143. Every one who attempts to commit murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, fine, or flogging or whipping, or with any two or more of such punishments.

144. Whoever

(a) Conspires or agrees with any person to murder or to cause or procure the murder of any other person, whether the person intended to be murdered is a subject of Her Majesty or not, or is within Her Majesty's dominions or not: or

(b) Counsels or attempts to procure any person to murder any other person, although such person is not murdered in consequence of such counselling or attempted procurement, whether the person whose murder is counselled or attempted to be procured is a subject of Her Majesty or not, or is within Her Majesty's dominions or not:

shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or flogging or whipping, or any two or more of such punishments.

*Accessory after the fact to Murder.*

145. Whoever is an accessory after the fact to murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both. Accessory after the fact to murder.

No. 24—1886.

*Punishment of Culpable Homicide.*

Punishment of culpable homicide.

146. Every one who commits culpable homicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or with flogging or whipping, or any two or more of such punishments.

*Aiding and abetting Suicide.*

Aiding and abetting suicide.

147. Whoever counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or whoever aids or abets any person in the commission of suicide, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or both: Provided, however, that for abetment of suicide of a minor or insane or intoxicated person the term of such imprisonment may extend to his natural life.

*Attempting Suicide.*

Attempting suicide.

148. Every one who attempts to commit suicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

*Concealment of Child-birth.*

Concealment of child-birth.

149. Whoever disposes of the dead body of any child in any manner, with intent to conceal the fact of its birth, whether the child died before, during, or after birth, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine, or both.

*Bodily injuries and acts causing danger to the Person.*

Bodily injuries and acts causing danger to the person.

150. Whoever with intent to maim, disfigure, disable or do grievous bodily harm to any one, or, to resist or prevent the lawful apprehension or detention of any one, unlawfully wounds or does actual grievous bodily harm to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or with flogging or whipping, or any two or more of such punishments.

The following kinds of hurt only are designated "grievous" bodily harm, viz.:—1, Emasculation; 2, permanent privation of the sight of an eye; 3, permanent privation of the hearing of an ear; 4, privation of any member or joint; 5, destruction or impairing of the powers of any member or joint; 6, permanent disfiguration of the head or face; 7, fracture or dislocation of a bone; 8, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

*Administering Poison so as to endanger Life.*

Administering poison so as to endanger life.

151. Whoever knowingly and with intent to injure, aggrieve, or annoy any person administers, or causes to be administered to, or be taken by such person, any poison, or other noxious or

destructive thing, whereby the life of any person is endangered or grievous bodily harm is caused to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with fine, or with flogging or whipping, or any two or more of such punishments.

No. 24—1886.

*Administering Poison with intent.*

152. Whoever knowingly and with intent to injure, aggrieve, or annoy any person, administers to, or causes to be administered to, or be taken by such person, any poison or other destructive or noxious thing, although no injury may be caused thereby, shall be punished with imprisonment with or without hard labour for a term which may extend to one year or with flogging or whipping, or any two or more of such punishments.

Administering poison with intent.

*Forcing or aiding, or procuring the enforcement of Circumcision or Intonjane.*

153. Whoever by force or threats compels any person to submit against his or her will to the act of circumcision, or to take part in the ceremony named *intonjane*, or whoever by force or threats compels any person, male or female, against his or her will, to submit to any other like act or ceremony, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a term which may extend to one year.

Forcing or aiding, or procuring the enforcement of circumcision or intonjane.

*Circumcision without consent.*

154. Any person aiding or procuring the circumcision of any youth without the consent of his parent or the person having the lawful custody of such youth, shall be guilty of an assault, and shall be punished as in the last preceding section mentioned.

Circumcision without consent.

*Assault defined.*

155. An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has or causes the other to believe upon reasonable grounds that he has the present ability to effect his purpose.

Assault defined.

*Indecent Assault.*

156. Whoever indecently assaults any female shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine or with flogging, or whipping, or any two or more of such punishments.

Indecent assault.

*Assaults on Peace Officers, and to resist Apprehension.*

157. Whoever

- (a) Assaults any person with intent to commit an offence, or to resist or prevent the lawful apprehension or detention of himself, or of any other person for any offence, or to rescue any person from lawful custody ;

Assaults on peace officers, and to resist apprehension.

No. 24—1886.

- (b) Assaults, resists, or wilfully obstructs any peace officer in the execution of his duty, or any person acting in aid of such officer; or
- (c) Assaults, resists, or unlawfully obstructs any person in the lawful execution of any process against any lands or goods, or with intent to rescue any goods, taken under such process, or taken under any lawful distress;
- shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or both.

*Common Assaults.*

Common assaults. 158. Whoever commits a common assault shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

*Rape.*

Rape. 159. Rape is the act of a man having carnal knowledge without the consent of a woman who is not his wife: Provided that nothing shall be deemed to be consent which is either extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by falsely and fraudulently misrepresenting the nature and quality of the act. This offence shall be complete upon penetration.

A boy under fourteen years of age shall be conclusively presumed to be incapable of having carnal knowledge of a woman within the meaning of this section.

Whoever commits rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with flogging or whipping or with fine or any two or more of such punishments.

*Attempt to Rape.*

Attempt to rape. 160. Whoever attempts to commit a rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or whipping, or any two or more of such punishments.

*Carnally knowing Children.*

Carnally knowing children.

161. Whoever carnally knows any girl under the age of twelve years, whether he believes her to be of or above that age or not, and whether she consents or not, shall be imprisoned, with or without hard labour, for a term which may extend to twenty years, or with or without flogging or whipping or fine, or any two or more of such punishments.

162. Whoever attempts carnally to know any girl under the age of twelve years, whether he believes her to be of such age or not, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or with fine, or with flogging or whipping, or any two or more of the said punishments.

*Age of Children.*

No. 24—1886.

Age of children.

163. It shall be lawful for the Court or Jury by whom the accused is tried to judge from the appearance of the girl in question in such prosecution, and also, if the Court thinks fit from the opinions duly given in evidence of persons skilled in ascertaining the age of such girls, and from any other evidence that may be adduced on the subject, whether the girl was under the age of twelve years at the time the offence was committed or not.

*Causing Death of Child by means of Miscarriage.*

164. Whoever causes the death of any living child, which has not proceeded in a living state from the body of its mother, in such a manner that he would have been guilty of murder if such child had been fully born, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years or with fine or both: Provided that no one shall be guilty of an offence under this section who by means employed in good faith for the preservation of the life of the mother of the child, causes the death of any such child before or during or after its birth.

Causing of miscarriage.

*Procuring Miscarriage.*

165. Whoever, with the intent to procure miscarriage of any woman, whether she be or be not with child, unlawfully administers to, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be punished with imprisonment with or without hard labour, for a term which may extend to five years, or fine or both: Provided that such woman herself shall not be indictable under this section.

Procuring miscarriage.

*Woman procuring her own Miscarriage.*

166. Whoever unlawfully administers or permits to be administered to herself, any poison or other noxious thing, or unlawfully uses or permits to be used on herself any instrument with intent to procure her own miscarriage, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or fine, or both.

Woman procuring her own miscarriage.

*Supplying means of procuring Abortion.*

167. Whoever unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be punished with imprisonment, with or without hard labour, for a period which may extend to one year, or fine or both.

Supplying means of procuring abortion.

*Bigamy.*

168. Whoever, having a husband or wife living, marries in any case in which such marriage is and shall be void by reason of its

Bigamy.

No. 24—1886.

taking place during the lifetime of such husband or wife, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine or both: Provided, however, that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, or to any person who contracts a marriage during the life of such husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time: Provided that the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same is within his or her knowledge: Provided, further, that this section shall not extend to any person whose previous marriage with a husband or wife living was entered into according to Native custom, whether the same was registered or not.

*Stealing or abducting Children under fourteen years of age.*

Stealing or abducting children under fourteen years of age.

169. Whoever with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of fourteen, unlawfully leads or takes away or decoys or entices away or detains any such child, or receives or harbours any such child, knowing it to have been dealt with as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both: Provided that nothing herein shall extend to any one who gets or takes possession of any child, claiming in good faith a right to the possession of the child.

*Abandoning or exposing Children.*

Abandoning or exposing children.

170. Whoever unlawfully exposes or abandons any child under the age of seven years, or who, being lawfully bound to take charge of any such child, knowingly and without lawful excuse leaves it abandoned or exposed, whereby its life is endangered or its health is permanently injured, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or with fine, or both.

CHAPTER XI.

PRETENDED WITCHCRAFT.

*Imputations of Witchcraft.*

Imputations of witchcraft.

171. Whoever imputes to any other the use of non-natural means in causing any disease in any person or animal, or in causing any injury to any person or property, that is to say, whoever names or indicates another to be a wizard or witch



(*umtakati*) shall be punished with a fine not exceeding forty shillings sterling, or in default of payment with imprisonment, with or without hard labour, for fourteen days unless such fine be sooner paid.

172. Whoever having named or indicated any person as wizard or witch, shall be proved to be by habit and repute a witch-doctor or witch-finder (*isanusi*) shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or flogging, or any two or more of such punishments.

*Employing a Witch-doctor.*

173. Whoever employs or solicits any witch-doctor or witch-finder (*isanusi*) to name or indicate any person as wizard or witch (*umtakati*) shall be punished with a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to two months unless such fine be sooner paid.

Employing a  
witch-doctor.

*Witch-doctors supplying Advice or Witchcraft Materials with intent to injure.*

174. Any person professing to a knowledge of so-called witchcraft, or the use of charms, who shall advise any person applying to him how to bewitch or injure persons, property, or cattle, or who shall supply any person with the pretended means of witchcraft, shall be punished with imprisonment, with or without hard labour, for a term not exceeding twelve months, or with fine.

Witch-doctors  
supplying advice or  
witchcraft materials  
with intent to injure.

*Persons using Witch Medicine with intent to injure.*

175. Whoever, on the advice of a witch-doctor, or of his pretended knowledge of so-called witchcraft, shall, with intent to injure, use, or cause to be put into operation, such means or processes as he believes are calculated to injure any person or property, shall be punished by imprisonment, with or without hard labour, for a period not exceeding twelve months, or with fine.

Persons using witch  
medicine with intent  
to injure.

TITLE VI.

CHAPTER XII.

THEFTS AND SIMILAR OFFENCES.

*Inanimate things, fixed or movable, capable of being stolen.*

176. Every inanimate thing whatever, which is the property of any person, and which either is or may be made movable, shall be capable of being stolen, as soon as it becomes movable, although it be made movable in order to steal it.

Inanimate things,  
fixed or movable,  
capable of being  
stolen.

*Animals capable of being stolen.*

177. All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen.

Animals capable of  
being stolen.

No. 24—1886.

Acts 9 of 1869, 12 of 1870, 15 of 1875, 24 of 1875 to be in force in these territories.

178. All wild living creatures, wild by nature, shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement, or are being actually pursued after escaping therefrom, but no longer. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen when living; nor shall the taking of their dead bodies by or by orders of the person who killed them before they are reduced into actual possession by the owner or occupier of the land on which they die, be deemed theft. Everything produced by, or forming part of, any living creature capable of being stolen, shall be capable of being stolen: Provided always that nothing in this section contained shall in any way affect or interfere with the provisions of Act 9 of 1869, "For the better protection of Bees," which last-mentioned Act shall be and remain in force as law throughout these territories: and provided, further, that Act 12 of 1870, "For the better preservation of Wild Ostriches," as amended by Act 15 of 1875, or "The Wild Ostriches Act of 1875," shall also have the effect of law within these territories: Provided, further, that the Act 24 of 1875, or "The Domesticated Ostriches Act of 1875," shall have the effect of law within the said territories.

*Definition of Theft.*

Definition of theft.

179. Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person anything or the use of anything capable of being stolen, with intent to deprive the owner thereof or to deprive any person having any special property or interest therein of such property or interest. It is immaterial whether the thing converted was taken by the thief for the purpose of the conversion or whether it was at the time of the conversion in the lawful possession of the thief: Provided that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of theft.

180. Theft is complete when the offender takes or moves anything capable of being stolen, or causes it to move or to be moved, for the purpose of fraudulently converting it, although such conversion be not completed.

181. Theft is committed when the offender cuts, rips, or otherwise begins to cause to be movable anything part of or growing out of or attached to any real property with intent to steal it.

*Theft of Animals.*

Theft of animals.

182. Every one commits theft who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage, or any part of such creature.

*Theft by Agent.*

No. 24—1886.

Theft by agent.

183. Every one commits theft who, having received any money, valuable security, or other thing whatsoever, on terms requiring him to account for or pay the same or the proceeds thereof to any other person, though not requiring him to deliver over in specie the identical money, valuable security, or other thing received, fraudulently converts to his own use or fraudulently omits to account for the same, or to account, for or pay any part of the proceeds which he was required to account for or pay as aforesaid: Provided that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of any part of such proceeds in such account shall be deemed a sufficient accounting for the part of the proceeds so entered.

*Theft by Person holding Power of Attorney.*

184. Every one commits theft who, being entrusted either solely or jointly with any other person, with any power of attorney, for, the sale, mortgage, pledge, or other disposition of any property, movable or immovable, whether capable of being stolen or not, fraudulently sells, mortgages, pledges, or otherwise disposes of the same or any part thereof; or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was entrusted with such power of attorney.

Theft by person holding power of attorney.

*Theft by misappropriating proceeds held under direction.*

185. Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security, or any power of attorney for the sale of any stock or shares whatever, with the direction that such money, or any part thereof, or the proceeds or any part of the proceeds of such security or such stock or shares shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person, such proceeds or part thereof: Provided that where the person receiving such money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, unless such direction is in writing.

Theft by misappropriating proceeds held under direction.

*Theft by Co-owner.*

186. Theft may be committed by the owner of anything capable of being stolen, against a person having a special property or interest

Theft by co-owner.

xx

No. 24—1886.

therein, or by a person having a special property or interest therein against the owner thereof, or by one of several joint owners, tenants in common, or partners of or in any such thing, against the other person interested therein, or by the directors, public officers, or members of a public company or body corporate against such public company or body corporate.

*Husband and Wife.*

Husband and wife.

187. No husband shall be convicted of stealing, during cohabitation, the property of his wife; and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but whilst they are living apart from each other, either shall be guilty of theft if he or she fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

188. Every one commits theft who, whilst a husband and wife are living together, knowingly (*a*) assists either of them in dealing fraudulently with anything which is the property of the other, in a manner which would amount to theft if they were not married; or (*b*) receives from either of them anything the property of the other, obtained from that other by such fraudulent dealings as aforesaid.

*Obliterating Documents Fraudulently.*

Obliterating documents fraudulently.

189. Every one who destroys, cancels, conceals, or obliterates any document for any fraudulent purpose, shall be punished as if he had stolen that document.

*Theft outside of the Territories.*

Theft outside of the territories.

190. Every one who having obtained any property by any act which if done in these territories would have amounted to theft, brings such property into these territories, shall be guilty of theft.

*Theft by False Pretences.*

Theft by false pretences.

191. A false pretence is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

192. Every one shall be guilty of theft by false pretences, and shall be liable, upon conviction thereof, to the penalties provided for the crime of theft, who by any false pretence obtains with intent to defraud, either directly or through the medium of any contract obtained by such false pretence, anything capable or the use of anything capable of being stolen, or who with intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of valuable security, or to impress or affix any name or seal on any paper or parchment, in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

193. Every one who by any false pretence causes or procures anything capable of being stolen to be delivered to any other person than himself with intent to defraud, obtains, that thing by a false pretence within the meaning of this section, and shall be punishable with the penalties provided for the crime of theft.

No. 24—1886.

*Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &c.*

194. All and singular the provisions of the Acts No. 32 of 1883, No. 19 of 1884 and No. 13 of 1885 shall be in force in the Transkeian Territories.

Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &amp;c.

*Wrongful possession of and Illicit Dealing in Diamonds.*

195. All and singular the provisions of every law which shall, at the time of the taking effect of this Code, be in force in any part of this Colony other than Griqualand West, in regard to the wrongful possession of and illicit dealing in diamonds and other precious stones, shall be in force in the Transkeian Territories.

Wrongful possession of and illicit dealing in diamonds.

*Obtaining Value or Credit by Fraud.*

196. Whoever obtains any money or things, or who in incurring any debt or liability, obtains credit by means of any fraud, though not amounting to a false pretence as hereinbefore defined, may be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Obtaining value or credit by fraud.

*Punishments for certain Thefts.*

197. Whoever steals any testamentary instrument, post letter bag, post letter, postal packet, or anything from such post letter bag, post letter, or postal packet, or who being a clerk or servant, or being employed in the capacity or for the purpose of a clerk or servant, steals anything belonging to or in the possession of his master or employer, or being employed in the public service of Her Majesty, or in the service of any public department, or public body, or being employed as a constable, steals anything in his possession by virtue of his employment, shall be punished with imprisonment, with or without hard labour, for a period which may extend to a term of seven years, or fine, or both; and, in case of subsequent conviction, with imprisonment, with or without hard labour, which may extend to a term of ten years, or fine, or both.

Punishments for certain thefts.

*Punishments for Cattle Thefts.*

198. Whoever steals anything from the person of another, or from any dwelling-house, or steals any horse, ass, mule, sheep, horned cattle, goat, or domesticated ostrich, or the feathers thereof, or who wilfully kills any such animal, with intent to steal the carcass, or any part thereof may, upon conviction, be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both; and in case of

Punishments for cattle thefts.

No. 24—1886.

subsequent conviction, with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or fine, or any two of such punishments.

*Punishment for Thefts otherwise not provided for.*

Punishment for thefts otherwise not provided for.

199. Whoever steals anything for the stealing of which no punishment is hereinbefore provided, shall be punished with imprisonment with or without hard labour, for a term which may extend to three years, or fine or both, and in case of a subsequent conviction with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, with flogging or whipping, or any two or more of such punishments.

*Responsibility for value of Stolen Property under Spoor Law.*

Responsibility for value of stolen property under Spoor Law.

200. When the spoor of any stolen animals is traced to any kraal or locality responsibility in respect of the value of such stolen animals shall be determined as is hereinafter provided ; that is to say :

- (A) When such spoor originates and terminates within the limits of a magisterial district or tribal area, then—
1. The head of any kraal (*umninimzi*) shall be responsible for the value and damages of any stolen animals the spoor of which is traced to such kraal, when corroborative evidence is forthcoming to the satisfaction of the Resident Magistrate that the theft in question was committed by some person belonging to such kraal.
  2. The owner of any stolen animals the spoor of which has become lost or obliterated, has a right of search for any traces of such animal in any hut, kraal, enclosure or lands in that neighbourhood ; and any person refusing to permit such search is responsible for the value of the animal stolen, with damages.
  3. When the owner of any stolen animals is on the spoor of such animal, it shall be lawful for such owner to demand from the persons living in the neighbourhood all reasonable assistance in following up such spoor, and whoever neglects or refuses to give such assistance, and by such neglect or refusal causes the loss or obliteration of such spoor, or whoever by wilful obstruction or malice causes the loss or obliteration of such spoor, is liable for the value of the animal stolen with damages.
- (B) When the spoor originates in one magisterial district or tribal area and passes into and terminates in another magisterial district or tribal area, then—
1. When such spoor is traced to any kraal or kraals, the owners (*abaninimizi*) shall be held responsible for the value of the animal stolen, and upon the order of the Resident Magistrate of the district, shall forthwith pay such value into Court for the benefit of the owner.

2. When such spoor cannot be traced to any specific kraal or kraals, but is lost, or becomes obliterated on any lands, then the responsibility for the value of such stolen animal shall devolve upon the heads (*abaninimizi*) of the kraals adjacent to and surrounding the spot where such spoor has been lost or obliterated; and for the purpose of compensating the owner of such stolen animal, it shall be lawful for the Resident Magistrate so to fix such responsibility by an assessment not exceeding two head of cattle (or their money value), to be by such Magistrate levied on each kraal, to make up the whole value, or as near as possible the whole value, of the stolen animal or animals.
3. Whenever a spoor is traced to, or within, the confines of any locality occupied by any kraal or kraals, or to or within any area occupied by any community or section of a tribe, if the persons occupying such kraal or kraals or locality, or constituting such community or such section of a tribe, without lawful excuse, neglect or refuse to receive to take over and follow up such spoor, they are responsible for the value of the stolen animal whose spoor shall have been so traced, and are to be compelled to make good such value to the owner in like manner as is provided for with reference to "lost spoor" cases in the preceding sub-section.

*Creating False Spoor.*

201. Whoever fraudulently and with intent to injure another shall create any spoor, shall be punished with fine not exceeding fifty pounds sterling, and in default of payment with imprisonment with or without hard labour for a term which may extend to twelve months.

Creating false  
spoor.

*Mode of procedure in Spoor Cases.*

202. It shall be lawful for the Resident Magistrate of any district, whenever any claim is made against any person or persons in respect of the spoor traced to any kraal or locality, upon request of the owner of the animal or animals stolen, or of any person authorized by such owner, to inquire summarily and without pleading, but in the presence of the heads of the kraals upon whom responsibility is sought to be attached, into the circumstances of the case, and the value of the animal or animals alleged to have been stolen, together with the damage which the owner or owners shall have sustained by the loss, or by the cost of search or other endeavour to recover the same, and may give judgment in favour of such owner as hereinbefore provided.

Mode of procedure  
in spoor cases.

No. 24—1886.

## CHAPTER XIII.

## FRAUD AND BREACH OF TRUST.

*Fraudulent Accounting by Directors.*Fraudulent  
counting by  
Directors.Ac-  
Di-

203. Whoever being a director, manager, public officer, or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates any book, paper, writing, or valuable security belonging to the body corporate or public company, or makes or concurs in making any false entry, or omits or concurs in omitting to enter any material particular in any book of account or other document, or being a director, public officer, or manager of any body corporate or public company, as such receives or possesses himself of any of the property of such body corporate or public company, and with intent to defraud omits to make, or to cause and direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be liable, upon conviction, to imprisonment with or without hard labour, for a term which may extend to five years, or fine, or both.

*False Statements by Directors.*False Statements  
by Directors.

204. Whoever being a promoter, director, public officer, or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates, or publishes any prospectus, statement, or account which he knows to be false in any material particular, with intent to induce persons, whether ascertained or not, to become shareholders, or partners, or with intent to deceive or defraud the members, shareholders, or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be liable to the punishment in the preceding section provided.

*Falsifying Accounts by Clerks and Servants.*Falsifying accounts  
by clerks and ser-  
vants.

205. Whoever being an officer, clerk, or servant, or employed or acting in such capacity, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, document, or account, which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or with intent to defraud makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, paper, writing, valuable security, or account as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with or without hard labour, or fine or both.



*Public Officers making False Statements and Returns.*

No. 24—1886.

206. Whoever, being an officer, collector, or receiver entrusted with the receipt, custody, or management of any part of the public revenues, knowingly makes or renders any false statement or return of any money collected by him or entrusted to his care, or of any balance of money in his hand, or under his control, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Public Officers making false statements and returns.

*Conspiracy to Defraud.*

207. Whoever conspires with any other person by deceit or falsehood, or other fraudulent means, to defraud the public, or to affect the public market, price of shares, merchandize, or anything else publicly sold, or who conspires by deceit and falsehood or other fraudulent means, to defraud any person, ascertained or unascertained, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence, as hereinbefore defined, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or to fine, or to both; and whoever after a previous conviction for any offence involving dishonesty, commits an offence under this section, may be sentenced to a term of imprisonment, with or without hard labour, which may extend to five years, or fine, or both.

Conspiracy to defraud.

*Unlawful Gaming and Betting.*

208. Whoever wins or endeavours to win from any other person to himself or to any other any money or valuable thing by any fraud or unlawful device or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wages, or adventures, or in betting on the size or hands of the players, or in wagering on the event of any sport, pastime, or exercise, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine or both. The offence is complete although the thing won has not been paid or delivered.

Unlawful gaming and betting.

*Criminal Breach of Trust.*

209. Whoever being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, shall be guilty of a criminal breach of trust, and upon conviction shall be punished with imprisonment for a term which may extend to three years, or with fine, or both.

Criminal breach of trust.

No. 24—1886.

*Fraudulent Disposition of Property.*

Fraudulent disposition of property.

210. Whoever dishonestly or fraudulently removes, converts, or delivers to any person, or causes to be transferred to any person without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent the distribution of that property according to law, or among his creditors or the creditors of any other person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

## CHAPTER XIV.

## ROBBERY AND EXTORTION.

*Definition of Robbery, and its Punishment.*

Definition of Robbery and its punishment.

211. Robbery is theft accompanied with actual violence or threats of violence to any person or property, intentionally used to extort the property stolen, or to prevent or overcome resistance to its being stolen, and shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, or flogging or whipping, or any two of these punishments.

212. Everyone who assaults any person with intent to rob him shall be punished as in the last section provided.

213. Whoever with menaces demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years or with fine or both.

214. Whoever with intent to extort or gain anything from any person: (a) accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of any offence punishable by law; or (b) threatens that any person shall be so accused by any other person; (c) or without lawful excuse sends, delivers, utters, or directly or indirectly causes to be received by any person any document containing any such accusation or threat as aforesaid, knowing the contents thereof; (d) or by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, shall be punished with imprisonment with or without hard labour, for a term that may extend to two years, or with fine, or with both such punishments.

*Housebreaking.*

Housebreaking.

215. Whoever breaks and enters a building with intent to commit any offence therein, or breaks out of such building either after committing such offence therein, or after having entered it to

commit an offence, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

No. 24—1886.

*Receiving Property stolen or dishonestly obtained.*

216. Whoever receives anything obtained by any offence punishable under any law in force for the time being, knowing that thing to have been stolen or dishonestly obtained, or who receives in these territories anything obtained elsewhere than in these territories by any act which if done in these territories would have been an offence punishable under this or any other law in force for the time being, knowing such things to have been stolen or dishonestly obtained, shall be punished for a first offence with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both; and after a previous conviction of any offence involving dishonesty, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Receiving property stolen or dishonestly obtained.

*When receiving is complete.*

217. The act of receiving anything stolen or unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

When receiving is complete.

*Corruptly taking Reward.*

218. Whoever corruptly takes reward, or bargains for any reward, directly or indirectly, on consideration that he will help any person to recover anything obtained by any offence punishable under this or any other law in force, shall, unless he shall have used all due diligence to cause the offender to be brought to trial for the same, be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

Corruptly taking reward.

—————  
*CHAPTER XV.*

*FORGERY AND PERSONATION.*

*Definition of Document.*

219. A document is any substance on which is expressed and described by means of letters, figures, or marks, any matter which is intended to be or may be used in a Court of Justice, or otherwise, as evidence of such matter.

Definition of document.

*False Document defined.*

220. A false document means

- (a) A document, the whole or some material part of which purports to be made by or on behalf of any person who

False document defined.

No. 24—1886.

did not make or authorize the making thereof; or which, though made by or by the authority of the person who purports to make it, is falsely dated as to time or place of making, where either is material; or

- (b) A document which is made in the name of an existing person, either by that person or by his authority, with a fraudulent intent that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

*Forgery defined.*

Forgery defined.

221. Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine whether within Her Majesty's dominions or not. Making a false document includes altering a genuine document in any material part, and adding to it any false date, attestation, or other thing which is material, or making any material alteration in it either by erasure, obliteration, removal, or otherwise.

*Forgery when complete.*

Forgery when complete.

222. A forgery is complete as soon as the document is made, with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced by the belief that it is genuine to do or refrain from doing anything. Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

*Punishment for Forgery.*

Punishment for forgery.

223. Whoever is convicted of the crime of forgery shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or fine, or both.

*Sending False Telegram.*

Sending false telegram.

224. Whoever shall without lawful authority or excuse (the proof whereof shall be upon the person accused) cause or procure any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with the intent that such telegram should be acted on as being sent by that person's authority, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine, or both.

*Procuring Execution of Document by False Evidence.*

No 24—1886.

225. Whoever, with intention to defraud, procures the execution of any document by any person by falsely pretending that the contents thereof are different from what they really are, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

Procuring execution of document by false evidence.

*Using Forged Documents.*

226. Whoever, knowing a document to be forged, fraudulently uses or acts upon it or causes or attempts to cause any person to use or act upon it as if it were genuine, shall, upon conviction, be liable to the same punishment as if he had forged that document. It is immaterial whether the document was forged in these territories or elsewhere.

Using forged documents.

*Personation.*

227. Whoever falsely and deceitfully personates any one, with intent fraudulently to obtain any benefit to himself or any other person, shall be imprisoned, with or without hard labour, for a term which may extend to two years, or fine, or both.

Personation.

## CHAPTER XVI.

## COINING.

228. Coin is metal used for the time being as money, and stamped and issued by authority of some State or Sovereign Power in order to be so used. Coin stamped and issued by authority of the Queen or any Government in the Queen's dominions, is the Queen's coin.

Coining.

229. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

230. Whoever

- (a) Makes or begins to make any counterfeit gold, silver, or copper coin; or
- (b) Gilds or silvers any counterfeit coin; or
- (c) Gilds, silvers, files, or alters any silver or copper coin, with intent to make it resemble or pass for gold or silver coin; or imports, receives, or has in his possession, any counterfeit gold, silver or copper coin, knowing such coin to be counterfeit, and with intent to utter it, or whoever utters any counterfeit coin, knowing it to be counterfeit, or has in his possession any stamps, dies or other instruments generally used for the purpose of counterfeiting coin.

No. 24—1886.

(d) With intent to defraud, utters pieces of gold, silver, or copper as Queen's coins, which are coins not Queen's coin, or any medal or piece of metal, or mixed metal being of less value than the Queen's coin, as and for which it is uttered,

shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

---

*CHAPTER XVII.*

OFFENCES RELATING TO WEIGHTS AND MEASURES.

*Standard Weights and Measures.*

Standard weights and measures.

231. The standard weights and measures required by law to be used in the Colony of the Cape of Good Hope, as provided for by Act No. 11 of 1858, shall be the standard weights and measures to be used in the territories to which this Code applies, and all the provisions of that Act as well as of Act No. 15 of 1876 shall be of force and effect in the said territories.

*Fraudulent use of False Instruments for Weighing.*

Fraudulent use of false instruments for weighing.

232. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

*Fraudulent use of False Weight or Measure.*

Fraudulent use of false weight or measure.

233. Whoever fraudulently uses any false weight, or measures of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

*Being in possession of False Weights or Measures.*

Being in possession of false weights or measures.

234. Whoever is in possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

---

*CHAPTER XVIII.*

MISCHIEF AND ARSON.

*Mischief.*

Mischief.

235. Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happened or not, shall be deemed to cause it wilfully for the purposes of this

part of this Code. Nothing shall be an offence under any provision contained in this part, unless it is done without legal justification or excuse, and without colour of right: Provided that where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, if done with an intention to defraud.

No. 24—1886.

*Arson, and Attempted Arson.*

236. Whoever wilfully sets fire to any building whatever, or to any erection or structure whatever fixed to the soil, whether such building, erection or structure is completed or not, or to any stock of vegetable produce, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, or to any crop, whether standing or cut down, shall be guilty of arson, and may be punished with imprisonment, with or without hard labour, for a term which may extend to fourteen years, or with or without flogging or whipping, or fine, or any two or more of such punishments.

Arson, and attempted Arson.

237. Whoever wilfully attempts to set fire to anything mentioned in the last preceding section, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, and with or without fine, or both.

*Damage by Explosive Substances.*

238. Whoever wilfully places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building, ship, road, or public place, or thoroughfare, so as to endanger person or property, shall be punished as provided for the crime of arson.

Damage by Explosive Substances.

*Damage to Public Works.*

239. Whoever wilfully breaks down, cuts down, or otherwise damages or destroys any public works, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to Public Works.

*Unlawful Killing of Animals, &c.*

240. Whoever unlawfully and wilfully kills, poisons, or wounds, any horse, ass, mule, horned cattle, sheep, ostrich, goat, or other domesticated animal, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a period which may extend to one year.

Unlawfully killing of animals, &amp;c.

*Damage to Telegraph.*

241. Whoever wilfully injures or removes anything whatever forming part of or used in or about any electric or magnetic telegraph, or in the working thereof, or prevents or obstructs in any manner whatever the sending, conveyance, or delivery by any such telegraph of any message or communication, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to Telegraph.

No. 24—1886.

*Damage to Tolls.*

Damage to Tolls. 242. Whoever unlawfully and wilfully throws down, levels, or otherwise destroys, in whole or in part, any toll-gate, or any toll-bar or chain, or fence belonging thereto, set up to prevent passengers from passing by without paying toll, directed by law, shall be punished with fine, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to six months.

*Other Damage.*

Other damage. 243. Whoever wilfully commits upon any property whatever, any wilful damage, or injury, not otherwise provided for, shall be punished with fine, and in default of payment with imprisonment with or without hard labour, for a term which may extend to three months.

## TITLE VI.

## CHAPTER XIX.

## THREATS, CONSPIRACY, ATTEMPTS, ACCESSORIES, &amp;c.

Threats, Con-  
spiracy, Attempts,  
Accessories, &c.

244. Whoever with intent to intimidate or annoy any person, breaks or injures any building or portion thereof, or by the discharge of firearms or otherwise alarms or attempts to alarm any person in any dwelling, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or with fine or both.

Conspiring to prevent  
levying of or  
collection of taxes.

245. Whoever conspires with any other person by force or intimidation to prevent the levying or collection of any taxes, authorized by law, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Inciting or at-  
tempting to commit  
offences.

246. Whoever attempts in any case, not hereinbefore by this Code provided, to commit any offence, or who incites or attempts to incite any one to commit an offence punishable by this Code, shall be liable to imprisonment for a term not exceeding one-half of the longest term, to which a person committing the offence attempted to be committed, or incited to, may be sentenced under this Code: Provided that the power to fine or in default of payment to imprison, shall exist in all such cases.

Punishment for  
accessories.

247. Whoever, in any case where no express provision is made for the punishment of an accessory, is an accessory after the fact, to any offence punishable under this Code, he shall be liable to imprisonment for a term not exceeding half of the longest term for which the offence to which he is accessory is punishable under this Code: Provided that the power to fine, or in default of payment to imprisonment, shall exist in all such cases.



## TITLE VII.

No. 24—1886.

## CHAPTER XX.

## JURISDICTION AND PROCEDURE.

*Courts of Resident Magistrates.*

248. The Courts of Resident Magistrates already established in the Transkeian Territories shall be until otherwise provided Courts of Resident Magistrates, and it shall be lawful for the Governor, by any proclamation to be by him from time to time issued for that purpose, to erect, constitute, and establish Courts of Resident Magistrates within the Transkeian Territories, to be held for and within such districts respectively as the said Governor shall think fit to create, which Courts shall be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

Courts of Resident Magistrates.

*Trial by Resident Magistrates.*

249. Whenever in any of the cases in which jurisdiction is hereby given to any Court of Resident Magistrate, the Magistrate shall consider that any person charged with any crime or offence, whether he has pleaded guilty to the same or not, ought to receive a more serious punishment than such Magistrate is competent to adjudge, he may, at his discretion, commit the accused person for trial before any Court having jurisdiction to impose such greater punishment, or the Special Court hereafter provided for and established.

Resident Magistrate may commit accused person for trial.

*Jurisdiction and Special Court.*

250. The Courts of Resident Magistrate shall have jurisdiction in all cases wherein a person may be accused of any crime or offence, except crimes or offences punishable under the following chapters and sections of this Code, viz. :

Jurisdiction.

- (a) Title II, Chap. V, Offences against the Public Order, sections eighty-five to ninety inclusive.
- (b) Title III, Chap. VII, Offences against the Administration of Justice, sections one hundred and three and one hundred and four.
- (c) Title V, Chap. X, Murder :  
 Provided, however, that no Resident Magistrate shall, in any case, have jurisdiction or authority to pass and pronounce upon any offender under this Code, any sentence greater or heavier than imprisonment, with or without hard labour, for any period not exceeding one year, or imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or corporal punishment in any number of lashes not exceeding twenty-five: Provided, also, that no offender

No. 24—1886.

sentenced under this Code to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Code the Courts of Resident Magistrates shall in their sentences observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences and be by the Governor prescribed for the guidance of such Court, and such Courts shall in their sentences fix, in accordance with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet.

*Trial by Special Court.*

Trial by Special Court.

251. Unless and until provision shall be made for the establishment in the said territories of a superior Court of Record the offences excepted in the last section and any offences under this Code the trial of which shall be remitted thereto, shall be tried by a Special Court consisting of the Chief Magistrate and two Resident Magistrates, having jurisdiction within his Chief Magistracy, who shall from time to time as occasion shall require be thereto summoned by such Chief Magistrate, and the judgment and sentence of the majority of such Chief Magistrate and Resident Magistrates shall be the judgment and sentence of such Court.

Sittings of the Special Court.

252. Such Special Court shall, from time to time as often as may be necessary, be summoned by the Chief Magistrate to assemble and sit for the trial of offences under this Code, and every order convening any sitting of the said Court shall specify the time and place of such sitting and the names of the Resident Magistrates who shall be thereto summoned: Provided, however, that the Chief Magistrate may, after the making thereof, alter or vary such order in respect of the time or place at which such Court shall assemble and sit, or in respect of the Resident Magistrates who shall be summoned to sit as members of such Court.

Adjournments.

253. The Special Court, when assembled, may adjourn from time to time as to it may seem fit.

Form of procedure to be same as in Resident Magistrates' Courts.

254. Until otherwise ordered by any rules to be made in pursuance of the provisions of this Code, the form and manner of procedure in the Special Court shall be according to the laws and rules for the time being regulating the practice and procedure in the Courts of Resident Magistrates in the Colony of the Cape of Good Hope.

Issuing of process.

255. The process of the said Court for compelling the appearance of any person accused to answer the charge, and of any persons as witnesses, may be signed and issued by any Magistrate by whom

the accused has been remanded or committed, or by the clerk of any such Magistrate, or by the clerk of the Chief Magistrate or of the Special Court.

No. 24-1886.

256. All charges for offences cognizable by the Special Court shall, in the first instance, be brought before a Resident Magistrate having jurisdiction in the district wherein the offence has been committed, and such Magistrate shall

Preliminary Examination to be held by Magistrate.

- (1) If the case be within his jurisdiction, either try and dispose of the same to the extent of his jurisdiction, or after preliminary examination remit it for trial to the Special Court;
- (2) If the case be not within his jurisdiction, after preliminary examination, remit it for trial to the Special Court.

257. The Governor may from time to time establish general rules and orders for regulating the practice and form of procedure in cases pending before the Special Court, in addition to or instead of the laws regulating the practice and procedure in the Courts of Resident Magistrates in the Colony of the Cape of Good Hope.

Governor may from time to time frame Rules regulating procedure in Courts of Resident Magistrates.

*Removal of Trial or Stay of Proceedings.*

258. Whenever any proceedings under this Code shall have been commenced in the Court of any Resident Magistrate, or shall have been remitted to the Special Court in manner provided in this Code, and it shall appear to the Attorney-General of the Cape of Good Hope, that substantial justice may be better attained by staying proceedings or removing the case for trial to the Supreme Court, the Eastern Districts Court, or any Circuit Court, it shall be lawful for him to order such stay of proceedings or such removal or both.

Removal of trial or stay of proceedings.

*Review of Sentence by Chief Magistrate.*

259. When, and as often as any Court of Resident Magistrates shall sentence any person upon conviction to be imprisoned for any period exceeding one month, or to pay any fine exceeding five pounds sterling, or to receive any number of lashes or cuts exceeding twelve, such sentence shall be subject to the review of the Chief Magistrate of that territory, in like manner as provided by section 47 of Act 20 of 1856: Provided that every record of the proceedings in such case shall be forwarded to the said Chief Magistrate, instead of to the Registrar of the Supreme Court.

Review of sentence by Chief Magistrate.

*Pleadings and Proceedings.*

260. The Courts aforesaid shall be respectively Courts of Record, and the pleadings and proceedings of the said Courts in criminal cases shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared in open Court and not otherwise: and the several pleadings and proceedings of the said Courts shall be in the English language, which shall be interpreted into such language as is best understood by prisoners not understanding

Pleadings and proceedings.

*3/1*

No. 24—1886.

English; and the witnesses for and against any accused person or persons shall deliver their evidence, *viva voce*, in the presence of the prisoner, and in open Court.

*Juries.*

Juries.

261. Nothing contained in this Code shall have the effect of depriving the Governor of the power at any time to direct that within any district of the said territories, the law of the Colony of the Cape of Good Hope, relating to the qualification, summoning, and functions of persons serving upon petit juries shall be in force.

*Native Assessors.*

Native Assessors.

262. In any case in which any Resident Magistrate shall deem it desirable, he shall be at liberty to call to his assistance any such number of assessors not exceeding five, who shall be chosen by him from the principal Chiefs, Councillors, Headmen, and others, whose names shall be placed upon a list to be framed by him for that purpose, after the taking effect of this Act, and thereafter annually, to aid him in the hearing of any trial with a view to the advantages derivable from their observations, and particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed, and if any of the assessors or the Magistrate shall desire it, the opinion of the assessors shall be recorded in writing, and form part of the proceedings to be forwarded for review; but the finding of the Court shall be vested exclusively in the Magistrate. In like manner the Special Court hereinbefore provided for shall be at liberty to call to its assistance a like number of assessors to be taken from any list framed as aforesaid within the territory within which the Chief Magistrate residing in such Court shall have jurisdiction.

*Evidence and Examination of Accused.*

Evidence and examination of accused.

263. In any proceeding under this Code the accused person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

*Enrolment of Legal Practitioners.*

Enrolment of legal practitioners.

264. No person shall be enrolled to practise in any Court of the said territories unless such person shall be an advocate or attorney, duly admitted as such by some competent Colonial Court

*Other matters of Procedure and Process.*

Other matters of procedure and process.

265. In all other matters of procedure and process in respect of crimes and offences brought before the Courts of Resident Magistrate for trial, until otherwise ordered, the powers of Resident Magistrates, and the rules, orders, and regulations of Courts of Resident Magistrate, respectively, in the said territories shall, *mutatis mutandis*, and as far as the circumstances of the country will admit, be the same as those from time to time in existence

as to the Resident Magistrates and Courts of Resident Magistrate in the Colony of the Cape of Good Hope, under the provisions of the Ordinance No. 40 of 1828, and Act 20 of 1856, with amendments thereof.

No. 24--1886.

*Authority of Officers of the Law.*

266. Every Justice of the Peace, Field-cornet, police constable, or other officer of the law within the said territories, is empowered to exercise all and singular the powers and authorities by law conferred upon such persons within the Colony of the Cape of Good Hope.

Authority of officers of the law.

*Power to make Rules.*

267. Subject to the provisions of this Code the Governor may at any time make such rules as shall be deemed expedient and proper with respect to the qualifications, appointment, form of summoning, challenging, and service of assessors; and generally for the amendment and better regulation of any matters relating to the practice, procedure, and process in the trial of crimes and offences in the several Courts established and provided for by this Code.

Power to make rules.

*Appeals.*

268. In every case in which judgment has been given and sentence passed under the provisions of this Code it shall be lawful for the convicted person or persons to appeal therefrom to the Supreme Court, the Eastern Districts Court, or any Circuit Court having jurisdiction.

Appeals.

*Crimes and Offences not specially provided for in this Code.*

269. In case any person shall be accused of the commission within the said territories of any Act which if committed in this Colony would constitute a crime or offence, but not hereinbefore in this Code provided for as a crime or offence, such person may be tried, and if convicted, sentenced for the same by the aforesaid Resident Magistrate or the said Special Court, as the case may be, as if such crime or offence had been committed in this Colony, and the laws and punishments applicable to such case shall be those which shall, for the time being, be in force in this Colony.

Crimes and offences not specially provided for in this Code.

*Repeal of repugnant or inconsistent Laws.*

270. So much of any Ordinance, Act, Law or Proclamation having the force of law as may be repugnant to or inconsistent with this Code is hereby repealed.

Repeal of repugnant or inconsistent laws.

No. 8—1859.]

[July 8, 1859.

## ACT

To Repeal the Ordinance No. 60, 1829, entitled Ordinance for “Preventing the Mischiefs arising from Printing and Publishing Newspapers and Papers of a like nature by Persons unknown,” and to make further provision in the Premises.

Preamble.

WHEREAS great benefits have been derived from the art of printing, and from the printing and publishing of newspapers and papers of a like nature in this Colony; and whereas all necessary remedies against abuses of the liberty of the press are provided for by the law of libel, on proof of publication of any libellous matter or thing: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ordinance 60, 1829, repealed.

1. The Ordinance No. 60, 1829, is hereby repealed, except the twenty-third section thereof, which repeals the proclamation of 21st July, 1800.

Printer's name and abode, and place where printed, to be inserted in every book or paper.

2. In some part of every book, pamphlet, newspaper, or other printed work, printed or published in this Colony, there shall be printed the true and real name or names, addition or additions, and place or places of abode, or of business of the printer or printers thereof, and also a true description of the place where the same is printed.

Penalty for contravening this Act.

3. Any person or persons who shall knowingly and wilfully print and publish, or cause to be printed and published, any such book, pamphlet, newspaper, or other work of that nature as aforesaid not containing the particulars aforesaid, shall forfeit a sum of not exceeding one hundred pounds.

Act when to commence.

4. This Act shall take effect from and after the promulgation thereof.

No. 29—1884.]

[July 25, 1884.

## ACT

To Provide for the Proper Registration of Newspapers.

Preamble.

WHEREAS no law at present exists in this Colony under which the proprietors and printers of newspapers can be compelled to register said publications, and it is desirable that provision should be made for such registration: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Newspaper to be registered in office of Civil Commissioner with address of publisher, &amp;c.

1. From and after the taking effect of this Act, it shall not be lawful for any one to print or publish, or cause to be printed or

published, any newspaper until there shall have been registered at the office of the Civil Commissioner of the division within which any such newspaper shall be intended to be printed and published the full and correct title thereof, and the full and correct names and places of abode of every person intended to be or who shall be a proprietor, printer, and publisher of such newspaper, and the description of the house or building where the same is to be published; and any person who shall contravene the provisions of this section shall be liable on conviction to pay a fine of not exceeding £100.

No. 29—1884.

Penalty for contravention.

2. It shall be the duty of every Civil Commissioner within whose division any newspaper is published, to keep a register, in which shall be entered the particulars in the last preceding section of this Act mentioned.

Register to be kept.

3. Any person desirous of having an extract from the register in the last preceding section mentioned signed by the Civil Commissioner of the division shewing the particulars in the second section of this Act, shall be entitled to obtain the same on application to the Civil Commissioner of the division, and on payment of a fee of two shillings and sixpence for every such extract.

Extracts from Register.

4. The production of such an extract as in the last preceding section mentioned and signed as aforesaid in any suit civil or criminal in any Court of Justice, shall be sufficient proof of the facts therein stated in regard to the names of the proprietors, printers and publishers of the newspaper therein named.

Certified extract proof as to publisher, &c.

5. The penalty provided for in the second section of this Act may be recovered by any person suing for the same in the Court of the Resident Magistrate of the District in which such penalty is incurred; and one-half of such penalty shall be paid to the party so suing, and the other half shall go into the Public Treasury.

Penalty how recovered.

6. Nothing in this Act contained shall be taken to remove any of the penalties imposed by the Act No. 8 of 1859.

Act No. 8 of 1859 not affected.

7. This Act may be cited as the "Newspaper Registration Act, 1884."

Short title.

NORTHERN BORDER.

1. Act 27—1868, (Protection).  
2. ,, 7—1874, do.

3. Act 29—1868, (Police Force).  
4. ,, 14—1880, do.

No. 27—1868.]

[September 2, 1868.

ACT

For the Better Protection of Her Majesty's Subjects on the Northern Frontier of this Colony.

WHEREAS it is expedient that better provision should be made for the peace and good order of that part of the Northern Border of this Colony comprising certain portions of the divisions of

Preamble.

No. 27—1868.

Namaqualand, Calvinia, Fraserburg, Victoria West, and Hope Town: Be it hereby enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Formation of new district on northern border sanctioned.

1. It shall be lawful for the Governor, by proclamation to be by him issued and published in the *Government Gazette*, to define, and from time to time thereafter, if it shall seem to him fit, by a like proclamation, in like manner issued and published, to alter the limits of a district to comprise the whole or such portions of the divisions of Namaqualand, Calvinia, Fraserburg, Victoria West, and Hope Town, or of any of such divisions, as to the Governor shall seem fit.

Governor may establish court for such district.

2. It shall be lawful for the Governor to establish within such district such Court as hereinafter is described.

Governor may appoint officer to exercise jurisdiction within such district and preside in such court.

3. It shall be lawful for the Governor to appoint an officer to exercise within such district as aforesaid the jurisdiction herein-after described, and to preside in such Court as is hereinbefore mentioned and hereinafter described, and such appointment shall be under the great seal of this Colony; and it shall be lawful for the Governor, when and so often as, by reason of the death, sickness, absence, or other incapacity of such officer, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as and in the stead of such officer within such district as aforesaid; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, under and by virtue of such his appointment, shall be as legal, valid, and effectual, to all intents and purposes, as if the same had been done and performed by or before such officer as aforesaid, instead of whom such person shall have been so appointed to act.

Oath to be taken by officer and recorded.

4. Every person who shall in manner aforesaid be appointed to be such officer as aforesaid, or to act as or in the stead of such officer, shall, before exercising any of the functions of his office, take the oath of office set forth in the schedule hereunto annexed, marked A, before the Chief Justice or any of the judges of the Supreme Court, or before any Justice of the Peace for any of the divisions comprising any part of the district for or in which such person is appointed to act, who are hereby empowered and required to administer the same; and every such person shall, so soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded, and shall subscribe the same in the record book of the proceedings of his Court or of the Court in which he shall so have been appointed to act, as the case may be.

Nature and proceedings of court defined.

5. The Court to be established under the provisions of this Act shall be a Criminal Court of Record, and the pleadings and proceedings thereof shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared, in open Court, and not otherwise; and the several pleadings and



proceedings of the said Court shall be in the English language, and the witnesses shall in all cases deliver their evidence *viva voce* and in open Court.

6. (1) Such officer as aforesaid shall have jurisdiction, without appeal or review, in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation, or banishment from this Colony; but it shall not be lawful for such officer to punish any offender in any higher or more severe manner than by a fine not exceeding twenty pounds, or by imprisonment, with or without hard labour, for any period not exceeding one year, or by imprisonment with spare diet, and with or without hard labour, for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding thirty-six, or by such imprisonment and such lashes, provided that in such last case the number of lashes shall not exceed twenty-four, and the period of imprisonment shall not exceed three months; and every prisoner sentenced to imprisonment shall be forthwith, or so soon as may be, sent to the gaol which shall happen to be nearest to or most easily accessible from the place where such prisoner shall have been tried; and there shall be forwarded along with such prisoner a copy of the sentence, which copy shall be signed by such officer as aforesaid, and may be supplemented by any remarks which such officer shall see fit to make upon the case, and shall be directed to the Resident Magistrate of the division within which such gaol shall be situate, who shall issue his warrant to the gaoler of such gaol to receive such prisoner and him safely to keep and deal with pursuant to the sentence passed upon him, in like manner as if such sentence were a lawful sentence to the same effect pronounced by such Resident Magistrate himself in his own Court; and such gaoler shall act in conformity with such warrant in like manner as if the same were issued by such Resident Magistrate in the ordinary performance of his duties as such.

Jurisdiction, powers, and duties of officer.

7. In the trial of all cases by such officer as aforesaid, the proceedings shall be taken down in writing, and duly recorded; including in such proceedings the charge or complaint, the plea of the prisoner, the evidence in the case, together with any statement the prisoner shall make on the case, the judgment, and if the judgment be a judgment of guilty, then also the sentence of the Court; and, further, there shall be entered in the record a statement of the manner in which such sentence shall have been executed by such officer, or those under his control, or what steps shall have been taken by him or them towards the execution of such sentence.

Record of proceedings to be taken.

8. It shall not be lawful for such officer to sentence any female to corporal punishment, or to hard labour on any road, street, or public place.

Females not liable to corporal punishment or to labour in public place.

<sup>1</sup> See also Act 7, 1874, *infra*.

No. 27—1863.

Accused person may make defence by counsel, attorney or agent.

9. Every person upon trial on any criminal charge in the Court of such officer as aforesaid shall be entitled to make his defence by counsel or by attorney, or by any agent enrolled, as in the thirty-sixth section of the Act No. 20 of 1856 is provided, in the Court of the Resident Magistrate within the local limits of whose jurisdiction the Court of such officer shall, for the time being, be holden; but nothing herein contained shall extend to entitle a prisoner as of right to the assistance of a legal adviser, while he shall be under any preparatory examination on any charge.

Report of trials to be forwarded to Attorney-General.

10. Such officer as aforesaid shall prepare and transmit to the Attorney-General of the Colony a report of every case adjudicated upon by him, showing the name and occupation of the party accused, the name and occupation of the complainant, the crime or offence charged, the judgment of the Court, and, in cases of conviction, the sentences.

Certain judgments to be subject to revision of a Judge of the Supreme Court.

11. When and as often as such officer as aforesaid shall sentence any person upon conviction to be imprisoned with or without hard labour for any period exceeding one month, or to pay any fine exceeding five pounds, he shall transmit a copy of the record of the trial, with the copy of the sentence, to the Resident Magistrate, and such Resident Magistrate shall, by the post next succeeding the time at which he shall receive such copy, transmit the same to the Registrar of the Supreme Court, and thereafter the same shall be dealt with as if the same and all proceedings to be had upon such conviction and sentence, respectively, were a record of the proceedings in the Court of a Resident Magistrate transmitted to such registrar under the forty-seventh section of the Act 20 of 1856, and the proceedings to be had upon such record respectively; and if in any case such prisoner shall be sentenced to corporal punishment in addition to such imprisonment as in this section is mentioned, then such corporal punishment shall not be inflicted by such officer as aforesaid or those immediately under his control, but shall be deferred until a judge of the Supreme Court shall have certified that the sentence is in accordance with real and substantial justice, or that such corporal punishment ought to be inflicted.

Corporal punishment not to be inflicted prior to revision.

Sections forty-eight and forty-nine of Resident Magistrates' Courts Act, 1856, to apply in regard to proceedings forwarded for revision.

12. In any case in which the copy of the proceedings shall have been forwarded by any Resident Magistrate under the last foregoing section to the Registrar of the Supreme Court, the provisions of the forty-eighth and forty-ninth sections of the Act 20 of 1856, shall apply in all respects as if the proceedings had been originally taken in the Court of the Resident Magistrate who shall have forwarded the copy thereof, and such proceedings shall, for the purposes of this provision, be deemed to have been taken in such Court of Resident Magistrate.

Jurisdiction of officer when crime charged shall have been wholly or partly committed beyond limits of his district.

13. Whenever any crime or offence shall have been committed within a limit of ten miles outside the boundary of the district so to be limited by the Governor under the provisions of this Act, or

No. 27—1868.

having been begun within the limits of such district shall be completed beyond such limits, or having been begun beyond such limits shall be completed within them, then such officer shall have the like jurisdiction in the case of every such crime or offence as if the same had been begun and consummated altogether within the limits of such district; and in every case in which objection shall be taken to the jurisdiction of such officer, on the ground that any act, matter, or thing whereof he shall take or have taken cognizance occurred or was done or committed beyond the local limits of his jurisdiction, the onus of proving that such act, matter, or thing did occur or was done or committed beyond such local limits shall lie on the person taking such objection; and such objection, unless taken and proved at the time of any trial held before such officer, shall not be allowed to be valid in any Court.

Onus of proving that offence was committed beyond limits of district to lie on person object-ing.

14. Such officer shall have power to summon any person to give evidence on any case which shall come before him for trial, and to compel the attendance of every such person, and for such purposes shall have all the powers vested in the Resident Magistrates throughout this Colony for the like purposes; but no witness summoned to attend before such officer to give evidence shall be entitled to demand, as of right, either before or after his attendance, any payment or sum in respect of travelling expenses or maintenance in respect of such attendance.

Power of summoning and compelling attendance of witness.

Witnesses not of right entitled to travelling expenses or maintenance.

15. Any person who shall wilfully insult such officer, during his sitting in his Court on any trial or examination lawfully held before him under this or any other law or ordinance, or any person lawfully acting as clerk or officer of such Court during his attendance as such clerk or officer on any such trial or examination, or shall wilfully interrupt the proceedings of such Court, or otherwise misbehave in such Court, may be forthwith arrested and detained by any person, under the order of such presiding officer, in custody until the rising of the Court; and such presiding officer is hereby empowered, if he shall see fit, to impose a fine on the person so offending, not exceeding five pounds, as and for contempt of Court, and in default of the said fine being paid, then to detain him in custody for any period not exceeding seven days unless the fine and the cost of the detention of such offender be sooner paid; but in any case in which a person shall be fined under this section, a record shall be made of the proceedings upon which such fine shall be imposed, and such presiding officer shall enter upon such record the facts which constitute the contempt of Court, and the grounds and reasons of his proceedings, and shall deal with the case in other respects as hereinbefore provided with regard to criminal offences in cases in which a fine exceeding five pounds shall have been imposed.

Contempts of court, what, and how punishable.

16. The records of such Court shall be kept in such place as the Governor shall from time to time order.

Records, where to be kept.

No. 27—1868.

Rules in resident  
magistrates' courts  
to apply.

Jurisdiction of re-  
sident magistrates  
not affected.

Short title.

17. The rules in force in the Courts of Resident Magistrates shall, save as herein is otherwise provided, as nearly as may be apply to the Court to be held by such officer as aforesaid.

18. Nothing herein contained shall be held to limit or take away any jurisdiction of any Resident Magistrate conferred by any law in force in this Colony.

19. This Act may be cited as the "Border Protection Act, 1868."

---

SCHEDULE A.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

I, A. B., do promise and swear that I will faithfully and diligently execute, to the best of my abilities, the several duties of the office of Special Magistrate. So help me God!

No. 7—1874.]

[July 29, 1874.

---

ACT

To Amend the "Border Protection Act, 1868."

Preamble.

WHEREAS it is expedient that the officer appointed to exercise jurisdiction under the "Border Protection Act, 1868," should, in addition to the jurisdiction given to him by the said Act, exercise within the limits of the district assigned to him under the said Act, certain powers possessed by a Resident Magistrate under the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices," and other laws: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Officer appointed  
under Border Protec-  
tion Act, 1868, to  
have jurisdiction un-  
der Act No. 15 of  
1856.

1. It shall be lawful for the officer appointed to exercise jurisdiction under the said Border Protection Act, 1868, in addition to the jurisdiction thereby given to him, to exercise within the limits of the district from time to time defined by virtue of the first section of the said Act, the same jurisdiction as if such district were a district of a Resident Magistrate under the Act No. 20 of 1856, intituled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," and as if he were the Resident Magistrate of such district: Provided that nothing herein contained shall authorize the exercise by the said officer of any jurisdiction in civil cases, and provided that in the exercise of the jurisdiction hereby given the said officer shall conform as nearly as may be to the rules and laws in force as to Courts of Resident Magistrates.

Short title.

2. This Act may be cited for all purposes as "The Border Protection Amendment Act, 1874."

No. 29—1868.]

[September 2, 1868.

## ACT

## For the Organization and Regulation of a Police Force for the Northern Border of the Colony.

WHEREAS it is expedient to provide for the organization and regulation of a Police Force to act on the Northern Border of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to cause such a sufficient number of fit men as Parliament shall from time to time provide for, to be embodied to serve as a police force, who shall be sworn before a Justice of the Peace to act as a police in the divisions of Namaqualand, Calvinia, Fraserburg, Hope Town, and Victoria West, for preserving the peace, and preventing robberies and other crimes, and apprehending offenders against the peace.

Police force to be embodied.

2. It shall be lawful for the Governor, by warrant under his hand, to appoint an inspector for the general superintendence and management of the said force, and such inspector from time to time to displace and remove and to appoint another in his place, as to him shall seem meet.

Governor may appoint and remove inspector.

3. It shall be lawful for the Governor, from time to time, to make such regulations respecting the training, arms and accoutrements, clothing and equipment of such force, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof; and also, when it shall appear necessary, to direct the employment and distribution of the said force beyond the limits of the divisions in the first section hereof mentioned, and also within or without the colonial boundary.

Governor may make regulations.

And employ force beyond limits of divisions named.

4. Every member of the said force shall be bound to obey the regulations which shall from time to time be made or sanctioned by the Governor for maintaining the discipline thereof, and to obey all lawful orders to be given him by his officers or superiors in furtherance of such regulations, or of the purposes for which such force is or is to be embodied; and every member of the said force who shall contravene any of such regulations, or who shall disobey such lawful orders as aforesaid, shall forfeit and pay a fine not exceeding twenty pounds; and such offender shall, in addition to such fine, or in default of payment thereof, be liable to be imprisoned, with or without hard labour, or with or without spare diet, for any term not exceeding three months in any gaol or place of confinement in the Colony.

Penalty upon members of force for disobedience or breach of regulations.

5. If any member of the said force shall take a bribe or any gratuity whatever for suffering any person lawfully in his custody to escape, or shall wilfully neglect to execute any warrant entrusted

Penalty on member taking bribes or gratuities.

No. 29—1868.

to him, every such member of the said force shall be liable for such offence to a fine not exceeding twenty pounds, or to be imprisoned, with or without hard labour, or with or without spare diet, for any term not exceeding six months, and in default of payment of the fine imposed to imprisonment, as already provided; but nothing herein contained shall exempt such offender from any higher or other punishment to which he may be subject by any other law in force in this Colony.

Penalty for desertion or refusal to serve during term of service.

6. If any member of such force shall during the period for which he shall have engaged to serve in the said force, and not being duly discharged from the same, desert from the same, or refuse to serve therein, or absent himself from duty without lawful cause or reasonable excuse, every such offender shall be liable for every such offence to a fine not exceeding twenty pounds, and to imprisonment with or without hard labour, or with or without spare diet, for any period not exceeding six months, or to one or other of such penalties, or to such imprisonment in the alternative on non-payment of such fine.

Application of fines levied under this Act.

7. All fines to be levied under this Act, or any part thereof, may be allocated by the Governor to such purposes for the better efficiency of the said force as to him shall seem fit, or any portion thereof may be by him made payable as rewards to informers, and the residue thereof, not otherwise allocated by the Governor, shall be payable into the colonial revenue; and all rewards and gratuities which shall be payable under any law in force in this Colony to any member of the said force, except as hereinafter provided, or which shall be given by any private person to any member of such force for the performance of any duty as a member of such force, or of any service connected with such duty, shall be paid into a common fund for the benefit and efficiency of such force; but it shall be lawful for the Governor, or such persons as he shall authorize, out of such general fund to make allowances to individual members of such force for special services, and for such other purposes as shall be settled by regulations to be made or sanctioned by the Governor from time to time.

Disposal of gratuities or rewards.

Penalty for unauthorized sale or pledge of horse, equipments, &c.

8. No member of the said force shall, without permission of the inspector first had and obtained, sell, pledge, or otherwise dispose of any horse, saddle, bridle, gun, clothing, ammunition, or other article or equipment which, by the regulations of the said force for the time being, he shall be required to keep and possess; and every sale, pledge, or other disposition of any of the matters aforesaid shall be null and void; and any member of the said force who shall make or attempt to make any sale, pledge, or other disposition as aforesaid, in contravention of this section, shall incur and be liable to a fine not exceeding twenty pounds sterling, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

9. If any person shall, in consequence of any sale, pledge, or other disposition made by any member of the said force in contravention of the last preceding section, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds sterling, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

No. 29—1868.  
Penalty for receiving horse or equipments disposed of without authority.

10. No animal, article, matter, or thing mentioned in the eighth section of this Act, and therein forbidden to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

Animals, equipments, &c., not liable to seizure under writ of execution or order for sequestration.

11. Nothing in the three last preceding sections contained shall apply to the inspector of the said force.

Sections 8, 9, and 10 not to apply to inspector.

12. For the protection of persons acting in the execution of this Act, all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within four calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, together with the costs incurred up to that time; and if a verdict shall be given for the defendant, or the plaintiff be non-suited or discontinue any such action after issue joined, or if upon execution, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

Persons acting in execution of this Act to receive notice of action, and to be entitled to tender amends.

Costs of suit.

13. [Repealed by Act 14, 1880.]

14. Nothing contained in the Ordinance No. 25 of 1847, entitled "Ordinance for improving the Police of the Colony," shall extend to the force aforesaid in this Act mentioned.

Ordinance No. 25 of 1847 not to extend to the force embodied under this Act.

No. 14—1880.]

[July 29, 1880.

## ACT

To Amend, in certain respects, Act No. 29 of 1868, being  
 “An Act for the Organization and Regulation of a  
 Police Force for the Northern Border of the Colony.”

Preamble.

WHEREAS doubts have arisen as to whether there exists any legal power to try and determine offences committed by members of the Police Force acting on the Northern Border of this Colony in cases where the offence shall be committed outside the limits of the Colony: And whereas it is expedient to remove such doubts and to confer jurisdiction in respect of such offences, as well as of all others created by the Act No. 29 of 1868, upon the officer duly appointed to exercise jurisdiction for the better protection of Her Majesty's subjects on the Northern Frontier of this Colony: Be it enacted by the Governor of the Cape of Good Hope, acting by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of sec. 13  
 of Act 29 of 1868.  
 Jurisdiction in  
 cases of offences un-  
 der such Act.

1. Section XIII of Act No. 29 of 1868 is hereby repealed.
2. All the offences created by the said Act No. 29 of 1868 shall be cognizable, triable, and punishable by any Resident Magistrate having jurisdiction in the place where such offence shall be committed, or by the officer appointed under the third section of Act No. 27 of 1868, to exercise jurisdiction for the better protection of Her Majesty's subjects on the Northern Frontier of this Colony, who is hereby authorized and empowered to try and punish offenders against the said Act in all cases, whether the offence be committed within the limits of his local jurisdiction or elsewhere, the true intent and meaning of this Act being to confer upon the officer last mentioned power and jurisdiction to try and punish persons guilty of offences created by the said Act No. 29 of 1868, although such offence shall not have been committed within the limits of his local jurisdiction or within this Colony.

No. 6—Sd. P. Maitland.]

[March 10, 1845.

Ordinance for substituting Declarations in the place of  
 certain Oaths and for the suppression of voluntary and  
 extra-judicial Oaths and Affidavits.

Preamble.

WHEREAS it has been found that to reserve the imposition of oaths as much as may be for judicial proceedings and such other weighty and important affairs as obviously require a recourse to the most solemn and effectual means of eliciting truth has a direct



and salutary tendency to establish and preserve a proper reverence for the nature and obligation of an oath: And whereas all oaths imposed merely for the protection of the public revenue and matters of a like nature are at variance with the principle aforesaid, and by weakening amongst the people generally the force of the religious sanction fail in a great measure to secure the objects contemplated by their enactment: And whereas it is expedient that such oaths should be abolished and that declarations should be substituted in their room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of any of the Ordinances hereinafter mentioned and of any former law or usage heretofore in force in this Colony as is repugnant or inconsistent with any of the provisions of this Ordinance shall be and the same is hereby repealed.

Ord. 6—1845.

Repeal of repugnant laws.

2. And be it enacted that in the room and stead of every affidavit or affirmation required by the Ordinance No. 60, entitled "An Ordinance for preventing the mischiefs arising from the Printing and Publishing Newspapers and Papers of a like nature by persons not known, and for regulating the Printing and Publication of such Papers in other respects, and also for restraining the abuses arising from the publication of Blasphemous and Seditious Libels," and that in room and stead of the oath referred to and directed in the eighth section of the Ordinance No. 7, 1834, entitled "An Ordinance for regulating the Trade in Gunpowder within this Colony," and that in room and stead of the oath referred to and directed in the ninth section of the Ordinance No. 6, 1844, entitled "An Ordinance for regulating Sales by Auction;" and that in room and stead of the several and respective oaths referred to and directed in the Ordinance No. 18, 1844, entitled "An Ordinance for regulating the payment of Transfer Duty in this Colony," and that in room and stead of the several respective oaths referred to and directed in the Ordinance No. 11, 1844, entitled "An Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees and Tutors and to sue and be sued in the name of the Secretary," and that in room and stead of any oath which by any official regulation in any department of or under the Executive Government of this Colony might but for the passing of this Ordinance be required to be taken by any person for the purpose of verifying any account, entry, or return, or for any other purpose whatever, there shall respectively be made and subscribed a declaration in the form set forth in the schedule hereunto annexed, but to the same effect nevertheless as the oath, affidavit, or affirmation which would but for the passing of this Ordinance have been in the same case taken or made, and every such declaration shall be made by and before the same persons respectively by and before whom the particular oath, affidavit, or

Substitution of declaration for oaths in certain cases.

Ord. 6—1845.

affirmation in the room and stead of which such declaration shall be made would but for the passing of this Ordinance have been made or taken.

Punishment of perjury on false declaration.

3. And be it enacted that in any case when a declaration shall be substituted for an oath, affidavit, or affirmation by virtue or in pursuance of the provisions of this Ordinance any person who shall wilfully and corruptly make and subscribe any such declaration knowing the same to be untrue in any material particular shall be deemed to be guilty of the crime of contravening the provisions of this Ordinance, and shall upon conviction thereof suffer such punishment as shall be by law provided for the crime of perjury.

Prohibition of extra-judicial oaths and affidavits.

4. And whereas voluntary and extra-judicial oaths have been occasionally administered by Resident Magistrates and Justices of the Peace in regard to matters wholly unconnected with any suit, inquiry, or proceeding at law and not in any wise pending or at issue before such Magistrates or Justices: And whereas the practice of administering such oaths is one productive of injurious consequences and which should be totally suppressed: Be it therefore enacted that it shall not be lawful for any Magistrate or Justice of the Peace or other person authorized to administer an oath to administer or cause or allowed to be administered any oath, affidavit, or solemn affirmation touching any matter or thing whereof such Magistrate, Justice, or other person hath not or doth not believe himself to have jurisdiction or cognizance under and by virtue of some law or ordinance in force at the time being.

Exceptions from application of ordinance.

5. And be it enacted that nothing in this Ordinance contained shall extend or apply to any oath, affidavit, or solemn affirmation which now is or hereafter may be taken or made in the course of any proceeding in any Court of Justice or in the course of any proceeding under Ordinance No. 97, entitled "An Ordinance for enabling certain persons having respectively the just, lawful, and undisputed right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Registry," or in the course of any proceeding under Ordinance No. 6, 1843, entitled "An Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony."

Time of taking effect.

6. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

#### SCHEDULE.

I, A. B., do solemnly and sincerely declare that (here set forth the effect of the oath, affidavit, or solemn affirmation for which the declaration shall be substituted); and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting Declarations in the place of certain Oaths and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Declared, &c.

No. 2—1858.]

[June 5, 1858.

## AN ACT

For Transferring to one of Her Majesty's Principal Secretaries of State, the Powers and Properties vested in this Colony in the Officers of the Ordnance.

WHEREAS, by divers grants, transfers, leases, contracts, or other means, divers lands, tenements, and properties within this Colony have been, and now are, vested in the officers of Her Majesty's Ordnance: And whereas Her said Majesty hath been pleased to signify Her Royal wish and desire that all such lands, tenements, and properties as aforesaid should be transferred from the officers of Ordnance and be vested in one of Her Majesty's Principal Secretaries of State: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. All lands, tenements, and properties, of every sort and description, lying and being within this Colony, and now vested in, or belonging to the officers of Her Majesty's Ordnance, whether by the name of the principal officers of Ordnance, or by the name of the respective officers of Ordnance, or by any other name or description whatsoever, and whether held by freehold, quitrent, leasehold, or any other tenure, are hereby transferred to Her Majesty's Secretary of State, for the time being, to whom Her Majesty shall think fit to entrust the seals of the War Department, and to such last mentioned Secretary of State, for the time being, for ever.

All lands, &c., vested in officers of Ordnance transferred to Secretary of State for War.

2. All contracts, covenants, and agreements heretofore made or entered into by any person or persons whomsoever, with the said principal officers of the Ordnance, or with the said respective officers of the Ordnance, or any person or persons on their behalf, as to or concerning any lands, hereditaments, estates, and property, vested in, or agreed to be purchased by, the said principal officers, or by the said respective officers, or in any wise relating to the public service, shall, in this Colony, be deemed and taken to have been made or entered into with such Principal Secretary of State as last aforesaid, and shall be executed and enforced by him, in like manner as if he had originally been party thereto, instead of the said officers of the Ordnance or other person or persons; and all proceedings whatsoever, which have been, or might, or may have been commenced, taken, or done in the names of the said officers, on behalf of Her Majesty, shall and may hereafter be commenced, continued, taken, and done in the name of such Principal Secretary of State as aforesaid, in like manner (in the case of proceedings already commenced, taken, or done) as if he had originally been party thereto, instead of the said officers of the Ordnance.

Contracts, &c., made with such officers to be enforced by Secretary of State.

No. 2—1858.

How such Secretary of State to be styled.

3. In every contract, conveyance, grant, transfer, lease, or other assurance of any lands, tenements, or property, with, unto, or by the last mentioned Principal Secretary of State, for the time being, and in every other deed or instrument relating to any lands, hereditaments, estates, or property, or in any wise to the public service, to which the last mentioned Principal Secretary of State, for the time being, shall be, or shall be intended to be, a party, it shall be sufficient to call or describe him by the style or title of "Her Majesty's Principal Secretary of State for the War Department," without naming him.

Commanding Royal Engineer to represent Secretary of State in the colony.

4. All deeds, instruments, and writings of every sort or kind whatsoever, relating to any lands, tenements, or properties within this Colony, or to any suits or proceedings at law instituted in any of the Courts of this Colony, or to any matter or thing belonging to or connected with the administration of the War Department in this Colony, and to which deeds, instruments, or writings the Secretary of State aforesaid shall be, or shall be intended to be, a party, may be executed for and on behalf of the Secretary of State aforesaid, for the time being, by the commanding Royal Engineer, for the time being, commanding in this Colony: Provided that nothing herein contained shall be construed so as to prejudice or affect the validity of any deed, instrument, or writing signed by the said last mentioned, or by any other, Secretary of State, or by any attorney lawfully appointed by the said Secretary of State to act for him in his official capacity within this Colony.

---

### OSTRICHES.

---

- |   |  |   |
|---|--|---|
| 1. Act 24—1875, (Domesticated).                     |  | 4. Act 15—1875, Wild Ostriches, Pre-<br>servation). |
| 2. ,, 24—1884, (Export Duty).                       |  | 5. ,, 32—1883, (Theft of Feathers).                 |
| 3. ,, 12—1870, (Wild Ostriches, Pre-<br>servation). |  | 6. ,, 13—1885, do.                                  |

See also "Cattle Thefts."

No. 24—1875.]

[June 30, 1875.

### ACT

To Repeal Act No. 10, 1871, intituled "Act for the Protection of Private Property in Domesticated Ostriches," and to make other provisions in lieu thereof.

Preamble.

WHEREAS it is expedient to repeal the Act No. 10 of 1871, intituled "Act for the Protection of Private Property in Domesticated Ostriches," and to substitute other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Act No. 10, 1871, shall be, and the same is hereby, repealed.

No. 24—1875.

2. Whenever any ostrich which shall have been domesticated, and shall have been, as such, the lawful property of any person, while in his custody, or possession, or guardianship, either by himself or his servants or within the bounds of any enclosure, within which it shall have been placed by such person, or by his orders, or with his consent, express or implied, shall have strayed or escaped from such custody, possession, guardianship, or inclosure, the property in such ostrich of the person who was the lawful owner or custodian thereof, respectively, and of every other person who had at the time of such escape or straying any property therein, —all of which persons shall, for the purposes of this Act, be designated by the term “owner of such ostrich,” shall be deemed to continue therein unimpaired and unaffected by reason of such escape or straying as aforesaid, and any person who shall, without reasonable and justifiable cause, kill, injure, or convert to his own use any such ostrich, shall be liable to account in damages to the owner of such ostrich in respect to any damage done to such owner’s property therein, or to restore such ostrich, or both to restore such ostrich and to account in damages, as the case may be, in like manner, as if such ostrich were an ox or other domestic animal: Provided that nothing herein contained shall be held to prevent any person from being prosecuted for any criminal offence for which he may have become liable by reason of such killing, injury, or conversion.

Act 10 of 1871 repealed.  
Rights of owners of escaped domesticated ostriches defined.

3. The owners or occupiers of land or inclosures where domesticated ostriches are kept, may destroy, or cause to be destroyed, all dogs found at large in such inclosure or on such land: Provided, that if any owner or occupier, under colour of this Act, shall maliciously and without cause destroy any dog, he shall be liable to account for and pay such damages for the same as may be awarded in any Court of Resident Magistrate.

Destruction of dogs found within inclosures for ostriches.

4. Nothing in this Act contained shall be held to take away, limit, or curtail any right or property which but for this Act would have existed, or be held to belong to any person in any domesticated ostrich in respect of its being domesticated, or in the eggs of any domesticated ostrich, nor to take away any remedy, by way of action for trespass<sup>(1)</sup> or otherwise, which any person on whose property any domesticated ostrich shall have trespassed, or whose property such ostrich shall have in any way injuriously affected, may have, or might but for this Act have had, against the owner of such ostrich in respect of damage done by such ostrich while remaining the property of such owner, nor to prevent any person from being prosecuted for any offence which he may have committed.

Certain existing rights not affected by this Act.

5. This Act may be cited for all purposes as the “Domesticated Ostriches Act, 1875.”

Short title.

<sup>1</sup> See Act 31 of 1875 (Pounds and Trespasses).

No. 24—1884.]

[July 25, 1884.

## ACT

## To Impose a Duty on the Export of Ostriches and Ostrich Eggs.

- Preamble. WHEREAS it is desirable to impose a duty on Ostriches and Ostrich Eggs exported from this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—
- Duty on export of ostriches and ostrich eggs. 1. Upon every ostrich exported from this Colony, except as hereinafter provided, there shall be payable a duty of one hundred pounds sterling, and upon every ostrich egg so exported there shall be payable a duty of five pounds: Provided, however, that no duty shall be payable on the export of any ostrich or ostrich egg to any neighbouring State or Colony which shall by its own Legislature have imposed a duty on the export of ostriches or ostrich eggs not less in amount than the duty imposed by this Act.
- Penalty for contravention. 2. Every person who shall contravene the provisions of this Act by exporting any ostrich or ostrich egg (except as hereinbefore excepted) without payment of the duty imposed by this Act, shall on conviction be liable to a fine of not less than twenty-five pounds nor more than one hundred pounds for every such ostrich or ostrich egg so exported, or to imprisonment with or without hard labour, for any term not less than one month nor more than six months or until such fine be paid.
- How penalty to be recovered. 3. All penalties under this Act may be recovered or enforced in the Court of the Resident Magistrate of the district in which the offence was committed.
- Governor may frame rules, &c. 4. It shall be lawful for the Governor from time to time to make such rules and regulations as he may deem advisable for carrying out the provisions of this Act: Provided that such rules and regulations shall be published in the *Gazette*.
- Short title. 5. This Act may be cited as the "Ostrich Export Duty Act, 1884."

No. 12—1870.] *repealed by Act 33 of 1884* [May 5, 1870.  
ACT

## For the better Preservation of Wild Ostriches. (1)

- Preamble. WHEREAS it is expedient to prevent the indiscriminate destruction of wild ostriches in this Colony: Be it therefore

<sup>1</sup> Printed as amended by Act 15 of 1875.

enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 12—1870.

1. The Proclamation dated 21st March, 1822, <sup>(1)</sup> intituled "Game Law Proclamation," in so far as the same relates to the protection of ostriches or the eggs of ostriches, is hereby repealed.

Proclamation of 21st March, 1822, repealed.

2. No person shall kill, catch, capture, hunt, or wound any ostrich not being domesticated without having first obtained a licence to kill ostriches, under a penalty of any sum not less than thirty pounds sterling and not exceeding fifty pounds sterling for the first offence, and not less than forty pounds sterling and not exceeding one hundred pounds sterling for every subsequent offence; and any person convicted under this section within six months from the time of the offence may be imprisoned, with or without hard labour, for any term not exceeding six months, unless or until the fine be sooner paid.

Penalty for killing, &c., wild ostriches without a licence.

3. No person shall, whether having obtained a licence to kill ostriches or not, kill, catch, capture, hunt, or wound within any district of this Colony, any ostrich not being domesticated within the months which shall in any such district be for the time being proclaimed as fence season for ostriches under the provisions of this Act, under like penalties as by the last foregoing section are provided in cases falling within that section.

Like penalty for killing, &c., ostriches during fence season.

4. For every licence to kill ostriches there shall be payable a stamp duty of twenty pounds sterling; and every such licence shall be in force for the time specified therein, and no longer: Provided that every licence to kill ostriches shall authorize the holder thereof to catch, capture, hunt, or shoot at the same.

Stamp duty on and duration of licence.

5. It shall be lawful for the Governor, by proclamation to be by him issued, to fix and prescribe for the several districts in this Colony the close time or fence seasons within which it shall not be lawful to kill, catch, capture, hunt, or wound ostriches within this Colony, not being domesticated ostriches, either with or without a licence to kill ostriches.

Governor to proclaim fence season.

6. No person shall at any time wilfully and without justifiable cause take away, disturb, destroy, or have in his possession (otherwise than is in the next section provided), the eggs or any of the eggs of any wild ostrich, under the penalty of any sum not exceeding ten pounds sterling for each egg, the information in each case being laid within six months from the time of the offence committed; and any person convicted under this section and failing to pay such penalty shall be liable to be imprisoned with or without hard labour for any period not exceeding twelve months, unless the fine be sooner paid.

Penalty on taking away, &c., the eggs of wild ostriches.

7. It shall be lawful for any owner or occupier of land without having taken out any licence, to catch and keep, or to cause or permit to be caught and kept, the young of any wild ostriches

Owner or occupier may without licence catch and keep young wild ostriches under two months old, or

<sup>1</sup> Repealed entirely by Act 36, 1886 (Game Law).

No. 12—1870.  
take eggs of wild  
ostriches found on  
his land.

for the purpose of domestication, or to take or cause to be taken the eggs or any of the eggs of any wild ostrich at any time when the same shall be found upon the land of such owner or occupier, anything contained in this Act or any other law to the contrary notwithstanding: Provided, however, that the young ostriches so caught and kept have not attained the age of two months at the time of their capture.

Fines by whom and  
how recoverable.

8. The several fines abovementioned may be recovered by any person, on behalf as well of himself as of the Crown, in all cases where the fine shall not exceed fifty pounds sterling, in the Court of the Resident Magistrate of the district where the offence may have been committed; the sentence, however, being subject to review by the Supreme or Eastern Districts or Circuit Courts, as the case may be, and in other cases in the Supreme Court, the Court of the Eastern Districts, as the case may be, or the Circuit Court for the district where the offence may have been committed; and a portion of any fine imposed upon any offender on conviction for contravening any of the provisions of this Act, not less than one pound nor exceeding five pounds, at the discretion of the Court, shall be paid to the person on whose information such conviction shall have taken place, provided such person be not an accessory.

Portion of fine to  
be paid to informer.

Ostriches may be  
protected for certain  
number of years.

9. It shall be lawful for the Governor, by proclamation in the *Government Gazette*, to proclaim and declare, as to any parts of this Colony, that wild ostriches shall be protected and not destroyed for any number of years not exceeding three, to be mentioned in such proclamation; <sup>(1)</sup> and any person contravening the provisions of any such proclamation shall be subject to the like penalties as those provided by the second section of this Act; and it shall also be lawful for the Governor from time to time to revoke, alter, or amend such proclamation.

Absence of name  
from list of licences  
*prima facie* proof of  
non-issue of licence.

10. In any prosecution for infringement of the second section of this Act, it shall be *prima facie* sufficient for the prosecutor to show that the accused does not appear as the holder of a licence in the list of persons to whom the requisite licence in such case shall have been issued, respectively, kept in the office of the Resident Magistrate, before whom or in whose district such case shall be brought for trial in any Court; but it shall be lawful for such accused person to rebut such evidence by proof that he was, in fact, at the time of the commission of the offence charged, the lawful holder of such licence.

<sup>1</sup> Proc. No. 19, 1872, in *Gazette*, 5th March, 1872.



ACT

To Amend in certain respects the Act No. 12, 1870,  
intituled “An Act for the better Preservation of  
Wild Ostriches.”

WHEREAS it is expedient that the Act No. 12 of 1870, intituled “An Act for the better Preservation of Wild Ostriches,” should be amended as hereinafter is provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The sixth and seventh clauses of Act No. 12 of 1870, intituled “An Act for the better Preservation of Wild Ostriches,” are hereby repealed, and the following shall stand in lieu thereof.

2. No person shall at any time wilfully and without justifiable cause take away, disturb, destroy, or have in his possession (otherwise than is in the next section provided), the eggs or any of the eggs of any wild ostrich, under the penalty of any sum not exceeding ten pounds sterling for each egg, the information in each case being laid within six months from the time of the offence committed; and any person convicted under this section and failing to pay such penalty shall be liable to be imprisoned with or without hard labour for any period not exceeding twelve months, unless the fine be sooner paid.

3. It shall be lawful for any owner or occupier of land without having taken out any licence, to catch and keep, or to cause or permit to be caught and kept, the young of any wild ostriches for the purpose of domestication, or to take or cause to be taken the eggs or any of the eggs of any wild ostrich at any time when the same shall be found upon the land of such owner or occupier, anything contained in this Act or any other law to the contrary notwithstanding: Provided, however, that the young ostriches so caught and kept have not attained the age of two months at the time of their capture.

4. This Act may be cited for all purposes as the “Wild Ostriches Act, 1875.”

Preamble.

Clauses 6 and 7 of Act 12, 1870, repealed.

Penalty on taking away, &c., the eggs of wild ostriches.

Owner or occupier may without license catch and keep young wild ostriches under two months old, or take eggs of wild ostriches found on his land.

Short title.

No. 32—1883.]

[September 27, 1883.

## ACT

To Provide for the Repression of Thefts of Ostrich Feathers and of Skins. <sup>(1)</sup>

- Preamble.** WHEREAS the theft of Ostrich Feathers prevails extensively throughout the Colony and is increasing, and whereas the Theft of Skins is also prevalent, and it is desirable to repress such crimes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—
- Buyers of Ostrich Feathers to be licensed.** 1. It shall not be lawful for any person to deal as a buyer of ostrich feathers for purposes of trade unless such person shall have obtained a licence so to deal: Provided, however, that this prohibition shall not apply to any person purchasing ostrich feathers at any public sale. Such licence shall be in the form A set forth in the schedule to this Act.
- To keep special book.** 2. Every purchaser of ostrich feathers under a licence as in the last preceding section provided, shall keep a book in which he shall
- Entries therein.** forthwith enter, or cause to be entered, as to ostrich feathers purchased by him
- (a) The date of the purchase of such feathers.
  - (b) The number, or weight, and description of feathers purchased.
  - (c) The name, residence, and occupation of the vendor.
  - (d) The price given.
  - (e) What has satisfied the purchaser that the vendor had a right to sell such feathers.
- Form in Schedule.** Such entry shall be in the form B set forth in the schedule to this Act, and such book may be inspected free of charge at all reasonable times by written order of any Resident Magistrate, Justice of the Peace, or Field-cornet.
- Penalty for contravening the above.** 3. Any person who shall without a licence buy ostrich feathers for purposes of trade, as in the first section of this Act mentioned, or any person buying ostrich feathers, who shall neglect to make entries with reference thereto in a book kept for that purpose as provided in the last preceding section, or any person who shall refuse to allow the production and inspection of such book, shall be liable upon conviction to a penalty of not exceeding one hundred pounds, or to imprisonment with or without hard labour for any period not exceeding twelve months, or to both such fine and such imprisonment.
- Licence £5.** 4. There shall be payable annually the sum of five pounds for the licence in the first section of this Act mentioned.
- Suspected persons may be apprehended without warrant.** 5. If there be reasonable grounds to believe that any person is or has been in unlawful possession of ostrich feathers, it shall be

<sup>1</sup> Printed as amended by Act 13 of 1886 (Criminal Procedure). See also under "Cattle Thefts."

competent for any Justice of the Peace, Field-cornet, landholder or police constable to apprehend such person without warrant and to convey him in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of ostrich feathers, and is not able to give a satisfactory account of his possession of such feathers to such Magistrate he shall on conviction be liable to pay a fine of not exceeding two hundred pounds, or to be imprisoned with or without hard labour, for any period not exceeding two years, or to both such fine and such imprisonment.

No. 32-1883.

Penalty for possession of feathers not properly accounted for.

6. If any person is found conveying any skin or hide, and on being questioned thereto, is unable to give a satisfactory account of his possession of such skin or hide, it shall be lawful for any Justice of the Peace, Field-cornet, landholder or police constable to apprehend such person without warrant and to convey him before any Magistrate having jurisdiction, and upon conviction such person shall be liable to pay a fine of not exceeding one hundred pounds, or to be imprisoned with or without hard labour for not exceeding twelve months, or to both such fine and such imprisonment.

Persons with hides and skins not properly accounted for.

Penalty.

7. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding twenty pounds, and to pay to the arrested person such amount, not exceeding the sum of fifty pounds, as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Penalty for wrongful, &amp;c., arrest.

8. This Act may be cited as the "Ostrich Feathers and Skins Theft Repression Act, 1883."

Short title.

---

SCHEDULES.

---

[ A. ]

*Form of Ostrich Feather Buyer's Licence.*

I, ....., Distributor of Stamps in.....  
 on this ..... day of ....., 188..., do hereby certify that  
 ..... is authorized to carry on the Trade of a  
 Buyer of Ostrich Feathers for One Year, ending on the .....  
 188..., and no longer.

.....  
 Distributor.

No. 32—1883.

[ B. ]

*Form of Entry to be kept by Licensed Buyer.*

Register of Ostrich Feathers purchased by .....  
 a Licensed Buyer.

188

Date of Purchase of Feathers.	Number or Weight and Description.	Name, Residence, and Occupation of the Vendor.	Price Given.	What has satisfied the Purchaser that the Vendor had a right to sell such Feathers.

No. 13—1885.]

[July 31, 1885.

## ACT

To make further provision for the Repression of Thefts of  
 Ostrich Feathers, Skins, Mohair, and Wool.

## Preamble.

WHEREAS the Theft of Ostrich Feathers, Skins, Mohair, and Wool still prevails throughout the Colony, and it is desirable to make further provision for the repression of such crimes than that already provided in Act No. 32 of 1883: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Purchase of feathers, skins or hides between sunset and sunrise prohibited, except at public sales.

1. It shall not be lawful for any person to purchase or sell for purposes of trade any ostrich feathers, skins, hides, mohair, or wool between the hours of sunset and sunrise: Provided, however, that this prohibition shall not apply to any person purchasing or selling ostrich feathers, skins, hides, mohair, or wool at any public sale.

Penalty for contravention of foregoing section.

2. Any person contravening the first section of this Act shall, upon conviction, be liable to a penalty of not exceeding twenty pounds, or to imprisonment with or without hard labour, not exceeding three months.

Act not to apply to contract of sale where price not less than £100.

3. The provisions of this Act shall not apply to any contract for the purchase and sale of any of the articles in this Act mentioned where the purchase price paid or agreed to be paid for the said articles shall amount in value to the sum of one hundred pounds sterling or upwards.

4. This Act shall only apply to and be in force in such divisions of this Colony as shall from time to time be notified by the Governor by proclamation published in the *Gazette*, and the Governor shall be authorized to publish any such proclamation at the request of the Divisional Council of any division, and, by the like request, to revoke or alter any such proclamation: Provided that, before any Divisional Council shall make any such request as aforesaid, three-fourths of the elected members thereof present at a meeting to be specially called for the making of such request shall concur in making the same, and not less than three months' notice of such meeting, and of the object thereof, shall have been given by advertisement in some newspaper circulating in the division.

No. 13—1885.

Act to be in force in any division upon proclamation after request of council by vote of three-fourths at special meeting.

5. This Act may be cited as the "Ostrich Feathers and Skins Theft Further Repression Act, 1885."

Short title.

No. 24—1861.]

[August 14, 1861.]

## ACT

## To Limit the Liability of certain Members of certain Partnerships.

WHEREAS it is expedient to limit in certain cases and under certain conditions, the liability of certain members of certain partnerships formed for the purpose of carrying on trade or business in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The partnerships coming within the meaning of this Act shall not include such as are joint-stock companies nor such partnerships as may be formed for the purpose of banking.

Joint-stock and banking companies not within the meaning of this Act.

2. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, except as is hereinbefore excepted, may be formed within this Colony upon the terms and subject to the conditions and liabilities hereinafter mentioned.

Limited partnerships may be formed.

3. The said partnerships may consist of one or more persons who shall be called general partners, and shall be jointly and severally responsible as partners now are by law, and who only shall be authorized to transact business and sign for the partnership, and to bind the same; and of one or more persons who shall contribute to the common stock a specific sum in actual cash payment, and who shall be called special partners, and who shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned, beyond the amount so paid in by them: Provided, however, that nothing in this Act contained shall be deemed or taken to make a special partner liable for any debts contracted by the general partners previous to the formation and registration of such limited partnership.

To consist of general and special partners.

- No. 24—1861.  
Partners to sign a certificate.
4. Any persons forming such partnership shall make and severally sign a certificate which shall contain the name or firm under which the said partnership is to be conducted, the names and residences of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has paid in to the common stock, the general nature of the business to be transacted, the time when the partnership is to commence, and the time when the partnership is to terminate.
- No partnership valid until certificate is registered in Deeds office.  
Copy of certificate to be filed with civil commissioner.
5. No such partnership shall be deemed to have been formed until a certificate containing the particulars as aforesaid shall be acknowledged by all the partners before a Justice of the Peace and registered in the office of the Registrar of Deeds of the Colony, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have a place of business situated in any division of the Colony, other than Cape Town and the district thereof and the Cape division, then a copy of the aforesaid certificate, certified by the Registrar of Deeds of the Colony shall be filed and registered in like manner in the office of the Civil Commissioner of every such division; and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable, as general partners are under this Act, for all the engagements thereof.
- False statement.
- Certificate of renewal of partnership to be filed, otherwise partnership to be general.
6. Upon every renewal or continuation of any such limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, and registered in like manner as is hereinbefore provided for the original formation of limited partnerships; and in every such partnership which may be renewed and continued, but not renewed and continued in conformity with the provisions of this Act, all the partners shall be deemed and taken to be general partners, and liable, as general partners under this Act are, for all the engagements of the partnership.
- Business to be conducted under name of general partners.
7. In all limited partnerships the business of the partnership shall be conducted under a name or firm which shall not include the name of any special partner; and if the name of any special partner shall be used in such firm with his consent or privity, he shall be deemed and treated as a general partner.
- Suits how to be brought.
8. All suits respecting the business of such partnership shall be brought and prosecuted by and against the general partners in the same manner as if there were no special partners; except in those cases in which it is provided in this Act that the special partners shall be deemed general partners and that special partnerships shall be deemed general partnerships; in which cases all the partners deemed general partners may join or be joined in such suits.
- No dissolution to take place until notice thereof be registered.
9. No dissolution of a limited partnership shall be held to have taken place, except by operation of law, before the time specified

in the certificate in the fourth section of this Act mentioned, unless a notice of such dissolution shall be registered in the Deeds Registry Office and in every Civil Commissioner's office in which the original certificate or the certificate of the renewal or continuation of the partnership was registered, and unless such notice shall also be published, for not less than three successive weeks in the *Government Gazette*, and in some newspaper or newspapers, if there should any be published in the division or divisions in which the certificate in the fourth section mentioned, or the certificate of the renewal or continuation of the partnership, was registered; and if no newspaper shall at the time of the dissolution be published in any such division, then the notice of such dissolution shall be published for not less than three successive weeks in any newspaper published in the town or village nearest to the division or divisions in which such certificate was registered.

No. 24—1861.  
tered and published  
in Gazette.

10. Every alteration which shall be made in the names of the partners, in the nature of the business, in the amount of capital thereof, or in any other matter stated in the original certificate shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made therein shall be deemed a general partnership, except renewed as a special partnership according to the provisions of this Act.

Alteration of  
names of partners  
to be deemed a dis-  
solution of partner-  
ship.

11. No part of the sum which any special partner shall have paid into the capital stock, and which shall be stated in the certificates hereinbefore provided to be registered in the Deeds Registry Office or office of Civil Commissioner as aforesaid, shall be withdrawn by him, or paid and transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership, but any partner may annually receive interest on the sum so contributed by him, if the payment of such interest shall not reduce the amount of such capital below the amount originally paid in; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits: Provided, however, that if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest thereon, from the date when they were so withdrawn respectively.

No part of sum  
contributed by spe-  
cial partner to be  
withdrawn by him.

12. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, or be employed for that purpose as agent, attorney, or otherwise; and if he shall personally enter into any transaction, or make any contract respecting the concerns of the partnership with any person except general partners, he shall be deemed and treated as a general partner in relation to such

How if capital is  
reduced by paying  
interest to special  
partner.

Special partner  
may examine into  
concerns of partner-  
ship but may not  
transact business on  
its account.

No. 24—1861.

transaction or contract, unless it shall be made to appear that in entering into such transaction or making such contract he acted as a special partner only.

General partners to account to each other and to special partners.

13. The general partners shall be liable to account to each other, and to the special partners, for their management of the business, as other partners now are by law.

As to claims of special partners when partnership becomes insolvent.

14. In case of the insolvency of any limited partnership, no special partner shall under any circumstances be allowed to claim as a creditor until all the claims of all the other creditors of the partnership shall be satisfied.

Short title.

15. This Act may be cited for all purposes as "The Special Partnerships' Limited Liability Act, 1861."

No. 17—1860.]

[July 17, 1860.

## ACT

To provide for the Granting, in this Colony, of Patents for Inventions.

Preamble.

WHEREAS it is expedient that the making of new and useful inventions should be encouraged by securing to their inventors for a limited time the exclusive enjoyment thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation of terms.

1. In the interpretation of this Act the term "invention" shall bear and have the same meaning as the term "invention" bears and has in the Act of the Imperial Parliament, the fifteenth and sixteenth of Her Majesty, chapter 83, and the term "letters patent" shall mean authorizations granted by the Governor under the public seal of the Colony, and the term "proceeding in the nature of a "*scire facias*" shall mean as much as may be what the same term would mean if used in an Act of the Imperial Parliament.

Power to grant patents.

2. It shall be lawful to make and issue, in the manner hereinafter mentioned, letters patent granting to the true and first inventor of any invention the privilege of the sole and exclusive working, making, and enjoyment of such invention, within this Colony, for any term not exceeding fourteen years from the date of such letters patent.

Governor to make rules for executing this Act.

3. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to make such rules and regulations, not inconsistent with the provisions hereof, as may appear to be necessary and expedient for the purposes of this Act, and all such rules and regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, if



Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament.

4. All applications under this Act for the grant of letters patent for an invention shall be made as follows, that is to say, the applicant shall deposit at the office of the Colonial Secretary an instrument in writing under his hand, particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, and also a copy of such instrument, and of the drawings accompanying the same, if any; and the day of the deposit of every such specification shall be recorded at the said office, and endorsed upon such specification, and a certificate thereof given to such applicant or his agent; and thereupon, subject and without prejudice to the provisions hereinafter contained, the said invention shall be protected under this Act, for the term of six months next after the said deposit, and the applicant shall have during such term the like powers, rights, and privileges as might have been conferred on him by letters patent for such invention issued under this Act, and duly sealed, as of the day of such deposit, and during the continuance of such powers, rights, and privileges under this provision, such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, such letters patent shall be conditioned to become void if such specification does not particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed; Provided, always, that in case the title of the invention or the said specification be too large or insufficient, it shall be lawful for the Attorney-General hereinafter mentioned, during the said term of six months and before the grant of the letters patent, to allow or require such specification to be amended, or another and sufficient specification to be deposited in lieu thereof; and every such amended or new specification shall have the same force, effect, and operation as if it had been originally deposited in its amended state.

No. 17—1860.

Applicants for patents to deposit specifications.

Specification may be amended before issue of patent.

5. In case of the deposit of any such specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of any such invention shall not be invalidated by reason of such deposit, or of any use or publication of the invention subsequent to such deposit and before the expiration of the said term of protection.

Patent of true inventor not to be affected by specification of pretended inventor.

6. The applicant, so soon as he shall think fit, after the deposit of such specification as aforesaid, and of the drawings and models accompanying the same, if any, may give notice in writing at the office of the Attorney-General of his intention to proceed with his application for letters patent for the said invention, stating in such notice the title of the said invention, and the day on which the specification thereof was deposited at the office of the Colonial

Mode of proceeding after deposit of specification.

No. 17—1860.

Secretary, and at the time of giving such notice shall produce the said certificate of deposit; and thereupon the said Attorney-General shall deliver to the applicant or his agent an appointment in the form contained in the second schedule to this Act, or to the like effect; and such applicant or agent shall cause the said appointment to be published once in the *Government Gazette*, once in some newspaper published in the city of Cape Town, and twice in some newspaper published in the town or place at or near to which the applicant uses or exercises the said invention, or (in case he does not use or exercise the same) in or near to which he resides, or if there shall be no newspaper published in such town or place, then twice in some newspaper circulating in the neighbourhood where he uses or exercises the said invention, or (in case he does not use or exercise the same) where he resides; and any persons having an interest in opposing the grant of letters patent for said invention shall be at liberty to leave particulars in writing of their objections to the said application at the office of the Attorney-General within such time, not being less than one month as the said Attorney-General by such appointment may direct.

Attorney-General  
to hear applications  
and objections, and  
award costs.

7. At the time and place named in the said appointment the applicant shall produce the newspapers containing the same, and the Attorney-General shall thereupon hear and consider the said application and all objections to the same mentioned in the said particulars, if any, and for that purpose shall obtain from the office of the Colonial Secretary the copy of the said specification, and of the drawings and models accompanying the same, if any, and may call to his aid such scientific or other person or persons as he may think fit, and may, by writing under his hand, order to be paid to such person or persons some remuneration for his or their attendance, and may also in like manner order that the costs of any hearing, upon any objection or otherwise, in relation to the grant of such letters patent or the protection acquired by the applicant under this Act, shall be paid, and in and by such writing shall fix the amount of such remuneration or costs, and by or to whom the same respectively shall be paid; and every such order shall be in the form contained in the third schedule to this Act or to the like effect, and may be made a rule of the Supreme Court: Provided, always, that the applicant, the objectors, and their respective witnesses and evidence, shall be respectively heard, examined, and considered separately, and apart from and in the absence of the other and his witnesses and evidence.

Attorney-General  
may issue warrant  
for letters patent.

8. The Attorney-General after such hearing and consideration, may issue a warrant under his hand for the granting of letters patent for the said invention, and by such warrant shall direct the insertion in such letters patent of all such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of this Act, and the said warrant shall be the warrant for the making and sealing of letters patent under

this Act, according to the tenor of the said warrant; and every such warrant shall be in the form contained in the fourth schedule to this Act, or to the like effect.

No. 17—1860.

9. A writ of the Supreme Court, in the nature of a writ of *scire facias* in England, shall lie for the repeal of any letters patent, granted under this Act, and it shall be lawful for the Governor, with the advice aforesaid, to order such Attorney-General to withhold such warrant as aforesaid, or that any letters patent for the granting whereof he has issued a warrant, shall not issue, or to order the insertion in any such letters patent of any restrictions, conditions, and provisoes, in addition to, or in substitution for any restrictions, conditions, or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for the Governor, with the advice and consent aforesaid, to order any specification in respect of the invention described in which no letters patent may have been granted, to be cancelled, and thereupon the protection obtained by the deposit of such specification shall cease.

Letters patent may be repealed or withheld, and specifications cancelled.

10. All letters patent for inventions granted under this Act shall be in the form contained in the fifth schedule to this Act, or to the like effect, and be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine at the expiration of three years and seven years respectively from the date thereof, unless there be paid within the said three and seven years respectively, the sum or sums of money in that behalf hereby required to be paid, and the Colonial Secretary shall issue under his hand a certificate of such payment, and shall endorse a receipt for the same on the letters patent.

Letters patent to be void on non-performance of conditions.

11. The Colonial Secretary, so soon after the receipt by him of the warrant aforesaid as required by the applicant, shall cause to be prepared letters patent for the invention according to the tenor of the said warrant; and it shall be lawful for the Governor, with the advice of the Executive Council, to cause letters patent to be sealed with the public seal of the Colony, and such letters patent shall be made applicable to the said Colony, and shall be valid and effectual as to the whole of the same; but, except as hereinafter mentioned, no letters patent shall issue on any warrant granted as aforesaid, unless application be made to seal such letters patent within three months after the date of the said warrant, nor unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit as aforesaid.

Letters patent to be issued within three months after warrant, and during the protection.

12. Where the application to seal such letters patent has been made during the continuance of such protection as aforesaid, and the sealing of such letters patent has been delayed from accident, and not from the neglect or wilful default of the applicant, then such letters patent may be sealed at such time, not being more

Letters patent may issue after that time, in certain cases.

aaa

No. 17—1860.

than one month after the expiration of such protection as the Governor, with the advice aforesaid, shall direct; and where the applicant for such letters patent dies during the continuance of such protection as aforesaid, such letters patent may be granted to the executors, testamentary or dative, of such applicant during the continuance of such protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such protection; and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such protection; and in case any letters patent shall be destroyed or lost, other letters patent, of the like tenor and effect, and sealed and dated as of the same day, may, subject to such regulations as the Governor, with the advice aforesaid, may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

Letters patent to bear date of deposit of specification.

13. All letters patent to be issued in pursuance of this Act shall be sealed and bear date as of the day of the deposit of such specification as aforesaid, and shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to be sealed and bear date; and after any letters patent shall have been granted or issued under this Act it shall not be necessary or admissible to inquire or ascertain whether such appointment as aforesaid has or has not been delivered and published in the manner hereinbefore mentioned and directed.

Letters patent for foreign inventions not to continue after expiration of foreign patent.

14. Where, upon any application made under this Act, letters patent are granted for or in respect of any invention, first invented in parts out of the Colony of the Cape of Good Hope, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any parts out of the Cape of Good Hope is obtained before the grant of such letters patent in the Cape of Good Hope, all rights and privileges under such letters patent shall, notwithstanding any term in such letters patent limited, cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such part out of the Cape of Good Hope shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: Provided, always, that no letters patent for or in respect of any invention, for which any such patent or like privilege as aforesaid shall have been obtained abroad, granted in the Cape of Good Hope after the expiration or determination of the term for which such patent or privilege was granted or was in force shall be of any validity.

Letters patent not to prevent the use of inventions in foreign ships resorting to ports in the Colony.

15. No letters patent for any invention, granted after the passing of this Act, shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign

ship or vessel which may be in any port of the Cape of Good Hope, in case such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from the same.

No. 17. 1860.

16. Every specification deposited at the office of the Colonial Secretary as aforesaid, and the drawings and models accompanying the same, if any, shall forthwith, after the grant of the letters patent, or if no letters patent be granted, then immediately on the expiration of six months from the time of such deposit, be transferred to and kept in such office as the Governor, with the advice aforesaid, shall from time to time appoint for that purpose.

Specification to be filed in office appointed by Governor, after issue of patent or expiring of protection.

17. Any person who shall obtain letters patent under this Act, or in case such person shall depart with the whole or any part of his interest by assignment, such person, together with the assignee (if part only hath been assigned), or the assignee alone (if the whole hath been assigned), may apply to the Attorney-General for leave to enter a disclaimer of any part of either the title of the invention or of the specification, or a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration, as shall extend the exclusive right granted by the said letters patent; and thereupon the Attorney-General shall deliver to such patentee and assignee, or either of them, or to their or either of their agents, an appointment in the form contained in the sixth schedule to this Act, or to the like effect, and such patentee or assignee shall thereupon cause such disclaimer (stating the reason for the same), or such memorandum of alteration to be written at the foot of such appointment, and shall cause the same respectively to be published in the manner hereinbefore required, with respect to the said first mentioned appointment, and any person having an interest in opposing the said application shall be at liberty to leave particulars, in writing, of their objections to the same, at the office of the Attorney-General, within such time, not being less than one month, as the said Attorney-General by such appointment may direct: Provided, always, that where such application as aforesaid shall be for leave to enter a disclaimer of any part of the title of the said invention, or a memorandum of any alteration in such title, the Attorney-General may dispense with such appointment and publication, and in that case shall certify in the fiat hereinafter mentioned that he has dispensed with the same.

Notice of application to disclaim or make alterations.

18. At the time and place named in such appointment, the said patentee and assignee, or one of them, shall produce the newspapers containing the same, and the said disclaimer or memorandum of alteration at the foot thereof: and the Attorney-General shall thereupon hear and consider the said application, and all objections to the same mentioned, in the said particulars, if any, and all such power and authority shall and may be exercised on such occasion by the Attorney-General, as by virtue of the provisions herein-

Application for disclaimer to be heard.

No. 17—1860.

before contained can and may be exercised in relation to the hearing and considering an application for letters patent, and objections to the same, and shall and may be enforced in the same manner.

How disclaimer may be entered, and alterations made.

19. After such hearing and consideration, or without such hearing and consideration, where the said appointment and publication shall have been dispensed with as aforesaid, such patentee and assignee, or either of them, may by leave of the Attorney-General, to be certified by a fiat under his hand (to be written at the foot of the same parchment with the said disclaimer or memorandum), enter such disclaimer stating the reason for the same, or such memorandum of alteration; and at the time of entering such disclaimer or memorandum of alteration shall deposit a copy thereof in the office next hereinafter mentioned, and such disclaimer or memorandum of alteration being filed in such office as the Governor, with the advice aforesaid, shall from time to time appoint for that purpose, shall be deemed and taken to be part of such letters patent or such specification, and subject to the several incidents thereof in all Colonial Courts, and shall be valid and effectual in favour of any person in whom the rights under the said letters patent may then be, or hereafter become legally vested; and no objection shall be allowed to be made in any proceeding upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the person entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: Provided, always, that no action shall be brought upon any letters patent in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration (unless the Attorney-General shall certify in his said fiat that any such action may be brought, notwithstanding the entry or filing of such disclaimer or memorandum of alteration); and no such disclaimer or alteration shall be receivable as evidence in any action or suit (save and except in any proceeding as aforesaid in the nature of a *scire facias*) pending at the time when such disclaimer or alteration was filed as aforesaid: but in every such last mentioned action or suit, the original title and specification alone shall be given in evidence, and be deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided, also, that when any such fiat shall have been granted or issued under this Act, it shall not be necessary or material to inquire or ascertain whether such appointment as last aforesaid has or has not been delivered and published or dispensed with in accordance with this Act; and such filing of any disclaimer or memorandum of alteration in pursuance of the leave of the Attorney-General certified as aforesaid, shall, except in cases of fraud, be conclusive

as to the right of the party to enter such disclaimer or memorandum of alteration under this Act.

No. 17—1860.

20. The copies of all specifications, and the drawings and models accompanying the same, if any, and of all disclaimers and memoranda of alterations, respectively deposited under or in pursuance of this Act, shall be open to the inspection of the public at all reasonable times after the grant of letters patent, or if no letters patent be granted, then immediately on the expiration of six months from the time of such deposit, but subject to such regulations as the Governor, with the advice aforesaid, may make in that behalf.

Copies of specification, disclaimers, &c., to be open for inspection.

21. If any person having obtained letters patent under this Act, or in case such person shall have departed with his whole, or any part of his interest by assignment, if such person together with the assignee (where part only hath been assigned), or if the assignee alone (where the whole hath been assigned), shall, six months before the expiration or other termination of such letters patent, present to the Governor a petition for the extension of the term in such letters patent mentioned, and shall set forth in such petition that he or they has or have been unable to obtain a due remuneration for his or their expense or labour in perfecting such invention, and that an exclusive right of using and vending the same for some further period, to be named in such petition, in addition to the said term, is necessary for his or their reimbursement and remuneration, it shall be lawful for the Governor, with the advice aforesaid, to refer the consideration of the said petition to commissioners to be appointed for that purpose in the manner hereinafter mentioned.

Mode of obtaining extension of the term.

22. If in any suit or action it shall be proved or specially found by the verdict of a jury that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person having invented or used the same or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same or some part thereof before the date of such letters patent, such patentee or his assigns may petition the Governor to confirm the said letters patent, or to grant new letters patent, and it shall be lawful for the Governor, with the advice aforesaid, to refer the consideration of the said petition to commissioners to be appointed for that purpose in the manner hereinafter mentioned.

Mode of obtaining confirmation of invalid patent.

23. For the purpose of considering any such petition as aforesaid, it shall be lawful for the Governor, if, with the advice aforesaid, he shall think fit to issue and direct in the name of Her Majesty, her heirs or successors, to five or more persons, of whom some of the judges of the Supreme Court shall be two, a commission reciting such petition, and requiring and authorizing such

Governor to appoint commissioners.

No. 17—1860.

persons or any three of them, of whom one of the said judges shall be one, to meet at some time, not being less than two months from the publication of the said commission in the *Government Gazette*, and at some place to be respectively fixed in the said commission, and then and there to consider the said petition, and to report to the Governor, in case such petitioner shall have prayed for an extension of the term in the letters patent mentioned, whether any, and if any, what further extension of the said term should be granted, according to the prayer of the said petition, and upon what, if any, conditions, or, in case such petitioner shall have prayed for a confirmation of the letters patent or for a grant of new letters patent, whether such confirmation or grant should be made.

Notice of commission to be published, and caveats entered.

24. Two months at least before the time named in the said commission for the consideration of any such petition as aforesaid, the petitioner shall cause to be published in the same manner as is hereinbefore required with respect to the said first-mentioned appointment, an advertisement of the contents of the said commission in the form contained in the seventh schedule to this Act, or to the like effect; and any person having an interest in opposing the said petition, shall be at liberty to enter a caveat against the same at the office of the Colonial Secretary at any time, not being less than one week before the time named in the said commission for the execution thereof.

Commissioners to hear all parties, and report.

25. At the time and place fixed in the said commission for that purpose, the commissioners shall meet and proceed to consider such petition, and the petitioner shall be heard by his counsel and witnesses, to prove his case as stated in such petition, and the publication of the said last-mentioned advertisement as required by this Act; and the persons entering caveats shall likewise be heard by their counsel and witnesses; and all such witnesses shall be examined upon oath or affirmation, which oath or affirmation such commissioners as aforesaid are hereby authorized and required to administer, and thereupon, and upon hearing and enquiry of the whole matter, in case such petitioner shall have prayed for an extension as aforesaid, the said commissioners may report whether any, and, if any, what further extension of the said term should be granted; and the Governor is hereby authorized and empowered, if he, with the advice aforesaid, shall think fit to grant to the petitioner new letters patent for the said invention, for a term not exceeding fourteen years after the expiration of the first term, anything hereinbefore contained to the contrary thereof, in any wise notwithstanding; and such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the first letters patent; or, in case such petitioner shall have prayed for a confirmation or grant as aforesaid, such commissioners, upon examining the said matter, and being satisfied that such patentee, as aforesaid, believed himself to be the first and original



inventor, and being satisfied that such invention, or part thereof had not been publicly and generally used before the date of such first letters patent, may report to the Governor their opinion that the prayer of such petition ought to be complied with, whereupon the Governor may, if he, with the advice aforesaid, shall think fit, grant such prayer; and the said letters patent shall be available at law and in equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, anything hereinbefore contained to the contrary thereof notwithstanding: Provided, that any person, party to any former action or suit touching such first letters patent as last aforesaid, shall be entitled to have notice in writing of the time and place fixed, as aforesaid, for the first meeting of the said commissioners to consider the said petition, and after any such report shall have been made, it shall not be material to inquire or ascertain whether any such advertisement as last aforesaid has or has not been published, or whether any such notice as last aforesaid has or has not been given in the manner hereinbefore directed in that behalf.

26. The Governor, with the advice aforesaid, may cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as aforesaid, to be prepared in such form as may be thought fit; and such indexes shall be open to the inspection of the public at such places as the Governor, with the advice aforesaid, shall appoint, and subject to the regulations to be made as hereinbefore provided.

Indexes to specifications, disclaimers, &c.

27. There shall be kept at the office to be appointed as aforesaid, a book or books to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters patent granted under this Act, the deposit and filing of specifications, disclaimers, and memoranda of alterations filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, determination, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent as the Governor, with the advice aforesaid, may direct; and such register or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the Governor, with the advice aforesaid, may make in that behalf.

Registers of patents to be kept.

28. There shall be kept at the same office a book or books entitled "The Register of Proprietors," wherein shall be entered in such manner as the Governor, with the advice aforesaid, shall direct, the assignment of any letters patent, or of any share or interest therein, any licence under letters patent, and the district to which such licence relates, with the name or names of any person having any share or interest in such letters patent or licence, the date of his or their acquiring such letters patent, share, and

Register of proprietors to be kept.

No. 17--1860.

interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or licence; and a copy of any entry in such book, certified as hereinafter mentioned, shall be given to any person requiring the same, and shall be *prima facie* proof of the assignment of such letters patent, or share, or interest therein, or of the licence or proprietorship as therein expressed: Provided, always, that until such entry shall have been made, the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licences and privileges thereby given and granted, and such register, or a copy, shall be open to public inspection subject to such regulations as the Governor, with the advice aforesaid, may make.

Falsification or forgery of entries.

29. If any person shall wilfully make, or cause to be made, any false entry in the said register, or shall wilfully make or forge, or cause to be made or forged, any writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause or suffer to be produced or tendered in evidence, any such writing knowing the same to be false or forged, he shall be guilty of the crime of contravening this section of this Act, and shall upon conviction be liable to imprisonment with or without hard labour, for any period not exceeding five years.

Entry may be expunged, or varied, by order of Supreme Court.

30. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said register, it shall be lawful for such person to apply by motion to the Supreme Court for an order that such entry may be expunged, vacated, or varied; and upon any such application such Court may make such order for expunging, vacating, or varying such entry, and as to the costs of such application as to such Court may seem fit; and the officer having the care and custody of such register, on the production to him of any such order, shall expunge, vacate, or vary the said entry according to such order.

Penalty for unauthorized use of word "patent."

31. If any person shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark upon anything made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making or vending of such thing, without leave in writing of such patentee or his assigns; or if any person shall, upon such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having had the licence or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "patent," the words "letters patent," or the words "by the Queen's patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, he shall for every such offence forfeit and pay the

sum of one hundred pounds, one-half to Her Majesty, her heirs and successors, and the other half, with full costs of suit, to any person who shall sue for the said penalty by action of debt: Provided, always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon anything for the sole making or vending of which letters patent before obtained shall have expired or otherwise determined.

32. In any action for the infringement of letters patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant on pleading thereto shall deliver with his pleas, and the prosecutor in any proceedings in the nature of *scire facias* to repeal letters patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or of the suggestions of the said declaration respectively; and at the trial of such action or proceedings no evidence shall be allowed to be given in support of any alleged infringement, or of any objection impeaching the validity of such letters patent, which shall not be contained in the particulars delivered as aforesaid: Provided, always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: Provided, also, that it shall and may be lawful for any Judge at Chambers to allow such plaintiff, or defendant, or prosecutor respectively to amend the particulars delivered as aforesaid upon such terms as to such Judge may seem fit: Provided, also, that at the trial of any proceeding to repeal letters patent the defendant shall be entitled to begin and give evidence in support of such letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

In actions for infringement, particulars of breaches and objections to be delivered.

33. In taxing the costs in any action for infringing letters patent, regard shall be had to the particulars delivered in such action; and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular, unless certified by the Court before which the trial was had to have been proved by such plaintiff or defendant respectively; and it shall be lawful for the Court before which any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question, and the record with such certificate being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding in the nature of a *scire facias*, to repeal the letters patent, shall entitle the plaintiff in any such suit or action or the defendant in any such proceeding, on obtaining a decree or judgment, to his full costs, charges, and expenses, to be taxed as between attorney and client, unless the Court making such judgment, decree, or order, shall certify that the

Particulars to be regarded in taxing costs.

No. 17—1860.

plaintiff or defendant respectively ought not to have such full costs.

Fees on obtaining patents.

34. There shall be paid in respect of letters patent applied for or issued as herein mentioned, the depositing of specifications, disclaimers, and memoranda of alterations, warrants, certificates, entries, and searches, and other matters and things respectively mentioned in the last schedule to this Act, such fees as are enumerated in that schedule; and such of the said fees as are thereby made payable to the Attorney-General, as well as the residue thereof, shall form part of the Colonial Revenue.

English patents subject to this Act.

35. All letters patent which shall be granted in the United Kingdom of Great Britain and Ireland after the first day of July, in the year of Our Lord one thousand eight hundred and sixty, for any invention, shall, so far as the same relate to this said Colony, be utterly void and of none effect, and in no wise be put in execution; but all such letters patent granted in the said United Kingdom on or before that day, and which if this Act had not been passed would have been valid in this Colony, shall be deemed and taken to have been granted under this Act, and may be dealt with accordingly.

---

## SCHEDULES.

### THE FIRST SCHEDULE.

Schedule 1.

To all to whom these presents shall come: I, John Doe, of Cape Town, engineer, send greeting: Whereas I am desirous of obtaining letters patent for securing unto me Her Majesty's special licence that I, my executors and assigns, and such others as I or they should at any time agree with, and no others, should and lawfully might, from time to time and at all times during the term of fourteen years (to be computed from the day on which this instrument shall be left at the office of the Colonial Secretary), make, use, exercise, and vend, within the Colony of the Cape of Good Hope, an invention for [insert the title of the invention]; and in order to obtain the said letters patent, I must, by an instrument in writing under my hand, particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed, and must also enter into the covenant hereinafter contained: Now know ye that the nature of the said invention and the manner in which the same is to be performed are particularly described and ascertained in and by the following statement, that is to say [describe the invention]. And I do hereby, for myself, my heirs and executors, covenant with Her Majesty, her heirs and successors, that I believe the said invention to be a new invention as to the public use and exercise thereof, and that I do not know or believe that any person other than myself is the true and first inventor of the said invention, and that I will not deposit these presents at the office of the Colonial Secretary with any such knowledge or belief as last aforesaid. In witness whereof I have hereunto set my hand at Cape Town, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

## SECOND SCHEDULE.

No. 17—1860.

Schedule 2.

Patent for [insert the title as in the specification].

This is to notify that Joe Doe, of, &c., did on the \_\_\_\_\_ day of \_\_\_\_\_ instant [or last] deposit at the office of the Colonial Secretary, in Cape Town, a specification or instrument in writing under his hand, particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, and that by reason of such deposit the said invention is protected and secured to him exclusively for the term of six calendar months thence next ensuing. And I do further notify that the said John Doe has given notice in writing, at my office, of his intention to proceed with his application for letters patent for the said invention, and that I have appointed [Thursday] the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at my office, to hear and consider the said application and all objections thereto; and I do hereby require all persons having an interest in opposing the grant of such letters patent to leave, before that day, at my office in Cape Town, particulars in writing of their objections to the said application; otherwise they will be precluded from urging the same.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

W. P., Attorney-General.

## THIRD SCHEDULE.

Schedule 3.

Upon hearing the objection of A. B. to the grant to John Doe of letters patent for [insert the title as in the specification], I do by this writing under my hand order that the said A. B. shall pay to the said John Doe the sum of \_\_\_\_\_ for the costs of such hearing [or to E. F. the sum of \_\_\_\_\_ as a remuneration for his attendance at such hearing].

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

W. P., Attorney-General.

## FOURTH SCHEDULE.

Schedule 4.

I have heard and considered the application of John Doe for letters patent for [insert the title as in the specification], and also all objections to the same, and, having perused the specification and the usual and necessary advertisements, am of opinion that, as it is entirely at the hazard of the said applicant whether the said invention is new and will have the desired success, Her Majesty's Royal Letters Patent may be issued in the form contained in the fifth schedule to the Act [with the following additional clauses, that is to say; here set them out, if any].

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

W. P., Attorney-General.

## THE FIFTH SCHEDULE.

Schedule 5.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas John Doe, of \_\_\_\_\_, in the division of \_\_\_\_\_, engineer, hath represented

No. 17—1860.

that he is desirous of obtaining our Royal Letters Patent for securing unto him our special licence that he, his executors and assigns, and such others as he or they should agree with, and no others, should and lawfully might make, use, vend, and exercise within our Colony of the Cape of Good Hope, an invention for [insert the title of the invention] and by an instrument in writing under his hand, deposited in the office of the Colonial Secretary, the said John Doe hath particularly described and ascertained the nature of the said invention and in what manner the same is to be performed: And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to confer upon the said John Doe the privileges hereinafter mentioned: Know ye, therefore, that we of our especial grace, certain knowledge, and mere motion have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said John Doe, his executors and assigns, our especial licence, full power, sole privilege and authority, that he, the said John Doe, his executors, administrators and assigns, and every of them, by himself and themselves, or his and their deputy or deputies, servants or agents, or such others as he or they shall at any time agree with, and no others, during the term herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our said Colony, in such manner as to him, his executors and assigns or any of them, shall seem meet; and that he, his executors and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time, coming, growing, accruing, and arising by reason of the said invention, during the said term: To have, hold, exercise, and enjoy the said licences, powers, privileges, and advantages, unto and by the said John Doe, his executors, and assigns, for and during and unto the full end and term of — years now next ensuing. And to the end that he, his executors and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention, we do by these presents, for us, our heirs and successors, require, and strictly command all and every person and persons, whatsoever, of what estate, quality, degree, name, or condition soever they be within our said Colony, that neither they nor any of them, at any time during the said term, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto by the said John Doe as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, deviser or devisors thereof, without the consent, licence, or agreement of the said John Doe, his executors or assigns, in writing under his or their hands first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our Royal command; and, further, to be answerable to the said John Doe, his executors and assigns, according to law, for his and their damage thereby occasioned: Provided, always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted, it shall appear that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is

not a new invention as to the public use and exercise thereof, or that the said John Doe is not the first and true inventor thereof, within this Colony, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided also, that these our letters patent, or anything herein contained, shall not extend, or be construed to extend to give privilege unto the said John Doe, his executors and assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom our like letters patent or privileges have been already granted for the sole use and exercise and benefit thereof within our said Colony; it being our will and pleasure that the said John Doe, his executors and assigns, and all and every person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented and found out, according to the true intent and meaning of the same respecting letters patent, and of these presents: Provided likewise, nevertheless, and these our letters patent are upon this express condition, that if the said instrument in writing does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, and also, if the said John Doe, his executors or assigns, shall not pay at the office of the Colonial Secretary of our said Colony the sum of \_\_\_\_\_ pounds within three years next after the date of these presents, and the sum of \_\_\_\_\_ pounds within seven years next after such date, that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And, lastly, we do by these presents, for us, our heirs and successors, grant unto the said John Doe, his executors and assigns, that these our letters patent shall be in and by all things good, firm, valid, sufficient and effectual in the law, according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said John Doe, his executors and assigns.

In witness whereof we have caused these our letters to be made patent, and to be sealed and bear date as of the \_\_\_\_\_ day of \_\_\_\_\_.

THE SIXTH SCHEDULE.

Patent for [insert the title].

Schedule 6.

This is to notify to all whom it may concern that John Doe, of, &c., has applied to me for leave to enter a disclaimer of part [or memorandum of alteration, as the case may be] of the said invention, the particulars whereof are stated below; I do therefore appoint [Thursday] the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to hear and consider the said application and all objections to the same. And I do hereby require all persons having an interest in

No. 17—1860.

opposing the said application to leave, before that day, at my office in Cape Town, particulars in writing of their objection to the same, otherwise they will be precluded from urging such objections.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_

W. P., Attorney-General.

The following is the disclaimer [or as the case may be] which I desire to make in, &c. [the applicant must here set forth what he wishes to enter, and sign it.]

THE SEVENTH SCHEDULE.

Schedule 7.

Patent for [insert the title].

Notice is hereby given that I have presented a petition to His Excellency the Governor, praying for the confirmation of [or extension of the term in] the said patent, and that a commission has issued authorizing and requiring certain commissioners therein named to consider and report upon the subject to the said Governor, which said commissioners will meet for that purpose on the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_. All persons objecting to the said confirmation [or extension] must enter a caveat against the same at the office of the Colonial Secretary in Cape Town, otherwise they will be precluded from objecting to it.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

JOHN DOE.

THE LAST SCHEDULE.

Schedule 8.

	£	s.	d.
On depositing specification .. .. .	2	10	0
To the Attorney-General for any "appointment" ..	2	4	6
On obtaining letters patent .. .. .	2	10	0
At or before the expiration of the third year .. ..	10	0	0
At or before the expiration of the seventh year .. ..	20	0	0
To the Attorney-General with particulars of objections ..	2	4	6
On presenting petition for extension or confirmation ..	2	10	0
Every search and inspection .. .. .	0	1	0
Entry of assignment or licence .. .. .	0	10	0
Certificate of assignment or licence .. .. .	0	10	0
Filing memorandum of alteration or disclaimer .. ..	2	10	0
Entering any caveat .. .. .	2	10	0
Copy or extract of any writing, per common law folio ..	0	1	0



## POLICE.

No. 12—1882.

- |  |  |
|--|--|
| 1. Act 12—1882, (Police Force, General).<br>2. Ord. 2—1840, (Cape Town).<br>3. Act 11—1860, do.<br>4. " 31—1883, do.<br>5. " 13—1860, (Water Police, do.).<br>6. Ord. 25—1847, (Rural Police). | 7. Act 12—1874, (Rural Police).<br>8. " 15—1857, (Municipal).<br>9. " 23—1885, do.<br>10. " 8—1873, (Divisional).<br>11. " 27—1882, (Police Offences).<br>12. " 13—1886, §§ 1-3, do. |
|--|--|

No. 12—1882.]

[June 21, 1882.

## ACT

## For the Organization and Regulation of a Police Force.

For the purpose of providing for the Organization and Regulation of a Police Force in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Governor may from time to time define certain portions of the Colony to be known as "Police Districts," and may appoint so many commissioners of police, inspectors, sub-inspectors, and other officers of different grades, and so many sergeants of police as may be deemed necessary, and may also from time to time suspend, reduce, discharge, or dismiss any such commissioner, officer, or sergeant.

"Police Districts" to be defined and officers appointed.

2. The commissioners shall, in their respective districts, and subject to the directions of the Governor, have the superintendence and control of the force, and all officers of police shall have the superintendence and control of that portion of the force which may be placed under their charge, subject to the authority by this Act conferred upon the commissioners and to the regulations to be made by the Governor, as is hereinafter provided.

Commissioners of Police to superintend the force.

3. The Governor may, when circumstances so require, appoint a person to act in the place of any commissioner, and every such acting commissioner shall have all the powers conferred, and shall discharge all the duties imposed by this Act upon a commissioner.

Governor may appoint Acting Commissioner.

4. The commissioners may in their respective districts, from time to time, appoint so many fit persons to be policemen of different grades as the Governor may deem necessary, and the Governor may disallow any such appointment. Such commissioners may from time to time discharge or dismiss any policeman.

Commissioners to appoint and dismiss policemen.

5. Every policeman shall in any district of the Colony have such powers, and shall perform all such duties, as any constable or policeman now has or hereafter may have by virtue of any Law, Ordinance or Act now or hereafter to be in force in this Colony.

Powers and duties of policemen.

No. 12—1882.  
Force may be armed or partly armed, or not.

6. The force so to be raised may be armed and mounted, or partly armed and partly not armed, partly mounted and partly unmounted, as to the Governor shall seem fit, and such force shall serve as a police force for preserving the peace and preventing crimes, and apprehending offenders, and perform such other duties as by this Act or any rule or regulation to be made by the Governor may be required.

In case of war force may be employed in defence of Colony.

7. The Governor may in case of any war or other emergency, employ the force raised under the provisions of this Act, or any part thereof, for the purpose of assisting in the defence of the Colony, either within or beyond the borders thereof, and may place such force, or part thereof as aforesaid, under the orders and directions of such person as he may appoint in that behalf; and while so employed such force shall be subject to the provisions of the "Colonial Forces Discipline Act, 1880," or any Act hereafter to be passed for the discipline of colonial forces.

Commissioners alone allowed to resign without permission.

8. No member of the force other than a commissioner shall be at liberty to resign his office, or to withdraw himself from the duties thereof, notwithstanding that the period of his engagement shall have expired, unless expressly authorized in writing so to do by the commissioner of the district, or unless he shall give to such commissioner three months' notice of his intention to resign or withdraw; and no commissioner shall be at liberty to resign or withdraw as aforesaid, without the consent of the Governor.

Powers, &c., conferred, cease on dismissal or discharge.

9. When any member of the force shall be discharged or dismissed from, or shall otherwise cease to hold and exercise his office, all powers, and authorities vested in him, as a member of the force, shall immediately cease.

Power of Governor to make rules and regulations.

10. The Governor may, from time to time, make rules and regulations for defining the duties of the members of the force, and respecting the training, arms, and accoutrements, clothing and equipment of such force, and as to all matters necessary for making the force efficient for the discharge of their respective duties, and may vary, alter, and repeal any such rules and regulations; and also when it shall appear necessary, may direct the employment and distribution of the said force beyond the limits of the respective police districts, and also within or beyond the colonial boundary.

Penalty for contravention of rules, &c.

11. Any member of the force, not being a commissioner or inspector, who shall be guilty of any neglect or violation of duty, or of contravening any of the rules and regulations made by the Governor, shall, upon conviction, be liable to a penalty not exceeding ten pounds.

Duty of serving summonses, &c.

12. Every sub-inspector, sergeant, and policeman shall obey and execute all lawful summonses, warrants, executions, and other process of any Court or Justice of the Peace, to him directed or delivered, and any summons, warrant or other process directed or given to any member of the force shall and may be executed and enforced by any other member of the same or any other force, and

every such last-mentioned member shall have the same rights, powers, and authorities for and in the execution of such summons, warrant and other process, as if the same had been originally directed to him expressly by name.

No. 12—1882.

13. Any member of the force who has served for a period of not less than ten years, and has attained the full age of fifty years, may, at the discretion of the Governor, be superannuated, and shall on retirement receive, at his option, either a gratuity of one month's pay for each year's service, or a yearly pension according to the following scale:—After ten years' service ten-fiftieths of the pay received by him during the year preceding his retirement, and an increase of one-fiftieth for each additional year's service completed, not exceeding thirty.

Members of the force at 50 and after ten years service may be superannuated.

14. Where any member of the force has served for ten years and has not attained the full age of fifty years, if a certificate to the effect set forth in the schedule to this Act signed by two medical practitioners, to be first approved of by the commissioner of the district, be forwarded to the Governor by such commissioner, the Governor may superannuate such member, and he shall thereupon be entitled to receive, at his option, the gratuity or pension provided by the last preceding section for members of the force who have attained the full age of fifty years.

If under 50 and after 10 years service may be superannuated on medical certificate.

15. When any member of the force has served for a less period than ten years, if without his own default, and in the discharge of his duty he receive such bodily injury as to incapacitate him for active service, he may retire from the force, and the Governor may grant to such member a gratuity not exceeding one month's pay for each year's service, or a yearly pension not exceeding half the pay received by him during the year preceding his retirement, or in the event of his death before so retiring such gratuity may be granted to his widow and children, or partly to his widow and partly to his children, as the Governor may deem fit.

In case of incapacity through bodily injury.

16. When any member of the force has served for a less period than ten years, if a certificate to the effect set forth in the said schedule shall be granted by two medical practitioners, to be first approved of by the commissioner of the district, such member shall be entitled to his discharge, and to receive a gratuity of one month's pay for each year of service at his then rate of pay.

Discharge and gratuity in certain cases.

17. No pension shall be granted to members of the force except upon condition that it is liable to be forfeited, and may be withdrawn by the Governor in any of the following cases :

Conditions of grant of pension.

1. On conviction of the grantee of any crime or offence.
2. On his knowingly associating with suspected persons, thieves, or other offenders.
3. On his refusing to resume his duties in his former office when required to do so by the Governor, in accordance with any regulations made under this Act.

bbb

No. 12-1882.

4. If he shall make use of the fact of his former employment in the force, in a manner which the Governor considers to be improper.

40 years of age and 20 years service entitled to pension.

18. Any member of the force who has attained the age of forty years, and who has served with diligence and fidelity for not less than twenty years, shall be entitled to retire upon a gratuity at the rate of one month's pay for every year of service.

What pension to widows and children.

19. Should any member of the force lose his life in the discharge of his duty, a gratuity or pension equal to what he would have been entitled to if he had reached the age of fifty years, shall be paid to his widow and children, or partly to his widow and partly to his children, as the Governor may determine.

Discharge for misconduct bars claim to pension.

20. Any member of the force who has been discharged or dismissed therefrom for misconduct, shall not be entitled to any pension, gratuity or allowance.

Members of existing police forces entitled to benefits of this Act.

21. The Governor may permit the period of service of any member of an existing police force, who shall be appointed to serve in the force by this Act constituted to be reckoned for the computation of pension or gratuity under this Act.

Rewards for extraordinary services.

22. The Governor may pay out of the public revenue such sums of money by way of reward to members of the force as shall by extraordinary service have merited the same: Provided that a return showing the amounts and particulars of such payments shall be laid upon the table of both Houses at the next ensuing Session of Parliament.

How cases of misconduct to be inquired into in cases of sergeants.

23. Any commissioner or inspector may examine on oath into any charge of insubordination or misconduct against the discipline of the force preferred against any sergeant, and the evidence taken by any inspector shall be referred to the decision of the commissioner of the district, who may, if he considers the charge satisfactorily proved, impose a penalty not exceeding five pounds, and may recommend such sergeant for reduction, discharge, or dismissal by the Governor.

How in cases of misconduct of policemen.

24. Any commissioner or inspector may examine on oath into any charge of insubordination or misconduct against the discipline of the force preferred against any policeman, and on conviction thereof may sentence such policeman to pay a penalty not exceeding two pounds, and every such sentence, if by an inspector, shall be subject to the approval of the commissioner of the district.

Power to issue subpoenas to give evidence at such enquiries.

25. Any commissioner, inspector, or other officer or person appointed by the Governor may issue summonses requiring any persons named therein to appear at a time and place to be therein appointed to give evidence on oath as to all matters and things known to them respecting any charge or complaint preferred against any member of the force as to any neglect or violation of duty, and any person duly summoned as aforesaid who shall not attend in obedience to such summons, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or to

answer all such questions as such person may lawfully be required to answer, shall incur and be liable to pay for each offence such penalty, not exceeding five pounds, as such commissioner, inspector, officer, or other person holding such enquiry may direct and adjudge.

No. 12—1832.

26. Any penalty imposed under the three last preceding sections of this Act, or for breach of any regulation made by the Governor, may be recovered, in the case of a member of the force by stoppage from the pay of the offender, and may in any case be recovered in manner and form as provided by the Ordinance No. 6, 1839.

Penalties to be recoverable under Ordinance 6 of 1839.

27. When an inspector, sub-inspector, or officer above the rank of a sergeant, is accused of a breach of duty, or of any conduct rendering it unfit that he should remain in the force, if he deny the truth of such accusation, and if the Governor is of opinion that sufficient cause has been shown for further proceedings, the Governor may appoint three or more fit and proper persons, of whom one only may be a member of the force, to enquire as to the truth of such charge; and such persons shall have authority to hear, receive, and examine evidence on oath, and shall after fully hearing the case, report to the Governor their opinion thereon.

Proceedings in case of alleged misconduct of officers above rank of sergeant.

28. If any member of the force shall be convicted of any crime or offence, or shall become a hired servant, or shall keep a house for the sale of wine, beer, or spirituous liquors, either in his own or any other name, or shall be directly or indirectly interested in any such house, he may be reduced or dismissed from the force, and if dismissed, shall forfeit all pay, gratuity, or pension to which he may be entitled at the time of such dismissal.

In what cases members of the force may be reduced in rank or dismissed.

29. Any officer, sergeant, or policeman who shall resign his office or withdraw himself from the duties thereof without the previous permission or notice required by this Act, shall upon conviction be liable for every such offence, to pay a penalty not exceeding forty pounds.

Officers, &c., resigning without permission.

30. Any member of the force who shall take any bribe, pecuniary or otherwise, either directly or indirectly, to forego his duty, or who shall in any manner aid or connive at the escape, or attempt to escape, of any prisoner in lawful custody, or who shall desert his post or assault his superior in rank in the force, or shall neglect or refuse to obey or execute any process by this Act directed to be by him executed, or shall be guilty of any act of insubordination or misconduct against the discipline of the force, or of any contravention of any rule or regulation made by the Governor, under the provisions of this Act, shall incur and be liable to a penalty not exceeding forty pounds; but nothing herein contained shall exempt such offender from any higher or other punishment to which he may be subject by any other law in force in the Colony.

Penalties for taking bribes.

31. If any person who having been a member of the force had been dismissed or who has otherwise ceased to be a member of the force, shall not forthwith deliver up everything which may have

Penalties for members of force not giving up articles so supplied to them when retiring or being dismissed.

No. 12—1882.

been supplied to him for the execution of his office, or which may be in his custody by virtue thereof to such person as may be appointed by any order issued by any commissioner, such first mentioned <sup>(1)</sup> person shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months; and any Justice of the Peace may and shall issue his warrant to search for and seize any arms, ammunition, accoutrements, horses, saddles, bridles, clothing, and other things whatsoever which shall not be so delivered wherever the same shall be found.

Desertion or refusal to serve.

32. If any member of the force shall, during the period for which he shall have engaged to serve, and not being duly discharged from the same, desert, or refuse to serve, or absent himself from duty without lawful cause or reasonable excuse, the proof of which shall lie upon him, every such offender shall be liable upon conviction for every such offence to a penalty not exceeding forty pounds.

Obtaining admission to force by false certificates.

33. Any person who shall, by false certificates or any false representations, obtain admission into the force, or who having been dismissed therefrom shall, by concealing the fact of such dismissal, receive any pay, gratuity, or pension, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months.

Licensed victuallers allowing policemen to get intoxicated.

34. The holder of any licence to sell wine, beer, or spirituous liquors, who shall by himself or his servants knowingly permit any policeman to become intoxicated on his premises or to be supplied with liquors while intoxicated, shall for every such offence be liable upon conviction to pay a penalty not exceeding twenty pounds.

Persons found in possession of arms, &amp;c., supplied to members of the force.

35. If any person not being a member of the force shall have in his possession any arms or ammunition, or any clothing, accoutrements, or other thing supplied to any member of the force, and shall not be able satisfactorily to account for his possession thereof, or shall put on or assume the dress, name, designation, or description of any member of the force, or shall give or promise to give any bribe, pecuniary or otherwise, or shall make any agreement with any member of the force to induce him in any way to forego his duty, or shall concert or connive at any act, whereby any rule or regulation made under this Act in relation to the force may be evaded, every such person shall in addition to any other punishment to which he may be liable for such offence, upon conviction incur and be liable to a penalty not exceeding forty pounds.

Horses, accoutrements, &amp;c., not to be sold or pledged without leave.

36. No member of the said force shall, without permission of the commissioner of the district first had and obtained, sell, pledge, or otherwise dispose of any horse, saddle, bridle, gun, clothing, ammunition, or other article or equipment which, by the regulations of the said force for the time being, he shall be required to

<sup>1</sup> Printed as amended by § 6, Act 31, 1883.

keep and possess; and every sale, pledge, or other disposition of any of the matters aforesaid shall be null and void; and any member of the said force who shall make or attempt to make any sale, pledge, or other disposition as aforesaid, in contravention of this section, shall incur and be liable to a penalty not exceeding twenty pounds sterling.

No. 12—1582.

37. If any person shall, in consequence of any sale, pledge, or other disposition made by any member of the said force in contravention of the last preceding section, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds sterling.

Fine for receiving such horses, &amp;c.

38. No animal, article, matter, or thing mentioned in the thirty-sixth section of this Act, and therein forbidden to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

Articles forbidden to be sold cannot be seized in execution.

39. Every member of the said force, when in uniform, whose duty it shall be, in proceeding to or from any place, to pass through any toll-bar, or over any ferry, at or in respect of which the payment of toll shall now be or may hereafter be lawfully demanded, shall be exempted from the payment of any such toll in respect of himself, and of any animal and vehicle that may be required for the performance of the duty on which he may be employed.

Exemption from tolls.

40. If any person duly authorized to collect tolls in respect of any ferry shall wilfully subject any member of the said force to unreasonable delay or detention in respect to the passage over such ferry, then such person shall be liable on conviction to a penalty not exceeding five pounds, and in default of payment thereof shall be liable to be imprisoned with or without hard labour for any period not exceeding one month.

Penalty for exacting tolls.

41. Except where otherwise specially provided, imprisonment with hard labour may in the discretion of the Court be substituted in lieu of any pecuniary penalty for any of the offences mentioned in this Act, other than such as are mentioned in the twenty-third, twenty-fourth, and twenty-fifth sections respectively, provided that such imprisonment shall not exceed one month, in case the penalty which may be imposed shall not exceed five pounds, or three months when such penalty exceeds five pounds, and shall not exceed twenty pounds, or six months when such penalty exceeds twenty pounds. Whenever any penalty shall have been imposed under the provisions of this Act and the person convicted shall not forthwith pay the same, the Court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds

Imprisonment with hard labour may be substituted for fines.

- No. 12—1882. or not exceeding three months if the penalty be above five pounds and not exceeding twenty pounds, and for a period not exceeding six months if the penalty be above twenty pounds, and such person shall be detained and kept, with or without hard labour as the case may be, unless he shall sooner pay the penalty.
- Time of imprisonment not to count as service. 42. No imprisonment or confinement of any member of the force shall be deemed to be part of any period for which he shall have engaged to serve in the force.
- Resident Magistrates to have jurisdiction. 43. All offences created by this Act, and all fines and penalties to be inflicted under or by virtue of this Act, or for breach of any regulations made by the Governor, may be prosecuted before, and imposed by, any Resident Magistrate, whether the offence be committed within the local limits of his jurisdiction or not, or within or beyond the Colony; and in case any such offence shall be committed within the limits of the district from time to time defined by virtue of the first section of the "Border Protection Act, 1868," the officer appointed to exercise jurisdiction under the said Act shall have and exercise in respect to such offence, jurisdiction concurrently with any Resident Magistrate.
- Exemption of members from liability to acts done under Magistrates' warrant. 44. If any action shall be brought against any member of the force for any act done in obedience to the warrant of any Magistrate or Justice of the Peace, such member shall not be liable for any irregularity in the issuing of such warrant, or for want of jurisdiction in the person issuing the same; and upon producing such warrant and proving that the signature thereto is the handwriting of the person whose name is subscribed thereto, and that such person is reputed to be and acts as a Magistrate or Justice of the Peace, and that the acts complained of were done in obedience to such warrant, judgment shall be given against the plaintiff and the defendant shall recover his full costs of suit.
- Costs provided for. 45. All costs and charges for carrying out this Act shall be paid out of such moneys as Parliament shall provide for the purpose.
- Interpretation clause. 46. In the interpretation of this Act the term "the force" shall mean officers and men of the police force constituted under this Act, whether employed upon land or upon water, and the term "member of the force" shall apply to every person employed in the force.
- Short title. 47. This Act may be cited for all purposes as "The Police Regulation Act, 1882."

#### SCHEDULE.

We certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 18— we examined \_\_\_\_\_ a member of the police force constituted under the "Police Regulation Act, 1882," and that we believe he is incapable of discharging his duties as a member of the force, from infirmity (of mind or body) and that we believe such infirmity is likely to be permanent, and has not been occasioned by any excess or misconduct on his part.



No. 2—Sd. George Napier.]

[April 6, 1840.]

Ordinance for improving the Executive Police of Cape Town and the District thereof, for defining the Powers and Duties of the said Police in certain cases, and for promoting the Peace and Good Order of the said Town. <sup>(1)</sup>

WHEREAS the systems of police and nightly watch heretofore existing in Cape Town and the district thereof have from the want of due connection and co-operation with each other and from other causes proved insufficient for the purposes for which they were intended: And whereas it is expedient to substitute for the said systems of police and nightly watch one united body of police for day and night under a new and more effective organization: And whereas it is also expedient that certain matters and things connected with the powers and duties of the said last mentioned body of police and the peace and good order of the town aforesaid should be herein provided for or declared: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the taking effect of this Ordinance the Ordinance No. 7, 1839, entitled "An Ordinance for reviving certain sections of the Ordinance No. 48, entitled 'An Ordinance of His Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the District thereof, and for consolidating and amending the Laws and Regulations relating thereto,'" and continuing the same until the regulations for the municipal board for Cape Town and the vicinity thereof shall have been duly framed, adopted, approved, and carried into effect according to the provisions of the Ordinance No. 3, 1839, entitled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for the creation of a Municipal Board for Cape Town and the vicinity thereof," shall be repealed, together with the said Ordinance No. 48, save and except so far as the forty-seventh section of the said Ordinance No. 48 repeals any former laws, rules, orders, or regulations, and both the said Ordinances are hereby declared to be from and after the time aforesaid repealed accordingly.

Ordinances No. 7,  
of 1839, and No. 48  
repealed.

2. [This section empowers the Governor to appoint a "Judge and Superintendent of the Police of Cape Town," and a "Deputy" Superintendent of the Police of Cape Town. Both these offices were however abolished by Act No. 11 of 1860.]

<sup>1</sup> By § 2, Act 31 of 1833, the powers and authorities vested in the Judge and Superintendent of Police by Ord. 2 of 1840, are vested in the Commissioner of Police for the police district comprising the divisions of the Cape and Simon's Town.

Ord. 2—1840.  
Powers and jurisdiction of judge and superintendent.

3. <sup>(1)</sup> And be it enacted that the said Judge and Superintendent of Police of Cape Town shall discharge all the duties and possess all the powers and jurisdiction imposed or conferred by any law or ordinance now in force in this Colony (save and except the aforesaid Ordinances No. 48 and No. 7, 1839) upon the functionary called in any such law or ordinance the Judge and Superintendent of Police of Cape Town or the Superintendent of Police for Cape Town and the district thereof and the Port of Table Bay.

4. [This section defines the powers of the Deputy Superintendent of Police which office was abolished by Act 11 of 1860.]

Inspector of police, appointment of.

5. <sup>(2)</sup> And be it enacted that it shall and may be lawful for the Governor of this Colony from time to time as a vacancy may occur or occasion may require to nominate and appoint some fit and proper person who shall be called and styled the Inspector of Police of Cape Town, to be under the control and command of the Judge and Superintendent of Police aforesaid for the time being and to discharge such duties as shall in the rules and regulations hereafter mentioned be allotted and appointed for such inspector to perform.

Constables, appointment of.

6. And be it enacted that it shall and may be lawful for the said Judge and Superintendent for the time being subject to the approval of the Governor of this Colony for the time being to nominate and appoint from time to time a sufficient number of fit and able men, who shall be sworn in by the said Judge and Superintendent to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed, and the men so sworn shall within the Cape district have all such powers, authorities, privileges and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any law or ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed; but the stated and ordinary duties of the members of the said police force shall be confined within the limits of the municipality of Cape Town, and they shall only proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice or when the exigency of some particular occasion shall induce the chief officer of police for the time being to order one or more members of the said force to repair to and perform duty at some place other than the said municipality within the said district. <sup>(3)</sup>

Powers, &c., of constables.

Limits of powers of constables.

<sup>1</sup> See § 3, Act 11 of 1860, and § 2, Act 31 of 1883.

<sup>2</sup> See § 4, Act 12 of 1882 and § 2, Act 31 of 1883.

<sup>3</sup> See Act 12 of 1882, and Act 31 of 1883.

7. (1) And be it enacted that the said Judge and Superintendent for the time being, subject to the approval of the Governor of this Colony for the time being, shall and may from time to time frame such rules and regulations as the said Judge and Superintendent shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force under this Ordinance, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, the peculiar books and forms to be respectively kept and used at the Police Station and all such other rules and regulations relative to the said police force as the said Judge and Superintendent shall from time to time deem expedient for preventing neglect of duty or abuse of authority, and for rendering such force as efficient as possible for the performance of its duties; and the said Judge and Superintendent may at any time suspend or dismiss from his employment any man belonging to the said police force (except the Deputy Superintendent and the Inspector of Police, who may be suspended or dismissed only by the Governor of this Colony for the time being) whom he shall think negligent or remiss in the discharge of his duty or otherwise unfit for the same; and when any man shall be dismissed or cease to belong to the said police force all powers vested in him as a constable by virtue of this Ordinance shall immediately cease and determine.

Ord. 2-1840.  
Rules and regulations for police.

8. (2) And be it enacted that any constable belonging to the said force save and except the inspector (who is not either here or elsewhere in this Ordinance comprehended under the term constable) who shall be guilty of any neglect or violation of duty in his office of constable, as the same shall be defined by the rules and regulations to be hereafter framed, shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the Judge and Superintendent of Police, who is hereby authorized and empowered to enforce in a summary manner all penalties to be incurred under this section as well as sections nine and ten next succeeding, be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

Penalty on constables for neglect, &c., of duty.

9. (3) And be it enacted that no constable belonging to the said police force shall be at liberty to resign his situation or with-

Resignation of constables.

<sup>1</sup> See § 10, Act 12 of 1882.

<sup>2</sup> See § 11, Act 12 of 1882, and 31 of 1883, § 3.

<sup>3</sup> See §§ 8 and 29, Act 12, 1882.

Ord. 2—1840.

draw himself from the duties thereof unless expressly permitted so to do by the Judge and Superintendent of Police in writing, or unless he shall give to such Judge and Superintendent two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month, as to the said Judge and Superintendent shall seem best and most expedient.

Delivery up of clothing, &c., by constables.

10. <sup>(1)</sup> And be it enacted that every constable belonging to the said police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the said Judge and Superintendent all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty, or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less value before delivering the same over, shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the said Judge and Superintendent to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found.

Possession of clothing, &c., of constables by third parties.

11. <sup>(2)</sup> And be it enacted that every person not being a member of the said police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession thereof shall be liable to a penalty not exceeding ten pounds, or in the discretion of the Magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month.

Harbouring of constables.

12. <sup>(3)</sup> And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether spirituous or otherwise shall harbour or entertain any constable belonging to the said police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty, every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

13. [Repealed by Act 27 of 1882.]

Duties of police.

14. And be it enacted that the said Judge and Superintendent and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within

<sup>1</sup> See § 31, Act 12 of 1882.

<sup>2</sup> See § 35, Act 12 of 1882.

<sup>3</sup> See § 34, Act 12 of 1882.

the limits of the said municipality and enforce every law or ordinance made or to be made for the due observance of the Lord's Day; for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the Municipality of Cape Town.

Ord. 2—1840.

15. [Repealed by Act 27 of 1882.]

16. [Repealed by Act 27 of 1882.]

17. <sup>(1)</sup>And whereas under and by virtue of the Ordinance No. 1, 1840, entitled "An Ordinance for the better regulation of the Municipal Board of Cape Town and the vicinity thereof," certain municipal regulations have been or will be duly framed, approved of, and established in which will be specified amongst other things certain acts and omissions which when done or made in the streets, thoroughfares, or public places of the said municipality shall be deemed and taken to be public nuisances or offences, and shall be punished as such; and whereas a list or catalogue of all such acts and omissions so being such nuisances or offences shall from time to time be duly furnished by the municipal commissioners who are hereby required to furnish the same to the Judge and Superintendent of Police for the information of the force under his command: Be it enacted that it shall and may be lawful for the members of the said police force to prevent, abate, and suppress all such nuisances and offences, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any nuisance: Provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

Suppression of nuisances, &c.

18. [Repealed by Act 27 of 1882.]

19. [Repealed by Act 27 of 1882.]

20. And be it enacted that it shall and may be lawful for any member of the said police force to remove any outcast or destitute person found in any of the streets or public places of the said municipality labouring or supposed to labour under any infectious or contagious disease, and to conduct such person to such hospital as the Judge and Superintendent shall direct, and such person may be lawfully detained in hospital until the medical officer in charge thereof shall see fit to order his or her discharge.

Diseased and destitute persons, removal of from streets, &c.

21. [§§ 21-23 repealed by Act 27 of 1882.]

<sup>1</sup> Ord. 1 of 1840 has expired, but see Act 44 of 1882 (Municipalities).

- Ord. 2—1840. 24. <sup>(1)</sup> And be it enacted that every person who by committing any offence herein or in the list and catalogue hereinbefore mentioned made punishable or forbidden shall have caused any hurt or damage to any person or property and who shall not upon demand make amends for such hurt or damage to the satisfaction of the person aggrieved shall upon conviction pay such sum not exceeding ten pounds as shall appear to the Court before which he shall be convicted to be reasonable amends to the person aggrieved, besides any penalty to which the party offending may be liable for the offence: Provided, always, that if the person aggrieved shall be the only witness who gives proof of the offence the sum ordered as amends instead of being paid to such person shall be paid and applied in the same manner as the penalty: Provided that nothing in this section contained shall be construed to alter the sixty-first, sixty-second, or sixty-third sections of Ordinance No. 1, 1840, entitled "An Ordinance for the better regulation of the Municipal Board for Cape Town and the vicinity thereof," or any of the said sections.
- Damage to person or property. 25. <sup>(2)</sup> And be it enacted that all fines, penalties, and forfeitures to be levied for or on account of offences specified herein shall be paid and handed over to the Treasurer of this Colony for the time being and shall be by him duly entered in a separate account under the head of "Moneys received under Ordinance No. 2, 1840."
- Fines, &c., appropriation of. 26. [Repealed by Ord. 1 of 1844. See Act 12 of 1874, and Act 12 of 1882, § 22].
27. [Repealed by Ord. 1 of 1844 and Act 12 of 1874].
- Before what courts offences to be tried. 28. And be it enacted that all persons charged with any of the offences mentioned in this Ordinance or in the list or catalogue of nuisances or offences hereinbefore mentioned may be proceeded against either in the Court of the Resident Magistrate for Cape Town or in the Police Court of Cape Town as the case may be, reference being had, however, to the extent of the fine, penalty, forfeiture, or punishment sought to be imposed and to the extent of the jurisdiction of the said Courts respectively in all cases in which the latter of the said Courts is not specially empowered and directed by this Ordinance to impose some given fine or punishment exceeding its ordinary jurisdiction, anything contained in the sixth section of the Ordinance No. 1, 1840, in anywise to the contrary notwithstanding.
29. [Repealed by Act 27 of 1882].
- Coolies to be licensed 30. And be it enacted that every person desirous of plying for hire as a coolie shall upon being approved of by the Judge and Superintendent of Police register his name and place of abode at the police office, and shall thereupon receive a badge which he shall wear firmly sewed to his coat or jacket on the left breast;

<sup>1</sup> See note to § 17.

<sup>2</sup> See Ord. 1 of 1844 and Act 12 of 1874, § 7. These fines form part of general revenue now. See also § 22, Act 12 of 1882.

and any person who shall so ply without such registration or without a badge so sewed as aforesaid shall forfeit the sum of ten shillings sterling for every offence; and for such registration and badge each coolie shall pay the sum of two shillings, and every coolie on application at the police office, shall receive a printed card of the rates of hire signed by the Judge and Superintendent of Police, which he shall at all times carry with him and show on demand to any person employing him; and if he shall refuse so to do he shall forfeit the sum of ten shillings sterling, and for every such card required each coolie shall pay sixpence.

Ord. 2—1840.

31. And be it enacted that any person not being duly registered as aforesaid who shall wear a badge or represent himself to be a coolie duly registered shall forfeit a sum not exceeding twenty shillings for every offence; and any coolie who shall be duly convicted of lending his badge to be worn by any other person shall forfeit a sum not exceeding twenty shillings for every offence.

Badge of coolie, wearing of by unlicensed persons.

32. And be it enacted that the Judge and Superintendent of Police shall have the power of depriving of his badge any coolie who shall be found guilty of dishonest or improper conduct upon complaint laid before the Judge and Superintendent of Police.

Deprivation of coolie licence.

33. And be it enacted that it shall be lawful for the Governor of this Colony for the time being to nominate and appoint such a number of fit and proper persons as he shall deem expedient, of whom the Judge and Superintendent of Police shall be always one, to fix a table of rates for coolie hire, and a scale of the weights to be carried for the same, and to publish the same in the *Government Gazette*, and to cause the same to be posted at the Town-house of the municipality of Cape Town and at such other places as may appear desirable; and it shall be further lawful of the persons so nominated and appointed or for such other persons as may be appointed from time to time by the said Governor in their room and stead when and so often as such persons shall think it right and fitting to revise the said table of rates, and to make such alterations therein either by raising or lowering the rates of hire therein mentioned as they shall deem expedient, and every change and alteration so made shall be forthwith published and posted in the manner herein directed with respect to the first table to be framed under the provisions of this section.

Rates of coolie-hire.

34. And be it enacted that any coolie plying for hire who shall refuse his services at the rates fixed by the table for the time being or who shall demand more than according to such table he is entitled to require or who shall refuse to carry his appointed burthen shall forfeit for every such offence any sum not exceeding two pounds, and in default of payment thereof may be imprisoned for any period not exceeding fourteen days.

Refusal of duty or extortion by coolies.

35. And be it enacted that in case of complaint made by any coolie to the Judge and Superintendent of Police that any person by whom he was employed as such coolie has refused to pay him

Refusal to pay coolie-hire.

Ord. 2—1840.

his just and legal hire according to the tariff of rates to be by him produced, it shall be lawful for the said Judge and Superintendent to summon the person so refusing to pay the same to appear before him, and whether the said person shall duly appear according to the exigency of the summons or not to inquire into the case, and if it should be made apparent to his satisfaction that payment has been refused or delayed without any just or proper reason he is hereby empowered to order in a summary manner the payment of whatever sum he shall think right and just; and if the said person so unjustly withholding such sum shall not pay the same when demanded by the messenger or other officer of the Police Court, then the said Judge and Superintendent shall issue his warrant for the apprehension of the person so as aforesaid refusing to obey the said order of the said Judge and Superintendent and shall commit such person to prison for any term not exceeding one week; provided, however, that if such person shall sooner obey the said order of the said Judge and Superintendent he shall be forthwith entitled to his discharge.

Police contracts, &amp;c.

36. And be it enacted that the Judge and Superintendent for the time being shall make all such contracts and disbursements as shall be necessary for purchasing or renting any land or building or for erecting, fitting up, furnishing, or repairing any building for a Police Station or any other purposes connected with this Ordinance in such manner as the Governor of this Colony for the time being shall approve of or direct, and of all lands and buildings so to be purchased or rented and of the fixtures or furniture thereof, and of all goods and chattels whatsoever to be from time to time held or purchased for the purposes of this Act; the property and lawful possession shall be deemed and taken to be vested in the said Judge and Superintendent, whom in all legal proceedings whatsoever regarding his public character and office it shall be sufficient to style "the Judge and Superintendent of Police," without any other or more particular description, and in which Judge and Superintendent also shall be vested the property and lawful possession of all watch-houses and watch-boxes mentioned in the Ordinance No. 1, 1840, and thereby vested in and made over to the Governor of this Colony, and in all the arms, accoutrements, and other necessaries furnished or to be furnished to the members of the said police force, and the said Judge and Superintendent for the time being may by the direction of the Governor for the time being sell, assign, or dispose of the whole or any part of any such property as aforesaid.

Vesting of police property.

Interpretation of words.

37. And be it further enacted that in the construction of this Ordinance, unless there be something in the context repugnant thereto, any word denoting the singular number or the male sex shall be taken to extend to any number of persons or things and to both sexes; that the word "month" wherever the same occurs shall be taken to mean a calendar month; and that any imprison-



ment by this Ordinance contemplated and authorized may be either with or without hard labour as the functionary directing such imprisonment shall adjudge and declare.

No. 11--1860.  
Imprisonment with  
or without hard la-  
bour.

38. And be it enacted that this Ordinance shall commence and take effect from the first day of May now next ensuing.

No. 11—1860.]

[August 15, 1860.

### ACT

For abolishing the Offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town.

WHEREAS it is expedient that the offices of Judge and Superintendent of Police of Cape Town and Deputy Superintendent of Police of Cape Town should be abolished, and that other provision should be made for the performance of the duties now belonging to the former of the said offices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The office of Judge and Superintendent of Police of Cape Town and the office of Deputy Superintendent of Police of Cape Town are hereby abolished.

Office of judge and  
superintendent of  
police abolished.

2. The Police Court of Cape Town, as erected, constituted, and established by the Ordinance No. 4, passed in 1834, entitled, "Ordinance for erecting, constituting, and establishing Police Courts, to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the Judge of Police of Cape Town, and of the Justice of the Peace of Simon's Town respectively," is hereby abolished, and the Ordinance aforesaid hereby repealed.

Police court of Cape  
Town abolished. Or-  
dinance No. 4, 1834,  
repealed.

3. <sup>(1)</sup> *All and singular the powers and authorities vested in the Judge and Superintendent of Police of Cape Town by the Ordinance No. 2, 1840, entitled "Ordinance for improving the Executive Police of Cape Town and the District thereof, for defining the powers and duties of the said Police in certain cases, and for promoting the peace and good order of the said Town," are hereby vested in the Resident Magistrate of Cape Town and the district thereof and the Cape district in like manner and to the same extent as if the name of such Resident Magistrate were substituted in the said Ordinance for the name of such Judge and Superintendent of Police as often as the latter name occurs.*

Powers of judge and  
superintendent of  
police vested in resi-  
dent magistrate.

4. [Repealed by Act 9, 1882.]

5. This Act shall commence and take effect at and from such a date as shall be fixed for that purpose by any proclamation of the Governor of this Colony. <sup>(2)</sup>

Act when to take  
effect.

<sup>1</sup> Repealed by § 2, Act 31, 1883.

<sup>2</sup> Took effect 15th August, 1860. See Proc. 9th August, 1860.

No. 31—1883.]

[September 27, 1883.

## ACT

To make further Provision for the Regulation of Police, and to Fix the Amount to be contributed by the Municipality of Cape Town for Police purposes.

Preamble.

WHEREAS it is expedient to make further provision for the regulation of police and to increase the amount to be contributed by the Town Council of Cape Town towards the annual cost of the police required for the municipality of Cape Town : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Repeal of repugnant laws.

1. The laws mentioned in the schedule hereto to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed.

Powers given to Resident Magistrate under Act 11 of 1860, transferred to commissioner of police.

2. The several powers and authorities vested in the Resident Magistrate of Cape Town and the district thereof and the Cape district by the third section of the Act No. 11, 1860, intituled “ An Act for abolishing the Offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town,” are hereby vested in the Commissioner of Police for the police district comprising the divisions of the Cape (including Cape Town) and Simon’s Town : Provided that the Governor may vest such powers and authorities in such other officer or person as to him shall seem fit, and thereupon the powers of the Commissioner of Police shall cease.

Such commissioner may nevertheless prosecute before Magistrate.

3. Nothing in this Act contained shall prevent any such commissioner or other person from prosecuting any case which might be determined by himself before the Court of the Resident Magistrate of any district in which the offence was committed, or in which the offender shall be.

Half the cost of Cape Town Police to be paid by Town Council.

4. The Town Council for the time being of the city of Cape Town shall pay over yearly on or before the thirty-first day of March one-half part or share of the expense incurred for the maintenance of the police required for the purposes of the municipality of Cape Town in lieu and instead of the proportion of one-fourth mentioned in the forty-seventh section of the “ Cape Town Municipality Act, 1882 :” Provided the yearly sum to be paid shall not exceed four thousand pounds.

Items in second schedule.

5. The items which shall for the purpose of such contribution as aforesaid be included in the expense of the police force shall be such as are included in the second schedule, and the said Town Council shall not be liable to contribute towards any further charge which may be incurred for or in respect of the said police or of any additional police engaged hereafter without the concurrence of the said Town Council.

6. The word "last-mentioned" occurring between the words "such" and "person" in the thirty-first section of the "Police Regulation Act, 1882," shall be omitted, and the word "first-mentioned" there inserted: and the said section shall be read and construed as so amended.

No. 31—1883.

Amendment of Police Regulation Act, 1882.

7. The short title of this Act shall be the "Police Regulation Act, 1883."

Short title.

---

**FIRST SCHEDULE.**


---

**LAWS REPEALED.**

No. and date.	Title.	Extent of Repeal.
Ordinance No. 2, 1840	"For improving the Executive Police of Cape Town and the district thereof, for defining the powers and duties of the said Police in certain cases, and for promoting the peace and good order of the said Town."	So much as may be repugnant to or inconsistent with this Act.
Act No. 22, 1858.	To fix the amount to be contributed by the Municipality of Cape Town towards the Expense of the Executive Police of Cape Town.	The second, third, fourth, and fifth sections.
Act No. 11, 1860.	"For abolishing the offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town."	The third section.
Act No. 44, 1882.	"Cape Town Municipality Act, 1882."	The forty-seventh and forty-eighth sections.

---

**SECOND SCHEDULE.**


---

Police Force for the City of Cape Town, in respect whereof the Town Council of Cape Town is liable to contribute in terms of the "Police Regulation Act, 1883: "

One Inspector,  
 Four Sub-Inspectors,  
 Five Sergeants,  
 One Detective,  
 Sixty-seven Constables,  
 Clothing and Accoutrements,  
 Forage,  
 Remounts,  
 Medicines,  
 Miscellaneous.

ccc

No. 13—1860.]

[July 17, 1860.

## ACT

For Creating a Body of Water Police at the Port of Cape Town, and for altering in certain respects the Scale of Fees now payable at the Shipping Office in Cape Town. (1)

Preamble.

WHEREAS it is expedient to employ in Table Bay a body of Water Police for the repression of thieving in and from cargo-boats and upon the public wharfs, for the suppression of mutiny and insubordination on board ship, and for other purposes connected with the protection of property and the preservation of good order in the harbour of Table Bay: And whereas, in order to defray in part the expense of such Water Police, it is expedient to increase the fees now payable at the Shipping Office in Cape Town, for or in respect of the engagement and discharge of seamen, and to provide for the payment in certain cases of certain charges for specific services which the Water Police may be desired to render, and shall render, to particular ships: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act confined to Cape Town.

1. Nothing in this Act contained shall extend to any Shipping Office or Shipping Master at any port in this Colony other than the port of Cape Town.

Fees for engagement and discharge of seamen.

2. The table marked A in the schedule to the "Local Merchant Seaman's Act, 1855," is, in regard to the port of Cape Town, hereby repealed, and the following fees are hereby substituted in lieu and stead of the fees specified in the said table, that is to say:

1. Upon and for the engagement of a seamen, or any number of seaman, for each seaman .. £0 5 0
2. Upon and for the discharge of a seaman, or any number of seamen, for each seaman .. 0 3 0

Deduction from wages by way of partial repayment of fees.

3. The table marked B in the schedule aforesaid is also hereby repealed, and the following sums are hereby substituted in lieu and stead of the sums specified in the said schedule, as the sums which may be deducted from wages by way of partial repayment of the fees in the last preceding section mentioned, that is to say:

1. From the wages of any mate, purser, engineer, surgeon, carpenter, or steward, upon each engagement and each discharge .. .. £0 3 0
2. From the wages of all others, except apprentices, upon each engagement and each discharge .. 0 2 0

<sup>1</sup> As to Superannuation of Members of Water Police see Act 12, 1874, *infra*.

4. It shall be lawful for the Governor to cause such a number of fit and able men as Parliament shall from year to year provide for to be enrolled to serve as water policemen at and for the port of Cape Town.

No. 13—1860.  
Governor may appoint water police.

5. The men of the said Water Police Force shall be sworn in before any Resident Magistrate or Justice of the Peace, and shall act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed; and the men so sworn shall, within Cape Town, the Cape district, and the port of Table Bay, have all such powers, authorities, privileges, and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has, or hereafter may have, within his constable-wick or assigned district, by virtue of any law or ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall from time to time be constituted, named and specified by the Governor.

Powers and duties of water police.

6. A boat shall be provided for the Water Police, to be manned by the members of the force, and to be used by them in the execution of their duty, and they shall convey seamen paying fees under the provisions of this Act to their respective vessels, upon each engagement, without making any charge.

Police boat to be provided.

7. Criminal warrants against any person being on board of any ship in the harbour of Table Bay shall, as much as may be, be executed by the Water Police; and as often as any such warrant shall have been sued out at the instance of any master against his crew, or any of them, such master shall pay to the officer or person in command of the Water Police executing the same, the sum of ten shillings for each trip of the police boat necessarily taken in and about the execution of such warrant.

Warrants to be executed by water police. Fees chargeable.

8. It shall be the duty of the Water Police Force to go on board any vessel about to sail from Table Bay, when so required by the master of such ship for the purpose of preventing the crew of such vessel, or any number of them, from unlawfully obstructing the sailing of such ship, and of rendering all such reasonable services towards enabling such ship to set to sea as they may be desired and be able to perform. For and in regard to such services as are in this section mentioned every master desiring the same shall pay such sum, not exceeding five pounds sterling, as the Governor shall from time to time fix and determine.

Duty of water police in regard to vessels putting to sea. Fees.

9. All fees and charges authorized by this Act, when received by the officer commanding the Water Police, shall be paid over by him into the Colonial Treasury, at such times and in such manner as the Governor shall direct.

Application of fees.

10. No member of the Water Police Force shall (except as hereinafter is excepted) receive from any shipmaster or other person

Policemen not to receive any gratuity unless authorized by Governor.

Ord. 13—1860.

any gratuity or reward for or in respect of anything done or to be done by him by virtue of or in connection with, his office as such policeman: Provided that nothing in this section contained shall extend to any gratuity or reward which may be voluntarily tendered by any shipmaster or other person, and which gratuity or reward the member or members to whom it shall be tendered shall by the Governor be authorized to accept. Any officer or member of the said force who shall without having had the authority of the Governor so to do receive any gratuity or reward shall, upon conviction, incur and be liable to a penalty not exceeding treble the amount or value of the gratuity or reward so received, and in case he shall not pay the same forthwith shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Short title of Act  
and when to com-  
mence.

11. This Act may be cited for any purpose as the "Cape Town Water Police Act, 1860," and shall commence and take effect from such day as the Governor shall, by proclamation, determine and appoint.

No. 25.—Sd. H. G. Smith.]

[December 28, 1847.

### Ordinance for improving the Police of the Colony.

Preamble.

WHEREAS it is intended to augment and render more efficient the police of the several country districts of this Colony: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this Colony for the time being to nominate and appoint from time to time as occasion may require, in every district of this Colony other than Cape Town and the district thereof, some fit and proper person to be the head of the police force of such district, who shall be called and styled "Chief Constable of the district of \_\_\_\_\_."

Chief constable.

Oath of allegiance  
and declaration of  
office.

2. And be it enacted that every such chief constable shall before entering upon the duties of his office take the oath of allegiance and also subscribe the declaration of office following, that is to say, "I, A. B., do declare that I will truly and faithfully to the best of my ability, without fear, favour or affection, perform the duties of chief constable of the district of \_\_\_\_\_;" which oath and declaration the Resident Magistrate of the district is hereby authorized to receive.

Powers and duties  
of chief constable.

3. And be it enacted that such chief constable shall have and possess all the powers and authorities of a constable as in the next succeeding section more particularly described, and he shall be under the authority and control of the Resident Magistrate of the district and shall as such chief constable yield obedience to all the

lawful commands of such Resident Magistrate, and shall constantly report to such Resident Magistrate all cases of crimes or offences which shall come to his knowledge.

Ord. 25—1847.

4. And be it enacted that it shall and may be lawful for the Resident Magistrate of every district other than Cape Town and the district thereof, with the consent of the Governor aforesaid, to nominate and appoint so many fit and proper men as may be necessary to be and constitute the police force of such district, who shall be sworn in by such Magistrate to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed; and the men so sworn shall within the said district have all such powers, authorities, privileges, and advantages and perform all such duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any law or ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed.

Appointment of police made by magistrate with consent of Governor.

Powers and duties of constables.

5. And be it enacted that the Resident Magistrate of each district, subject to the approval of the Governor aforesaid, shall and may from time to time frame such rules and regulations as the said Magistrate shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force of such district, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, and all such other rules and regulations relative to the said police force as the said Magistrate shall from time to time deem expedient for preventing neglect of duty or abuse of authority and for rendering such force as efficient as possible for the performance of its duties.

Rules, &c., framed by magistrate subject to Governor's approval.

6. And be it enacted that the chief constable of the district with the consent of the Resident Magistrate thereof may suspend from his employment any man belonging to the police force of that district whom he shall deem guilty of misconduct or negligent or remiss in the discharge of his duty or otherwise unfit for the same. But no man belonging to such force shall be dismissed save by the said Governor, and when and as often as any man shall be dismissed or shall cease to belong to such force all powers vested in him as a constable by this Ordinance shall immediately cease and determine.

Chief constable may suspend members of the force, but not dismiss.

7. And be it enacted that any constable belonging to the police force of any district who shall be guilty of any neglect or violation of duty in his office of constable as the same shall be defined by

Penalty for infringing the rules.

Ord. 25—1847.

the rules and regulations to be hereafter framed shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the Resident Magistrate <sup>(1)</sup> of the district who is hereby authorized and empowered to enforce in a summary manner, all penalties to be incurred under this section, as well as under the section next succeeding be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

Resignation of constable.

8. And be it enacted that no constable belonging to any such police force shall be at liberty to resign his situation or withdraw himself from the duties thereof unless expressly permitted so to do by the chief constable in writing or unless he shall give to such chief constable two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month as to the Resident Magistrate of the district shall seem best and most expedient.

Penalty.

9. And be it enacted that every constable belonging to any such police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the chief constable all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less value before delivering the same over shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the Resident Magistrate of that district to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found.

Clothing, &amp;c., to be delivered up on leaving the force.

Penalty on persons possessing clothing, &amp;c., belonging to the force.

10. And be it enacted that every person not being a member of any such police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession thereof shall be liable to a penalty not exceeding ten pounds or in the discretion of the Magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month.

Publichousekeepers not to harbour constables on duty.

11. And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether

<sup>1</sup> Or Special J.P., Act 10 of 1876, § 2.



spirituous or otherwise shall harbour or entertain any constable belonging to any such police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

Ord. 25—1847.

12. And be it enacted that no constable during any part of that time during which he shall be on duty shall be employed by any Resident Magistrate or chief constable or other public officer in any sort or description of private business, work, or labour under any circumstances or pretext whatsoever.

Constables on duty not to be employed on private business.

13. [Repealed by Act 27 of 1882.]

14. And be it enacted that the said chief constable and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within the limits of their district, and enforce every law or ordinance made or to be made for the due observance of the Lord's Day, for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the suppression of unlicensed tippling houses, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the said district.

Duties of police force.

15. [Repealed by Act 27 of 1882].

16. [Repealed by Act 27 of 1882.]

17. And be it enacted that it shall and may be lawful for the members of any such police force to prevent, abate, and suppress all such nuisances and offences within any municipality situated in their district as shall be punishable by any municipal regulations of such municipality, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any such nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any such nuisance; provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

Powers of police in regard of nuisances.

18. [§§ 18-20 repealed by Act 27 of 1882.]

21. And be it enacted that no chief constable or constable of or belonging to any such police force as aforesaid shall demand or receive from any person whatsoever any fee, gratuity, or payment for anything done or abstained from by such chief or other constable by virtue or under colour of his office.

Unlawful payments to constables.

- Ord. 25—1847.  
Constables not to be concerned in canteens nor in supplying gaols.
22. And be it enacted that no chief constable or other constable shall directly or indirectly be concerned in or derive any profit or advantage from any tap, canteen, public house, or inn within the district nor from the supply of any rations, transport, matter, or thing to the public gaol or to the police force of such district, and any chief or other constable contravening any of the provisions of this section shall forfeit any sum not exceeding one hundred and not less than five pounds.
- Criminal process of supreme court.
23. <sup>(1)</sup> And be it enacted that the chief constable of every district shall diligently and faithfully execute or cause to be executed as he shall be by law required all criminal process of the Supreme or any Circuit Court.
- Returns to be made by chief constable.
24. And be it enacted that every chief constable shall every morning (unless prevented by some lawful cause) make a return in writing to the Resident Magistrate of the district showing how each constable of the force has been employed during the hours of duty of the previous day.
- Residences of members of police force.
25. And be it enacted that when and as often as the members of any such police force as aforesaid shall not be provided with a place of residence by the Government of this Colony but shall be required to provide a residence for themselves such residence shall be fixed as near as may be to the public gaol of the district and shall be approved of by the Resident Magistrate.
- Field-cornet's duties to be performed by chief constable.
26. And be it enacted that it shall and may be lawful for chief constables to perform within the limits of the town or village in which the office of the Resident Magistrate of his district shall be situated all and singular the several duties which by law might be performed within such town or village by the Field-cornet of a field-cornetcy embracing such town or village. Provided that the limits of every town or village shall for the purpose of this section be as follows, that is to say,—should the same be or become a municipality the municipal limits for the time being, and should the same not be a municipality then the limits of such town or village shall be an imaginary circle drawn at the distance of two miles from the office aforesaid of the Resident Magistrate.
- Cape Town police not affected.
27. [§§ 27-36 repealed by Act 12 of 1874.]
37. And be it enacted that nothing in this Ordinance contained shall extend to or affect the executive police of Cape Town and the district thereof.
- Interpretation clause.
38. And be it enacted that in the construction of this Ordinance the term “Governor” shall mean the officer administering the Government of this Colony for the time being, and that the term “month,” whenever the same occurs, shall be taken to mean a calendar month, and that the term “imprisonment” shall embrace imprisonment either with or without hard labour as the functionary awarding such imprisonment shall adjudge and declare; and that all words, importing the singular number only, shall include

<sup>1</sup> See § 6, Act 15 of 1864 and § 12, Act 12 of 1882.

several persons, matters and things, as well as one person, matter, or thing; and the words importing the masculine gender only, shall include females as well as males, unless there be something in the subject or context, repugnant to such construction.

No. 12—1874.

39. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

40. And be it enacted, that this Ordinance shall commence and take effect as law from and after the date of the promulgation thereof.

Time of taking effect.

No. 12—1874.]

[July 29, 1874.

## ACT

To Amend the Law relating to the Superannuation Allowance to Police Officers.

WHEREAS by the Ordinance No. 1 of 1844, intituled “Ordinance for creating a Police Superannuation Fund,” a Police Superannuation Fund was created for the police force of Cape Town, and whereas, by the Ordinance No. 25 of 1847, intituled “Ordinance for improving the Police of the Colony,” a Police Superannuation Fund was created for the police force of the several country districts of this Colony, and whereas it is expedient that the Police Superannuation Funds created under and by virtue of the said Ordinances should be abolished, and that the superannuation allowance for which the said funds were intended to provide should be paid from and out of the public revenue of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance No. 1 of 1844, and the several sections of the said Ordinance No. 25 of 1847, numbered twenty-seven to thirty-six, both inclusive, are hereby repealed.

Repugnant laws repealed.

2. All moneys, securities, and assets of every kind, constituting or belonging to any police superannuation fund, created under and by virtue of any of the provisions of the said Ordinances which are by the last preceding section repealed, shall, by the respective trustees in whom the same are vested, be paid, transferred, and made over to the Treasurer-General of this Colony, as part and on account of the public revenue of the Colony, and the Treasurer-General for the time being shall, if necessary, sue for and recover any moneys due to and to become due to any such trustees as aforesaid.

All Police Superannuation Funds to be handed over to, and become part of public revenue.

3. It shall be lawful for the Governor to order that any police officer shall be superannuated and thereupon to pay, or cause to be paid, from out of the general revenue of this Colony, to the person so superannuated, such pension or yearly allowance as the said

Governor may superannuate police officers and pay pensions out of public revenue.

No. 12—1874.

Governor shall approve of and prescribe, but subject, however, to the following limitations and conditions, that is to say, that when and as often as the person superannuated shall have served with diligence and fidelity for any term not less than fifteen, and not more than twenty years, his yearly allowance may be made equal to, but shall not exceed one-half of his yearly pay while in active service, which yearly pay shall be taken to be the average of his yearly pay for the three years next pending his superannuation, and that when and as often as the person superannuated shall have served, in manner aforesaid, for the term of twenty years or upwards, his yearly allowance may be made equal to, but shall not exceed, two-thirds of his yearly pay while in active service, which yearly pay shall be taken to be the average aforesaid: Provided always that no police officer who shall be under the age of fifty years shall be capable of receiving any such yearly allowance as aforesaid unless it shall be certified in writing by the Resident Magistrate of his district that, from infirmity of mind or body, he is incapable of discharging the duties of his situation.

Governor may pension disabled police officers.

4. It shall be lawful for the Governor, in case any police officer shall be disabled for the performance of his duty by reason of any wound or injury received by him in the actual execution of his duty, to pay or cause to be paid from and out of the general revenue of this Colony, to the person so disabled, whatever his age or time of service may be, such pension or yearly allowance not exceeding the average of his yearly pay for the three years next preceding the time of his receiving the said wound or injury, should he have served so long; and if not, such yearly allowance not exceeding the average of his yearly pay during his time of service, as the said Governor shall approve of and prescribe.

Governor may reward police officers for extraordinary services out of public revenue.

5. It shall be lawful for the Governor to pay, or cause to be paid from and out of the public revenue of this Colony such sums of money by way of reward to such police officers as shall by extraordinary services have merited the same: Provided that whenever such rewards shall have been paid by the Governor, a return showing the amounts and particulars of such payments shall be laid on the table of both Houses at the next ensuing Session of Parliament.

Superannuation allowance cannot be claimed as a matter of right.

6. Nothing in this Act shall be construed so as to entitle any police officer to claim as a matter of right any superannuation allowance or to prevent any such person from being unconditionally dismissed.

All moneys formerly paid to the Superannuation Fund, except deductions from pay, to be paid in future to general revenue.

7. All sums of money which, by the Ordinances in the first section hereof mentioned, are directed to be paid and handed over to trustees for the purpose of giving and being applied to the superannuation fund therein mentioned, except the deduction from the pay of police officers, not exceeding two and a half per centum, shall hereafter be paid into and form part of the general revenue of this Colony.

8. The term "police officer," in this Act shall be taken to include Inspector of Police, Sub-Inspector of Police, Chief Constable, Sergeant of Police, Police Constable, and men of the Water Police for the port of Cape Town; but nothing in this Act contained shall apply to any officer or man of the Frontier Armed and Mounted Police Force of this Colony, or to any officer or man of the Northern Border Police established under the Act No. 29 of 1868.

No. 15—1857.  
Interpretation  
clause.

9. This Act may for all purposes be cited as the "Police Superannuation Act, 1874."

Short title.

No. 15—1857.]

[June 29, 1857.

### AN ACT

For enabling Municipalities to obtain additional Police, by contributing towards the Expense thereof.

WHEREAS, in certain of the municipalities of this Colony, the want of an adequate and efficient body of police, for the prevention of crime and the preservation of peace and order, has for some time been seriously felt by the inhabitants; and whereas, whilst the expense of some policemen at each of the several seats of magistracy to be employed in the execution of criminal warrants, the safe keeping of offenders, and the conduct of the criminal business of the Courts held in and for the several districts of this Colony, may fitly and properly be borne by the public revenue, it will be necessary that the inhabitants of such municipalities as may desire the advantage of a body of police, sufficiently numerous to patrol their streets, prevent drunkenness and disorder, and perform other duties of a like nature, within the municipal limits, should contribute towards the expense of such police: And whereas, from the claims upon the public revenue which the inhabitants of municipalities regarded as contributors thereto, must be considered as possessing, it would not be just to require such municipalities to contribute towards the expense of such additional police more than one-half of the cost and charge thereof, leaving the other half of such cost and charge to be borne by the public revenue: And whereas there is reason to believe that certain municipalities would be desirous to obtain a more efficient police force, upon the terms just referred to: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the municipal commissioners of any municipality, acting in pursuance of the vote or decision of a meeting of the resident householders thereof, to communicate to the Resident Magistrate of the district that such municipality is

Municipal commissioners, acting upon a decision of a meeting of householders, may intimate to the magistrate, their

No. 15—1857.

desire to co-operate for the purposes of this Act.

Such meeting to be called in due form.

Magistrate to ascertain the number and probable cost of the additional police required.

Number and cost of such police to be reported to the Governor.

Approved by Governor.

Municipal commissioners may call a meeting of householders to assess a police rate.

Rate assessed to be for one year, or annually for not exceeding three years.

desirous of availing itself of the provisions of this Act: Provided that no such meeting shall be held unless upon a notice, setting forth the object of such meeting, and published, in whatever manner shall be by law directed in regard to the meetings of resident householders in such municipality, for not less than twenty-one days.

2. Every Resident Magistrate, receiving any such communication as aforesaid, shall, by conference or correspondence with the municipal commissioners, ascertain what number of policemen, in addition to the police force for the time being, such commissioners desire; and such Magistrate shall, in conjunction with the said commissioners, frame a detailed estimate of the probable cost, per year, of such additional policemen: Provided that, thereafter the police force, for the time being, to be maintained exclusively from and out of the public revenue, in the district of which such seat of magistracy is, or shall be, a municipality, shall be the number set forth as regards such seats of magistracy in the schedule annexed to this Act,—leaving all additional policemen to be provided for under this Act.

3. As soon as the number and the estimated cost of such additional policemen shall have been agreed upon, between the Resident Magistrate and the municipal commissioners, the Resident Magistrate aforesaid shall report the particulars, for the consideration and approval of the Governor of the Colony, who may, in case the number or cost shall appear to him to be unnecessarily large, communicate, through the said Magistrate, with the municipal commissioners, for the purpose of agreeing upon some smaller number or reduced cost.

4. As often as the Governor aforesaid shall approve of the number and cost of additional policemen as originally submitted, or as subsequently reduced, he shall signify such approval to the Resident Magistrate, who shall, in writing, communicate the same to the municipal commissioners.

5. It shall be the duty of any municipal commissioners to whom any such approval as in the last preceding section shall have been communicated, should they not already have been placed in possession of funds applicable to, and sufficient for, defraying one-half of the cost of such additional policemen for a period of not less than one year, to call, upon a notice of not less than fourteen days, a meeting of resident householders, for the purpose of assessing a police rate, for defraying one-half of the cost of the said policemen, and such rate shall be regarded as a rate duly assessed by virtue of the Ordinance or Law under which such municipality shall have been established: Provided that at such meeting as aforesaid a police rate may be assessed for one year only, or successive annual police rates may be then assessed for any number of years not exceeding three: And provided that meetings of resident householders shall and may be called, in manner afore-

said, for the purpose of assessing the necessary police rate, so long as such municipality shall continue to avail itself of the provisions of this Act.

No. 15—1857.

6. When and as soon as the municipal commissioners aforesaid shall have paid to the Civil Commissioner of the division, acting for and on behalf of the Colonial Treasury, one-half of the estimated cost of such additional policemen for one year, the Resident Magistrate of the district shall, with all convenient speed, nominate and appoint the additional policemen agreed to by the municipal commissioners and approved of by the Governor.

When half the estimated cost for one year has been paid, the magistrate to appoint the additional police.

7. Such additional policemen shall be deemed and taken to be appointed under the Ordinance No. 25 of 1847, entitled "An Ordinance for Improving the Police of the Colony," and shall possess all the powers and perform all the duties belonging to the members of the police force in the said Ordinance mentioned: Provided, however, that the stated and ordinary duties of a number of the police force of the district, not less than the number of such additional policemen, shall be confined within the limits of the municipality which shall have desired to have such additional policemen: Provided, however, that every member of the police force aforesaid, whether his stated and ordinary duties be confined within the municipal limits or not, may proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice, or when the exigency of some particular occasion shall induce the Resident Magistrate, or, in his absence, the chief constable, to order one or more of the members of the said police force to repair to and perform duty at some place other than the said municipality within the said district of such Magistrate.

Duties of additional police.

Proportion of ordinary police to be retained for duty within the municipality.

8. <sup>(1)</sup> A true and correct account shall be kept of the cost, in each respective district, of the additional policemen desired by, and employed in, any municipality within such district; and a copy of such account, or an abstract thereof, shall be furnished to the municipal commissioners of such municipality, at the expiration of one year from the date of the payment, to the Civil Commissioner, in the sixth section mentioned; and so on, from year to year, as long as such municipality shall continue to avail itself of the provisions of this Act, and shall pay to the Civil Commissioner of the division, from year to year, in advance, one-half of the estimated annual cost of the additional policemen.

Civil commissioner to furnish an annual account of the expense of such additional police to commissioners of municipality, who will pay one half in advance.

9. Should the actual expenditure in any year have fallen short of the estimated expenditure, so that the sum paid in as aforesaid exceeds, in amount, one-half of such actual expenditure, the excess shall be repaid by the Colonial Government to the municipality; and *vice versa*, should the actual expenditure have exceeded the estimated expenditure, the municipality shall make good to the Colonial Government one-half of such actual expenditure.

If the actual expenditure falls short of the estimate, difference to be restored to municipality, and *vice versa*.

<sup>1</sup> See Act 23, 1855, *infra*. All payments to be made quarterly in advance.

No. 15—1857.

Municipality to give three months' notice before ceasing to avail itself of this Act.

10. Should any municipality, which shall have availed itself of the provisions of this Act, become afterwards desirous to cease to do so, it shall be necessary for the municipal commissioners of such municipality to give to the Colonial Government, through the Resident Magistrate of the district, not less than three months before the expiration of the year for which such municipality shall have made its latest payment, under this Act, notice, in writing, that, at and after the expiration of the current year, the said municipality will cease to avail itself of the provisions of this Act: and, thereupon, steps shall be taken to dismiss, at the expiration of the said year all additional policemen, or a number of the police force for the time being, equal to the number of additional policemen.

If municipality neglect to give such notice, police to be continued for three months at its expense.

11. Should any municipality neglect to give such notice as aforesaid, then it shall be lawful for the Colonial Government to continue in employment such additional policemen as aforesaid, until the expiration of three months from the last day of that month, on any day of which month notice shall be given by such municipality to the Resident Magistrate aforesaid, that such municipality desires to cease to avail itself of the provisions of this Act, and one-half of the cost of all additional policemen employed by desire of such municipality, down to the expiration of such three months, shall be payable by such municipality to the Colonial Government, and may be recovered by the Colonial Government from the municipal commissioners for the time being by action in any competent Court.

Municipality may add to or reduce the additional police.

12. It shall be lawful for any municipality which shall have desired and received, in manner aforesaid, any particular number of additional policemen, afterwards to add to or reduce that number, as circumstances may require, and thereupon the provisions of this Act shall apply to such altered number: Provided that the number of additional policemen for the time being shall not be altered, except in pursuance of the vote or decision of a meeting of resident householders, called upon a notice similar to that in the first section of this Act mentioned: Provided, further, that as often as the number of additional policemen for the time being shall be increased, one-half of the estimated cost of such increase shall be paid by the municipality to the Civil Commissioner before such increased number shall be employed: And provided, also, that as often as the number of additional policemen shall be reduced, the provisions of the ninth and tenth sections of this Act shall apply to the number of policemen proposed to be reduced, precisely as if the number proposed to be reduced were the whole number of additional policemen for the time being, and as if such municipality were desirous to cease altogether to avail itself of the provisions of this Act.

Moiety of expense to be paid before any addition takes place.

Sections 9 and 10 to apply in respect of policemen proposed to be reduced.

Act to apply to all municipalities, except Cape Town.

13. The provisions of this Act shall apply to all the municipalities within this Colony for the time being, except the municipality of Cape Town.



## SCHEDULE.

No. 15—1857.

District.	Municipality.	Number and Description of Police Force.
Albany .....	Graham's Town..	1 chief constable and 9 constables, including turnkeys.
Port Elizabeth ..	Port Elizabeth ..	1 do. and 7 do. do.
Graaff-Reinet ..	Graaff-Reinet....	} Each 1 do. and 5 do. do.
Uitenhage .....	Uitenhage .....	
Albert .....	Burghersdorp....	}
Beaufort (West)	Beaufort (West)	
Caledon .....	Caledon .....	}
Cradock .....	Cradock .....	
Colesberg.....	Colesberg.....	}
Fort Beaufort ..	Fort Beaufort...	
George .....	George .....	} Each 1 do. and 4 do. do.
Paarl .....	Paarl .....	
Queen's Town....	Queen's Town....	}
Somerset .....	Somerset.....	
Stellenbosch ....	Stellenbosch ....	}
Swellendam.....	Swellendam ....	
Victoria .....	Alice .....	}
Worcester .....	Worcester.....	
Mossel Bay.....	Aliwal (South)...	} Each 1 do. and 3 do. do.
Middelburg .....	Middelburg .....	
Riversdale .....	Riversdale .....	}
Aliwal (North)..	Aliwal (North)..	
Richmond .....	Richmond.....	Each 1 do. and 2 do. do.

No. 23—1885.]

[August 11, 1885.]

## ACT

To Amend Act No. 15 of 1857, and Act No. 8 of 1873.

WHEREAS it is expedient in certain respects to amend the provisions of Act No. 15 of 1857, intituled "An Act for enabling Municipalities to obtain additional Police, by contributing towards the Expense thereof," and of Act No. 8 of 1873, commonly called the "Divisional Police Act, 1873:" Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. All payments which have heretofore been made annually, and which would, without the passing of this Act hereafter be made annually to the Civil Commissioners of the several divisions of this Colony, by municipal councils or commissioners, under the

Payments to be made quarterly by Municipalities and Divisional Councils, not annually as heretofore.

No. 23—1885.

provisions of the Act No. 15 of 1857, or by Divisional Councils, under the provisions of Act No. 8 of 1873, shall, notwithstanding anything contained to the contrary in the two last-mentioned Acts, be after the passing of this Act made quarterly in advance, and so soon as in any year the first quarterly payment in advance shall have been made the several provisions of the said Acts shall respectively apply as though the whole annual payment for the said year had been duly made.

Short title.

2. This Act may be cited as the "Police Acts Amendment Act, 1885."

No. 8—1873.]

[June 26, 1873.

## ACT

For Enabling the several Divisions of this Colony to obtain a Force or Additional Force of Police by contributing towards the Expenses thereof.

Preamble.

WHEREAS it is expedient that the several divisions of this Colony should be enabled, if so willing, to obtain the services of a force or an additional force of police, as the case may be, by contributing towards the expenses of raising and maintaining such force or additional force: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may, on petition, arrange with divisional council the number of police required, and furnish said council with estimate of cost for one year.

1. On the receipt of a petition from the Divisional Council for any division signifying the desire of such council that a force or an additional force, as the case may be, of police, mounted or unmounted, or partly mounted and partly unmounted, should be raised and maintained for the purpose of preserving order and repressing crime within such division, the Governor may arrange with the council preferring such petition the number or additional number of men which will be required for the purpose aforesaid, and furnish such council with an estimate of the cost of raising and maintaining such force or additional force for the year next ensuing the raising of the same.

On payment of one-third of estimated cost by divisional council.

2. <sup>(1)</sup> If the Divisional Council shall, on receipt of such estimate, be willing to contribute one-third of the estimated amount, it shall pay to the Civil Commissioner for the behoof of Her Majesty, in her colonial revenue, such third of such estimated amount, and the Civil Commissioner shall forthwith grant his receipt for the same, and shall inform, or the Divisional Council may inform, the Governor that such amount has been so paid as aforesaid, and on the Governor being satisfied of such payment, it

<sup>1</sup> Contributions of Council are payable quarterly in advance. See Act 23, 1885, *supra*.

shall be lawful for him to authorize the appointment and employment by the Resident Magistrate of the district of such force or additional force in and for such division as the Governor shall have approved of during the year next ensuing such payment as aforesaid: Provided that in any division where there is more than one Resident Magistrate, the Divisional Council for that division shall apportion the number of the police force to be appointed by each Magistrate in such division.

No. 8—1873.

Governor may authorize resident magistrate to appoint police force.

Divisional council to apportion when more than one magistrate in division.

3. A true and correct account shall be kept of the costs in each division of the police force or additional police force raised and maintained under the provisions of this Act, and a copy or abstract of such account, or of such part thereof as relates to each division, shall be furnished to the Divisional Council of such division at the expiration of the year, reckoning from the date of such payment as aforesaid to the Civil Commissioner; and if the third of such actual expenditure shall exceed the amount so paid as aforesaid to the Civil Commissioner, then the Divisional Council shall make good the excess of the third of the actual expenditure over the amount so paid as aforesaid, by paying such excess to the Civil Commissioner on behalf of the Colonial Treasury; but if the third of such actual expenditure shall fall short of the amount so paid as aforesaid, then the balance shall be repaid by the Colonial Treasury to the Divisional Council which shall have paid such amount as aforesaid, or shall be allowed in account by the Civil Commissioner to such Divisional Council on its next payment, if any, under the provisions of this Act.

Accounts to be furnished to divisional council annually.

Mode of procedure if estimate be exceeded or otherwise.

4. As to every year succeeding the first in which any such payment as aforesaid shall have been made by any Divisional Council to the Civil Commissioner for the purposes of this Act, the Governor shall, within the first three months after the commencement thereof, dating from the time of such first payment as aforesaid, furnish such council with an estimate of the cost of maintaining such force, or additional force, as the case may be, for the succeeding year, and if the third of such estimated cost shall be paid by such council to the Civil Commissioner on or before the termination of three calendar months from the anniversary of such payment as aforesaid, as well as any excess by which the third of the actual expenditure occasioned by such force or additional force, as the case may be, shall have exceeded the third of the original estimate so paid as aforesaid then it shall be lawful for the Governor to maintain the like force to be stationed within such division during the year next ensuing the anniversary of such first payment as aforesaid; but if such sum and such excess, if any, or any part thereof, respectively, shall not be paid as aforesaid, then such force shall be disbanded or withdrawn from such division, and such council shall immediately be compelled to pay to the Colonial Treasury all such excess as last aforesaid, and further one-twelfth part of the estimated cost of

In succeeding years new estimate of cost to be furnished and one-third paid by divisional council with excess, if any.

Force to be disbanded or withdrawn on non-payment.

*ddd*

No. 8—1873.

such force or additional force, as the case may be, for the year whereof such three months as aforesaid shall have expired, unless such notice as is hereinafter provided of the intention of such division to discontinue the maintenance of such force shall have been duly given.

Course to be adopted in years succeeding the first year.

5. A like account shall be kept and rendered as to every year succeeding the first year in which any such force shall be maintained as is hereinbefore provided regarding the first year, and the like course shall be followed as to any difference or balance, if any, between the third of the estimate paid and the third of the actual expenditure for the past year, as is provided in respect of the first year in which such force shall be maintained under the provisions of this Act.

What notice, &c., necessary when divisional council desirous to cease to maintain such force.

6. If any Divisional Council shall be desirous to cease to maintain such force or additional force as aforesaid, or any portion thereof, such council may, by resolution duly forwarded by address to the Governor, make known the wish of such council at any time not less than three months before the expiration of the year for which provision shall have been already made, and the Governor shall on the receipt of such address within such three months, make provision for disbanding or otherwise disposing of the said force or additional force, or portion thereof, as the case may be; and if such notice shall have been duly forwarded in proper time as aforesaid, the Divisional Council shall be bound to pay to the Colonial Treasury only the sum, if any, by which the third of the actual expenditure for the current year may exceed the third of the estimated expenditure therefor already paid in respect of such force, or additional force, as the case may be, and any payment to be made for the succeeding year shall be only for such force as such divisions shall desire to continue to maintain, if any.

Divisional council may levy a special rate if necessary.

7. The Divisional Council for every division within which any force or additional force of police shall be stationed under the provisions of this Act may, out of funds at its disposal, make such payments to the Civil Commissioner as hereinbefore are provided to be made, or, if necessary, levy a special rate for this purpose, and such rate shall be assessed and levied by such Divisional Council in like manner as road rates are assessed and levied.

Police to be under orders of magistrate, subject to certain rules.

8. The police or additional police to be raised and maintained under the provisions of this Act shall, save as is hereinafter excepted, be deemed to be under the orders and directions of the Resident Magistrate of the district to which the same belongs, subject to such rules and regulations as the Civil Commissioner of the division, in concurrence with the Divisional Council of the division, shall frame, and the Governor shall approve of.

Powers and duties of police.

9. All such police as aforesaid shall, save as is hereinafter excepted, be deemed and taken to be appointed under the Ordinance No. 25 of 1847, intituled "An Ordinance for Improving

the Police of the Colony," and shall possess all the powers and perform all the duties belonging to the members of the police force in the said Ordinance mentioned.

No. 8—1873.

10. It shall be lawful for the Governor, in the case of any war or other emergency, to employ any of the police raised under the provisions of this Act for the purpose of assisting in the defence of the Colony, and to place such police under the orders and directions of such person as the Governor shall appoint in that behalf, and such police while so employed shall possess the powers and be subject to the rules and regulations appertaining to the force of Armed and Mounted Police: Provided, however, that, at the expiration of any year during which any police shall have been so employed by the Governor for any period the Divisional Council which shall have contributed towards the expenses of such police under the provisions of this Act shall be entitled to receive from the Colonial Treasury a sum of money equal to one-third of the estimated cost of maintaining such police within such division for such period of employment as aforesaid; but if the Divisional Council of any division shall offer and agree to pay, and shall pay, one-half of the expense for raising and maintaining such police force or additional police force for such division, it shall not be lawful to remove such police force from such division for employment elsewhere without the concurrence and consent of such Divisional Council, signified by resolution adopted at any meeting of the same.

Police may be employed in colonial defence.

Expense whilst so employed to be borne by general revenue.

If divisional council pays half the expense of police, they are not to be removed without consent of such council.

11. This Act may for all purposes be cited as "The Divisional Police Act, 1873."

Short title.

No. 27—1882.]

[June 29, 1882.

## ACT

## To Provide for the Suppression and Punishment of Certain Offences.

WHEREAS it is expedient to consolidate and amend the law relating to the suppression and punishment of certain offences: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the schedule hereto, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed: And the Governor may at or after the coming into effect of the first part of this Act in any municipality or in any community which has been brought under the operation of the "Villages Management Act, 1881," repeal any regulations in force in any such municipality or community as shall be repugnant to or inconsistent with the provisions of the

Repeal of repugnant laws.

Repeal of existing Municipal or other regulations.

*ddd 2*

No. 27—1882.

first part of this Act. But such repeal shall not affect any things done, offences committed, or proceedings commenced or pending under, by virtue of, or against any of said repealed laws, or any such regulations so to be repealed as aforesaid.

Interpretation  
clause.

2. In the construction of this Act, the term "Local Authority" shall mean

The Council or Board of Commissioners of any Municipality;  
The Board of Management of any community in which the "Villages Management Act, 1881," is in operation;

The Resident Magistrate or Special Justice of the Peace (if any, or as the case may be), residing in any town or village not being a municipality, or in which the said "Villages Management Act" is not in operation, and when there shall be no such Resident Magistrate or Special Justice of the Peace, any Justice of the Peace residing in or nearest to such town or village.

PART I.—POLICE PROVISIONS APPLICABLE TO SPECIAL LOCALITIES.

To what localities  
police provisions to  
apply.

3. The provisions of this part of this Act shall be in operation:

- (1) In every town or village which shall hereafter be constituted a municipality.
- (2) In every community which has been, or shall hereafter be, brought under the operation of the "Villages Management Act, 1881."
- (3) In any city, town, village, or other place in which the Governor shall by proclamation declare this part to be in operation, and from a date to be by such proclamation fixed and appointed.

Governor may de-  
fine, &c., limits of  
towns, villages, &c.

4. The Governor may from time to time define, vary and alter the limits of any such city, town, village or other place to which the provisions of this part shall be put in operation, and may revoke any such proclamation.

Penalty on conviction  
of following of-  
fences.

5. Any person guilty of any of the following offences, omissions, or neglects shall, on conviction, in respect of each act or offence, be liable to a penalty not exceeding two pounds, or in default of payment, to be imprisoned, with or without hard labour, for a period not exceeding thirty days, unless such penalty be sooner paid:

Offences enumer-  
ated.

- (1) Washing in, or in any manner defiling or polluting, the water of any public stream or watercourse.
- (2) Indecently exposing the person or appearing in any street or public place without such articles of clothing as decency requires.
- (3) Wantonly or mischievously ringing any public bell, or making any noise or disturbance in the streets, throwing stones or other missiles, using catapults, knocking at doors or ringing any private bells, removing signboards, scales, or other property from the premises of the owner, or mischief of a like nature.

- (4) Wantonly irritating any cattle, horses, or other animals, whether attached to vehicles or not, or unnecessarily clapping wagon-whips in any public street or place.
- (5) Making a fire in any street, thoroughfare, or public place, or letting off fireworks without leave of the local authority.
- (6) Riding a horse or driving a vehicle upon any footpath or side-walk.
- (7) Failing or neglecting to keep the sluices or flood-gates of any erf in a proper state of repair, and to allow the water to pass freely through or past the ground of any person for the use of the occupants of the land below.
- (8) Wilfully or by any neglectful act depriving any person of the water to which such person is entitled at the time proper for the use thereof.
- (9) Unlawfully diverting or appropriating the water to which any other person is entitled.
- (10) Throwing any glass, filth, dirt, rubbish, orange peel, or offensive matter upon any public street, lane, or public place, or in any dam, or reservoir, or watercourse, or fountain, or in any other place than such as may have been appointed for that purpose by the local authority.
- (11) Encumbering any public street, footway, or carriage-road, or obstructing the free passage along the same by means of any wagon, cart, or other thing whatsoever.
- (12) Wilfully or neglectfully breaking up, injuring or damaging any dam or public watercourse, or sluice gate, or any public street, footway, carriage-road, or thoroughfare.
- (13) Cutting down, removing, destroying, or injuring any wood, tree or shrub upon any commonage without special permission from the local authority.
- (14) Destroying, damaging, or injuring any tree or shrub growing in or along any public street, or in any public place.
- (15) Furiously driving any vehicle, horses, or cattle, or furiously riding any animal in or through any public street, lane or thoroughfare.
- (16) Discharging firearms in any street or thoroughfare without leave of the local authority, or unless in the discharge of some duty, or in obedience to some lawful command.
- (17) Driving or leaving any vehicle drawn by oxen in any public street or thoroughfare without a leader, or leaving any vehicle drawn by horses or mules standing in any street or thoroughfare without a person at the head of the leaders.
- (18) Swearing or making use of obscene, abusive, insulting, or threatening language, or swearing, shouting, or screaming

No. 27—1882.

- to the annoyance of the inhabitants in any street, road, or public place.
- (19) Singing any obscene song or ballad, or writing or drawing any indecent or obscene word, figure, or representation in any public street or place.
  - (20) Burning any straw, shavings or other materials upon any footway, carriage-road, or open or public place.
  - (21) Leaving any inflammable material or matter in any public shed or place, or on any open space near any building, without having first obtained the permission of the local authority.
  - (22) Drawing or trailing any sledge, timber, or other heavy material upon any footway or carriage-road to the injury of such footway or carriage-road.
  - (23) Allowing any night-soil or other offensive matter to be spilt or cast into or upon any road, street, footway, or public place.
  - (24) Allowing the drippings of the eaves of any house to fall upon any public footway.
  - (25) Placing any placard or other document, writing or painting on, or otherwise defacing any house, building, wall, fence, lamp-post, or gate, without the consent of the owner or occupier thereof.
  - (26) Neglecting to clean all private yards, ways, passages, or avenues, by which neglect a nuisance by offensive smell or otherwise is caused.
  - (27) Rolling any cask, flying any kite, or playing any game to the annoyance of any person in any public place.
  - (28) Committing any nuisance in any street, or within view of any dwelling-house, whereby public decency may be offended.
  - (29) Any common prostitute or night walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers.
  - (30) Suffering to be at large any unmuzzled ferocious dog.

## PART II.—GENERAL POLICE PROVISIONS.

Provisions of this part to operate throughout Colony and Transkeian territories.

Repugnant Municipal Regulations repealed.

Penalty on conviction of certain offences.

6. The provisions of this part of this Act shall extend to and be in operation throughout the Colony, including the Transkeian territories annexed by the Act No. 38 of 1877, and so much of any municipal regulation as may be repugnant to or inconsistent with the provisions of this part of this Act, or which would operate concurrently with such provisions shall be and the same are hereby repealed.

7. Any person guilty of any of the following acts or offences, shall upon conviction in respect of each act or offence, be liable to a penalty not exceeding five pounds, or in default of payment to



be imprisoned with or without hard labour for a period not exceeding three months, unless such penalty be sooner paid :

- (1) Any driver of any vehicle injuring any property by negligence or driving on the wrong side of the road <sup>Offences enumerated.</sup> (1).
- (2) Any driver of any vehicle being away from his horse or cattle so as to be unable to have the full control of them.
- (3) Driving any vehicle or riding any animal, and when meeting any other vehicle or animal being ridden not keeping on the left or near side of the road or street, or when passing any other vehicle or animal going in the same direction, not going or passing or not allowing any person desirous so to do to pass when practicable on the right or off side of such other vehicle or animal being ridden.
- (4) Leaving upon any street, public road or thoroughfare any stone, timber, bricks, or other thing, calculated to damage or endanger any animal or vehicle ridden or driven thereon.
- (5) Any driver or guard of a public vehicle, for the conveyance of passengers wilfully delaying on the road, using any abusive or insulting language to any passenger, or by reason of intoxication, negligence or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.
- (6) Leaving upon any public road or thoroughfare any vehicle, plough or harrow without any horse or animal harnessed thereto, unless in consequence of some accident having occurred.
- (7) Having any timber, iron, or boards laid across any vehicle going along any public road so that either end projects more than two feet beyond the wheels or sides of such vehicle.
- (8) Slaughtering or skinning any beast upon any public road or thoroughfare, or leaving any dead beast on any such road or thoroughfare.
- (9) Setting or urging or permitting any dog or other animal to attack or worry any person, horse or other animal, or by ill-usage or negligence in driving any cattle causing any damage or hurt to be done by such cattle.
- (10) Wilfully breaking any pane of glass in any building.
- (11) Wilfully breaking or extinguishing or injuring any lamp, or damaging any lamp-post.
- (12) Wilfully trespassing in any place, and neglecting or refusing to leave such place after being warned to do so by the owner or occupier, or any person authorized by or on behalf of the owner or occupier.

---

<sup>1</sup> Printed as amended by § 1, Act 13, 1886.

No. 27--1882.

(13) Playing or betting in any street or other open and public place, at or with any table or instrument of gaming, or pretended game of chance.

Penalty on conviction of certain other offences.

8. Any person guilty of any of the following acts or offences shall upon conviction in respect of each act or offence be liable to a penalty not exceeding twenty pounds, or in default of payment to be imprisoned with or without hard labour, for a period not exceeding six months, unless such penalty be sooner paid, or either to such penalty or such imprisonment, that is to say :

Offences enumerated.

- (1) Any person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, crow, or other implement of housebreaking.
- (2) Any person found by night, having his face blackened or wearing felt or other slippers, or being dressed or otherwise disguised, with a criminal intent.
- (3) Any person found by night without lawful excuse (the proof of which excuse shall be on such person) in or upon any dwelling-house, warehouse, coach-house, stable, cellar, or out-house, or in any enclosed yard, garden, or area, or in or on board any ship or other vessel when lying or being in any port, harbour, or place in this Colony.
- (4) Any person found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with a criminal intent, or who being thereto required shall not assign a valid and satisfactory reason for being so armed.
- (5) Any person who shall resist, or incite, or aid, or encourage any person to resist, and any person who shall hinder or disturb any constable, policeman, or officer of any local authority in the execution of his duty.

Punishment for drunken, riotous, and indecent conduct.

9. Any person drunk in any street, road, lane, or public place, in or near any shop, store, hotel, or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station-house, shall, upon conviction, be liable to a penalty not exceeding two pounds, and in default of payment, to imprisonment with or without hard labour, and with or without spare diet for any period not exceeding fourteen days, and in case of a second or subsequent conviction, shall be liable to a penalty not exceeding five pounds, or in default of payment to imprisonment <sup>(1)</sup> for any period not exceeding thirty days, unless the fine in any case be sooner paid.

For threats, abusive language, &c.

10. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, in any

<sup>1</sup> With or without hard labour or with or without spare diet. See § 3, Act 13, 1886, *infra*.

street, road, public place, or licensed public-house, shall, upon conviction be liable to a penalty not exceeding three pounds, or to imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be sooner paid; and such person may further be required to find sureties to keep the peace for such period, not exceeding three months, as the Court before which such person is tried may deem necessary.

No. 27—1882.

11. Every person who shall, in any port of this Colony, knowingly purchase, or take in exchange from any seaman or other person, not being the owner or master of any vessel, anything belonging to such vessel lying in such port, or any part of the cargo of any such vessel, or any stores or articles belonging to the same, shall, upon conviction, be liable to a penalty not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months, but nothing herein contained shall prevent the trial of such person for any other crime of which, but for the passing of this Act, he would have been guilty.

For accepting from seamen and others ship's stores, &amp;c.

12. If any seaman belonging to any vessel lying in any port of this Colony, or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same without having obtained permission so to do from the master or some officer of the said vessel, such seaman or other person shall (although such taking or removal may not have been with intent to steal), upon conviction, be liable to a penalty not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months.

For seamen and others removing ship's boats.

## PART III.—MISCELLANEOUS.

13. The Local Authority or any Resident Magistrate or Justice of the Peace, may authorize any police officer or constable from time to time to visit and inspect any butchers' shambles, slaughter-house, or yard, or any house, out-building, lane, alley, or other place, for the purpose of ascertaining if the same be kept cleansed; and such person so authorized shall, if it appear that any accumulation of manure, dung, offal, soil, filth, or other unwholesome or noxious matter ought to be removed, give notice to the person to whom the same belongs, or to the occupier or person in charge of the premises whereon it exists to remove the same; and if at the expiration of four days after such notice the same be not complied with, such owner, occupier or person in charge shall, upon conviction, be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day after conviction during which such notice shall not be complied with; or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months in respect of every penalty imposed unless the penalty be sooner paid.

Nuisance in private buildings, lanes, &amp;c., provided against.

No. 27—1882.

Powers of police in regard to persons suspected of unlawful dealing in spirits, &c.

14. Any inspector, sub-inspector, or sergeant of police, any chief constable, or any policeman, or constable who may be thereto authorized by any such officer of police, or by any chief constable, may from time to time and at all times as often as they shall have reasonable or probable ground for suspecting that any person licensed to sell wines and spirituous liquors, is selling liquors at unlawful hours or on prohibited days, may demand admittance into the premises of such dealer for the purpose of examining the same; and if such dealer shall wilfully and intentionally refuse to admit any such police officer, chief constable, constable or policeman, after being informed of his official character, or if such dealer shall make any unnecessary delay in admitting the person so demanding admittance as aforesaid, such dealer shall upon conviction be liable for such offence to a penalty not exceeding ten pounds, or in default of payment to be imprisoned with or without hard labour for any term not exceeding three months, unless such penalty be sooner paid.

Right to demand admittance in to houses of persons suspected of selling liquor unlawfully.

15. Any of the persons in the last preceding section mentioned and empowered for the purpose therein stated, may demand admittance into any lodging or other house, or into any apartments in any house, not being a licensed house, in case there shall be reasonable or probable cause for suspecting either from the fact that persons are seen coming out therefrom in a state of intoxication, or from any other fact of a like nature, or from private information given, that spirituous or other liquors are being sold therein, for the purpose of examining the same; and if the occupier of any such house or apartment shall wilfully or intentionally refuse to admit any such person as aforesaid (after such person has stated his official character), or if such occupier shall make any unnecessary delay in admitting such person as aforesaid, such occupier shall be liable upon conviction for such offence to a penalty not exceeding ten pounds, or in default of payment to be imprisoned with or without hard labour for any term not exceeding three months, unless such fine be sooner paid.

Power to stop persons carrying bundles, &c., between sunset and sunrise.

16. Any officer or member of any police force may stop any person who shall be found at any time between sunset and sunrise carrying or transporting any bundle or parcel or generally any goods of any description, and to interrogate such person: and if such person shall not account satisfactorily for the possession of the goods or articles so being carried or transported, or if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured, then such officer or member may convey such goods or articles and the person so carrying or transporting the same to any prison or police station, and to detain such person in custody until the next sitting of the Court of the Resident Magistrate (or Special Justice of the Peace, as the case may be), who shall enquire into the circumstances and make such order, or give such direction as to him shall seem fit and proper.

17. If any person shall without the consent of the owner or occupier of any landed property, burn any stubble, grass, trees, or herbage thereon, or if any person shall leave any fire which he may have lighted or used in the open air before the same be thoroughly extinguished, he shall be liable upon conviction to pay a penalty not exceeding twenty pounds for every such offence, or to be imprisoned with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid, or to both such penalty and such imprisonment: Provided that nothing herein contained shall be deemed to exempt such person from prosecution for any other crime or offence for which but for the provisions of this section he would have been liable, but no person shall be twice prosecuted in respect of the same act or offence.

No. 27—1882.

Penalties for burning stubble, grass, &amp;c., without consent.

18. Any person found committing any offence punishable under the provisions of this Act may be taken into custody without a warrant by any constable or any member of any police force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by the servant of such owner or by any person authorized by such owner; and such person may be detained until he can be delivered into the custody of a constable or policeman to be dealt with according to law: And any such constable or member of any police force may also stop, search, and detain any vessel, boat, cart, or carriage, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property shall be offered to be sold, pledged, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorized and, if in his power, is required to apprehend and detain, and as soon as may be, to deliver such offender into the custody of a constable or policeman, together with such property, 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 arresting the person offending he could not be found or made answerable to justice without delay, trouble or expense.

Persons offending against this Act may be arrested without warrant.

Search and detention of vessels, carriages, &amp;c., suspected to contain stolen goods.

19. Any person taken into custody without warrant shall be brought before the nearest Court having jurisdiction as soon as practicable after he is so taken into custody, and if it is not practicable to bring such person before such Court within twenty-four hours after such person is taken into custody, any chief constable or officer of any police force may enquire into the case, and, except when the offence appears to be of a serious nature, shall discharge the prisoner upon his making a deposit of ten

Persons arrested without warrant to be taken before nearest Court having jurisdiction as soon as possible.

- No. 27—1882. pounds, or on his entering into a recognizance conditioned in a like sum, with or without sureties, as such chief constable or police officer shall require to appear before some Court having jurisdiction, on a day, and at a time and place to be stated in the recognizance; and every such recognizance shall be returned to the Court at which the party was bound to appear at the next ensuing sitting of the same, and if such person fails to appear at the place and time notified by the person taking the same, any deposit so made shall be forfeited, and any such recognizance shall be recoverable in the same manner as any recognizance taken and acknowledged before a Justice of the Peace.
- Release on bail for minor offences.
- Offences in Part I and Sections 9 and 10 may be prosecuted before special justices.
- Special J.P.'s jurisdiction limited.
- Appropriation of fines.
- Private prosecutions allowed.
- How offences to be set forth.
- Short title.
20. The offences mentioned in Part I, and in the ninth and tenth sections of this Act, may be prosecuted before any Special Justice of the Peace within whose jurisdiction any such offence shall have been committed, provided that when so prosecuted, notwithstanding anything in this Act to the contrary, no fine imposed by any such Special Justice shall exceed the sum of two pounds sterling, and no term of imprisonment awarded shall exceed one month, and the said offences, and all other offences created by this Act and all fines and penalties which may be imposed under the provisions of this Act, may be prosecuted before and imposed by any Resident Magistrate of any district in which the offence was committed.
21. All moneys arising from fines, penalties, and forfeitures under this Act shall, when recovered, and subject to the proviso hereinafter contained, be appropriated as follows :
- (1) Under Part I and II, if incurred in any municipality or in any village or community in which the "Villages Management Act, 1881," is in operation, such moneys shall be paid to the Local Authority.
  - (2) Except as aforesaid into the Public Treasury.
- Provided that it shall be competent for the Court before which any person shall be convicted to award an amount not exceeding one-half of the amount of any such money recovered to any informer or person prosecuting.
22. Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act.
23. In any prosecution for any offence under the provisions of this Act, it shall be sufficient to set forth the offence charged in the words of this Act.
24. This Act may be cited as "The Police Offences Act, 1882."

---

(For Schedule see next page).

## SCHEDULE.

No. 27—1882.

## ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ord. No. 2, 1840.	Ordinance for improving the Executive Police of Cape Town and the district thereof, for defining the powers and duties of the said police in certain cases, and for promoting the peace and good order of the said town.	Sections 13, 15, 16, 18, 19, 21, 22, 23, and 29.
Ord. No. 25, 1847.	Ordinance for improving the Police of the Colony.	Sections 13, 15, 16, 18, 19, 20.
Ord. No. 9, 1851.	Ordinance for the better regulation of the sale of Wines and Spirituous and Fermented Liquors.	Section 35.
Act No. 2, 1855.	An Act for abating Public Nuisances and other Mischiefs of a Public Nature in certain Towns and Villages not being Municipalities.	So much as has not already been repealed.
Act No. 8, 1867.	An Act to amend the Ordinance No. 25 of 1847, intituled "An Ordinance for improving the Police of the Colony."	The whole.
Act No. 8, 1875.	An Act to amend the law relating to the sale of Wines and Spirituous and Fermented Liquors.	Section 8.
Act No. 10, 1876.	An Act to improve the Administration of Justice in places distant from a seat of magistracy.	Section 12, and so much as is repugnant to this Act.

(1) No. 13—1886.]

[June 18, 1886.]

WHEREAS it is expedient to amend in some respects the Criminal Law and the Law of Evidence: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

<sup>1</sup> For full text of this Act see under "Criminal Procedure."

No. 24—1882.  
Section 7, Act 27  
of 1882, amended.

Penalty for injur-  
ing any person by  
negligent driving.

Meaning of "im-  
prisonment" in Sec-  
tion 9 Act 27 of 1882.

1. "The Police Offences Act, 1882," shall be read and construed as if the words "person or" in the first sub-section of the seventh section thereof were omitted.

2. Any driver or other person having the charge of any carriage or vehicle injuring any person by negligence shall upon conviction be liable to a fine not exceeding one hundred pounds sterling, or, in default of payment, to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding two years, or to both such fine and such imprisonment.

3. The word "imprisonment," where the same occurs for the last time in the ninth section of "The Police Offences Act, 1882," shall be taken to mean imprisonment with or without hard labour, and with or without spare diet.

\* \* \* \* \*

No. 24—1882.]

[June 29, 1882.

ACT

To Incorporate the Port Elizabeth Chamber of Commerce.

Preamble.

WHEREAS there exists an association of merchants and others at Port Elizabeth, called and known as the "Port Elizabeth Chamber of Commerce," formed for the purpose of promoting and protecting the trade of that place: And whereas it is expedient to incorporate such association in order the better and more effectually to carry out its objects: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Incorporation of  
"Port Elizabeth  
Chamber of Com-  
merce."

1. The several persons who are or who may from time to time, become shareholders in or subscribers to the association in the preamble to this Act mentioned, shall be and are hereby united into one body corporate, under the name and title of the "Port Elizabeth Chamber of Commerce," for the purpose of promoting, encouraging, and protecting the trade of that port.

Power given to  
such Corporation.

2. The association hereby incorporated by the name of the "Port Elizabeth Chamber of Commerce" shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued in any competent Court, and shall have power to take, purchase, and hold landed and other property, and such landed or other property, subject to any engagements affecting the same, shall be vested in the association in its corporate name, and without the necessity of each individual member being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

To make, &c., rules  
and regulations.

3. The said corporation hereby created shall have power from time to time to make, rescind or alter rules or regulations as to the admission of its members, or the expulsion of any such members, and for the general good management and guidance of the association and the furtherance of its objects.



4. Until any new rules and regulations, as in the last preceding section mentioned, shall have been framed by the corporation hereby created, the existing rules and regulations of the association shall be and continue in force; and all persons now holding office shall continue to hold office in accordance with and subject to the provisions of such rules and regulations.

No. 5—1856.  
Existing rules to apply meanwhile.

5. This Act may be cited as the "Port Elizabeth Chamber of Commerce Act, 1882."

Short title.

No. 5—1856.]

[June 4, 1856.

AN ACT

For Regulating the Provincial Hospital at Port Elizabeth.

WHEREAS it is intended to establish an hospital, to be called the "Provincial Hospital at Port Elizabeth:" And whereas it is expedient that the Board of Managers of the said Provincial Hospital should be incorporated, and that certain other matters likely to promote the welfare of the said Hospital should be provided for by Parliament: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:—

Preamble.

1. The hospital aforesaid shall be called the "Provincial Hospital at Port Elizabeth," and shall be managed by a Board of Managers.

Hospital how to be designated.

2. (1) The Civil Commissioner of the division of Port Elizabeth for the time being, the commissioners of the municipality of Port Elizabeth for the time being, together with a number of elective members equal to the number of municipal commissioners for the time being, which members shall be elected as hereinafter provided, shall form a board for the management of the said hospital, of which board the Civil Commissioner for the time being shall be the chairman: Provided always, however, that when the Civil Commissioner is not present, then the managers present shall choose their own chairman; and in case of an equality of votes upon any matter or question submitted to the said board, he shall, besides a deliberative vote, possess a casting vote.

Board of management: civil commissioner, municipal commissioners, and elective members.

3. For the purposes of this Act, the said Board of Managers for the time being shall be a corporation by the name or style of "The Board of Managers of the Provincial Hospital," and shall have perpetual succession, and shall and may sue and be sued in all courts, places, and proceedings, by the name or style aforesaid.

Board how to be styled.

4. The elective members of the said board shall be elected by the life-governors of and the annual subscribers to the said hospital.

Elective members.

<sup>1</sup> See Act 14, 1868 § 80 (Printed under Municipalities).

- No. 5—1856.  
Life-governor. 5. Any person making a donation to the funds of the said hospital of not less than £20 (twenty pounds) shall become a life-governor, and be entitled to elect and be elected.
- Donor to the funds entitled to elect and be elected. 6. Any person making a donation to the funds of the said hospital of not less than twenty-five pounds shall be entitled to nominate some other person as a life-governor, who shall be entitled to elect and be elected.
- Subscribers of one guinea. 7. Any subscriber subscribing annually not less than one guinea shall be entitled to elect and be elected.
- Subscribers of half a guinea. 8. Any subscriber subscribing not less than half-a-guinea annually, shall be entitled to elect, but not to be elected.
- Board of managers, when to be elected. 9. As soon as there shall be twenty persons entitled to vote at the election of the elective members of the Board of Managers aforesaid, but not sooner, the Civil Commissioner aforesaid shall, by a notice to be published in the *Government Gazette*, for not less than twenty-one days before the day appointed, call a meeting of the life-governors and subscribers to the said hospital, to be held at some place in Port Elizabeth, to be specified in such notice, for the purpose of electing so many members of the said board as shall be then to be elected.
- Election, how to be made. 10. At the meeting lastmentioned, the Civil Commissioner shall preside, and the election shall be by signed lists, and the Civil Commissioner shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the *Government Gazette*: Provided that at such meeting all persons entitled to vote who shall be females, or who shall reside beyond the limits of the municipality of Port Elizabeth, but no other persons, shall be entitled to appoint, by any writing under their hands respectively, some other person, being himself a person entitled to vote, to be the proxy of or for the person by whom he shall have been so appointed, and to vote in such person's behalf.
- Who entitled to vote. 11. The elective members elected at the first meeting held for the election of elective members shall hold office for three years; and thereafter until the expiration of one year and one half year from the day on which the municipal commissioners of Port Elizabeth, in office at the expiration of the said three years were elected, at which time such first elected members shall go out of office, and be succeeded by others to be then elected; and all elective members other than those first elected shall go out of office at the end of the third year from the date of their election, and be succeeded by others; and so on for ever: Provided that all outgoing elective members shall be eligible to be re-elected.
- Elective members, when to retire. 12. On the Monday next before the day on which any body of elective members are appointed to go out of office as aforesaid, a meeting shall be holden of the life-governors and subscribers to the said hospital, for the election of elective members for the three years next succeeding, of which meeting a notice of not less
- How their places to be supplied.
- Election of new members.

than twenty-one days shall be given by the Civil Commissioner aforesaid, in the *Government Gazette*.

No. 5—1856.

13. If any elected member of the said board shall die or resign, or, being a subscriber, shall cease to subscribe, in manner aforesaid, an amount not less than one guinea per annum, or shall cease to reside in the division of Port Elizabeth, or shall become incapacitated for fulfilling the duties of his office by mental or bodily infirmity or disease, he shall, *ipso facto*, vacate his office, and the said board shall give notice of such vacancy to the Civil Commissioner aforesaid, who shall, upon the like notice as that in the last preceding section mentioned, call a meeting of life-governors and subscribers, for the purpose of filling up such vacancy; and the person elected to fill such vacancy shall be entitled to continue in office till the next general election of elected members, but no longer: Provided that every such person shall be eligible to be re-elected.

What constitutes vacancy of office.

How vacancy to be filled.

14. Should it happen by reason of any failure or neglect, or other cause, that any such meeting as in the twelfth section mentioned shall not have been duly holden, or that at such meeting the number of elected members which were then to be elected shall not have been duly elected, then the Civil Commissioner aforesaid, upon being informed by the Board of Managers of such non-election, shall forthwith, upon the like notice as in the said twelfth section mentioned, call a meeting of life-governors and subscribers, in order thereat to elect the members necessary to be elected: Provided that the elected members in office at the time of such non-election of new members shall remain in office till such new members shall be elected: And provided that the new members, elected at any such meeting as in this section mentioned, shall remain in office as long as members elected at such regular meeting as in the twelfth section mentioned would have remained in office, and no longer.

In case of failure to elect.

15. Until elective members of the Board of Managers shall be elected, the members *ex-officio*, of the said board shall be deemed and taken to form the said board, and shall possess all and singular the powers and authorities of the said board, as fully as if elective members had been elected; and no vacancy or vacancies at any time occurring amongst or in regard to the elective members shall be deemed or taken to render the said board incomplete, or to suspend or impair any of its powers.

Ex-officio members to constitute the board until elective members are chosen.

16. Should the number of commissioners of the municipality of Port Elizabeth be increased or diminished in the interval between one general election of elective members and the next succeeding general election, such increase or diminution shall not alter or affect the tenure of office of any of the elective members who shall be in office at the time of such increase or diminution: Provided that at the then next ensuing general election, the number of members to be elected shall be the same as the number of

Increase or diminution of municipal commissioners, before any general election, not to affect the board.

ccc

No. 5—1856

municipal commissioners for the time being: Provided also, that if, during any such interval as aforesaid, the number of municipal commissioners shall be diminished, so as to fall below the number of elected members for the time being, no casual vacancies occurring in the office of elective members shall be filled up, so long as the elected members for the time being shall exceed the number of municipal commissioners for the time being.

Board of managers to hold property for the benefit of the institution.

17. The Board of Managers aforesaid shall stand and be possessed of all lands which may be granted to the said board by Her Majesty the Queen, or by any private person, for the use and benefit of the Provincial Hospital aforesaid, and of all lands and buildings which may be purchased, erected, or in any manner acquired by the said board for the purposes of the said hospital; and of all funds and moneys granted to the said board from and out of the public revenue of this Colony, or given, subscribed, bequeathed, paid, or in any manner coming to the said board, for the use and benefit of the said hospital; and generally of all property, movable or immovable, belonging to the said hospital, —more especially of a certain grant of land already made in trust to the municipal commissioners of Port Elizabeth, for the use and benefit of the said hospital.

Board may, with sanction of the Governor, sell or lease lands held in trust.

18. It shall be lawful for the said board, with the sanction of the Governor of this Colony for the time being, first had and obtained, but not otherwise, to sell by public sale, but not otherwise, any portion or portions of any land which may have been granted to the said board by Her Majesty the Queen, which land it may be found expedient to alienate; and the said board may, in case the sanction aforesaid shall have been obtained, lease any of the said lastmentioned lands, at the best rent that can be obtained, without any fine or fore-gift, for any term not exceeding thirty-three years from the time when such lease shall be made.

Transfers, leases, &c., to be executed by three members of the board.

19. All transfers, leases, contracts, or other instruments to be executed by the said board, for any of the purposes of this Act, or of the said hospital, shall be executed by three members of the said board, acting for and on behalf of the board, of which three members the chairman of the said board for the time being shall be one.

Gratuitous treatment to indigent persons.

20. The Provincial Hospital at Port Elizabeth shall be all times open, so far as its funds will permit, to receive all persons standing in need of medical or surgical aid or treatment, and to supply such aid and treatment to all persons in poor or indigent circumstances, free of any fee or charge whatever.

Paying patients to be charged according to tariff.

21. It shall be the duty of the Board of Managers to make provision for the reception and treatment of patients able and willing to pay for the same, and to frame in regard to such paying patients a scale or tariff of the charges to be made by or on behalf of the said hospital.

Physicians and surgeons appointed by board.

22. It shall be lawful for the Board of Managers to appoint all such doctors of medicine and surgeons as may be required for the

said hospital, at such salaries as the said board shall deem expedient, and to discharge any such doctor of medicine or surgeon for immoral or improper conduct, or for non-fulfilment of his engagements with the said board: Provided that no such doctor of medicine or surgeon shall be discharged upon any of the grounds in this section, mentioned until he shall have been furnished in writing by the said board with a statement of the charges against him and shall have had an opportunity of making his defence, and until a majority of the members present at some meeting of the said board at which not less than three-fourths of the members for the time being shall be present shall have resolved that such doctor of medicine or surgeon be so discharged.

No. 5 -1856.

23. All persons other than doctors of medicine and surgeons employed in or about the said hospital shall be engaged by the said board and shall hold their situations at the pleasure of the said board.

Board to appoint other officers.

24. It shall be the duty of the Board of Managers to frame and from time to time if need be to amend all such rules and regulations as to the said board shall seem necessary touching and concerning the times of meeting and mode of summoning of the members of the said board; how many members shall form a quorum; the recording of the proceedings of every such meeting; the officers of such board and their salaries, if any; the mode in which the moneys belonging to the said board shall be collected, kept, and paid out; the mode in which the accounts of the said hospital shall be kept; the number and the duties of the officers, hospital attendants, and other persons employed in or about the said hospital; the length of notice to be given or received by each doctor or surgeon employed in the said hospital before it shall be lawful for him without mutual consent to vacate his office or for the said board to dispense with his services, unless for some cause in the twenty-second section specified; the regulations under which ministers of religion or others desirous to visit patients for the purpose of religious counsel or consolation shall be permitted so to do; the fees or charges to be paid by the paying patients herebefore in the twenty-first section mentioned; and generally any subject connected with the cleanliness, order, conduct, and management of the said hospital.

Board to frame and amend rules.

Board to regulate duties and salaries of officers.

25. The Board of Managers shall furnish to the Governor for the time being a copy of the rules and regulations aforesaid for the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

Copy of rules to be sent to the Governor.

26. It shall be lawful for the said board to purchase or rent all such lands or buildings as shall be necessary for the purposes of the said hospital, and when it shall be desirable so to do to sell again by public sale, but not otherwise, any lands or buildings which the said board shall have purchased, and shall no longer require; and the said board may also contract for the building of

Board may purchase, rent, or dispose of lands, buildings, &amp;c., for the benefit of the institution.

No. 5—1856.

any buildings or the supply of any furniture or apparatus which shall be required for such hospital: Provided that no contract for any purpose which shall require an expenditure above twenty pounds shall be entered into, unless tenders for the same shall have been called for by a notice, written or printed, and posted at the office of the Resident Magistrate of Port Elizabeth for not less than eight days, as also by an advertisement to be published in some one or more of the newspapers of Port Elizabeth for not less than eight days.

Report of proceedings and accounts of expenditure to be submitted to Parliament.

27. The Board of Managers aforesaid shall cause detailed accounts in writing of all sums of money received by them for any of the purposes of this Act and of all sums expended by them for any purpose thereof to be made up to the thirty-first of December in every year; and the said board shall also frame a full report of the state and proceedings of the hospital up to the same day in each year, and shall cause a copy of such accounts and of such report to be transmitted to the Governor of the Colony not later than the first of March in the next succeeding year; and the said Governor shall lay a copy of such accounts and of such report before each House of Parliament should Parliament be sitting at the time of the receipt of such accounts by such Governor; and in case Parliament should not be then sitting the Governor shall lay the copies aforesaid before the said Houses respectively at the then next ensuing session of Parliament. And the said Governor shall also cause the said accounts and report or an abstract of them to be published in the *Government Gazette*.

To be published in Gazette.

Act when to commence.

28. This Act shall commence and take effect from and after the promulgation thereof.

---

No. 33—1884.]

[July 25, 1884.

### ACT

To Authorize the Trustees of the Port Elizabeth Volunteers to raise a Sum of Money on Mortgage for their Drill-hall.

Preamble.

WHEREAS by a deed of grant bearing date the 27th day of October, 1864, His Excellency SIR PHILIP EDMOND WODEHOUSE, the Governor of the Cape of Good Hope, did grant a freehold unto the Civil Commissioner of Port Elizabeth for the time being, the Mayor of Port Elizabeth for the time being, and the senior officers of volunteers at Port Elizabeth for the time being, as trustees for the volunteers at Port Elizabeth, a piece of land upon the Hill in the Town of Port Elizabeth, as a site for a Drill-house and Gymnasium for the use of the aforesaid volunteers, and for no

other use or purpose whatsoever, the said piece of land being fully described in such deed of grant : And whereas it was in such deed made a condition that the said land should, by the said trustees, be held in trust for the Town Council of Port Elizabeth, in case and as soon as it should no longer be required for the purpose aforesaid : And whereas the said Town Council were thereupon to be entitled to have the said land transferred to them by the said trustees or by the two first of them, should the third of such trustees have ceased to exist : And whereas the said trustees being desirous of raising a sum of four thousand pounds for the purpose of paying off part of the cost of the Drill-hall of the said volunteers at Port Elizabeth, seek to do so by giving as security a mortgage for that amount upon the said piece of land granted to them as aforesaid, and upon the building erected thereon ; but under the condition in the said grant hereinbefore cited they are unable to make such security satisfactory to persons who would otherwise be willing to advance the required amount : and whereas it is desirable that the said trustees should be empowered to raise the said sum and to give the requisite security : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

1. It shall be lawful for the trustees of the piece of land on the Hill in the town of Port Elizabeth, granted to them on the 27th day of October, 1864, as in the preamble of this Act mentioned, to mortgage such land and any building or buildings erected thereon for any sum not exceeding £4,000 ; and thereupon such mortgage shall remain a charge upon such land and buildings until the capital and interest thereby secured shall have been paid off, whether such land shall continue vested in the hands of such trustees or shall be transferred to the Town Council of Port Elizabeth as in the said deed of grant provided, any conditions in such deed to the contrary notwithstanding.

Power to trustees to mortgage notwithstanding the provisions of the Deed of Grant.

2. This Act may be cited as the "Port Elizabeth Volunteers Drill Hall Act, 1884."

Short title.

## POST OFFICE.

1. Act 4—1882.  
 2. „ 3—1886, (Rates of Postage).

3. Act 4—1885, (Postal Drafts).  
 4. „ 6—1883, }  
 5. „ 4—1886, } (Savings Banks).

No. 4—1882.]

[June 7, 1882.

## ACT

## To Amend the Law relating to the Post Office.

Preamble.

WHEREAS it is expedient to amend and consolidate the law relating to the Post Office: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. The several laws mentioned in the first schedule to this Act, and so much of any other law or ordinance as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except as to any things done, appointments, orders, regulations and contracts made, offences committed, penalties incurred or proceedings instituted previously to the commencement of this Act.

What are "inland" letters.

2. All letters, post cards, packets, and newspapers received at any Post Office for delivery in this Colony shall be deemed inland letters, post cards, packets, and newspapers; and all letters, post cards, packets, and newspapers received from any place beyond the limits of this Colony, or received at any Post Office for delivery beyond the limits of this Colony, shall be deemed to be Foreign letters, post cards, packets, and newspapers.

What are "foreign" letters.

Interpretation of word "Colony."

3. In the interpretation of this Act, the term "this Colony" shall include all territories under the administration of the Government of the Cape of Good Hope: and in case of doubt the Governor may declare any <sup>(1)</sup> territory or dependency to be within this Colony for the purposes of this Act; and the words "Post Office" shall include any pillar-box, or wall-box, or other place set apart for the reception of letters, post cards, packets, or newspapers, under the authority of the Postmaster-General.

Of words "Post Office."

Governor empowered to make regulations for purposes mentioned in the sub-sections.

4. The Governor may from time to time make, alter, and repeal regulations for all or any of the purposes following:

- (1) For the establishment and management of Post Offices.
- (2) For the receipt, registration, dispatch, carriage, and delivery of letters, post cards, packets, and newspapers.
- (3) For the conduct and guidance of all Postmasters and other officers and servants of the Post Office.
- (4) For the charges to be made for the use of private boxes and private bags.

<sup>1</sup> Provisions of this Act extended to Basutoland, Transkei and Griqualand East by Proclamation No. 98 of 1st July, 1882; To St. John's River Territory by Proclamation No. 99, and to Tembuland, Emigrant Tambookieland, Bovanaland, and Galekaland by Proclamation No. 100, dated 1st July, 1882.



- (5) For the making, issuing, sale, and respecting the use of post cards.
- (6) For providing that certain letters upon the service of Her Majesty the Queen, civil or military, shall be forwarded and received free of postage.
- (7) For regulating the issue of money orders and postal orders; the rate of commission to be received in respect of such money orders and postal orders; the persons by or through whom, and the places where, and the times when, and the manner and form in which, money orders and postal orders shall be granted; and the persons in favour of whom, and the places where, and the times when, and the manner and form in which, money orders and postal orders respectively shall be paid; and the length of time during which money orders and postal orders shall be current, and after which they shall become void; and the mode of forwarding advices of transmitting moneys; and as to every other matter or thing necessary to be regulated or done for enabling the public promptly and safely to remit small sums of money through the Post Office.
- (8) For conveying small parcels from place to place within this Colony; for limiting the weight of such parcels; for regulating the rates to be paid in respect of the conveyance of such parcels not being more than threepence for every four ounces, or fraction of four ounces, and generally for regulating and controlling the receipt, registration, and delivery of such parcels.
- (9) For the making, issuing, and sale of such postage or impressed or embossed stamps, as may from time to time be deemed necessary for the purposes of this Act; and for authorizing the making and use of such office stamps as may be necessary in the General or any other Post Office.

And by such regulations may impose any penalty not exceeding ten pounds for any offence against any of the same.

5. Except when otherwise specially provided in this or by any Act now or hereafter in force, postage upon, and fees for registration of, every inland and foreign letter, post card, packet, and newspaper respectively shall be levied according to the scale and at the rate set forth in and by the second schedule to this Act; but every letter, post card, packet, and newspaper sent by post from any place beyond the limits of this Colony shall be transmitted and delivered free of additional charge within this Colony; except as hereinafter mentioned, and except in cases where it is necessary to collect the postage under any arrangement or convention to be made as hereinafter mentioned, in which case the same and all fees and charges upon such letter, post card, packet, or newspaper

Postage payable according to rates mentioned in schedule 2.

No. 4—1882.

may be collected on or before the delivery thereof respectively: Provided, however, that at any time after the expiration of the existing contracts for conveying the ocean mails, it shall and may be lawful for the Governor, by proclamation in the *Government Gazette*, to take effect at such time as may be mentioned therein, to reduce the postage in the second schedule to this Act so far as to provide that the postage to be levied upon inland letters posted for delivery through another Post Office in the Colony shall be one penny; that the postage to be levied on ship letters, if posted in any other part of the Colony, shall be fourpence; that the postage to be levied on shippers' and consignees' letters, if transmitted to any other part of the Colony, shall be one penny; and the postage to be levied on each inland postal card, shall be one half-penny.

Certain letters  
charged with id.  
postage only.

6. Inland and Foreign letters not exceeding one half ounce in weight addressed to or forwarded by any writer or schoolmaster, or any seaman on actual service in Her Majesty's navy, or by any bandmaster, army schoolmaster or schoolmistress, sergeant, corporal, drummer, trumpeter, fifer, or private soldier on actual service in Her Majesty's Imperial or Colonial Forces or Royal Marines, shall be charged the sum of one penny in lieu of the postage in the said second schedule mentioned, exclusive of postage (if any) payable in respect of the transmission of any such letter through any Foreign territory. But no such letter shall be transmitted or delivered unless such letter relates exclusively to the private concerns of such seaman or soldier, and unless (in case of a letter forwarded as aforesaid) there shall be on the face thereof the name of the writer and his class or description in the vessel, regiment, corps, or detachment to which he belongs, and the signature of the officer having command of such vessel, regiment, corps, or detachment, nor unless (in the case of a letter addressed as aforesaid) there shall be specified on the superscription thereof the vessel, regiment, corps or detachment to which the person to whom it is addressed belongs. This section shall not apply to letters addressed to or forwarded by any commissioned or warrant officer whether in the Imperial or Colonial Forces or in the Navy or midshipman in the Navy.

Postal packets de-  
fined.

7. The Governor may from time to time, by notice published in the *Government Gazette*, direct what packets may be sent by post as inland and foreign packets within the meaning of this Act, and upon what terms and conditions the same may be sent; and until such order be made the following, and no others, may be sent by post as inland and foreign packets within the meaning of this Act:

- (1) "COMMERCIAL PAPERS" (in covers open at the ends or sides), under which are comprised all papers or documents written or drawn wholly or partly by hand (except letters or communications in the nature of letters, or other papers or documents having the character of an

- actual and personal correspondence), documents of legal procedure, deeds drawn up by public functionaries, copies of or extracts from deeds under private seal (and whether written or printed on stamped or unstamped paper), way bills, bills of lading, invoices, and other documents of a mercantile character, documents of insurance and other public companies, all kinds of manuscript music, the manuscript of books and other literary works, and other papers of a similar description ;
- (2) "PRINTED PAPERS" (in covers open at the ends or sides), including periodical works, books (stitched or bound), pamphlets, sheets of music (printed), visiting cards, address cards, proofs of printing (with or without the manuscript relating thereto), engravings, photographs (when not on glass or in frames containing glass), drawings, plans, maps, catalogues, prospectuses, announcements, and notices of various kinds, whether printed, engraved, or lithographed, and in general all impressions or copies obtained upon paper, parchment, or card-board by means of printing, lithographing, or any other mechanical process easy to recognize, except the copying press, and anything usually attached or appurtenant to any of the before-mentioned articles in the way of binding, mounting, or otherwise, and anything convenient for their safe transmission by post which shall be contained in the same packet; also printed, engraved, or lithographed circulars, notwithstanding that such circulars may be letters or communications in the nature of a letter ;
- (3) Packets (in covers open at the ends or sides), containing patterns or samples of merchandize not having a value of their own apart from their mere use as patterns or samples, and either unenclosed or enclosed in bags tied, so as to be easily loosened and refastened.

8. For the purposes of this Act, any publication coming within the following description shall be deemed a newspaper (that is to say): Any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, and with or without engravings, prints, or lithographs illustrative of articles in such newspaper, subject to these conditions :

Definition of a newspaper.

That it be published in numbers or parts at intervals of not more than seven days.

That it be printed on a sheet or sheets unstitched.

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

- No. 4—1882.  
Newspaper supplements.
- And the following shall be deemed a supplement to a newspaper: A publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, such publication being in every case published for the first time with the issue of the newspaper of which it purports to be a supplement, and having the title and date of publication of such newspaper: Notwithstanding anything in this section, all literary publications, printed and published in this Colony, shall, when posted for transmission to any place within the same be considered to be newspapers within the meaning of this section.
- How newspapers to be addressed and posted.
9. Every inland or foreign newspaper shall be sent without a cover, or in a cover open at both ends; and there shall not be in or upon any such newspaper or the cover thereof any communication, character, figure, letter, or number (other than the words "newspaper only" or the printed title of such newspaper, the printed names, occupation, and places of business of the printer, publisher, or vendor thereof, the name, occupation, and address of the person to whom it is sent, and the words aforesaid), nor shall anything be enclosed in or with or accompany such newspaper or cover; otherwise, there shall be charged upon every such newspaper postage at the rate for the time being chargeable upon letters.
- Prohibitions.
10. The *Government Gazette*, when enclosed in a cover, open at both ends, and with the words "On Her Majesty's Service" printed thereon, together with its title and the imprint of the printer, shall if received at the General Post Office from the office of the printer, but not otherwise, be exempt from postage.
- Government Gazette exempt from postage if sent by Government printer.*
- Petitions to Parliament free.
11. All petitions to Parliament, addressed to a member of either House, and with or without a letter enclosed therein, shall be exempt from postage. Every such petition shall be enclosed in a cover open at both ends or sides, and marked on the outside "Petition to Parliament;" and every such letter shall refer exclusively to the subject of the said petition.
- What packets may be refused transmission.
12. Every Postmaster may refuse to transmit by post any packet exceeding five pounds in weight, or of inconvenient form or dimensions, or containing or suspected to contain articles likely to injure the other portions of the mail, or the person of any officer or servant of the Post Office.
- Adhesive stamps to be used.
13. Except in the cases in this Act or in any regulations made under the authority of this Act expressly mentioned, the postage upon every inland and foreign letter, packet, and newspaper, and upon every parcel, and all fees (if any) upon such letter, packet, newspaper, or parcel, shall be prepaid by affixing thereon postage stamps not obliterated or defaced, and not being embossed or impressed stamps cut out of or separated from the paper, card, or other material upon which such stamps were embossed or impressed, although not previously used; and in default thereof, there shall be chargeable upon every such letter, packet, or parcel, double the ordinary rate of postage for the time being payable thereon respec-

tively : and every such newspaper may be destroyed : Provided that postage on loose letters received from masters of vessels may be collected in money on delivery.

No. 4—1882.

14. In case any Postmaster shall not have any postage stamps of the requisite value for sale, the postage and fees (if any) upon any letter, packet, newspaper, or parcel, may be prepaid in money, and shall be acknowledged by such Postmaster on the face or cover of such letter, packet, newspaper, or parcel, anything to the contrary in the last preceding section notwithstanding.

When postage may be paid in money.

15. Any inland letter, inland packet, or inland newspaper, or any parcel posted with an unobliterated postage stamp of any denomination shall be regularly transmitted and delivered although the stamp be insufficient, but before delivery in this Colony there shall be paid in money double the amount of postage omitted to be prepaid, and the sum so to be paid shall be written or stamped on such letter, packet, newspaper, or parcel, by the Postmaster who transmits or delivers the same.

Double postage payable on letters, &c., not prepaid.

16. Except in the cases expressly mentioned in this Act or in any such regulations as aforesaid, every Postmaster shall see that every post card and every inland and foreign letter, packet and newspaper, and every parcel, bears either postage stamps or a proper acknowledgment for money respectively equal in value or amount to the postage due thereon.

Postmasters to see that letters, &c., properly stamped.

17. Every letter, post card, packet or parcel, re-directed and forwarded, shall be charged for postage from the place at which the same shall be re-directed to the place of ultimate delivery, such a rate of postage as the same would be liable to if prepaid.

Re-directed letters.

18. Any person who shall send any letter, post card, packet, newspaper, or parcel by post shall be entitled to have the same registered at the Post Office at which the same shall be posted upon payment of the proper registration fee ; but such registration shall not be deemed to render the Government or the Postmaster-General, or any officer of the Post Office, liable for the loss of any such letter, post card, packet, newspaper, or parcel ; and all letters, post cards, packets, newspapers, and parcels shall be put into the Post Office, and also be delivered, at or between such hours in the day and under such regulations as the Postmaster-General shall from time to time appoint.

Registration of letters, &c.

19. In any case where it shall come to the knowledge of any Postmaster, or officer of the Post Office, or where any Postmaster or officer of the Post Office has reasonable cause to believe, that any inland or foreign letter or packet not registered under this Act contains any money or other valuable enclosure, such Postmaster or officer may register such letter or packet, and charge thereon double the proper fee for registration ; and such fee shall be paid in money by the person to whom it is addressed before delivery, unless such person shall before or upon such delivery open the letter or packet in the presence of some Postmaster or officer of the Post

Double registration fee to be charged in certain cases.

No. 4—1862.

Office and it shall be found not to contain money or other valuable enclosure, in which case such fee shall be remitted.

How letters may be destroyed or returned.

20. Except in the cases in this Act expressly mentioned, no letter, post card, packet, newspaper, or parcel shall be destroyed or returned to the writer or sender thereof without either the consent in writing of the person to whom the same is addressed, or the direction of the Postmaster-General; and no letter, post card, packet, newspaper, or parcel shall be delivered to any person not named in the address thereof without such consent or direction as aforesaid.

How delivered to third parties.

What letters, &c., must be returned to General Post Office.

21. Every Postmaster or other officer of the Post Office shall transmit to the Returned Letter Branch of the General Post Office without delay any letter, post card, packet, or parcel, which

- (1) Shall have anything blasphemous, obscene, offensive or libellous written or drawn on the outside thereof.
- (2) Shall have no address or no legible or intelligible address.
- (3) The person to whom it is addressed shall refuse to receive or to pay for when postage is payable.
- (4) Shall be known or reasonably suspected to be posted, or to contain an enclosure, in fraud or violation of this Act, or any regulation thereunder, or of any Customs Act, or to contain any obscene enclosure.

And every letter, post card, packet, or parcel as aforesaid, posted at the General Post Office, may be there retained and dealt with as if it had been transmitted as aforesaid.

Power to open packet or parcel suspected of being posted in fraud of this Act.

22. Any Postmaster may (notwithstanding anything in the last preceding section contained) open or unfasten any packet or parcel which he has reasonable ground to suspect to be posted in fraud or violation of this Act or any regulation thereunder, and shall close or refasten any packet or parcel so opened which he shall find not to have been so posted, and shall mark on the cover of every such packet or parcel that the same has been opened, and sign his name thereon.

Time of detention of returned letters.

23. Every letter, post card, packet, newspaper, and parcel (other than those directed to be transmitted to the General Post Office without delay), which shall remain undelivered at the Post Office to which the same shall have been transmitted for delivery, shall be kept thereat for delivery during not less than two months, and after the expiration of such period the Postmaster at every such Post Office shall (subject to the directions of the Postmaster-General) transmit to the Returned Letter Branch of the General Post Office every unclaimed letter, post card, packet, and parcel, which shall have been kept as aforesaid, and all newspapers undelivered or unclaimed during such period of two months may be destroyed.

What letters, &c., may be opened at General Post Office.

24. On the receipt at the General Post Office of any unclaimed letter, packet, or parcel originally posted in this Colony, or of any letter, packet, or parcel posted, or reasonably suspected to have been

posted, or to contain any enclosure, in fraud or violation of this Act, or of any Act relating to the Customs, or of any regulation or order made under the authority of this Act, such letter, packet, or parcel may be opened in the General Post Office in the manner hereinafter provided.

No. 4—1882.

25. Every such unclaimed letter or packet originally posted elsewhere than in this Colony shall be transmitted by the Postmaster-General to the proper authorities in the country in which such letter or packet was posted.

Foreign unclaimed letters.

26. All letters, packets, or parcels which shall be opened under the authority of this Act (except as in the twenty-second section is provided), shall be opened in the presence of the Postmaster-General, or by or in the presence of an officer of the Post Office specially nominated for that purpose by the Postmaster-General.

Who to open letters at General Post Office.

27. Every unclaimed letter, packet, and parcel which shall be opened under the provisions of this Act (unless such letter, packet, or parcel contains any valuable or saleable enclosure, or shall have been posted, or shall contain any enclosure in fraud or violation of this Act, or of any Act relating to the Customs, or of any regulation or order made under the authority of this Act, or with intent to evade payment of the postage properly chargeable thereon), shall be returned to the writer or sender thereof if the name or address of such writer or sender can be ascertained by examination of such letter, packet, or parcel, but if such writer or sender shall refuse to receive such letter, packet, or parcel, or if his name and address cannot be ascertained, the same may be destroyed.

Unclaimed letters.

28. Every letter, packet, or parcel, opened under the provisions of this Act, which shall contain any valuable or saleable enclosure, shall be safely kept, and a list of its contents shall be made and preserved; and the Postmaster-General (unless such contents shall have been posted or shall be in fraud or violation of this Act, or of any Act relating to the Customs or of any regulation or order made under the authority of this Act, or with intent to evade payment of the postage properly chargeable on the letter, packet, or parcel containing them), shall cause notice of such letter, packet, or parcel, and of the said contents to be sent to the person to whom the same is addressed if he be known, or otherwise to the writer thereof if he be known, and upon demand by the person to whom such notice shall have been sent, such letter, packet, or parcel and its contents shall be delivered upon payment of the postage or fees (if any) due thereon. But if neither of such persons can be found or shall make such demand within three months after the sending of such notice as aforesaid, or if the contents shall have been posted or shall be in fraud or violation of this or any Act, regulation, or order, as aforesaid, or with intent to evade payment of postage as aforesaid, the said letter or packet shall be destroyed, and its contents forfeited, unless the Colonial Secretary shall direct

Letters containing valuables.

- No. 4—1882. the said contents to be restored to the writer or sender. And if the contents aforesaid shall not be money, or a security or order for money payable to bearer, the same may be destroyed, sold or converted into money in such manner as the Postmaster-General may direct, and the proceeds paid into the Treasury.
- Sender of opened letter to pay postage. 29. The sender of any letter, packet, or parcel, which shall be opened under the provisions of this Act, shall on demand pay the postage and fees respectively (if any) due thereon; and in case of refusal shall upon conviction pay a penalty not exceeding twenty shillings, and in any proceeding for the recovery of the said penalty the person from whom such letter, packet, or parcel, shall purport to have come, shall be deemed to be the sender thereof, unless the person proceeded against shall prove that such letter, packet or parcel was not sent by him.
- Penalty for refusal.
- Power of Governor to make postal conventions. 30. The Governor may from time to time make and alter arrangements or postal conventions with the Postmaster-General of the United Kingdom, or with the proper authorities of any British possession or Foreign country for any or either of the purposes following :
- (1) For the issue and payment by means of the Post Office of money orders between this Colony and Great Britain, or any British possessions or Foreign country.
  - (2) For the transmission to any place out of this Colony of letters, post cards, packets, and newspapers, posted in this Colony or received in mails or loose, from masters of vessels on which no postage or insufficient postage shall have been paid, free of postage, or upon such terms as to the amount of postage or fine to be paid on delivery, and as to the application thereof as may be agreed upon.
  - (3) For determining the amount and collection of postage and fees or other charges upon letters, post cards, packets, and newspapers conveyed between this Colony and such kingdom, possession or country.
  - (4) For the division and mutual accounting for and payment of the money collected under any arrangement.
  - (5) For the purposes abovementioned in sub-sections (3) and (4) in the case of letters, post cards, packets, and newspapers transmitted through this Colony or the said kingdom, possession or country to or from any part of the world.
  - (6) For the prepayment (in full or otherwise) of the postage due on any letters, packets, and newspapers.
- How convention to be promulgated. 31. So soon as any arrangement or postal convention shall have been made under the authority of this Act, the Governor may from time to time issue a proclamation defining a time for such arrangement or convention to come into operation, and from and after such time the rates of postage and regulations therein set forth shall be imposed, paid, and observed.



32. Copies of all arrangements or conventions made between the Government of this Colony and the Postmaster-General of the United Kingdom, or the proper authorities of any British possession or Foreign country, and copies of all regulations or orders made by the Governor under the provisions of this Act, shall from time to time be laid before both Houses of Parliament within thirty days after the making thereof, respectively, if Parliament be in session, and if Parliament be not then in session after the commencement of the next session.

No. 4—1882.  
Conventions so made to be laid before Parliament.

33. Subject to such regulations as may be made by the Governor under the provisions of this Act, the Postmaster-General may authorize his officers or any of them to issue money orders for sums not exceeding ten pounds, and postal orders for sums not exceeding one pound, and all regulations made by the Governor relating to such money orders, and postal orders shall be binding and conclusive upon all officers of the Post Office, and upon the persons to whom such money orders and postal orders, respectively, shall be granted or issued, and the payees thereof and all persons interested through or claiming under them, and upon all other persons whomsoever, and such regulations shall have the same force and effect in all respects as if contained in this Act.

Money orders and postal orders.

34. No letter shall be carried for hire or reward otherwise than by post, and no letter shall be conveyed by any vehicle used for the public conveyance of passengers unless in any Post Office bag which may be thereby conveyed. Any person who shall send or convey any letter by any such vehicle, or otherwise than by post, or who shall for hire take charge of the same, for such conveyance shall upon conviction be liable to pay a penalty not exceeding ten pounds for every such letter. And every such letter sent, conveyed, or taken charge of to be conveyed, otherwise than by post, shall be deemed to have been so sent, conveyed, or taken charge of for hire or reward unless the contrary be shown by the accused. But nothing herein contained shall extend to any letter concerning goods sent and to be delivered therewith, or containing process of or proceedings or pleadings in any Court of Justice, or affidavits, or depositions; nor to any letter sent by any person concerning his private affairs, nor to any letter sent or carried to or from any Post Office.

Restrictions as to mode of conveying letters.

Penalties.

35. If any person shall with intent to defraud remove from any letter, packet, newspaper, or parcel respectively sent by post any stamp which shall have been affixed thereon, or wilfully remove from any stamp which shall have been previously used, any mark which shall have been made thereon at any Post Office, or shall knowingly put off or use any such stamp, he shall upon conviction be liable to a penalty not exceeding forty pounds, or to be imprisoned with or without hard labour for any period not exceeding six months; or to both such fine and such imprisonment.

Penalties for removing stamps from letters posted.

No. 4—1882.  
Penalties for sending dangerous substances by post.

36. If any person shall enclose in or with any letter, packet, newspaper, or parcel, or shall put into any Post Office, pillar-box, or wall-box for the receipt of letters, any explosive, dangerous, or destructive substance, or any matter or thing likely to injure any letter, packet, newspaper or parcel, or the person of any officer or servant of the Post Office, such person shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding five years.

List of offences and penalties.

37. Any person who shall be guilty of any of the following acts or offences shall, upon conviction, be liable to a penalty not exceeding twenty pounds, or to imprisonment with or without hard labour for any period not exceeding six months; or to both such fine and such imprisonment.

- (1) If he shall, contrary to the provisions of this Act or with intent to defraud, put into any Post Office anything purporting to be a letter, packet, or newspaper, within any of the exemptions by this Act allowed, or any letter purporting to belong to a class in which lower rate of postage is chargeable.
- (2) If he shall put into any Post Office any packet or parcel in or upon which or the cover whereof, there shall be any letter, communication, or intelligence not allowed by law or shall wilfully subscribe on the outside of any packet a false statement of the contents thereof.
- (3) If he shall put into any Post Office any newspaper in or upon which or upon the cover whereof, there shall be any communication, character, figure, letter, or number (other than is excepted by the tenth section of this Act) or in or with which anything shall be enclosed, or which anything shall accompany.
- (4) If he shall put into any Post Office any letter, post card, packet, newspaper, or parcel bearing an obscene, profane, or libellous address or signature.
- (5) If he shall wilfully deface, break or injure any pillar-box or wall-box for the receipt of letters, or place in any such box for the receipt of letters any substance likely to deface any letter, post card, packet, or newspaper.
- (6) If he shall detain, secrete, or keep any letter, post card, packet, newspaper, or parcel which ought to have been delivered to any other person, or any mail bag, mail box, mail parcel, letter, post card, packet, or newspaper, which shall have been found by the person detaining, secreting, or keeping the same, or by any other person.
- (7) If he shall by any false pretence or misstatement induce any Postmaster or any officer or servant of the Post Office to deliver to him any letter, post card, packet, newspaper, or parcel sent by post and not addressed to him.

- (8) If (being a Postmaster, master of a vessel, or other person authorized to receive, sort, dispatch, carry, or deliver mail letters, post cards, packets, newspapers, or parcels sent by post) he shall negligently lose, or wilfully omit or delay to dispatch or deliver any such mail, letter, packet, newspaper, or parcel, whether the same shall or shall not afterwards be recovered or delivered (as the case may be).
- (9) If (being the driver of any vehicle used for the conveyance of any mail, or the guard or person in charge of a mail, whether conveyed by such vehicle or on horseback or on foot) he shall become intoxicated, or shall loiter on the road, or wilfully misspend or lose time so as to retard the arrival of the mail at its proper destination within the time limited for its arrival.

38. (1) All mails and every loose letter, post card, packet, or newspaper which at the time of the arrival of any vessel in any port of this Colony shall be on board thereof directed to any person in this Colony, shall be delivered on demand to any Postmaster or port officer of such port or to any person duly authorized in their behalf by writing under the hand of the Postmaster-General or officer in immediate charge of the Post Office, except letters concerning goods on board such vessel and to be delivered with such goods, or sent by way of introduction only, or concerning the bearer's private affairs. And any person who shall knowingly or negligently detain, or keep in his possession, or shall neglect or refuse to deliver any mail bag, mail box, or mail parcel, or any letter, post card, packet, or newspaper (except as aforesaid) after such demand made as aforesaid, shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Letters arriving by ship to be delivered to Post Office.

Penalties for omitting to make such delivery.

39. The master or person in charge of any vessel arriving at any port in this Colony shall, as soon as practicable after such arrival, sign in the presence of the Postmaster or other officer appointed by the Postmaster-General to receive the same at such port or the town or place nearest thereto, a declaration in the form set forth in the third schedule to this Act, and thereupon such Postmaster or officer shall grant a certificate under his hand of the making thereof; and until such certificate shall have been delivered to the proper officer of Customs at such port he shall not permit such vessel to report. And any master or person in charge as aforesaid who shall fail or refuse to make such declaration or who shall make a false declaration shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Masters of ships to sign declaration in schedule 3.

40. Every master or person in charge of every vessel about to depart from any port in this Colony who shall receive on board thereof any mail bag, mail box, or mail parcel, for the purpose of

Payments for conveyance of letters by ship.

<sup>1</sup> See also § 20, Act No. 16, 1857. (Harbours).

*fff*

No. 4—1882.

conveying the same according to the direction thereof, shall be entitled to demand or receive for the carriage thereof

For every foreign letter and packet contained therein the sum of one penny ;

For every inland letter and packet contained therein the sum of one half-penny ;

For every newspaper, one farthing ;

such master or person giving a receipt for the amount so received by him. But nothing herein contained shall entitle the master or person in charge of any vessel under contract for the conveyance of mails to receive payment for the same as aforesaid.

Shipmasters to give notice to Postmaster of intended departure.

41. Every master or person in charge of any vessel not carrying mails under a contract for the carriage thereof, and being about to depart from any port in this Colony, shall, before the clearance of such vessel, give to the Postmaster or officer in charge of the Post Office at the port from which such vessel shall be about to depart, notice, in writing, of the intended time of departure of such vessel. Such notice, in case the destination of the vessel be to any port or place beyond the limits of the Colony shall not be less than twenty-four hours, and in case the destination be to any other port or place within the Colony shall be not less than six hours. And every such notice shall expire between the hours of nine o'clock in the forenoon and three o'clock in the afternoon. And every such master or person in charge shall from time to time give notice of any postponement of such time of departure. And such Postmaster or other officer of the Post Office shall, upon receiving such notice, grant a certificate to such master or person, and until such certificate shall have been given the vessel shall not be cleared. Every master or person in charge who shall omit to give such notice as aforesaid, or who shall depart from the port before the time mentioned in such notice, shall upon conviction be liable to pay a penalty not exceeding fifty pounds.

Penalties for refusing to receive mails on board ship.

42. If any master or person in charge of any vessel about to depart from any port in this Colony, to any port or place within or beyond the same, shall (after being thereto required by any officer of the Post Office, or by any port officer, or by any person duly authorized in writing in that behalf by the Postmaster at such port), refuse or neglect to receive on board such vessel any mail bag, mail box, or mail parcel, or to give a receipt for the same being thereto required by the person tendering or delivering such bag, box, or parcel, or shall refuse or neglect safely to convey the same upon her then intended voyage, such master or person shall for every such offence be liable upon conviction to pay a penalty not exceeding one hundred pounds.

Master not sailing as notified to return mails and gratuity.

43. As often as the master or person in charge of any vessel shall have received any mail bag, mail box, or mail parcel for carriage on board such vessel, and such vessel shall not depart on her voyage according to the time fixed for the departure thereof,

such master or person as aforesaid shall on demand return to the Postmaster, port officer, or other person duly authorized in that behalf, in writing, or to the officer in charge of the Post Office, such mails, and also any gratuity which may have been paid for the carriage of the same; and in default of so doing, shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

No. 4—1882.

44. Every Postmaster and other Post Officer shall, before the exercise by him of the duties of his office, take and subscribe before a Justice of the Peace a solemn declaration, which every Justice of the Peace is hereby authorized and required to administer, in the form in the fourth schedule to this Act.

Solemn declaration to be made before J.P. by each postal officer.

45. Any Postmaster or other officer employed in the Post Office, or any master of a vessel or other person employed by or under any Postmaster, or employed or authorized to receive, sort, carry, or deliver mails, or letters, post cards, packets, newspapers, or parcels sent by post or otherwise employed in the business of the Post Office, who shall offend against or wilfully neglect or omit to comply with any of the arrangements or regulations to be made under the provisions of this Act, or with any of the provisions of this Act (for breach or neglect of which no other penalty is by this Act or by law provided) shall upon conviction be liable to a penalty not exceeding fifty pounds.

Penalty on postal officers, shipmasters &amp; others for breach of provisions of this Act or regulations thereunder.

46. If any person shall be convicted of any of the offences following, he shall be liable to be imprisoned and kept at hard labour for any period not exceeding seven years

Offences and penalties.

- (1) If he shall forge, alter, or imitate, or assist in forging, altering, or imitating, any stamp, envelope, or cover, or any money order or postal order, used or made under, the authority, or for the purposes of this Act, or shall use, offer, utter, or dispose of any forgery or imitation of any such stamp, envelope, or cover, or any money order or postal order, knowing it to be forged, or with a fraudulent intent;
- (2) If he shall engrave, or in anywise make upon any plate or material whatever, any stamp used for the purposes of this Act, without the authority of the Executive Government (the proof of which authority shall lie upon the person accused);
- (3) If he shall make, or cause to be made, or assist in making or have in his custody, or possession, without lawful excuse (the proof whereof shall lie on the person accused) any mould, frame, or other instrument, having thereon any words, letters, figures, marks, lines, or devices, peculiar to paper provided, or used for postage stamps, money orders or postal orders; or if any person shall make or procure to be made, or assist in making, or have in his custody or possession, without lawful

fff 2

No. 4—1882.

excuse (the proof whereof shall lie on the person accused), any paper, in the substance of which shall appear visible any words, letters, figures, marks, lines, or devices, peculiar to paper provided for postage stamps, money orders, or postal orders, and intended to imitate or pass for the same ;

- (4) If he shall, without lawful excuse (the proof whereof shall lie on the person accused), sell, purchase, dispose of, or receive, or take, or have in his custody or possession, any paper provided for the purpose of being used for postage stamps, money orders, or postal orders, before the same shall have been issued for public use ;
- (5) If he shall, for his own gain or purposes, or with intent to defraud, make use of any stamp, die, or plate, provided by any person charged with the duty of providing stamps, dies, or plates, for the purposes of this Act.

Property in letters posted to vest in Postmaster-General.

47. In any prosecution for any crime, or offence committed upon or in respect of any mail bag, mail box, or mail parcel, or any letter, post card, packet, parcel or newspaper, sent by post, or any property, moneys, money order, or postal order, under the management or control of the Postmaster-General, or when any matter or thing shall have been done or committed with any malicious, injurious, or fraudulent design, intent or purpose, relating to or concerning, the Post Office, of any such property, moneys, money order, or postal order, it shall be sufficient to allege the property to belong to, or be in the lawful possession of the Postmaster-General, and any such act, deed, matter, or thing to have been done or committed, with intent to injure or defraud the Postmaster-General, without setting forth his name.

Jurisdiction of Resident Magistrates.

48. The Courts of the Resident Magistrates, respectively, shall have jurisdiction for the trial of any offence created by this Act in respect whereof the penalty which may be imposed shall not exceed twenty pounds or the period of imprisonment which may be awarded shall not exceed six months.

No actions against Government for delay in transmission of letters, &c.

49. No action or suit shall be capable of being brought against the Colonial Government or against the Postmaster-General by reason of any default, delay, omission or loss in respect of any letter, post card, packet, newspaper, or parcel posted or received for transmission under the provisions of this Act ; or for or by reason, or in consequence of payment of the amount of any money order or postal order being delayed.

Limits of delivery from Post Offices to be defined.

50. The Postmaster-General may, by any notice, to be published in the *Government Gazette* from time to time, define or alter the limits of any city, town, or village within which letters, packets, parcels and newspapers are to be delivered from the Post Office.

Power to order imprisonment, &c., in case fines not paid.

51. Whenever any penalty shall have been imposed under the provisions of the thirty-eighth, thirty-ninth, forty-first, forty-second, forty-third, and forty-fifth sections, respectively, of this

Act, and the person convicted shall not forthwith pay the same, the Court before which such person is convicted may direct that such person be imprisoned with or without hard labour for any period not exceeding twelve months, and such person shall be detained and kept to hard labour accordingly, unless the penalty be sooner paid.

52. This Act shall come into operation on the first day of July, 1882, and may be cited for all purposes as the "Post Office Act, 1882."

No. 4—1882.

Short title.

---

SCHEDULES.—FIRST SCHEDULE.

---

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
1. Ord. No. 1, 1846.	Ordinance for the Regulation of the Post Office and Postage.	So much as has not been already repealed.
2. Ord. No. 23, 1847.	Ordinance for reducing the Postage upon Religious Publications of or under a certain weight.	The whole.
3. Act No. 23, 1856.	Act for empowering the Governor to Regulate the Postage of Letters transmitted to and from Countries beyond the Colony.	So much as has not been already repealed.
4. Act No. 21, 1857.	Act to Amend the Ordinance No. 1, 1846, entitled "Ordinance for the Regulation of the Post Office and Postage."	The whole.
5. Act No. 15, 1858.	Act for Amending the Act No. 21, 1857, entitled "An Act to Amend the Ordinance No. 1, 1846, entitled 'Ordinance for the Regulation of the Post Office and Postage.'"	So much as has not been already repealed.
6. Act No. 2, 1859.	Act for Amending the Act No. 15 of 1858, entitled "An Act for Amending the Act No. 21, 1857, entitled 'An Act to Amend the Ordinance No. 1, 1846,' entitled 'Ordinance for Regulation of the Post Office and Postage.'"	The whole.

## FIRST SCHEDULE—(continued.)

Number and Year.	Title.	Extent of Repeal.
7. Act No. 2, 1862.	Act for Amending in certain respects the Regulations of the Post Office and Postage.	The whole.
8. Act No. 3, 1862.	Act to facilitate the transmission of Books by means of the Post Office.	So much as has not been already repealed.
9. Act No. 30, 1864.	Act for Amending the Law relating to the Post Office and Postage.	Ditto.
10. Act No. 6, 1868.	Act for Altering and Regulating certain Rates of Postage.	The whole.
11. Act No. 7, 1868.	Act to Amend and Alter in certain respects the Regulations of the Post Office.	Ditto.
12. Act No. 9, 1874.	Act to Amend the Law relating to the Post Office and Postage.	Ditto.
13. Act No. 14, 1877.	Act to Regulate the Postage payable in this Colony upon Letters and other matters arriving from certain other places.	Ditto.
14. Act No. 25, 1879.	Act to Alter certain Rates of Postage payable in this Colony.	Ditto.
15. Proclamation No. 55, dated 14th Oct., 1872, issued by the local Commissioners of Griqualand West.	Proclamation defining Postal Route between Barkly and Hope Town.	The whole.
16. Ordinance No. 11 of 1874 of the Province of Griqualand West.	Ordinance to regulate the Conveyance of Mails and the establishment of Post Offices in the Province of Griqualand West, and also for other purposes.	The whole.
17. All Proclamations issued under the provisions of Section 5 of the last-mentioned Ordinance.		



SECOND SCHEDULE.

LETTERS.		
INLAND :	Posted for delivery within the same town or village in the Colony.	One Penny.
	Posted for delivery through another Post Office in the Colony.	Two Pence.
SHIP :	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet), direct to any Foreign country or British Possession with which a convention for the exchange of such mail matter has not been concluded	
	(a) If posted at the port of the mail's embarkation ;	Four Pence.
	(b) If posted in any other part of the Colony.	Six Pence.
SHIPPERS AND CONSIGNEES :	For owners, charterers, or consignees of vessels arriving in any part of the Colony by such vessel	
	(a) If delivered at the port of arrival	One Penny.
	(b) If transmitted to any other part of the Colony.	Two Pence.
NEWSPAPERS.		
INLAND :	For each newspaper not exceeding four ounces in weight.	One Half-penny.
SHIP :	For each newspaper not exceeding four ounces in weight.	One Penny.
POSTAL CARDS.		
INLAND :	On each postal card.	One Penny.
PACKETS.		
INLAND :	[Repealed by Act 3, 1886, § 1.]	

For every half-ounce or fraction of half an ounce.

SECOND SCHEDULE (*continued*).

SHIP :	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet), direct to any Foreign country or British Possession with which a convention for the exchange of mail matter has not been concluded, for every two ounces or fraction of two ounces.	One Penny.
.....		
INLAND :	PARCEL POST. [Repealed by Act 3, 1886, § 1].	
.....		
	REGISTRATION. For the registration of every separate article.	Four Pence.

## THIRD SCHEDULE.

I, \_\_\_\_\_, do hereby declare that I have to the best of my knowledge, delivered to \_\_\_\_\_ every mail bag, mail box, mail parcel, letter, packet, and newspaper that were on board the (name of vessel) at the time of her arrival at the port of \_\_\_\_\_, except such letters as are exempt by law from such delivery.

Signed in my presence        }  
on the                            day of                        }  
(S. 5.)

## FOURTH SCHEDULE.

## DECLARATION

(Made pursuant to the provisions of the 44th Section of the "Post Office Act, 1882.")

I \_\_\_\_\_ do solemnly and sincerely declare that I will not wittingly or willingly open or delay, or cause, or suffer to be opened or delayed, contrary to my duty, any letter or anything sent by the post, which shall come into my hands or custody, by reason of my employment relating to the Post Office, except by the consent of the person or persons to whom the same shall be directed, or except in such cases where the party or parties to whom such letter, or anything sent by the post shall be directed, and who is, or are,

chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or anything sent by the post, as shall be returned for want of true directions, or when the party or parties to whom the same shall be directed, cannot be found; and that I will not in any way embezzle any such letter or anything sent by the post as aforesaid; and I make this solemn declaration conscientiously intending to fulfil and obey the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting declarations in the place of certain oaths and for the suppression of voluntary and extrajudicial Oaths and Affidavits."

Declared before me, at  
 this                      day of  
 188

No. 3 of 1886.]

[May 28, 1886.

ACT

For Altering certain Rates of Postage payable in the Colony of the Cape of Good Hope.

WHEREAS it is expedient to alter the rates of postage payable upon certain packets and parcels conveyed by post between Post Offices in the Cape Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of the second schedule of the Post Office Act, 1882, as relates to the rates of postage payable upon inland packets and parcels forwarded through the inland post, is hereby repealed, and in lieu thereof postage shall be levied according to the scale and at the rates set forth in and by the schedule to this Act.

Postage rates on inland packets, &c., altered.

2. This Act shall come into operation on the first day of July, 1886, and may be cited for all purposes as the "Post Office Amendment Act, 1886."

Commencement of Act and Short title.

(For Schedule see next page).

## SCHEDULE.

PACKETS.			
INLAND	..	For each packet not exceeding one ounce in weight .. ..	One Half-penny.
		For each packet above one ounce and not exceeding two ounces in weight .. ..	One Penny.
		For each additional two ounces or fraction of two ounces ..	One Penny.
PARCEL POST.			
INLAND	..	For each parcel not exceeding four ounces in weight .. ..	Two Pence.
		For each parcel above four ounces and not exceeding eight ounces in weight. .. ..	Four Pence.
		For each parcel above eight ounces and not exceeding twelve ounces in weight .. ..	Six Pence.
		For each parcel above twelve ounces and not exceeding one pound in weight .. ..	Eight Pence.
		For each additional pound or fraction of a pound .. ..	Eight Pence.

No. 4—1885.]

[July 14, 1885.

## ACT

## To Authorize the Post Office Department to Issue Postal Drafts for the Collection of Small Sums of Money.

## Preamble.

WHEREAS it is expedient that provision should be made for the collection of small sums of money through the agency of the Post Office by means of Postal Drafts: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Postmaster-General may authorize issue of postal drafts.

1. Subject to such regulations as may be made by the Governor under the provisions of this Act, the Postmaster-General may authorize his officers, or any of them, to issue postal drafts and to collect the amounts thereof.

2. No postal draft shall be issued for a higher amount than ten pounds sterling, nor for any sum which shall include the fractional part of a penny.

No. 4—1885.

No draft to exceed £10 sterling.

3. The Governor may from time to time make, alter and repeal regulations for all or any of the following purposes:

Power of Governor to make, alter and repeal certain regulations.

- (1.) The fees to be received in respect of the issue to the drawer and presentation to the drawee of postal drafts.
- (2.) The charges to be made for the collection from the drawee and transmission to the drawer or other person authorized to receive the same of the amounts for which any such drafts shall have been drawn.
- (3.) For regulating the manner in which any fees payable under the provisions of this Act shall be paid and brought to account.
- (4.) For regulating the persons by or through whom and the places where and the times when such drafts shall be issued, and the persons by or through whom and the places where and the times when such drafts shall be presented for payment, and the payment of the amounts thereof received.
- (5.) For regulating the length of time for which such drafts shall remain current, and the manner in which the demands for the payment thereof shall be made.
- (6.) For regulating the conduct of all Postmasters and other officers charged with the issue of such drafts and the collection of the amounts thereof.
- (7.) For any other purposes whatsoever necessary for the effectual carrying out of the object and provisions of this Act.

4. All amounts payable to the Post Office in respect of any postal draft shall be payable in current coin.

Amounts payable to Post Office to be paid in coin.

5. Every draft shall be payable in full, and it shall not be lawful for any Postmaster or other officer of the Post Office to accept the payment of any sum in instalments.

Drafts to be paid in full.

6. All demands which, under the provisions of this Act, or the regulations to be framed by virtue thereof, shall be authorized by the drawer of any postal draft, shall be made by the Postmaster in person, or by some other officer of the Post Office duly authorized by the Postmaster-General in that behalf, if the drawee resides in the immediate neighbourhood of the Money Order Office on which such draft is drawn; but if the drawee should reside at a distance, or cannot be communicated with personally, a letter of demand on the form prescribed in the regulations to be framed under the provisions of this Act shall be addressed to him at the address given by the drawer, and be forwarded by post to the nearest Post Office to such address, and in the event of no reply being received to such demand, the postal draft, in respect of the payment of the amount of which such demand shall have been issued, shall be

By whom and in what manner demands under this Act to be made.

No. 4—1885.

returned to the drawer at the termination of the currency thereof, accompanied by a statement on the proper form, certifying to the non-payment thereof.

Production of draft returned for non-payment to be *prima facie* evidence of dishonour.

7. The presentation in accordance with the provisions of this Act, or the regulations to be framed by virtue thereof, of any postal draft, shall be of the same force and effect as a legal demand, and the return of any such draft so presented, by reason of the non-payment of the amount thereof by the drawee, and the report thereon by any Postmaster or other duly authorized officer, shall, in any suit or action on the account or claim, in respect of which such draft was drawn, be taken on the mere production of such returned draft, together with the report thereon, as evidence of the facts stated in such report, unless the contrary shall be proved.

Receipts, &c., not chargeable with fees or duties.

8. No receipt, demand, or other document issued under the provisions of this Act shall be chargeable with any fees or duties whatsoever, excepting such as shall be imposed by the regulations made by the Governor under the authority of the third section hereof.

Governor empowered to make conventions with foreign countries for system of postal drafts.

9. The Governor may from time to time make conventions with the proper authorities of any other British possession or Foreign country for the institution of a system of postal drafts between this Colony and such other British possession or Foreign country as the case may be, and by proclamation in the *Government Gazette*, define the time when such convention shall come into operation, and the regulations under which it shall be carried into effect.

When Postmaster-General and officers discharged from liability on drafts.

10. The presentation of a draft to the drawee, or the non-presentation within the prescribed period when the drawee cannot be communicated with, and in the case of payment, the collection of the amount of a postal draft and the transmission of the money in the form of a money order or postal order in a registered letter to the drawer shall discharge the Postmaster-General and his officers from all liability whatsoever in respect of such draft, notwithstanding any forgery, fraud, or mistake, which may have been committed or have occurred in reference to such draft, or to the procuring thereof, or to obtaining payment thereof, or by reason of any default, delay, or loss, in respect of any sum collected or to be collected, and notwithstanding any disregard of any regulations to be framed under the provisions of this Act.

Interpretation Clause.

11. In the interpretation of this Act the term Postmaster-General shall mean the Postmaster-General of the Colony for the time being; the term Postmaster shall mean the Postmaster or other officer duly authorized to issue, or collect the amounts of postal drafts; the term drawer shall mean the person in whose favour or on whose behalf a postal draft shall be issued; the term drawee shall mean the person from whom the amount of a postal draft is to be collected.

12. Copies of all regulations and conventions, and orders made by the Governor under the provisions of this Act shall from time to time be laid before both Houses of Parliament within thirty days after the making thereof, respectively, if Parliament be in session, and if Parliament be not then in session, after the commencement of the next session.

No. 6—1883.  
Copies of rules and conventions to be laid before Parliament.

13. This Act shall come into operation on such day as may be fixed by the Governor by Proclamation, and may be cited for all purposes as the "Postal Drafts Act, 1885."

Short title.

No. 6—1883.]

[September 6, 1883.

### ACT

#### To establish Post Office Savings Banks.

WHEREAS it is expedient to afford greater facilities for the deposit of small savings at interest upon the security of the public revenue and to make the General Post Office of the Colony available for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Postmaster-General may, with the consent of the Colonial Secretary, establish Post Office Savings Banks and authorize and direct such of his officers as he shall think fit to receive deposits for remittance to the principal office, and to repay the same under such regulations as the Governor may from time to time prescribe in that respect by notice published in the *Government Gazette*.

Power of Postmaster-General to establish Savings Banks.

2. Every deposit received by any officer of the Postmaster-General appointed for that purpose shall be entered by him at the time in the depositor's book, and the entry shall be attested by him, and by the dated stamp of his office, and the amount of such deposit shall upon the day of such receipt, if there be a daily post, or by the next first post if the mail be dispatched less frequently, be reported by such officer to the Postmaster-General, and the acknowledgment of the Postmaster-General, signified by the officer whom he shall appoint for the purpose, shall be forthwith transmitted to the depositor, and the said acknowledgment shall be conclusive evidence of his claim to the repayment thereof, with the interest thereon, upon demand made by him on the Postmaster-General; and, in order to allow a reasonable time for the receipt of the said acknowledgment, the entry by the proper officer in the depositor's book shall also be conclusive evidence of such claim to repayment for twenty days from the lodgment of the deposit; and if the said acknowledgment shall not have been received by the depositor through the post within twenty days, and he shall before

How deposits to be made, entered, reported and proved.

- No. 6—1883. or upon the expiry thereof, demand the said acknowledgment from the Postmaster-General, then the entry in his book shall be conclusive evidence of such claim during another term of thirty days.
- Limits of deposits. 3. <sup>(1)</sup> Deposits of one shilling or any number of shillings, or of pounds and shillings, will be received from any depositor at the Post Office Savings Bank, provided the deposits made by such depositor in any year ending on the thirty-first day of December do not exceed one hundred pounds, and provided the total amount standing in such depositor's name in the books of the Postmaster-General do not exceed two hundred pounds, exclusive of interest. When the principal and interest together standing to the credit of any one depositor amount to the sum of two hundred and fifty pounds, all interest shall cease so long as the same funds amount to the said sum of two hundred and fifty pounds.
- How repayments to be obtained. 4. On demand of a depositor or person legally authorized to claim on account of a depositor, made in such form as shall be prescribed in that behalf, for repayment of any deposit, or any part thereof, the authority of the Postmaster-General for such repayment shall be transmitted to the depositor forthwith, and the depositor shall be absolutely entitled to the repayment of any sum that may be due to him within thirty days, after his demand shall have been made at any Post Office where deposits are received or paid.
- Secrecy to be observed. 5. The officers of the Postmaster-General engaged in the receipt or payment of deposits shall not disclose the name of any depositor, nor the amount deposited or withdrawn, except to the Postmaster-General, or to such of his officers as may be appointed to assist in carrying this Act into operation: Provided that nothing herein contained shall be deemed to limit the authority of the Controller and Auditor-General.
- Accounts to be kept, and investments made. 6. The Postmaster-General shall keep separate accounts of all moneys deposited and paid under this Act, and the Treasurer of the Colony shall from time to time, and as often as the account will permit, invest any moneys to the credit of such account in such manner as the Governor may require or approve of, and may as often as occasion may require, or as the Governor may deem expedient, realise or vary any such investments.
- Interest. 7. The interest payable to depositors shall be at such rate as may from time to time be fixed by the Governor, not exceeding the rate of five pounds per centum per annum; but such interest shall not be calculated on any amount less than one pound, or some multiple thereof, and shall not commence until the first day of the month next following the day of deposit, and shall cease on the first day of the month in which such deposit is withdrawn.
- How calculated. 8. Interest on deposits shall be calculated to the thirty-first day of December in every year, and shall be added to and become part of the principal money.

<sup>1</sup> Certain societies not limited as to amount, § 1 Act 4 of 1886.



9. Every depositor on making a first deposit shall be required to specify his names in full, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make, and subscribe with his name, or mark if unable to write, the declaration set forth in the schedule annexed marked "A," to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some minister of religion in the district in which the depositor resides, or by a Justice of the Peace.

No. 6-1883.  
Names and address  
of depositors.

10. Deposits may be made by a trustee on behalf of another person in the joint names of such trustee and the person on whose account such money shall be so deposited; but repayment of the same, or any part thereof, shall not be made without the receipt of both the said parties, or the executors or administrators and the survivor, in the case of the decease of one of them, whose receipt either personally or by agent appointed by power of attorney, which power of attorney may be executed by an infant of or exceeding the age of fourteen years, shall alone be a valid discharge, except in case of insanity or imbecility of the person on whose behalf the deposits were made, when the Postmaster-General may on proof of the fact to his satisfaction allow repayment to be made to the trustee alone. And in such cases the declaration set forth in the schedule annexed marked "B," shall be signed by the said trustee.

Trust deposits.

11. Deposits may be made by, or for the benefit of, any person under twenty-one years of age, and repayment may be made to such minor after the age of seven years in the same manner as if he were of full age. In case of minors under the age of seven years the declaration set forth in the schedule annexed marked "A," shall be signed for and on his behalf by one of the parents or a friend of such depositor.

Deposits for minors.

12. Any Postmaster or other officer as aforesaid may pay, under the authority of the Postmaster-General, any sum of money in respect of any deposit made by a married woman, or by a woman who may marry after such deposit, to such woman.

Married women.

13. The trustees of any friendly society, the rules of which have been certified by the Attorney-General, or of any charitable or provident society approved by the Colonial Secretary, may deposit the funds without restriction as to the maximum amount in the Post Office Savings Bank: Provided that a copy of the rules be forwarded to the Postmaster-General with the names and addresses of such trustees. And in the case of friendly societies the declaration set forth in the schedule annexed marked "C," shall be signed by one of the trustees, the treasurer, steward, clerk, or other responsible officer, for and on behalf of such society. And in the case of charitable or provident societies, the declaration set forth in the schedule annexed marked "D," shall be signed by one of

Deposits by Friendly Societies.

No. 6—1883.

How deposits of  
intestates and others  
to be dealt with.

the trustees, the treasurer, or other responsible officer for and on behalf of such society. (1)

14. In case any depositor in the said Post Office Savings Bank shall die, leaving a sum of money in the Post Office Savings Bank which, with the interest due thereon, shall not exceed in the whole the sum of fifty pounds, and letters of administration be not produced to the Postmaster-General, or if notice in writing of the existence of a will, and intention to take out letters of administration be not given to the Postmaster-General at his principal office within the period of two months from the death of the depositor, or if such notice be given, but such letters of administration be not taken out and produced to the Postmaster-General within the period of three months from the death of the depositor, it shall be lawful for the Postmaster-General, after the expiration of the two or three months as the case may be, with the consent of the Attorney-General, to pay and divide such money to and among such persons as shall appear to be entitled thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said Post Office Savings Bank by any other person as being the lawful representative of such depositor; and any such person so claiming as aforesaid shall have his remedy by recourse against the person who shall have received such payments, and not otherwise; and such administration or distribution by the said Postmaster-General shall be entirely free and discharged from all stamps, fees and duties whatsoever: Provided that in case no claims be made on any such money as aforesaid or, if made, shall not be admitted by the said Postmaster-General, or by the determination and adjudication of one of the Judges of the Supreme Court, as hereinafter mentioned then, and in every such case, such money shall, subject to any order made by any such Judge, be paid by the Postmaster-General into the Guardian's Fund to be dealt with by the Master of the Supreme Court as if such money had been paid in by an executor or tutor.

Illegitimate repre-  
sentatives of deceas-  
ed depositor.

15. If any depositor of a sum not exceeding fifty pounds being illegitimate shall die intestate leaving any person who, but for the illegitimacy of such depositor would be entitled to the money due to such deceased depositor, it shall be lawful for the Postmaster-General, with the authority in writing of the Attorney-General, to pay the money of such deceased depositor to any one or more of the persons who, in his opinion, would have been entitled to the same, according to the law of succession *ab intestato* if the said depositor had been legitimate.

Account of depo-  
sits distributed un-  
der Sections 14 or 15  
to be forwarded to  
the Master.

As often as the Postmaster-General shall under the provisions of sections fourteen or fifteen of this Act distribute any sum of money deposited in the Post Office Savings Bank, he shall forward to the Master of the Supreme Court an account shewing the sum

<sup>1</sup> See §§ 1, 2, Act 4, 1886, *infra*.

deposited and the distribution thereof, and such account shall be filed and registered in the same manner as an account rendered by an executor, but free of any fee or duty.

No. 6—1883.

16. In all cases wherein a certificate shall be required of the amount of the balance standing in the books of the Post Office Savings Bank for the purpose of obtaining letters of administration, such certificate shall be prepared in the manner set forth in the schedule annexed marked "E."

Certificates of amounts deposited.

17. In case any difference shall arise between the Postmaster-General and any depositor in the said Post Office Savings Bank, or any executor, administrator, next of kin, or creditor, or trustee of a depositor who may become insolvent, or any person claiming to be such executor, administrator, next of kin, creditor, or trustee, or to be entitled to any money deposited in the Post Office Savings Bank, then, and in every such case, the matter so in dispute may be referred, in writing, to the summary decision of one of the Judges of the Supreme Court; and such Judge may inquire into and determine the matter in dispute, and his determination and adjudication on the premises shall be final and conclusive and binding on the said parties: Provided that such Judge may, if he see fit, make such order for further inquiry and determination of the matter in dispute as he may deem necessary.

How disputes between depositor and Postmaster-General to be settled.

18. The Governor may make, and from time to time as he shall see occasion, alter, by notice published in the *Government Gazette*, regulations for superintending, inspecting, and regulating the mode of keeping and examining the accounts of depositors, and with respect to the making of deposits, and to the withdrawal of deposits and interest, and all other matters incidental to the operation of this Act, and all regulations so made shall be binding on the parties interested to the same extent as if such regulations formed part of this Act; and copies of all regulations issued under the authority of this Act shall be laid before Parliament within fourteen days from the date thereof, if Parliament shall then be sitting, and, if not, then within fourteen days from the next re-assembling of Parliament.

Governor may make regulations.

19. An account of all deposits received and paid under the authority of this Act, and of the expenses incurred during the year ended the thirty-first of December, together with a statement of the total amount due at the close of the year to all depositors shall be laid before both Houses of Parliament within thirty days after the commencement of each annual session thereafter.

Accounts to be laid before Parliament.

20. All expenses incurred in the execution of this Act shall be paid out of such moneys as Parliament shall provide, and such expenses shall from time to time be repaid as far as may be out of the surplus or profits arising from the administration of the funds of the said Post Office Savings Banks.

Expenses.

21. This Act may be cited as "The Post Office Savings Banks Act, 1883."

Short title.

A.

DEPOSITOR'S BOOK.	
Place .....	
No. ....	

DECLARATION BY DEPOSITOR ON MAKING FIRST DEPOSIT.

In pursuance of an Act of Parliament,  
 (Name in full) I, .....\*  
 (Residence) of .....  
 (Occupation) .....  
 do hereby declare to the Postmaster-General that I am desirous on my own behalf to become a Depositor in the Post Office Savings Bank. I do further hereby declare that I am not directly or indirectly entitled to any sum or sums standing in the name or names of any other person or persons in the books of the said Post Office Savings Bank ; and I do hereby also testify my consent that my deposits in the said Post Office Savings Bank shall be managed according to the Regulations thereof.

Witness my hand this.....day of.....188...

Signed by the said Depositor  
 in the presence of me { .....  
 .....  
 .....

Save and except such benefit as I may be entitled to from being a Member of a Friendly Society legally established ; or from such sum or sums as may be standing in my name as Trustee jointly with the name or names and on behalf of any other Depositor or Depositors.

*\* In the case of Minors under the age of seven years, the Declaration must be made by one of the Parents, or a friend on behalf of the Minor. The date on which a Minor will attain the age of seven years must be stated here.*

SEVEN YEARS OF AGE ON THE.....DAY OF.....18...  
 BEFORE WHICH DAY THE DEPOSITS CANNOT BE WITHDRAWN.

B.

DEPOSITOR'S BOOK.	
.....	
No. ....	

DECLARATION BY THE TRUSTEE OF A DEPOSITOR.

In pursuance of an Act of Parliament,  
 (Name in full) I, .....\*  
 (Residence) of .....  
 (Occupation) .....  
 do hereby declare to the Postmaster-General that I am desirous of

becoming a Depositor in the Post Office Savings Bank as Trustee of  
 (Name in full) .....  
 (Residence) .....  
 (Occupation) .....  
 and I do further declare on behalf of myself, and also on behalf of the  
 said ..... that we are not either jointly or severally, directly  
 or indirectly, entitled to any sum or sums standing in the name or  
 names of any other person or persons in the books of the said Savings  
 Bank above-mentioned.

Witness my hand this.....day of.....188...

Signed by the said Trustee in { .....  
 the presence of me { .....

Save and except such benefit as I or he may be entitled to from  
 being a member of a Friendly Society legally established, or from  
 such sum or sums as may be standing in my name as a Depositor on  
 my own account, or as Trustee jointly with the name or names, and  
 on behalf of any other Depositor or Depositors.

*\* If the person in trust for whom the account is opened be under seven  
 years of age, the date on which he will attain that age is to be stated here.*

SEVEN YEARS OF AGE ON THE .....DAY OF....., 18...  
 BEFORE WHICH DAY THE DEPOSITS CANNOT BE WITHDRAWN.

C.

DEPOSITOR'S BOOK.

Place .....

No. ....

DECLARATION.

I, ..... being the  
 \* ..... of the Friendly Society called the  
 ..... held at  
 ..... in the Division of  
 ..... and duly † .....  
 do hereby declare that I am desirous on behalf of the  
 Trustees of the said Society, of depositing in the Post  
 Office Savings Bank, the sum of £....., and I  
 hereby declare that this sum is the exclusive property  
 of the said Society specified in this Declaration and  
 arises from the contributions of the members of the said  
 Society ‡ .....

\* Insert "Trustee,"  
 "Treasurer," "Ste-  
 ward," or "Clerk" as  
 the case may be.

† Insert "Enrolled,"  
 "Registered" or  
 "Certified" as the  
 case may be.

‡ Insert "and from  
 Donations" if Dona-  
 tions have been re-  
 ceived.

Witness my hand this.....day of.....18..

..... § ..... of the said Society.  
 Signed in presence of me .....

§ Insert "Trustee,"  
 "Treasurer," "Ste-  
 ward" or "Clerk."

No. 6-1883.

D.

DEPOSITOR'S BOOK.

Place .....

No. ....

DECLARATION.

I, ..... being the \* .....  
of the † .....  
held at .....  
in the Division of .....  
do hereby declare that I am desirous of depositing the  
sum of £..... in the Post Office Savings Bank on  
behalf of the said.....

\* Insert "Trustee" or  
"Treasurer."  
† Insert "Charitable  
Society," "Provident  
Institution" or  
"Society," "Charita-  
ble Donation or Be-  
quests for the Mainte-  
nance of Education or  
Benefit of the Poor"  
as the case may be.

Witness my hand this.....day of.....18..

.....  
† .....of the said.....  
Signed in presence of me.....

† Insert "Trustee" or  
"Treasurer."

E.

DEPOSITOR'S BOOK.

Place.....

No. ....

POST OFFICE SAVINGS BANK.

It is hereby certified that the Balance standing in the Books of  
the Post Office Savings Bank to the credit of the Depositor.....  
.....of.....numbered as  
above, on the.....day of.....in the year 18....  
amounts in the whole to the sum of.....

.....  
Controller,  
Savings Bank Department,  
General Post Office, Cape Town.

Entered.....  
Examined .....

No. 4 of 1886.]

[May 28, 1886.

ACT

To Legalize the Deposit of Moneys in Post Office Savings  
Banks by certain Societies, Clubs or Funds, and to  
Repeal the Savings Banks Act, 1875.

Preamble.

WHEREAS it is expedient to legalize the deposit of moneys in  
the Post Office Savings Bank by certain societies, clubs or funds,

and to render applicable to such deposits the provisions of "The Post Office Savings Banks Act, 1883:" Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 4—1886.

1. The trustees, treasurer or other responsible officer or officers of any society, club or fund, approved of by the Colonial Secretary, may deposit the funds of such society, club or fund, without restriction as to the maximum amount, in the Post Office Savings Bank: Provided that a copy of the rules be forwarded to the Postmaster-General with the names and addresses of such trustees, treasurer or other responsible officer or officers.

Deposits by certain societies, clubs, or funds.

2. One trustee or the treasurer, or one other responsible officer of any such society, club or fund, shall sign, on behalf of such society, club or fund, a declaration as nearly as may be in the terms set forth in the schedule D annexed to the Act No. 6 of 1883.

Declaration to be signed.

3. The "Savings Banks Act, 1875," is hereby repealed, and all balances of deposits received under the authority of that Act and transferred to the Post Office Savings Bank shall hereafter be administered by the Postmaster-General under the provisions of "The Post Office Savings Banks Act, 1883."

Repeal of Savings Banks Act, 1875.

4. This Act shall be read as one with "The Post Office Savings Banks Act, 1883," and may be cited for all purposes as "The Post Office Savings Banks Act Amendment Act, 1886."

Effect and short title of Act.

POUNDS AND TRESPASSES.

- |   |  |
|---|--|
| <p>1. Ord. 16—1847, (Regulation of Pounds and Prevention of Trespasses).</p> <p>2. Act 1—1857, (Divisional Council's Powers over Pounds).</p> <p>3. ,, 21—1867, do.</p> | <p>4 Act 1—1869, (Regulations, regarding Stallions).</p> <p>5. ,, 31—1875, ( do. Ostriches, &amp;c.).</p> <p>6. ,, 30—1886, do.</p> <p>7. ,, 19—1860, (Glen Grey Pound, Tambookie Location).</p> |
|---|--|

No. 16—1847. *Sd. Henry Pottinger.*] [July 24, 1847.]

Ordinance for the better Regulation of Pounds and prevention of Trespases. (1)

WHEREAS the existing pound regulations of this Colony are in many respects defective and by reason thereof much injury and inconvenience are sustained by the inhabitants of the country districts: And whereas it is expedient to provide for the better regulation of all public pounds not being within or belonging to any municipality (2) and to define the duties appertaining to the

Preamble.

<sup>1</sup> The provisions of this Ordinance extended to Domesticated Ostriches by Act 31, 1875.

<sup>2</sup> As to Municipal Pounds see Act 45 of 1882, §§, 109, 164 (Municipalities).

Ord. 16—1847.

situation of poundmaster, and also to impose penalties upon the owners of animals found trespassing, and to regulate certain other matters of a like nature: And whereas the state and condition of the several parts or portions of this Colony are such that the same regulations in all respects regarding pounds and trespasses could not without inconvenience be unalterably enacted for the Colony at large, and it will therefore be expedient while providing regulations for or in respect of the several matters aforesaid to provide at the same time a means or mode by which certain of them may be accommodated and rendered suitable to the peculiar circumstances of particular divisions: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Government minute of the 17th of June, 1825, commonly called the Pound Regulations, and the proclamation of the Governor of this Colony, Lord Charles Henry Somerset, of the 23rd of May, 1823, and all other laws or usages so far as the same may be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

Repeal of former laws.

Establishment of pounds in field-cornets and appointment of poundmasters.

2. And be it enacted that it shall be the duty of the Civil Commissioner of every division to establish one or more pound or pounds in each field-cornet of his division, and to appoint subject to the approbation of His Excellency the Governor <sup>(1)</sup> some fit and proper person to be the poundmaster or keeper of every such pound. And it shall be competent for such Civil Commissioner to dismiss any such poundmaster for misconduct or for what such Civil Commissioner shall consider such, but every such dismissal, together with the grounds and reasons thereof, shall be forthwith reported to His Excellency <sup>(1)</sup> the Governor. Provided, however, that no field-cornet <sup>(2)</sup> or assistant field-cornet not being already a poundmaster at the time of the taking effect of this Ordinance shall except as hereinafter excepted be eligible to be appointed or continued as a poundmaster; and provided that no person shall be appointed or continued as poundmaster who shall not possess sufficient pasturage for the number of animals likely to be at any time impounded, nor shall any licensed dealer in wines or spirits be so appointed or continued. Provided, nevertheless, that it shall and may be lawful for the Civil Commissioner of any division with the previous consent of the <sup>(2)</sup> Governor of this Colony to appoint any field-cornet or assistant field-cornet to be a poundmaster in any place where sufficient grounds for dispensing with the prohibition aforesaid shall be found to exist.

Disqualifications.

Duty of poundmaster to receive cattle tendered.

3. And be it enacted that it shall be the duty of the poundmaster of every pound to receive into his charge or custody all horses, horned cattle, sheep, goats, and pigs which shall be tendered at such pound by any person being himself the owner or occupier

<sup>1</sup> But see Act 1 of 1857, *infra*.

<sup>2</sup> But see Act 1 of 1857, § 3.



of any fixed property or by any person authorized thereto in writing by any such owner or occupier, between sunrise and sunset, in order to be impounded as having been found trespassing upon such property; and any poundmaster who shall not by himself or some one acting on his behalf receive into his charge or custody all such animals as aforesaid so tendered as aforesaid shall for every such neglect or refusal incur a fine not exceeding five pounds; and such poundmaster shall moreover be liable to satisfy and make good whatever amount of damage the owner of such animals so refused or neglected to be impounded or any other person shall or may sustain by reason of such refusal or neglect.

Ord. 16--1847.

Penalty on neglect.

4. And be it enacted that every poundmaster or person acting on his behalf shall give to every person delivering any animals into his charge a receipt or certificate in writing, signed by such poundmaster or other person setting forth the number and description of the animals so delivered and specifying the species of trespass as reported by the person impounding the same for or on account of which the same shall have been seized and impounded; and such poundmaster shall enter the contents of every such certificate in his pound-book hereinafter mentioned.

Receipt for impounded cattle.

5. (1) And be it enacted that every person who shall bring to the pound and deliver to the poundmaster any animals to be impounded and who shall produce a note or memorandum in writing from the owner or occupier of the property trespassed upon or his known agent or caretaker (which note or memorandum the poundmaster shall preserve as a voucher) stating in substance that the bearer has been directed or authorized to convey the said animals to such pound, shall be entitled to receive from the poundmaster of such pound at the time of the delivery over to him of such animals, mileage at and after the rate of four pence for each mile not exceeding ten of the distance which such animals (2) shall have been brought, and four pence for each mile not exceeding ten which such person shall be obliged to return from such pound to the place from which such animals shall have been brought, or to his residence (whichever shall be the nearest to such pound), and in case such animals shall have been brought a greater distance than ten miles then such person shall receive for every mile above ten as well in coming to as returning from such pound at and after the rate of three pence. Provided, always, that such mileage shall not be paid to more persons than one, but when and as often as the number or nature of the animals brought to be impounded shall be such as to require the care and attendance of more persons than one the owner of the said animals shall be liable and bound to pay to the person impounding the same mileage at and after the rate aforesaid for and in respect of every person more than one,

Mileage payable to person delivering cattle to be impounded.

<sup>1</sup> See § 37 of this Ord. and Act 21 of 1867, *infra*.

<sup>2</sup> For ostriches, see Act 31 of 1875.

Ord. 16—1847.

necessarily and properly employed, in conveying such animals to the pound, and such additional amount shall be recoverable by action in any competent Court.

Poundmaster's fees for receiving cattle.

6. (1) And be it enacted that the poundmaster shall be entitled to demand or retain (as the case may be) a fee of one shilling for every horse and of six pence for every other animal (not being a sheep or a goat) (1) delivered to and received by him to be impounded, and a fee of one half-penny for every sheep or goat so delivered and received.

Poundmaster's fees for grazing, &amp;c.

7. (1) And be it enacted that the poundmaster shall be entitled over and above the fee in the last preceding section mentioned to demand or retain (as the case may be) a further fee of four pence and one half-penny per diem for every day during which any such animal as aforesaid (not being a sheep or goat) shall be herded, grazed, and fed by such poundmaster; and a fee of one half-penny per diem for every sheep or goat so herded, grazed, and fed. Provided always, that for every stallion horse, or stallion ass, above the age of two years, every bull above the age of one year, every ram, he-goat, or boar above the age of nine months, and every animal, male or female, which from contagious disease, dangerous vice, or other reason shall be unfit to run with the remaining herd shall be kept and fed separately and safely, and for every such stallion horse or ass shall be charged by such poundmaster one shilling and six pence per diem for every such bull, one shilling per diem for every boar, nine pence per diem for every ram, he-goat, or other separated animal as aforesaid three pence per diem.

Power of district meetings to alter rates of mileage, &amp;c.

8. And be it enacted that the rate of mileage hereinbefore in the fifth section mentioned and the amount of the fees payable on delivery of receipt as in the sixth section, and the amount of the fees payable for herding, grazing, and feeding as in the seventh section mentioned shall be capable of being altered and adapted by each and every of the district (2) meetings hereinafter in the thirty-seventh section mentioned. Provided, always, that no such district meeting shall be competent to impose or establish any rate of mileage greater than sixpence or less than two pence for each mile going to the pound and for each mile returning therefrom, or any fees payable as aforesaid on delivery and receipt greater than the fees in that behalf in the sixth section mentioned; or less than one half of the said fees respectively, or any fees to be payable as aforesaid for herding, grazing, and feeding greater than six pence, or less than four pence per diem for, or in respect of every animal impounded (not being a sheep or goat) or greater than one half-penny, or less than one farthing per diem for every sheep or goat. Provided, also, that none of the fees or rates in

Limitation of power.

<sup>1</sup> For ostriches see Act 31 of 1875.

<sup>2</sup> See Act 21 of 1867, *infra*.

the sixth and seventh sections respectively mentioned shall be reduced by any such meeting as aforesaid unless with the concurrence of the Civil Commissioner presiding thereat.

Ord. 16 -1847.

9. And be it enacted that the mileage hereinbefore in the fifth section mentioned and the certain fees aforesaid to be taken and recovered by the poundmaster of each pound, whether those specified as aforesaid or those substituted for the same by any such district meeting as hereinbefore and hereinafter mentioned, shall be payable to the said poundmaster by the owner of the animal impounded and shall be a charge upon such animals, which may be detained for the security thereof, and such fees as aforesaid shall be taken and received by every poundmaster for his own use, and in consideration thereof he shall be bound to put and keep his certain kraals and enclosures by the next section required in good and sufficient repair and to keep a sufficient number of competent herdsmen, and generally to sustain all charges belonging to or connected with the animals impounded until they shall as hereinafter provided be released or sold. Provided, always, that every poundmaster shall deliver to the owner of any animals impounded who may not be in a condition to pay the charges due upon the same so many thereof as may be so delivered without thereby incurring any fair or reasonable risk that the animal or animals retained might prove insufficient to cover or satisfy the charges due upon the animals so delivered and those due or to become due upon the animals retained; and any poundmaster who shall retain after demand any greater number of such animals than reasonably and fairly were necessary amply to secure or satisfy such charges as aforesaid shall be liable to make good to the owner thereof whatever damage he may sustain by such wrongful retention. And provided, also, that if in any case any animal shall be illegally placed in the pound the person so placing it there shall be liable to the owner to repay or make good all damages, costs, and charges arising out of such proceeding, together with an additional sum of two shillings for or in respect of every horse or head of cattle so illegally impounded, and of one penny for or in respect of every animal of any other species.

Mileage and fees payable to poundmaster by owner, and a charge on cattle detained.

Duty of poundmaster to keep kraals in repair.

Number of cattle poundmaster may detain for charges.

Illegal impounding.

10. And be it enacted that it shall be the duty of every poundmaster and he is hereby required to keep and maintain not less than three separate and distinct kraals or inclosures for horses, for horned cattle, for sheep and goats and pigs; but it shall be lawful for the Civil Commissioner of every division in regard to any particular pound therein with respect to which a strict compliance with the provisions of this section shall be either wholly impossible or highly inconvenient to authorize a deviation therefrom to such an extent as he shall find to be requisite and necessary. And every poundmaster shall take or cause to be taken due and proper care of all animals impounded; and turn them or cause them to be turned out to graze not later than one hour at farthest after

Number of kraals to be kept.

Duties of poundmaster as to cattle impounded.

Ord. 16—1847.

sunrise in the morning, and shall be responsible to the owners thereof for all injury and damage which they may sustain by reason of any sort or degree of neglect or default on the part of such poundmaster or his servants or others acting on his behalf. And any poundmaster who shall ride or drive or otherwise work or use any animal impounded shall for every such offence forfeit a sum not exceeding five pounds. And when and as often as any animal shall die or be injured from intrinsic causes or unavoidable accident and without any such default as aforesaid the poundmaster shall enter or cause to be entered in his pound-book hereinafter mentioned a true description of the animal dead or injured and of the cause or casualty (so far as ascertainable) which shall have occasioned its death or injury as the case may be, and in case any death or injury shall have taken place in regard to which no such entry as aforesaid shall be made; or if any entry shall be made wilfully untrue in any respect such death or injury shall be deemed and taken to have been occasioned by the default of such poundmaster who shall be responsible accordingly.

Record of death of animals.

Destruction of animals having contagious disorders.

11. And be it enacted that it shall and may be lawful for every poundmaster to destroy or cause to be destroyed all impounded animals affected with any contagious disorder or such as may from any cause be found so furious and ungovernable as to endanger the lives of human beings or to be obviously destructive to other animals impounded. Provided that no animal however diseased or dangerous shall be destroyed until the Justice of the Peace nearest to the pound in which such animal shall be confined, or in case he shall be absent from his residence or shall reside at a greater distance than twelve miles the nearest Field-cornet, or in case he shall be absent from his residence or shall reside at a greater distance than six miles, two disinterested landowners (not living or jointly occupying with the poundmaster requiring their attendance), shall have examined the animal proposed to be destroyed and shall agree with the poundmaster regarding the necessity of such destruction; and every Justice of the Peace, Field-cornet, or landowner attending for the purpose of any such inspection shall be paid by such poundmaster horse-hire at and after double the usual tariff rate, which shall be recoverable from the owner of the animal should the same be destroyed; but should the same not be destroyed or should such animal be destroyed and the owner thereof be unknown then the amount of such horse-hire shall be paid to such poundmaster by the Colonial Treasury. And provided that the owner of every such animal when known to such poundmaster shall be summoned in writing by such poundmaster to attend such examination as aforesaid (and for serving such summons the poundmaster may recover from such owner horse-hire at the usual tariff rate), and in case such owner shall attend such inspection and object to the destruction of the said animal such owner shall be entitled to release such animal from the pound

Notice of disease by poundmaster to justice of the peace, field-cornet, &amp;c.

Payment of horse-hire to justice of the peace, &amp;c.

in case he shall release the same forthwith and shall at the same time release also all other animals belonging to him (if any) impounded at the same time with the animal proposed to be destroyed. Provided, also, that no sheep affected merely with the disease commonly called *brandziekte* or goat with the disease called scurvy shall be destroyed unless with the owner's consent; nor shall any such examination as aforesaid be had recourse to in regard to such sheep or goats.

Ord. 16—1847.

12. And be it enacted that no poundmaster shall (except as hereinafter excepted) be permitted to confine in the pound under his care any animals found trespassing upon any property belonging to such poundmaster either individually or in common with any other person; but all such animals shall be sent to the nearest pound kept by any other poundmaster; but every poundmaster sending any animals to such other pound, shall be bound to make for the information of persons seeking strayed or missing animals a memorandum in his pound-book setting forth the number and description of the animals so sent. And if any poundmaster shall confine any animal or omit to make a memorandum contrary to the provisions of this section he shall for every such offence forfeit any sum not exceeding ten pounds and not less than two pounds. Provided, always, that nothing in this section shall extend to any poundmaster from whom the nearest pound other than that kept by himself shall be distant twenty-five miles or upwards.

Prohibition to poundmaster to impound for trespass in his own pound.

13. And be it enacted that in every case in which the owner of any animals impounded in any pound shall be a person known to the poundmaster of such pound it shall and may be lawful for such poundmaster to send notice in writing to such owner informing him that the said animals have been so impounded, and such poundmaster shall be entitled to receive for the service of such notice horse-hire at and after the usual tariff rate; and the amount of such horse-hire shall be payable by the owner receiving the same and become a charge upon the animals impounded. But no poundmaster shall send such notice until the animals in question shall have been impounded for the space of forty-eight hours; and if any poundmaster shall sooner send such notice he shall not be entitled to demand such horse-hire as aforesaid.

Notice by poundmaster to owner.

14. And be it enacted that it shall be the duty of every poundmaster to keep a book to be called the "Pound-book," which book shall be kept in the English or Dutch languages according as the Civil Commissioner of the division shall authorize and direct, and in which shall be entered the date at which any animals shall have been received; a description of the animals in such a manner as to enable and assist persons seeking strayed or missing cattle to identify and recover the same; the name and residence of the person who shall have sent the said animals to the pound, the name and residence of the owner or supposed owners, the date of release by owner when the animals shall be released: the date and

Pound-book.

Its requisites.

Ord. 16—1847.

particulars of the sale when the animals shall be sold, and any other matters which the poundmaster shall be instructed from time to time by the Civil Commissioner aforesaid to ascertain and record. Provided, always, that in regard to the form in which all entries in the pound-book shall be made the poundmaster shall obey all such directions as he shall in that behalf receive from the Civil Commissioner aforesaid.

Transmission of  
copy of pound-book  
to civil commissioner

15. And be it enacted that it shall be the duty of every poundmaster to make out and forward by the post to the Civil Commissioner of his division by every post or at such longer intervals as such Civil Commissioner shall direct a copy of all the entries made in the pound-book between each successive transmission of such copy; and the Civil Commissioner aforesaid shall cause all such copies to be duly filed or otherwise preserved in his office in some place where the same may be conveniently inspected by all persons desirous to inspect the same; and if any poundmaster shall make or permit to be made any wilfully erroneous entry in his pound-book or in any copy of any part thereof so forwarded as aforesaid he shall for every such offence forfeit any sum not exceeding twenty-five pounds and not less than five pounds.

Penalty on false  
entry.

Inspection of pound-  
book at place of sale.

16. And be it enacted that it shall be the duty of every poundmaster and he is hereby required to take with him to every sale of animals impounded as hereinafter mentioned his said pound-book, and such book shall be free of all claim for the inspection of all persons desirous to inspect the same at the office of the Resident Magistrate when such there is at the place of sale, or otherwise at some convenient place to be approved of by the Civil Commissioner of the division.

Inspection of  
pound-book at  
poundmaster's resi-  
dence.

17. And be it enacted that the pound-book of every poundmaster shall (except when otherwise provided by this Ordinance or when the same shall be required in the course of any legal proceeding) be kept at the residence of the poundmaster, and may be inspected at all reasonable hours by every person desirous to inspect the same upon payment of a fee of sixpence. And it shall be incumbent upon every poundmaster to make them sign and deliver to any person applying for the same a copy of any entry or entries in his pound-book contained, upon being paid by the applicant the sum of one shilling for every entry required to be copied.

Advertisement of  
impounded animals  
after ten days.

18. And be it enacted that when and as often as any animals impounded in any pound which shall not be released or taken away within ten days next after the same shall have been received by such poundmaster as impounded, such poundmaster shall prepare and forward to the Civil Commissioner of his division in order to the publication thereof as in the next succeeding section provided an advertisement setting forth the species, marks, and distinguishing peculiarities (if any) of the animals so remaining in the pound, and in regard to horses and horned cattle their colour also;

and such advertisement shall give notice to all whom it may concern that the animals therein mentioned will be sold at the next ensuing sale of impounded cattle (as hereinafter mentioned), the time and place of holding which sale shall be set forth in such advertisement.

Ord. 16--1847.

19. And be it enacted that every Civil Commissioner receiving any such advertisement as aforesaid from any poundmaster within his division shall except as hereinafter is excepted forthwith transmit the same to the Secretary to Government in Cape Town in order that it may be inserted twice successively in the *Government Gazette*: Provided, always, that it shall be lawful for any Civil Commissioner with the approval of His Excellency the Governor for the time being, instead of transmitting such pound notices as aforesaid for insertion in the *Government Gazette*, to publish the same in such other and more convenient manner as such Civil Commissioner shall suggest and the said Governor sanction. <sup>(1)</sup>

Transmission of advertisement for publication in Gazette.

Other publication.

20. And be it enacted that the successive sales of animals impounded in the several pounds in each division shall except the first sale from and out of every such pound take place as nearly as may be every six weeks, and be held at such towns and villages as the Civil Commissioner shall appoint, or where there are none such near any particular pound then at such other places as the said Civil Commissioner shall think fit: Provided, always, that the first sales aforesaid from and out of every such pound shall as much as may be be so arranged by the Civil Commissioner of each division as to the time of holding the same respectively as to cause every successive sale of or from the several pounds in that division to fall upon and be held in different months: and provided, also, that every Civil Commissioner shall frame and transmit to the Secretary to Government for insertion in the *Government Gazette* once in the month of January and again in the month of July in each year a notice setting forth the dates and places at which the several pound sales as aforesaid for each year are appointed to take place. <sup>(2)</sup>

Periodical sales at intervals of six weeks

21. And be it enacted that at every pound sale held under the provisions of this Ordinance the poundmaster shall act as auctioneer; but no auctioneer's licence shall be necessary in order to entitle any such poundmaster to hold any such sale nor shall any auction duty be payable thereon; and any poundmaster who shall purchase or be directly or indirectly interested in any purchase at any such sale held by him shall be liable to forfeit any sum not exceeding twenty-five pounds and not less than ten pounds.

Poundmaster's right to act as auctioneer.

Prohibition of poundmaster to purchase.

22. And be it enacted that every such sale as aforesaid shall be held between the hours of ten o'clock a.m. and three o'clock p.m., and that no animal shall be put up for sale until the same shall have been impounded for five weeks at least unless with the consent of the owner first had and obtained, and that at every such sale all

Hours of sale and manner of selling.

<sup>1</sup> See § 5, Act 1, 1857, *infra*.

<sup>2</sup> See §§ 5 and 6 of Act 1, 1857, *infra*.

Ord. 16—1847.

animals except sheep and goats shall be put up and sold singly and the sheep or goats shall be put up and sold in lots not exceeding ten in number; and that in no case shall sheep and goats be put up together in the same lot, or sheep or goats with different marks or brands; and in case of any contravention of any of the provisions of this section the poundmaster who shall have brought or sent to the sale the animal or animals in regard to which such contravention shall have taken place shall for each offence forfeit any sum not exceeding ten pounds and be also liable to pay to the owner of any animal sold in contravention of any of the provisions of this section the full value of the same.

Sales for cash.

23. (1) And be it enacted that at every such sale as aforesaid all animals shall be sold for cash and not otherwise and that the proceeds of every such sale less the amount of the pound and other fees properly payable and of any damage due or assessed in manner and form as hereinafter mentioned shall be handed over with all convenient speed by the Poundmaster to the Civil Commissioner of the division, to be by him paid to the owners of animals sold according to their respective rights. Provided, always, that when and as often as there shall be a Resident Magistrate not being also a Civil Commissioner at the village or place when any such sale as aforesaid shall be held the proceeds aforesaid shall be handed over to such Resident Magistrate who shall with all convenient speed pay the same to the Civil Commissioner of the division. And provided, also, that if in any particular case the animals sold shall not realize sufficient to satisfy all such fees and damages as aforesaid the proceeds shall be first applied to the payment of the fees aforesaid and the balance of such fees or damages shall be recoverable from the respective owners by the parties entitled to receive the same by suit or action in any competent Court. And provided, further, that in case the owner of any animals sold in respect of which any sum of money shall have been handed over by any poundmaster to any Civil Commissioner or Resident Magistrate shall not within the space of twelve months from the day of such payment claim the same (1) the same shall become the property of Her Majesty the Queen and be paid into the Colonial Treasury.

Application of proceeds.

Poundmaster's fee for attendance.

24. And be it enacted that every poundmaster shall be allowed for his attendance at every such sale as aforesaid a fee of ten shillings, to be borne by the several owners of the animals sold in proportion to the amount of purchase money realized on account of every such owner.

Animals to be sent to nearest accessible pound.

25. And be it enacted that every person finding any horse, head of horned cattle, sheep, goat, or pig trespassing upon his lands or grounds may send the same to the nearest accessible pound (2) but except as in the next succeeding section is excepted to none other, and if any person shall by himself or his servants ride or otherwise

<sup>1</sup> But see § 6, Act 1 of 1857.

<sup>2</sup> As to Tambookie Location and Glen Grey Pound. See Act 19 of 1860, *infra*.



work or use any animal found trespassing or detain at his place or on his property any such animal for any space of time exceeding twenty-four hours he shall for every such offence forfeit any sum not exceeding ten pounds, to be recovered for his own use by the owner of the animal or animals so detained.

Ord. 16—1847.

Penalty on detention beyond twenty-four hours.

26. And be it enacted that when and as often as any animal found trespassing as in the last preceding section mentioned shall be known to belong wholly or in part to any poundmaster or to any person residing or having the right to graze such animal upon the place or farm of any poundmaster such animal may be sent to the nearest accessible pound other than that kept by such poundmaster as aforesaid, provided such lastmentioned pound be not more than fifteen miles farther off than the pound kept by such poundmaster.

Poundmaster's cattle to be sent to pound within fifteen miles.

27. And be it enacted that every Magistrate, Justice of the Peace, Field-cornet, Assistant Field-cornet in any division or any person authorized in writing by any of the said persons may send to the nearest accessible pound all animals which shall be found upon any outspan-place in such division not being in the possession of travellers outspanning there or which being in the possession of such persons shall be out-spanned there for more than twenty-four successive hours, unless such persons shall be detained by floods or some other sufficient cause, and when and as often as any such person as aforesaid takes or sends any such animals to the pound he shall be entitled to receive the mileage as hereinbefore provided.

Trespass on outspan-places.

28. And be it enacted that when and as often as any animal not belonging to or being in the possession of travellers, shall be found trespassing on or injuring any dam or tank belonging to the Government and intended for the use of travellers and their cattle only, such animals may be sent to the nearest accessible pound by any of the persons in the last preceding section mentioned in case there shall not be any person appointed or authorized by Government to take charge of such dam or tank; but in case there shall be any such lastmentioned person then it shall be his duty to impound all animals liable to be impounded; and he shall be entitled to receive the mileage as hereinbefore provided.

Injury to public dams or tanks.

29. And be it enacted that if any animals belonging to any person shall be found to have wrongfully trespassed upon or injured any such tank or dam as aforesaid, twice or oftener within the space of three months, such person shall over and above all other fees and charges be liable to forfeit any sum not exceeding five pounds.

Repetition of such injury.

Penalty.

30. And be it enacted that if any person shall furiously drive, worry, starve, or wantonly ill-treat any animal found trespassing as aforesaid, or conduct the same to the pound by any except the nearest route unless some other shall be more desirable for the animal itself or to avoid standing crops, or divide or separate any

Furious driving and wanton ill-treatment of trespassing animals.

- Ord. 16—1847. number of animals found trespassing at the same time in order to send them separately to the pound and so obtain double or still greater mileage, such person shall be liable for every such offence to forfeit any sum not exceeding five pounds, and shall moreover be liable to make good to the owner the amount of any damage which he may have sustained by any infringement of this section.
- Penalty.
- Rescue. 31. And be it enacted that if any person shall by threats or violence or otherwise rescue or attempt to rescue against the will of the person or persons in charge of any animals lawfully seized in order to be impounded; or shall so rescue or attempt to rescue any animals after the same shall have been impounded with any poundmaster; such person so rescuing or attempting to rescue the same shall for every offence forfeit any sum not exceeding ten pounds.
- Penalty.
- Trespass in gardens, vineyards, &c. 32. <sup>(1)</sup> And be it enacted that the owner of or other person lawfully claiming any such animal as in the twenty-fifth section of this Ordinance mentioned which shall be found trespassing in any garden, vineyard, or enclosure or on cultivated land in which any crop is growing or cut but not removed, or in any stack-yard or trap-floor or other enclosed place containing grain shall be liable to pay as trespass money to the owner of the property trespassed upon for or in respect of each horse, head of horned cattle, pig, or goat so trespassing the sum of one shilling and six pence and for every sheep the sum of one penny as damage, exclusive of all pound fees and other charges: Provided, always, that when and as often as any animals shall be sent to the pound for or in respect of any such trespass as is in this section mentioned, the person sending the same shall send with them to the poundmaster a note in writing, signed by himself or by his known agent or caretaker, setting forth the number and description of the animals sent and the species of place or property in or upon which the said animals shall have been found trespassing, and the amount of damage payable under and by virtue of the provisions of this section, when the complainant shall elect to claim such amount instead of referring the amount of damage to the award of the Field-cornet and landowners as hereinafter mentioned, or instead of proceeding by way of action; but when the complainant shall elect to refer such amount to such award or to legal proceedings then the note in writing aforesaid shall after specifying the animals trespassing and the property trespassed upon state the intention of the complainant to proceed for the amount of damage according to law; and if no such note in writing shall be delivered to the poundmaster together with the animals sent to the pound then such animals shall be deemed to have been impounded for an ordinary trespass as in the next succeeding section mentioned. Provided, always, that when and as often as any animals shall be
- Transmission of written statement of damage to poundmaster.
- Right of complainant to claim award of field-cornet or to proceed at law.
- Verbal statement of damage.

<sup>1</sup> See Act 31 of 1875.

conveyed to the pound by the owner or occupier of the property trespassed upon in person then his verbal statement shall be taken and be recorded by the poundmaster, and shall be of the same effect as any such note in writing as aforesaid.

Ord. 16—1847.

33. And be it enacted that when and as often as any such animal as in the preceding section mentioned shall be found trespassing in or upon any property not being of the description of any in the last preceding section mentioned, the owner of or other person lawfully claiming such animal shall be liable to pay as trespass money to the owner of the property trespassed upon for or in respect of every horse, head of horned cattle, pig or goat, the sum of four pence, and for every sheep where the number shall not exceed three hundred the sum of one half-penny, and where the number of sheep shall exceed three hundred the sum of one farthing for every sheep. <sup>(1)</sup>

Trespass-money for damage in unenclosed property.

34. And be it enacted that when and as often as the same animal or animals (or any of them) of the same owner shall be found trespassing again upon the same property of the same owner within the space of fourteen days next after any former trespass by the same animal or animals upon the same property, the owner of such animal or animals so again trespassing shall be liable to pay double the rate of mileage and of trespass money in force for the time being in regard to trespasses not being repeated trespasses.

Repetition of trespass.

Penalty.

35. <sup>(2)</sup> And be it enacted that it shall and may be lawful for every district meeting as hereinbefore and hereinafter mentioned to alter and adapt the provisions in the thirty-second or thirty-third sections mentioned by changing the rate to be paid for trespass money as therein specified or by abolishing any such rate entirely. Provided, always, that it shall not be competent for any such district meeting to impose or establish in place or stead of the rate in the thirty-second section mentioned any rate higher than three shillings for any animal other than a sheep or three pence for any sheep, or to impose or establish in place or stead of the rate in the thirty-third section mentioned any rate higher than one third of whatever rate shall be imposed or established in regard to the trespasses mentioned in the thirty-second section.

Alteration of trespass money.

Limit of increase.

36. And be it enacted that no poundmaster shall release or deliver up any animal impounded until there shall be paid to him over and above all other fees and charges the amount of such damages as may be due and payable under or by virtue of either of the three last preceding sections, for which damages in case of any release or delivery up of the animals impounded the poundmaster shall be responsible.

Liability of poundmaster on delivery of animal without payment of damage.

37. <sup>(2)</sup> And whereas it is expedient to provide for the adaptation of certain clauses of this Ordinance to the peculiar circumstances of

Alteration of rates.

<sup>1</sup> See note to § 35.

<sup>2</sup> See Act 21 of 1867, *infra*, by which the powers vested in Civil Commissioners and Justices of the Peace by this section are conferred on Divisional Councils.

Ord. 16—1847.

particular divisions should the said provisions be found upon experience to be unsuited to such divisions: Be it enacted that at any time after the first day of January, one thousand eight hundred and forty-nine, it shall and may be lawful for the Civil Commissioner of any division of this Colony and he is hereby required upon receiving a requisition to that effect in writing, signed by not less than twenty landowners of such division, to call a meeting of the Justices of the Peace of such division at some time and place to be specified for the purpose of considering the provisions of the fifth, sixth, seventh, thirty-second, and thirty-third sections of this Ordinance, in order to determine whether they or any of them stand in need of alteration. And such meeting shall be summoned upon a notice to be published not less than three weeks before the day of meeting in the *Government Gazette*, and at such meeting the Civil Commissioner shall take the chair, and every question moved thereat shall be determined by a majority of votes of the persons then present and entitled to vote; and in case there shall be an equality of votes the chairman shall have an additional or casting vote. And in case it shall be decided at or by any such meeting that any alteration shall be made in regard to any of the rates by any of the respective sections aforesaid established the Civil Commissioner aforesaid shall as such chairman as aforesaid report the particulars of such alterations to the Secretary to Government for the information of His Excellency the Governor, and every such alteration shall be announced by a Government notice in the *Government Gazette* together with the date at which such alteration shall commence and take effect in the division in question, and thereupon the rate, charge, or payment mentioned in such notice shall become fixed and binding, and the rate, charge, or payment in this Ordinance contained for which the rate, charge, or payment in such notice mentioned shall be substituted shall become void and of no effect. Provided, always, that no such meeting shall be competent to alter or interfere with any provision of this Ordinance other than those contained in the several sections hereinbefore in this section recited or to alter or interfere with any of the provisions of the said recited sections except under and within the limits and restrictions in the eighth and thirty-fifth sections of this Ordinance respectively contained. And provided that every rate, charge, or payment in this Ordinance contained and not altered by any such meeting shall remain and continue in full force and effect.

Interval of twelve months before second meeting.

38. And be it enacted that at any time after the expiration of twelve months from any such meeting as aforesaid, but not sooner, it shall and may be lawful for the Civil Commissioner of the division in and for which such meeting shall have been held upon a similar requisition to that in the last preceding section mentioned to call in manner aforesaid a similar meeting for the purpose of altering or adapting the rates, charges, or payments for the time

being; and such second meeting shall have and possess all and singular the powers and authorities and none other hereinbefore conferred upon the first meeting aforesaid, precisely as if the rates, charges, or payments for the time being in any such division had been the rates, charges, or payments by this Ordinance imposed; and such meeting shall proceed and the decision thereof shall be notified in the same manner as is hereinbefore provided in regard to the first meeting aforesaid; and such notification shall be attended with the like effect as that of the decision of the said first meeting. <sup>(1)</sup>

Ord. 16—1847.

39. And be it enacted that similar meetings to those in the two last preceding sections mentioned may successively be summoned upon similar requisitions at intervals of not less than twelve months for the purpose of altering and adapting in manner and form as aforesaid the rates, charges, and payments for the time being. Provided, however, that no district meeting whatsoever held under this Ordinance shall be competent to proceed to or transact any business unless there shall be present thereat at the hour appointed for holding the same at least three members exclusive of the chairman.

Interval of twelve months as to succeeding meetings.

Quorum of meeting.

40. [This section provided for the appointment of other persons besides Justices of the Peace to act at district meetings, and is no longer applicable.]

41. And be it enacted that if in any case the owner of any species of property in the thirty-third section described shall deem the amount which would be claimable under and by virtue of such of the provisions in that section contained an inadequate compensation for the damage done it shall and may be lawful for such owner to require that such damage shall be assessed by the nearest field-cornet and any two landowners, one to be nominated by the complainant and the other by the owner of the animals which have trespassed. Provided, always, that in case the owner of such animals shall be unknown or shall refuse or neglect to nominate a landowner willing and ready to act then the field-cornet shall nominate a landowner in his place or stead, and in case the said field-cornet and landowners shall not agree in their assessment then the amount agreed upon by any two of them shall be binding.

Reference to field-cornet and two landowners of damage under section 33.

42. And be it enacted that when and as often as any person shall be minded to refer the amount of damage sustained to the field-cornet and landowners as aforesaid such field-cornet shall be informed of the trespass within twenty-four hours next after the trespass committed, and he shall fix such time for the inspection as may be most convenient to all parties; and such field-cornet and landowners shall be entitled to receive from the complainant for their award the sum of seven shillings and six pence each, which charge as well as the amount of damages assessed shall be paid by the owner of the animals which have trespassed in case the

Proceedings in the reference.

Fees of referees.

<sup>1</sup> See note to § 37.

- Ord. 16—1847. damages assessed shall exceed the amount which would under the provisions of the thirty-third, thirty-fourth, and thirty-fifth sections of this Ordinance have been claimable, but otherwise the charge aforesaid for the award of the field-cornet and landowners shall be defrayed by the complainant requiring their intervention.
- Costs.
- Award in writing. 43. And be it enacted that every award of field-cornet and landowners shall be in writing and shall be signed by such field-cornet and landowners, or when all cannot agree by some two of them, and be delivered to the complainant, and shall state in words the amount at which the damage done has been assessed and also whether the complainant or the owner of the trespassing animals is liable for the charge for the award of the field-cornet and landowners.
- Transmission of copy of award to poundmaster. 44. And be it enacted that when and as often as the animals which shall have done the damage assessed by field-cornet and landowners in manner aforesaid shall have been impounded previously to the making of the award, a copy of the award certified by the complainant to be a true copy shall be sent by him to the poundmaster of the pound in which such animals as aforesaid shall be impounded, and thereupon the assessed damages and the charge aforesaid for the award (when such charge shall not be one against the complainant) shall become a charge upon the animals impounded, which shall not be released or delivered up until the same shall be satisfied; and for the payment of the sum in case of such release or delivery the poundmaster shall be responsible.
- Trespass-money in case of diseased sheep or goats. 45. And be it enacted that the owners of any sheep <sup>(1)</sup> infected with the disease commonly called brandziekte or scab or of any goats infected with the disease commonly called scurvy which shall be found trespassing upon any species of property shall (except as hereafter excepted) be liable to pay twice the amount of damages which under the provisions of the thirty-second or thirty-third section of this Ordinance would be claimable in regard to a similar trespass by sheep or goats not so diseased. And in case such diseased sheep or goats so trespassing shall be found mixed with sheep or goats free from disease and belonging to any other person then the amount of damage shall be double the amount last mentioned. And any person who shall wilfully drive or cause to be driven any diseased sheep or goats respectively into or upon the property of any other person on which there shall be any sheep or goats which shall respectively be free from disease, such person shall over and above all damages and fees payable by him be liable upon conviction to be imprisoned with or without hard labour for any period not exceeding six months.
- Effect of claim for damages on assessment by field-cornet, and of such claim on action at law. 46. And be it enacted that nothing in this Ordinance contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent Court. But no person who shall once have claimed damages under

<sup>1</sup> See § 8, Act 28, 1886 (Scab Act) under *Animals Diseases*.

the thirty-second and thirty-third sections of this Ordinance shall be competent afterwards to require an assessment by field-cornet and landowers, nor shall any person who shall once have claimed either such damages or such assessment be competent afterwards to seek redress by legal process. And whenever any complainant shall be minded to proceed at law for the recovery of damages for any alleged trespass the owner of the cattle impounded for or on account of such trespass shall be entitled to release the same upon payment of pound fees and upon giving security to the satisfaction of any Resident Magistrate or Justice of the Peace or field-cornet for the payment of any damages or costs which the complainant may recover. Provided, always, that every such owner shall be entitled to tender to every such complainant such sum as he may consider adequate to cover and satisfy such damages as aforesaid, and in the event of such tender being refused the complainant shall be condemned in the costs of all such legal proceedings as he may afterwards institute unless the Court in which the same shall be pending shall find that such damages exceeded the amount so tendered.

Ord. 16—1847.

Release of animals on security pending action.

Tender.

47. And be it enacted that when and as often as there shall be impounded in any pound any number of sheep or goats respectively affected with the respective diseases in the forty-fifth section mentioned the same shall not be destroyed but be sold by public sale at the place where the sales of animals impounded in the same pound are usually held, in case the Civil Commissioner shall not appoint (as he is hereby authorized to do) some other place for selling diseased sheep; and such sale shall not take place until the expiration of fourteen days from the day of the impounding of the same and until a notice of such sale shall have been posted at the Court-house of the nearest Resident Magistrate and at the residences of the two nearest Field-cornets. Provided, however, that no other publication of such notice shall be necessary. And provided that the sales of diseased sheep and goats shall in all respects other than those herein provided for be regulated in like manner as the ordinary sales hereinbefore mentioned.

Sale of diseased sheep or goats.

Notice of sale.

48. And be it enacted that if in any case it shall chance or happen that property trespassed upon shall be situated in a division different from that in which the pound proper for the receipt of the animals trespassing shall be situated, and that there shall be in such divisions respectively different rates of mileage or trespass money, then mileage and trespass money shall respectively be payable according to the rate in and for the division in which the property trespassed on is situate. But all rates payable upon the delivery to and receipt by the poundmaster of such animals, and for herding, grazing, and feeding the same, shall be paid according to the rate in and for the division in which the pound is situate.

Mileage and trespass-money where the pound and property trespassed on are in different divisions with different rates.

49. And be it enacted that every person who shall (without the permission of some person entitled to give permission) by himself

Molestation of animals on owner's property.

- Ord. 16--1847. or any person acting by his authority, molest, drive, or scatter the horses, cattle, sheep, or goats of any other person upon the property of such last mentioned person or pursue or take away any such animals from off the property of their owner, whether under pretext of seeking for or separating his own animals or any other purpose, shall for every such offence forfeit any sum not exceeding ten pounds.
- Destruction of pigs, poultry, and pigeons 50. And be it enacted that all pigs, poultry, and pigeons found trespassing in or upon any sort or species of property in the thirty-second section of this Ordinance specified may lawfully be destroyed while and where so trespassing by the owner of such property or any person acting by his authority. And that
- Dogs. any dog found trespassing, between the first day of December and the first day of April in any enclosed vineyard or garden in which grapes are growing and doing damage therein may also be destroyed.
- Penalty on stallions trespassing. 51. (1) And be it enacted that the owner of any stallion horse or stallion ass above the age of two years, which shall be found without having any person riding, driving, or otherwise in charge of the same, trespassing upon the property of any other person, shall be liable to forfeit any sum not exceeding five pounds and not less than one pound: Provided, always, that if such horse or ass shall when so trespassing be found amongst mares or with any mare not belonging to the owner of such horse or ass then the owner thereof shall be liable to forfeit any sum not exceeding thirty pounds and not less than six pounds. And provided that in calculating the said age the term of two years shall be calculated from the first of June of the year in which the animal was foaled.
- Penalty on stallions found amongst mares. And provided, also, that the proclamation of the then Governor of this Colony, Lord Charles Henry Somerset, of the 23rd of May, 1823, respecting entire horses running loose shall be repealed, and the same is hereby repealed accordingly.
- Repeal of proclamation. 52. And be it enacted that the owner of every bull or ram above the age of twelve months respectively which shall be found trespassing upon the property of any other person shall be liable to forfeit any sum not exceeding two pounds and not less than ten shillings. Provided that if any such bull or ram shall be found amongst cows or ewes respectively the penalty aforesaid shall be doubled.
- Penalty on bulls, rams, &c., trespassing. 53. And be it enacted that the penalties in the two last preceding sections respectively mentioned shall be payable over and above all pound fees or other charges.
- Such penalties above other charges. 54. And be it enacted that for or in respect of any of the provisions of this Ordinance in regard to which no penalty shall have been hereinbefore or hereinafter expressly provided every person so contravening the law shall incur and be liable to any penalty not exceeding five pounds.
- Penalty for contraventions where not specially fixed.

<sup>1</sup> See also Act 1 of 1869.



55. And be it enacted that all fines and penalties imposed by any of the provisions of this Ordinance shall be recoverable in the Court of the Resident Magistrate of the district in which the offence shall have been committed and may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place. And any fine or penalty which shall not be incurred by any act or omission affecting the property of any particular person may be proceeded for by any person whomsoever. And all fines and penalties when recovered shall be paid to the person proceeding for the same.

Ord. 16 - 1847.  
Recovery of fines  
and penalties.

56. And be it enacted that when and as often as any person convicted of any offence against any of the provisions of this Ordinance shall not forthwith pay or satisfactorily secure the penalty imposed, it shall and may be lawful for the Court imposing such penalty, in case no other term of imprisonment shall have been hereinbefore provided for or in respect of the non-payment of such fine or penalty, to sentence the offender to imprisonment with or without hard labour for any term not exceeding two months.

Imprisonment on  
non-payment of pen-  
alties.

57. And be it enacted that when and as often as any proceeding for the recovery of any such penalty under the provisions of this Ordinance shall appear to the Court before which such proceeding shall come to be frivolous and vexatious, it shall and may be lawful for such Court to adjudge to the party proceeded against double his full costs of defence, to be taxed and assessed by such Court and to be paid by the party prosecuting; such costs to be recoverable by the like process as that by which costs awarded to be paid by a plaintiff in any civil suit pending in such Court shall be by law recoverable.

Costs in vexatious  
proceedings.

58. And be it enacted that in the interpretation of this Ordinance the following words and expressions are intended to have the meanings hereby assigned to them so far as such meanings are not excluded by the context or the nature of the subject-matter, that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender to apply also to persons and inferior animals of the feminine gender, and that the term horse shall include mules and asses, colts, fillies and foals, and that the term horned cattle shall include bulls, cows, oxen, heifers and calves, and that the term sheep shall include rams, ewes, wethers, and lambs. And that the term Civil Commissioner shall include together with Civil Commissioners assistant Civil Commissioners and the officers acting as either Civil Commissioners or assistant Civil Commissioners; and that the term division shall designate the territory under the fiscal administration of a Civil Commissioner or assistant Civil Commissioner.

Interpretation  
clause.

59. (1) And be it enacted that nothing in this Ordinance contained shall extend to any trespass committed or pound erected

Exemption of mu-  
nicipalities.

<sup>1</sup> See Act 1 of 1869, § 6, *infra*; Act 45 of 1882, §§ 22, 109 and 164 (Municipalities).

No. 1—1857.  
Use of municipal  
pound.

within any municipality. Provided always that animals seized or detained for or on account of any trespass committed beyond the limits of a municipality shall be sent to any pound within the said limits if the same shall be the pound nearest to the place of trespass and the poundmaster of such pound shall be bound to receive the animals so sent; and all animals impounded in any pound within a municipality shall be subject in all respects to the regulations of such pound; but all questions respecting trespasses committed beyond the limits of any municipality shall be determined and the damages claimable therefrom shall be regulated by the provisions of this Ordinance. <sup>(1)</sup>

Exclusion of Natal.

60. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Time of taking  
effect.

61. And be it enacted that this Ordinance shall commence and take effect from and after the first day of November in the year of our Lord one thousand eight hundred and forty-seven.

No. 1—1857.]

[June 29, 1857.

### AN ACT

For transferring from the Colonial Government to the Divisional Councils certain Powers and Functions relating to the Public Pounds of the Colony.

Preamble.

WHEREAS it is expedient to transfer to the Divisional Councils the powers and functions which are by the Ordinance No. 16, 1847, entitled "Ordinance for the better Regulation of Pounds and Prevention of Trespasses," vested in the Colonial Government; and for this purpose to amend the said Ordinance: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant part of  
Ordinance No. 16,  
1847, repealed.

1. So much of the Ordinance aforesaid, No. 16, 1847, as is repugnant to or inconsistent with this Act, is hereby repealed.

Civil commissioner,  
with advice of divi-  
sional council, may  
establish pounds, ap-  
point and dismiss  
poundmasters.

2. The Civil Commissioner of each division, in establishing pounds, and in appointing, and in dismissing poundmasters shall act with the advice and consent of the Divisional Council of such division, if such there be, and the approval by the Governor of this Colony of any such appointment or dismissal shall not be necessary or required.

May appoint field-  
cornets or assistant  
field-cornets to be  
poundmasters.

3. The Civil Commissioner, acting with such advice and consent as aforesaid, may appoint any field-cornet, or assistant field-cornet, to be a poundmaster; and no consent of the Governor aforesaid to such last mentioned appointment shall be necessary or required.

May abolish  
pounds.

4. The Civil Commissioner, acting with such advice and consent as aforesaid, may abolish any pound which it shall be deemed inexpedient to continue.

<sup>1</sup> Printed as amended by Act 30 of 1886.

*repealed by  
Act 40 of 1889*

5. Advertisements or notices of intended sales of impounded animals, commonly called pound notices, shall be published in manner and form as the Divisional Council shall, from time to time, approve of and direct ; and the approval by the Governor aforesaid of any particular manner or form of publication shall cease to be necessary or required, anything in the 19th section of the Ordinance No. 16, 1847, to the contrary notwithstanding : Provided that the certain notice in the 20th section of the said Ordinance mentioned shall continue to be published as therein directed, but at the expense of the Divisional Council in case sufficient funds for the purpose shall have been received by such council under or by virtue of the next succeeding section of this Act.

No. 1--1857.

Pound notices to be published under direction of the divisional council.

Notice of pound sales to be published at the expense of the divisional council.

6. All moneys which, under or by virtue of the 23rd section of the Ordinance No. 16, 1847, would, but for this Act, have become the property of Her Majesty the Queen, and have been paid into the Colonial Treasury, shall henceforth be received by the Divisional Council of the division, to be applied in defraying the cost of publishing the pound notices and other notices connected with pounds : Provided that the surplus of such moneys, if any, shall be applicable to any purpose to which the Divisional Council may lawfully apply any funds at its disposal.

Moneys derived from pounds to be received and disposed of by divisional council.

7. This Act shall extend to all pounds to which the Ordinance aforesaid extends, but to none other.

Act to extend only to pounds under Ordinance No. 16, 1847.

8. This Act shall commence and take effect one month from and after the date of the promulgation thereof.

Act when to commence.

No. 21—1867.] *repealed by Act 40 of 1889* [August 16, 1867.  
ACT

For Conferring on Divisional Councils certain Powers relating to the Regulation and Management of Pounds in their Divisions.

WHEREAS it is desirable to vest in Divisional Councils, besides the powers already conferred upon them by the Act No. 1, 1857, certain other powers of making regulations for the management of pounds within their divisions respectively, and of altering such regulations from time to time: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Preamble.

That the powers formerly vested in the Civil Commissioners and Justices of the Peace under and by virtue of section 37 of Ordinance No. 16 of 1847, entitled "An Ordinance for the better regulation of Pounds and prevention of Trespasses," shall be vested in and exercised by the Divisional Councils for the divisions in which the pounds therein referred to are or may be situate, respectively, save as by the same Ordinance is excepted.

Powers vested in divisional councils.

No. 1—1869.]

[October 18, 1869.

## ACT

To Amend the Ordinance No. 16 of 1847, intituled "An Ordinance for the better Regulation of Pounds and Prevention of Trespasses."

Preamble.

WHEREAS it is expedient to amend in certain respects the Ordinance No. 16 of 1847, intituled "An Ordinance for the better Regulation of Pounds and Prevention of Trespasses:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Ord. No. 16 of 1847 repealed.

1. So much of the Ordinance No. 16 of 1847 as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Stallions impounded to be castrated previous to release or sale.

2. No stallion above the age of two years which shall hereafter be lawfully impounded shall be released by the owner thereof, or sold out of the pound, without being previously castrated, unless such stallion shall be released under the provisions of the fifth section hereof.

Who to perform operation.

3. Every such stallion not released under the provision of the fifth section hereof shall be castrated by the poundmaster, if competent to perform such operation, or by some other competent person employed by him at his own expense, and such poundmaster shall be allowed for the performance of this duty a fee of

Fee for castrating.

ten shillings, to be recovered from the owner of such stallion, if known, or deducted from the proceeds of sale, should such animal be sold out of the pound: Provided, however, that no such fee as aforesaid shall be recoverable from the owner in respect of any animal which shall die while in the poundmaster's keeping in consequence of such castration.

Fee not recoverable if animal dies.

Period to elapse prior to castration.

4. No stallion shall (except as hereinafter is provided) be castrated under the provisions of this Act until it shall have remained impounded for at least five weeks; and any stallion not sooner released by or on behalf of the owner thereof shall, subject to such regulations as may be in force at the date of such sale, be sold at the first pound sale occurring after the expiration of forty-five days from the date of such stallion having been impounded:

Period to elapse prior to sale.

When castration may be forthwith proceeded with.

Provided, however, that if the owner of such stallion shall give his consent, or shall decline to release it under the fifth section hereof, such stallion may be castrated forthwith, and shall be castrated without unnecessary delay should the owner thereof desire to release the same under the ordinary provisions of the law.

When impounded stallion may be released without being castrated.

5. The owner of any stallion which may hereafter be impounded shall be entitled to release such stallion without its being castrated, upon payment of pound fees and other charges, and upon giving

security, to the satisfaction of any Resident Magistrate or Justice of the Peace or Field-cornet, for the payment of any fine or penalty and costs of suit recoverable under the fifty-first and fifty-fifth sections of the said Ordinance: Provided, always, that every such owner shall be entitled to tender to any person claiming any penalty under the sections aforesaid such sum as he shall consider adequate to cover such fine or penalty as aforesaid; and in the event of such tender being refused, the person claiming any such fine or penalty shall be condemned in the costs of such legal proceedings as he may afterwards institute for the recovery thereof, unless the Court in which the same shall be pending shall award such fine or penalty as shall exceed the amount so tendered.

No. 1—1869.

6. The provisions of this Act shall extend to any trespass committed, or pound erected, within any municipality. Act to extend to municipalities.

7. This Act shall not take effect or be in force within any division of this Colony until such division shall, at the request of the Divisional Council thereof, have been proclaimed by His Excellency the Governor in the *Government Gazette* as made subject to this Act; and it shall be lawful for the Governor to make such proclamation as aforesaid at the request of any such Divisional Council as aforesaid. When to take effect.

8. The word "stallion" shall include a male ass not castrated. Word "stallion" to include male ass.

No. 31—1875.]

[June 30, 1875.]

## ACT

## To Amend the Law relating to Pounds and Trespasses.

WHEREAS it is desirable that the laws relating to the impounding of certain animals should be extended to domesticated ostriches, and should be otherwise amended as hereafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The provisions of the Ordinance No. 16 of 1847, and of the Acts No. 1 of 1857 and No. 21 of 1867, shall apply to domesticated ostriches in like manner as if they had been expressly mentioned therein, as well as horses, horned cattle, and other animals; and the said laws shall be read as one with this Act: Provided that the mileage, pound fees, fees for herding, grazing, and feeding, and trespass money payable in respect of such ostriches as aforesaid, shall be according to the tariff in the schedule hereto, but the same power of altering, adapting, and abolishing the said payments respectively shall exist as with respect to the like payments under the said Ordinance No. 16 of 1847; but the rate of mileage shall not be more than one shilling nor less than fourpence per mile; and the pound fees payable on delivery and receipt of each ostrich

Application of certain laws to domesticated ostriches.

No. 31—1875.

shall not be more than two shilings nor less than one shilling; and the fees to be payable for herding, grazing, and feeding shall not be more than two shillings nor less than one shilling per diem for and in respect of any such ostrich; and the rate of trespass money payable under the thirty-second section of the said Ordinance shall not be more than three shillings for each ostrich; and the rate of trespass money payable under the thirty-third section of the said Ordinance shall not be more than one-third of whatever rate shall be then established in regard to the trespassers under the said thirty-second section mentioned.

Penalty for selling animal found trespassing.

2. It shall not be lawful for any landowner or occupier of land to sell or dispose, either by public auction or otherwise, of any animal whatsoever that may at any time be found trespassing on his property, under a penalty not exceeding twenty pounds, to be recovered by the owner of the animal so sold or disposed of: Provided that payment of such penalty shall not deprive the lawful owner of any animal so sold of his right of suing such party for the value of such animal, together with any damages he may have sustained by reason of the detention and sale of such animal.

Owner of animals found trespassing may tender trespass money before they are impounded.

3. Any owner of animals which have become liable to be impounded for any trespass shall be entitled, before the same have been conveyed to the pound, to tender to the person complaining of such trespass such sum as he may consider adequate to cover and satisfy the damages caused by such trespass, together with any costs and expenses actually incurred by such complainant; and in the event of such tender being refused, the complainant shall be condemned in the costs of all such legal proceedings as he may afterwards institute, and shall also be liable to pay any damages sustained by the person tendering as aforesaid by reason of the detention of the said animals from the date of such tender, unless in either case the Court before which the case is heard shall find that such damages, costs, and expenses exceed the amount so tendered: Provided that in case the amount of trespass money shall be fixed by law, the amount to be tendered for trespass money shall not be less than the amount so fixed.

Short title.

4. This Act may for all purposes be cited as "The Pounds Act, 1875."

---

SCHEDULE.

	s.	d.
Mileage (see section 5 of Ordinance No. 16 of 1847)		
where the distance does not exceed ten miles, per mile	..	.. 0 8
Where the distance exceeds ten miles, per mile	..	.. 0 6
Pound fees (see section 6 of Ordinance No. 16 of 1847) for each ostrich	..	.. 2 0

	s. d.	No. 30—1886.
Grazing, &c., fees (see section 7 of Ordinance No. 16 of 1847), for each ostrich, per diem .. ..	1 6	
Trespass Money under section 32 of Ordinance No. 16 of 1847, per head .. ..	1 6	
Trespass Money under section 33 of Ordinance No. 16 of 1847, per head .. ..	0 4	

No. 30—1886.]

[July 6, 1886.]

ACT

To Alter and Amend the Fifty-ninth Section of the “Pounds and Trespases Ordinance ” No. 16 of 1847.

WHEREAS it is desirable that cattle found trespassing should in all cases be sent to the pound which is nearest to the place of trespass, whether the same be situated or not within the limits of any municipality ; and for that purpose it is necessary to amend in certain respects the fifty-ninth section of the Ordinance No 16 of 1847, being the “Pounds and Trespases Ordinance :” Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. The proviso in the fifty-ninth clause of the Ordinance mentioned in the preamble to this Act is hereby repealed and the following shall be substituted and read in lieu thereof : “ Provided always that animals seized or detained for or on account of any trespass committed beyond the limits of a municipality shall be sent to any pound within the said limits if the same shall be the pound nearest to the place of trespass, and the poundmaster of such pound shall be bound to receive the animals so sent ; and all animals impounded in any pound within a municipality shall be subject in all respects to the regulations of such pound ; but all questions respecting trespases committed beyond the limits of any municipality shall be determined and the damages claimable therefrom shall be regulated by the provisions of this Ordinance.”

New clause substituted for provisions in 59th section of Ordinance No. 16 of 1847.

2. This Act may be cited as the “Pounds and Trespases Ordinance Amendment Act, 1886.”

Short title.

No. 19—1860.]

[July 17, 1860.]

ACT

For Regulating the Public Pound at Glen Grey, in the Tambookie Location in the Division of Queen Town.

WHEREAS it is expedient, in reference to the peculiar circumstances of the Tambookie Location in the division of Queen’s

Preamble.

2330 POUNDS AND TRESPASSES (GLEN GREY POUND).

No. 19—1880.

Town, that all impoundable animals found trespassing within the said location should be sent to the public pound at Glen Grey, and not to any pound beyond the limits of the said location: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant part of Ordinance 16, 1847, repealed.

1. So much of the twenty-fifth section of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and the prevention of Trespasses," as shall be repugnant to or inconsistent with this Act is hereby repealed.

Cattle trespassing within the limits of location to be sent to Glen Grey pound.

2. No horse, head of horned cattle, sheep, goat, or pig found trespassing upon any land or ground within the limits of the Tambookie Location aforesaid, shall be sent to any pound other than the pound at Glen Grey, or at such other place within the said limits as the pound of or for the said location shall from time to time be placed at. Any person contravening this section shall, upon conviction, be liable to a penalty not exceeding ten pounds, and in case of non-payment of the same forthwith, to imprisonment, with or without hard labour, for any term not exceeding one month.

Penalty for contravening this section.

PRACTITIONERS.

A. LEGAL PRACTITIONERS.  
B. MEDICAL do.

A.

1. Charter of Justice, §§ 17-24, (Admission of Barristers, &c.)
2. Act 12—1858, (Barristers, Attorneys, Notaries and Conveyancers).
3. ,, 16—1873, §§ 19-21, (Powers of University, Degrees in Law, &c.).
4. ,, 27—1883, (Law Society incorporated).

5. Act 21—1864, §§ 13-19, (Enrolment of Advocates in E. D. Court).

6. ,, 3—1865, § 8, (Kaffrarian Practitioners).

7. ,, 6—1872, do.

8. ,, 39—1877, § 21, (Griqualand West do.)

For Enrolled Agents see under "Resident Magistrates."

B.

9. Ord. 82—1830, (Medical Practitioners and Apothecaries).

(<sup>1</sup>) Charter of Justice.]

\* \* \* \* \*

Admission of barristers, &c.

17. And we do hereby authorize and empower the said Supreme Court of the Colony of the Cape of Good Hope to approve, admit, and enrol such persons as shall have been admitted as barristers in England or Ireland, or advocates in the Court of Session of Scotland, or to the degree of Doctor of Laws at our universities of Oxford, Cambridge, or Dublin, to act as barristers or advocates in our said Supreme Court.

Advocates of the late court.

18. And we do further authorize and empower the said Supreme

<sup>1</sup> For full text of this Charter, see "Administration of Justice."



Court to admit any persons to practise as barristers and advocates therein, who, previously to the promulgation of these presents within the said Colony, have been actually admitted to practise as advocates in the Supreme Court of Justice heretofore existing within the same.

Charter of Justice.

19. And we do further authorize and empower the said Supreme Court to approve, admit, and enrol any persons, being attorneys or solicitors of any of our Courts of Record at Westminster or Dublin, or being proctors admitted to practise in any Ecclesiastical Court in England or Ireland, or being writers to the signet in Scotland, or being now entitled to practise as proctors or notaries in the said Supreme Court of Justice heretofore existing within the said Colony, to act as attorneys, solicitors, or proctors in the said Supreme Court of the Colony of the Cape of Good Hope.

Admission of attorneys, solicitors, and proctors.

20. And we do further authorize our said Supreme Court to approve, admit, and enrol as such attorneys, solicitors, or proctors as aforesaid, such and so many persons as may be instructed within our said Colony in the knowledge and practice of the law by any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said Court, and which persons shall be so approved, admitted, and enrolled according to and in pursuance of any general rule or rules of court to be for that purpose made in manner hereinafter directed.

Future admission of attorneys, solicitors, and proctors.

21. And we do ordain and declare that persons approved, admitted, and enrolled as aforesaid shall be, and they are hereby, authorized to appear, and plead and act for the suitors of the said Supreme Court; subject always to be removed by the said Supreme Court from their station therein, upon reasonable cause.

Capacity and removal of enrolled persons.

22. And we do further ordain that no person or persons whatsoever not so approved, admitted, and enrolled as aforesaid shall be allowed to appear, plead, or act in the said Supreme Court for or on behalf of any suitors in the said Court.

Incapacity of unenrolled persons.

23. Provided, always, and we do further ordain and declare, that the functions and office of barristers and advocates shall not be discharged in the said Court by the attorneys, solicitors, and proctors thereof, and that the functions and office of such attorneys, solicitors, and proctors shall not be discharged by such barristers at law or advocates.

Functions of barristers and of solicitors.

24. Provided, nevertheless, and we do further declare our will to be, that in case there shall not be a sufficient number of barristers and advocates within the said Colony, competent and willing to act for the suitors of the said Court, the said Court shall, and is hereby authorized, to admit any of the attorneys, solicitors, or proctors thereof to appear and act as barristers and advocates, during the time of such insufficiency only; and in case there shall not be a sufficient number of attorneys, solicitors, and proctors within the said Colony, competent and willing to appear and act

Authority of the court, in case of insufficiency in number of barristers or attorneys, to allow attorneys to act as barristers, and vice versa.

No. 1.—1858.

in that capacity for the suitors of the said Court, the said Supreme Court shall, and is hereby authorized, to admit any of such barristers or advocates, to practise and act in the capacity of attorneys, solicitors, and proctors, during the time of such insufficiency only.

\* \* \* \* \*

No. 12—1858.]

[June 5, 1858.

## AN ACT

For Regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers. <sup>(1)</sup>

Preamble.

WHEREAS it is expedient to make provision for the admission, as advocates of the Supreme Court, of such persons, in addition to those at present by law entitled to be so admitted, as shall be duly qualified thereto by general acquirements and by a sufficient knowledge of law and jurisprudence: And whereas it is further expedient to make additional regulations regarding the admission of attorneys of the Supreme Court, and persons desirous of practising as notaries, and of obtaining authority to prepare deeds of transfer and of hypothecation in this Colony: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Royal Letters Patent of His late Majesty King William the Fourth, bearing date at Westminster, the 4th May, in the second year of his reign, commonly called the Charter of Justice, and so much of the Ordinance No. 14, of 1844, and so much of any other law, usage, or ordinance as shall be repugnant to or inconsistent with any of the provisions of this Act are hereby repealed.

Certain persons may be enrolled as barristers, &amp;c., in the Supreme Court, in addition to those admitted under the charter of justice.

2. In addition to the persons who may, by the seventeenth section of the said Charter of Justice, be approved, admitted, and enrolled by the Supreme Court as barristers or advocates in the said Supreme Court,—authority is hereby given to the said Supreme Court to approve, enroll, and admit all such persons as shall have obtained either of the two certificates of merit and attainment mentioned in the ninth section of an Act, made and passed in this present session of Parliament, for creating a board of public examiners in literature and science; and in addition to such certificate, the certificate of the higher class in law and jurisprudence in the sixteenth section of the said Act mentioned, to act

<sup>1</sup> As to Licences payable by Advocates, Attorneys, Notaries and Conveyancers, on admission to practise, and Stamps on Articles of Apprenticeship, see Tariff 15, Act 20 of 1884, under "Stamps and Licences."

As to Enrolled Agents, see Act 20, 1856 (Resident Magistrates).

and practise as barristers or advocates of the said Supreme Court. <sup>(1)</sup>

No. 12—1858.

3. Every person who shall, previously to the time of his application to be approved, admitted, and enrolled an attorney of the Supreme Court, have obtained either of the certificates in law and jurisprudence in the sixteenth section of the said Act mentioned, shall, upon having actually served as an apprentice or clerk, by contract in writing, to any advocate, attorney, solicitor, or proctor, throughout the term of three consecutive years, be eligible to be approved, admitted, and enrolled an attorney of the Supreme Court, as fully and effectually, to all intents and purposes, as any person having been bound and having served for five years is eligible to be approved, admitted, and enrolled an attorney, by virtue of the 20th section of the said Charter of Justice and the 149th rule of the Supreme Court. <sup>(1)</sup>

Persons holding certificates in law may, after a service of three years as apprentice or clerk, be admitted as an attorney.

4. It shall not be lawful for any one to take upon himself to practise as a notary public within the Colony, until he shall have obtained authority to that effect from the Supreme Court, without prejudice, always, to the right of such persons so to practise as may before the taking effect of this Act, have obtained the previously existing legal authority in that behalf.

Authority of the Supreme Court required to practise as notary public.

5. It shall be lawful for the Supreme Court of the Colony to grant authority to practise as notaries public to the following persons only, that is to say:—To every attorney of the Supreme Court and to every person who shall have been bound by contract in writing to serve within this Colony as a clerk to a notary duly authorized to practise, during the term of four consecutive years subsequent to the date of such contract, and who shall, during the whole of such term of service, have continued to be actually employed within the Colony as clerk in the proper employment and business of such notary as a notary: Provided, however, that if any such last-mentioned person shall have obtained either of the certificates in law and jurisprudence in the sixteenth section of the Act aforesaid mentioned, it shall be lawful for the Supreme Court to grant authority to such person to practise as a notary public after a service of one year only, instead of the service of four years, as hereinbefore required: Provided, also, that no person shall be authorized, as aforesaid, to practise as a notary public unless he shall have attained, at least, the age of twenty-one years, and unless it shall be certified to the Supreme Court, in writing, by the examiners, in the next succeeding section described, that such person has been duly examined by the said examiners, and that he is, in the opinion of such examiners, qualified to be admitted to practise as a notary public. <sup>(2)</sup>

Who may be admitted as notaries.

Limitation as to age, &c.

6. The examiners in the last preceding section mentioned shall

Who to be examiners in last preceding section mentioned.

<sup>1</sup> See § 21, Act 16, 1873.

<sup>2</sup> The Act (4 of 1858) referred to herein is repealed, but see §§ 19-21, Act 16, 1873, *infra*.

No. 12—1858.

be appointed, from time to time, by the Supreme Court, and shall be three in number, of whom one shall be an advocate of the Supreme Court, of not less than seven years' standing, and two shall be public notaries, duly admitted, and of not less than seven years' standing; and a certificate under the hands of any two or more of such examiners shall be sufficient.

How as to applicants for admission before the passing of this Act.

7. Notwithstanding this Act, it shall be lawful for the Supreme Court to cause to be examined, in regard to his qualification to be admitted to practise as a notary public, any person who shall, at any time before the taking effect of this Act, apply to be so examined, whether such person shall or shall not have served as clerk to a notary; and if, upon such examination, such person shall be found qualified, it shall be lawful to admit him to practice: Provided that every such person shall be examined by such examiners as are in the sixth section of this Act mentioned.

Who may draw deeds of transfer and hypothecation.

8. No person, not being an advocate of the Supreme Court, shall receive authority to draw and prepare transfer deeds, and deeds of hypothecation, which shall be entitled to registration by the Registrar of Deeds, unless he shall have attained the age of twenty-one years, and unless it shall be certified to the Supreme Court, in writing, by three examiners, to be appointed from time to time by the said Supreme Court, of whom one shall be an advocate of the Supreme Court, of not less than seven years' standing, and two shall be persons who shall have received authority to draw and prepare such deeds as aforesaid, that such person, desirous of receiving such authority as aforesaid, has been duly examined by the said examiners, and that he is, in the opinion of such examiners, qualified to receive authority to draw and prepare such deeds as aforesaid; and a certificate to that effect under the hands of any two or more of such examiners shall be sufficient.

Examinations mentioned in preceding sections how to be held.

9. Every examination in the three last preceding sections mentioned shall be held with open doors, at such time and place as the examiners appointed to conduct such examination shall find convenient and appoint.

Fee to be paid by persons authorized to draw deeds of transfer and hypothecation.

10. Every person applying to be admitted to practise as a notary public, or to be authorized to draw and prepare deeds of transfer and hypothecation, shall, before such examination, pay into the hands of the Registrar of the Supreme Court the sum of ten pounds; and such sum shall, by such officer, be divided amongst the examiners who shall have examined such person, share and share alike; and such payment shall be in lieu or stead of every other fee or charge now by law payable to the public revenue, by any person admitted to practise as a notary, or authorized to draw or prepare deeds of transfer or hypothecation.

Supreme Court to make rules and regulations for notaries, &c.

11. It shall be lawful for the Supreme Court to make such rules and regulations as may ensure the due performance of their duties by notaries public and conveyancers, whether appointed under this Act, or previously, and to suspend such of them as may fail therein,

for such period, and upon such terms, as to such Court shall seem to be proper in the circumstances: Provided that the fourth section of the Act No. 26 of 1856, entitled "An Act for amending the Law relating to Rules of Court," shall extend and apply to all such rules as aforesaid.

No. 16—1873.

No. 16—1873.]

[June 26, 1873.

## ACT

To Establish and Incorporate an University at the Cape of Good Hope.<sup>(1)</sup>

\* \* \* \* \*

19. Besides being empowered as aforesaid to grant degrees in law, the council of the university is also empowered to grant after examination certificates of proficiency in law and jurisprudence. The nature of the subjects of such examination and the degree of proficiency to be required from candidates for such certificates shall generally and in substance correspond with the practice in those respects of the Board of Public Examiners, during its existence, in regard to the lower or second-class certificates of proficiency in law and jurisprudence granted by such board. But no person shall, except as hereinafter excepted, be admitted to be a candidate for any such certificate as is in this section mentioned who shall not have passed the matriculation examination in the said university, or shall not be the holder of a third-class certificate in literature and science granted by the Board of Public Examiners: Provided that it shall not be necessary for any person to pass the matriculation examination aforesaid who shall at the time of the taking effect of this Act be serving as an apprentice or clerk under any such contract as is in the third section or in the fifth section of the Act No. 12, 1858, described.

Council may grant certificates of proficiency in law and jurisprudence.

Who eligible as candidates.

20. Persons who shall have obtained or been admitted to the degree of Bachelor of Laws in the said university shall, for the purpose of the second section of the Act No. 12, 1858, intituled "An Act for regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers," be eligible to be enrolled as barristers or advocates of the Supreme Court, in like manner, precisely, as if such persons had obtained the certain certificates in the said section mentioned.

Bachelors of laws to be eligible to be enrolled as barristers, &c.

21. Persons who shall have obtained the certificate of proficiency in law and jurisprudence in the nineteenth section of this Act mentioned shall, for the purpose of the third and the fifth sections of the Act No. 12, 1858, in the last preceding section mentioned, be deemed to be, in all respects, in the same plight and condition as if they had obtained one or other of the certificates in law and jurisprudence in the said third and fifth sections of the said Act described.

Position of persons obtaining the certificate of proficiency in law and jurisprudence under this Act in regard to the provisions of the 3rd and 5th sections of Act No. 12 of 1858.

\* \* \* \* \*

<sup>1</sup> For full text of this Act see "Education."

No. 27—1883.]

[September 27, 1883.

## ACT

## For Establishing an Incorporated Law Society for the Colony of the Cape of Good Hope.

Preamble.

WHEREAS it is expedient for the maintenance and advancement of sound legal learning and correct and uniform practice and discipline amongst the members of the professions of Attorneys and Notaries in this Colony, and also for the superintendence of the professional training, studies and examination of persons hereafter desiring to be admitted to practise in such professions, and for the regulation of their admission thereto, and for promoting the formation of a Law Library at Cape Town, to establish and incorporate a society at the Cape of Good Hope for the promotion of the said objects:

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Incorporation of, and authorities conferred on "The Law Society of the Cape of Good Hope."

1. A society consisting of a president, a vice-president, a council and members shall be established at the Cape of Good Hope, consisting of attorneys and notaries duly authorized to practise as such in the said Colony, and shall be a body politic and corporate by the name of "The Law Society of the Cape of Good Hope," and by such name shall have perpetual succession, and shall adopt and have a common seal, and shall be capable both of purchasing and holding property, movable and immovable, and of selling, mortgaging, transferring, leasing or otherwise disposing of any such property, and of suing and being sued in its corporate capacity, and of doing all other matters and things incidental or appertaining to a body politic: Provided that it shall not be lawful for the said society to sell, mortgage, transfer, lease or otherwise dispose of any immovable property to which it may become entitled without the approbation and concurrence of two-thirds of the members present at a general meeting.

Constitution of the council.

2. The council of the said society, including the president and the vice-president, shall consist of nine members, exclusive of such *ex-officio* members as are hereinafter provided for. The first president of the society shall be Charles Aken Fairbridge, and the first vice-president shall be Casper Hendrik van Zyl, and John Robertson Reid, John Blake Buissinne, Henry Knight Tredgold, Frederick Samuel Phillipson Stow, Edward Philip Solomon, William Edward Moore and Charles Christian de Villiers, shall be the first members of the council of the said society, and shall hold office until the election of new officers as hereinafter provided.

Mode of electing members.

And it shall and may be made lawful for the president so appointed to receive and consider applications from attorneys and

notaries desirous of becoming members, and for a majority of the members of the said council present at a meeting to be convened by the president, after three weeks' notice, to agree or refuse to enrol the applicants as members of the society : Provided, however, that such refusal shall not debar the rejected candidate from again applying to be enrolled, or from being enrolled as a member of the society, after the first general meeting hereinafter mentioned : Provided, also, that the president shall cause true and proper minutes of the proceedings at such meetings to be recorded in a book kept for the purpose, including the names of all persons enrolled, as well as those refused. So soon as convenient after there shall have been enrolled in the manner aforesaid members sufficient to make up the number of the members of the society, including the president, vice-president, and the council aforesaid, to twenty-five, it shall be the duty of the president, by notice in the *Government Gazette* of not less than six weeks, to convene a general meeting of all the members aforesaid for the purpose of electing a council in the place of the council appointed by this Act. And as soon as may be after the election of the new council aforesaid, the said council shall proceed to the election from among its members of a new president and vice-president, it being expressly provided that the existing president, vice-president and council shall remain in office and exercise all their functions until the final election and appointment of the new president, vice-president and council, whereupon their appointment shall cease, and thereafter every election of a new council, and every election by such new council of a president and vice-president, shall take place in exactly the same manner and after the same notice as is by this section determined for the election of the first new council and president and vice-president. At any meeting it shall be competent for members residing more than twenty-five miles from the place where the meeting is held to vote by proxy, but no persons residing within twenty-five miles of such place shall be allowed to vote by proxy. No person not being an attorney shall have the privilege of becoming a member of the council.

3. The president, vice-president and council so first appointed shall continue in office three years. At all meetings of the council four members, including the president or vice-president, or other presiding member, shall form a quorum. At least ten members of the society shall be required to form a quorum at any meeting.

4. At the expiration of three years from the date of their taking office the president, vice-president and council shall retire from office, and be succeeded by a new president, vice-president and council, to be elected in the manner provided by the second section of this Act : Provided, however, that the president, vice-president and members of the council retiring as aforesaid, or any of them, shall be eligible for re-election.

No. 27—1883.

Minute book to be kept.

Election of President and Vice-President.

Duration of office of first President, &c.

Fresh election at the end of three years.

No. 27—1883.  
President of meet-  
ings.

5. The vice-president shall, in the absence of the president, perform all duties and functions appertaining to the office of the president, and preside at the meetings of the council: Provided that any meeting of such council at which neither the president nor the vice-president shall be present may elect its own chairman.

In case of office be-  
coming vacant.

6. In case any member of the said council shall die or resign or be absent from the Colony for the space of six months, or be absent from six consecutive meetings of the council, his office shall become vacant. All vacancies occurring under the provisions of this section shall be filled by election at a duly convened meeting of the society, and any member so elected to fill any such vacancy shall be elected to hold office until the expiration of the term during which the person in whose place he shall have been elected would have been entitled to hold office.

Duration of office  
of elected President,  
&c.

7. The president and vice-president shall respectively continue in office for three years, unless during that period he shall die, resign, or cease to be a member of the council, or be absent from the Colony for the space of six months, in any of which cases his office shall become vacant and another member of the council be elected in his room and stead, who shall continue in office until the expiration of the term during which his predecessor would have been entitled to continue in office.

Who eligible to be  
elected members of  
the society.

8. The said council shall have power from time to time at their meetings, to be held at the times and places to be directed by the bye-laws of the society, to appoint and elect in the manner to be directed by such bye-laws, such persons as they shall think fit, being attorneys or notaries practising within the said Colony, or being persons who shall have so practised and shall have voluntarily retired from such practice (not being barristers or advocates), to be members of the society.

Who shall cease  
to be members.

9. In case any member of the society shall in consequence of the order of any Court of competent jurisdiction be rendered incapable by reason of malpractice or other professional misconduct of practising in the Courts of Justice of this Colony or any of them, or as a notary in this Colony, such person shall forthwith cease to be a member of the society.

Powers of the coun-  
cil.

10. Subject and without prejudice to the powers hereinafter vested in the general meetings of the society, the council shall have the sole and entire management of the society and of the income and property thereof for the uses, purposes and benefit of the society, and shall have the sole and exclusive right of nominating and appointing a secretary, treasurer, librarian, lecturer, and such other officers, clerks, attendants and servants as they may deem necessary or useful to the society, and of removing them if they shall think fit, and shall prescribe their respective duties: And it shall and may be lawful for the council or any three or more of them to assemble and meet together as often as they shall think fit until the passing of the bye-laws of the society, and from and



after the passing of such bye-laws, at such times and places as shall be directed by the said bye-laws, and from time to time to do all such acts as shall appear to them or the majority of the council then present necessary or fitting to be done in order to carry into full operation and effect the object and purposes of the society: Provided always that the same be not inconsistent with or repugnant to this Act or any existing bye-law, ordinance, or regulation made, ordered, or agreed upon at any special general meeting of the society, or the laws and statutes of this Colony.

11. At any general meeting it shall and may be lawful for the members of the society, or such of them as shall be then present, to ordain and make such and so many bye-laws, rules, orders and ordinances as to them or the major part of them shall seem necessary, convenient and proper for the good government of the society and of the members and affairs thereof, and the manner in which any vacancy in the council shall be supplied, and for regulating the times and places at which meetings of the council shall be held, and the manner of appointing or admitting persons to be members of the society, and of removing or expelling members from the society, and for convening the ordinary or any special meetings of the members, and for establishing, maintaining, and regulating the use of a law library, and generally for carrying out the objects for which the society is founded, with reasonable penalties and fines to be contained in such bye-laws on the offenders for non-performance of or for disobedience to the same, and the said bye-laws, rules, orders, ordinances, penalties and fines, or any of them, from time to time to alter, change or annul as the said general meeting shall think requisite; provided all such bye-laws, rules, orders, ordinances, penalties and fines be reasonable and not repugnant or contrary to the laws or statutes of this Colony, and provided they be approved by the Attorney-General for the time being.

Bye-Laws.

12. A general meeting of the members of the society shall be held within three calendar months after the election of the first president, vice-president and council, for the making and ordaining of bye-laws, rules, orders and ordinances for the government of the society; and an annual meeting shall thereafter be held at Cape Town in the month of June in every year, or as soon thereafter as conveniently may be, for the said purposes and for other purposes of the society; and other meetings shall be held from time to time as occasion shall require. All meetings, other than the annual general meetings of the members of the society shall be held at such times and places as shall be determined by the majority of the members of the society present, in person or by proxy, at meetings held for the purpose of deciding when and where such meetings shall be held: Provided that members not present shall have the right to vote by proxy on the question of the time when and the place where such meetings shall be held.

When first general meeting to be held.

Annual meeting.

Proxies.

No. 27—1883.

Who to preside.

13. At all general meetings the president of the society, if he shall be present, and if not, then the vice-president, and in the absence of the president and vice-president then some one of the members of the council to be chosen by the council, and in the absence of the president, vice-president, and all the members of the council, then some member of the society, to be chosen at the meeting shall preside as chairman.

Before admission as attorneys all candidates must pass one of the University Law Examinations.

14. Subject to the exemptions allowed by this Act or by regulations made under the authority thereof, no person shall, after the taking effect thereof, be admitted to practise as an attorney or notary, except upon production to and registration with the council and the Registrar of the Court to which application for admission shall be made of a certificate of having passed one of the examinations in law and jurisprudence referred to in the third section of the Act 12 of 1858 of the University of the Cape of Good Hope, and a true copy of all articles of clerkship shall be registered with the council of the society, and a fee of two guineas paid for such registration within three months of the execution of such articles: Provided, however, that nothing in this Act shall apply to the admission or registration of the articles of any person who shall have been articulated with a view to admission as an attorney or notary previous to the taking effect hereof.

Provisions to apply to candidates for admission to E.D. Court and High Court of Griqualand.

15. Such of the provisions of this Act as affect the admission of persons to practise as attorneys shall apply *mutatis mutandis* to persons applying to the Eastern Districts Court or the High Court of Griqualand for admission to practise as attorneys; and all the laws regulating the admission of attorneys in the Supreme Court shall apply to persons seeking to be admitted as such in the Eastern Districts Court or the High Court of Griqualand, and anything repugnant to or inconsistent with the said provisions in any existing Proclamation, Ordinance, or Act contained shall be, and the same is hereby repealed. Subject to such exemptions as are in this Act mentioned, no person applying after the taking effect of this Act to the Supreme Court, or the Eastern Districts Court, or the High Court of Griqualand for admission as an attorney shall be entitled to an order for such admission until he shall have lodged with the Registrar of such of the above mentioned Courts as he shall apply to, a certificate from the council of the society of his having duly complied with the provisions of the fourteenth section hereof, or those hereinafter in the eighteenth section mentioned.

Fees for certificate from society.

16. For every certificate lodged with or obtained from the said council, the person to whom the same refers shall pay to the society such fees in respect of the same as may from time to time be determined by regulations, to be made by the council in accordance with the provisions of this Act: Provided that such fees shall not exceed the sum of one guinea.

17. A certificate of having passed the examination prescribed by section XIV of this Act shall not be required from any person exempted by the tenth section of the Solicitors' Act, 1877, of the Imperial Parliament (40 & 41 Vic., Chap. 25).

No. 27—1883.  
In what cases certificate not required.

18. No person practising or entitled to practise in the United Kingdom of Great Britain and Ireland, as attorneys, or solicitors, or writers to the signet in Scotland, shall be required to produce a certificate of having passed the examination prescribed by the fourteenth section of this Act, but every such person shall produce to and register with the council of the society sufficient proof of his legal authority to practise in England, Scotland, or Ireland, and shall, upon payment of the fee as provided for in the sixteenth section hereof, obtain a certificate from the council and lodge the same with the Registrar of the Court as provided in the fifteenth section hereof.

Attorneys, &c., of United Kingdom not required to produce council's certificate.

19. Save as in the eighteenth section hereof appears nothing in this Act shall affect the acts, rules and regulations now in force respecting the admission of English, Scotch and Irish solicitors and writers to the signet to practise in the Courts of this Colony.

Existing rules, &c., as to such attorneys, &c., to continue.

20. Due notice shall be given to the council of the society of all applications to the Court to admit, suspend, or strike off the roll any attorney or notary, and the society shall be entitled to appear and be heard either in opposition to or in support of any such application.

Notice of applications to admit, suspend, &c., attorneys to be given to council.

21. If it shall appear to the council, or be represented to them by a requisition in writing signed by two or more members of the society, that there is reason to suppose that any member of the society has been guilty of conduct which in the absence of satisfactory explanation would render him unfit to remain a member of the society, the council shall send to such member a statement in writing of the conduct imputed to him, and shall appoint a special meeting of the council for the consideration of the subject. At least twenty-one days' notice of such meeting shall be given to such member in order that he may be present and be heard if he shall think fit. If at such meeting or any adjournment thereof the council shall be of opinion that such member ought to be excluded from the society, they shall state their opinion thereon in the form of a report to be laid before a special general meeting of the society, and such member shall be liable by the order and resolution of the majority of such meeting to be excluded from the society, and immediately upon such order or resolution being passed he shall cease to be a member thereof. But no order shall be made at any such meeting for the exclusion of any member unless ten members at least shall be present at the time appointed for the chair to be taken at such meeting, or within half an hour afterwards. But it shall be competent to call another meeting to consider the same question of the expulsion of such member.

Proceedings in regard to any member of society suspected of misconduct.

No. 27—1883.

In case of attorneys, &c., not members of the society.

22. If the council shall become cognizant of any professional or alleged professional misconduct of any attorney or notary, whether such attorney or notary be a member of the said Law Society or not, after due examination into the circumstances, and in case there is in their opinion, or in the opinion of a majority of them, a *prima facie* case against such attorney or notary, it shall be incumbent on the president, on behalf of the said society, to bring the circumstances to the notice of the Supreme Court by application thereto for the striking off the rolls or other punishment of the accused party, of which due notice shall be given to him, and the members of such council in the *bona fide* exercise of their duty and discretion herein shall not be liable to any action or suit for damages for defamation of character, libel, or any other cause at the hands of any party against whom any such application shall have been unsuccessfully made.

Provisions in regard to the "Eastern Districts Law Society."

23. The Eastern Districts Law Society, as now established under articles of association of 15th January, 1883, shall within three months after the passing of this Act file and register in the office of the Registrar of the Supreme Court, a true and correct copy duly certified by the president of the said society of said articles of association; and any other Law Society hereafter to be established within this Colony, shall in like manner, within three months after the execution of the like or similar articles of association, file the same with the Registrar of the Supreme Court, and any amendments or alterations made and agreed to, from time to time, of such articles of association, under the authority thereof, shall in the like manner, be filed and registered in the said office of the Registrar of the Supreme Court.

President thereof to be *ex-officio* member of this society.

24. The president of the Eastern Districts Law Society, and of any other Law Society now established, or hereafter to be established within this Colony, under similar articles of association, shall, *ex-officio*, be members of the council of the said society by this Act established.

Constitution of E.D. Law Society not affected by this Act.

25. Nothing in this Act contained shall be taken to affect the constitution and object of the Eastern Districts Law Society as now established, or the constitution and object of any other Law Society to be hereafter established within this Colony, under similar articles of association.

Short title.

26. This Act may be cited for all purposes as "The Incorporated Law Society Act, 1883."

No. 21—1864.] <sup>(1)</sup>

\* \* \* \* \*

13. All advocates and attorneys admitted and enrolled in the Supreme Court shall be entitled, upon proof of such admission and enrolment, to be admitted and enrolled as advocates or attorneys respectively in the said Court of the Eastern Districts.

Advocates and attorneys of Supreme Court entitled to be enrolled as such in Eastern Districts Court.

14. The said Court of the Eastern Districts may approve, admit, and enrol, as an advocate or an attorney thereof, any person who would, by the law for the time being regulating the admission of advocates and attorneys in the said Supreme Court, be qualified to be admitted and enrolled an advocate or attorney (as the case may be) of such Supreme Court, and such person, when so admitted and enrolled, shall, upon proof of such admission and enrolment, be entitled to be admitted and enrolled in the said Supreme Court.

Enrolment of advocate or attorney in Eastern Districts Court to entitle person so enrolled to enrolment in Supreme Court.

15. Every such person as aforesaid, admitted and enrolled by the said Court of the Eastern Districts as an advocate or attorney, shall take and subscribe the like oaths as such person would have taken and subscribed if admitted and enrolled by the Supreme Court.

Oath to be taken by advocate or attorney on enrolment.

16. Every person who at the taking effect of this Act shall be an admitted attorney of the Circuit Courts of this Colony, shall be entitled to be admitted and enrolled as an attorney of such last-mentioned Court.

Attorneys admitted to practise in Circuit Courts may be enrolled.

17. In case there shall, at the time of the opening of the said Court of the Eastern Districts, or at any time afterwards, be fewer than four attorneys admitted and enrolled therein, under and by virtue of any of the preceding sections of this Act, and domiciled within the district of Resident Magistrates within which such Court shall be appointed to be holden, then it shall be lawful for such Court to admit and enrol, as attorneys thereof, so many persons of good fame and credit, domiciled within the said district, being public notaries and persons who have practised as agents in one or more of the Circuit Courts of this Colony for not less than five years, as the said Court shall consider necessary.

When notaries may be allowed to practise as attorneys before Eastern Districts Court.

18. No person admitted and enrolled in the Court of the Eastern Districts under either of the two last preceding sections shall, by reason thereof, be entitled to be admitted or enrolled in the Supreme Court.

Persons admitted under two preceding sections not entitled to enrolment in Supreme Court.

19. Advocates shall be admitted to act as attorneys in the Court of the Eastern Districts, and attorneys shall be admitted to act as advocates in the said Court in the like cases, and none other, as those in which, by the two hundred and first and two hundred and second of the rules and orders for the Circuit Courts of this Colony, advocates may appear and act for attorneys, and *vice versa*, attorneys may appear and act for advocates.

When advocates may act as attorneys and attorneys as advocates.

\* \* \* \* \*

<sup>1</sup> For full text of this Act see "Administration of Justice."

No. 3—1865.] (1)

\* \* \* \* \*

Advocates, attorneys, notaries of Supreme Court of British Kaffraria and their articed clerks, how affected by this Act.

8. Every advocate admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled, after such incorporation as aforesaid, upon proof of such admission and enrolment, to be admitted and enrolled as an advocate in the Supreme Court of the Colony of the Cape of Good Hope and in the Court of the Eastern Districts, without the payment of any fee or charge, and all attorneys admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled, after such incorporation as aforesaid, upon proof of such admission and enrolment, to be admitted and enrolled as attorneys of the Court of the Eastern Districts without the payment of any fee or charge; and service rendered under articles by any clerk to any attorney of the Supreme Court of British Kaffraria before such incorporation shall, for the purpose of entitling the articed clerk so serving to be admitted and enrolled an attorney of the Court of the Eastern Districts, be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, an attorney of the Court of the Eastern Districts: Provided, also, that in case the attorney of the Supreme Court of British Kaffraria to whom any such clerk shall have been articed shall be admitted and enrolled as an attorney of the Court of the Eastern Districts within two months next after such incorporation as aforesaid then such service shall be deemed and taken to have been unbroken, and shall be reckoned continuously from the first commencement thereof: Provided, further, that every notary public who shall have obtained authority to practise as such in British Kaffraria shall, after such incorporation as aforesaid, upon proof of such authority, be entitled to receive the authority of the Supreme Court of the Colony of the Cape of Good Hope to practise as such notary public in the said Colony, without examination, and without the payment of any fee or charge; and the provisions of this section relative to service rendered under articles by any clerk to an attorney of the Supreme Court of British Kaffraria before such incorporation shall, *mutatis mutandis*, apply to the service rendered under articles to a notary public of British Kaffraria, in like manner as if when the Supreme Court of British Kaffraria is mentioned in the said section the territory of British Kaffraria had been named, and as if when the Court of the Eastern Districts is mentioned the Supreme Court of the Colony of the Cape of Good Hope had been named. (2)

\* \* \* \* \*

<sup>1</sup> For full text of this Act see "Annexation."

<sup>2</sup> See Act 6, 1872, § 2 *infra*.

No. 6—1872.]

[July 31, 1872.

## ACT

To Amend the Act No. 3, 1865, entitled “An Act to make provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the number of the Members of both Houses of Parliament of the said Colony,” and to remove the existing Disqualification of certain Persons, otherwise well qualified, from being admitted Attorneys of the Supreme Court.

WHEREAS by the sixth section of Act No. 3, 1865, entitled “An Act to make provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the number of the Members of both Houses of Parliament of the said Colony,” the Supreme Court of British Kaffraria, existing at the time of such incorporation, was abolished: And whereas by the eighth section of the aforesaid Act, it is provided that every advocate admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled after such incorporation, upon proof of such admission and enrolment, to be admitted and enrolled as an advocate in the Supreme Court and in the Court of the Eastern Districts, without the payment of any fee or charge; and that all attorneys admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled after such incorporation, upon proof of such admission and enrolment, to be admitted and enrolled as attorneys of the Court of the Eastern Districts, without the payment of any fee or charge: And whereas the ninth section of the said Act provides that no person admitted and enrolled as an attorney of the Court of the Eastern Districts under and by virtue of the eighth section of the said Act shall be entitled, by reason of such admission and enrolment, to be admitted and enrolled as an attorney of the Supreme Court: And whereas it is expedient to repeal the ninth section of the aforesaid Act, and to make other provisions in lieu thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The ninth section of the aforesaid Act No. 3, 1865, is hereby repealed.

Section 9 of Act No. 3 of 1865 repealed

2. Every person admitted and enrolled as an attorney of the Court of the Eastern Districts of the Cape of Good Hope, under and by virtue of the eighth section of the aforesaid Act No. 3, 1865, shall, upon proof of such admission and enrolment, be entitled to be admitted and enrolled an attorney of the Supreme Court of the Colony of the Cape of Good Hope, without the payment of any fee or charge.

Attorneys of Eastern Districts Court entitled to enrolment in Supreme Court.

No. 39—1877.

Service of artieled  
clerks, how to be  
reckoned.

3. Service rendered before the taking effect of this Act under articles by any clerk to any attorney of the Court of the Eastern Districts admitted as such under and by virtue of the said eighth section of said Act 3 of 1865, shall, for the purpose of entitling the artieled clerk so serving to be admitted and enrolled as an attorney of the said Supreme Court, be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, and thereafter, an attorney of the said Supreme Court; provided that in case the attorney to whom such clerk shall have been artieled shall be admitted and enrolled as an attorney of the said Supreme Court within three months next after the taking effect of this Act, such service shall be deemed and taken to have been unbroken, and shall be reckoned continuously from the first commencement thereof.

No. 39—1877.]

[August 15, 1879.

\* \* \* \* \*

Admission of ad-  
vocates, attorneys  
and notaries.

21. (1) From and after such annexation as aforesaid, every advocate and attorney duly admitted and enrolled in the Supreme Court of the Colony of the Cape of Good Hope, or in the said Court of the Eastern Districts, shall be entitled, upon proof of such admission and enrolment, and that he is still entitled to practise therein, to be admitted and enrolled as an advocate or attorney, as the case may be, in the said High Court of Griqualand, without the payment of any fee or charge, and every advocate and attorney duly admitted and enrolled in the said High Court shall be similarly entitled, upon proof as aforesaid, to be admitted and enrolled as an advocate or attorney, as the case may be, in the said Supreme Court and Court of the Eastern Districts; and service rendered under articles by any clerk to any attorney of either of the said Courts before such annexation shall, for the purpose of entitling the artieled clerk so serving to be admitted and enrolled as an attorney of either or both of the other said Courts be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, an attorney of such Court; and every notary public who shall have obtained authority to practise as such in the said province shall, after such annexation as aforesaid, upon proof of such authority, and that he is still entitled to practise therein, be entitled to receive the authority of the Supreme Court of this Colony to practise as such notary public in this Colony, without examination, and without the payment of any fee or charge; and the provisions of this section relative to service rendered under articles by any clerk to an attorney as

<sup>1</sup> As to admission of Conveyancers see Proclamation (G. W.) No. 25, 1872. For full text of this Act see "Annexation."



aforesaid before such annexation shall, *mutatis mutandis*, apply to the service rendered under articles to a notary public of Griqualand West, in like manner as if such notary public had during such service been duly authorized to practise as such by the said Supreme Court.

Ord. 82—1830.

\* \* \* \* \*

No. 82.—Sd. G. Lowry Cole.] [December 23, 1830.]

Ordinance for Altering and Amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony. (1)

WHEREAS it is expedient to alter and amend the laws and regulations relative to medical practitioners and apothecaries in this Colony: Be it therefore enacted by His Excellency the Governor in Council, that from and after the 1st day of January, 1831, the proclamation of the 26th September, 1823, shall be repealed, and the same is hereby repealed accordingly.

Preamble.

Repeal of former proclamations.

2. And be it further enacted that it shall and may be lawful for the Governor, or other person administering the Government of the Colony for the time being, to appoint a committee consisting of a president and such number of members, being of the medical profession, as he shall think proper, together with a secretary, under the style and description of "The Colonial Medical Committee," who shall superintend the civil medical concerns of this Colony; and it shall be lawful for the Governor, or other person administering the Government as aforesaid, to remove the said members or any of them, and upon the removal, death, or resignation of the said members or any of them to appoint such other person or persons as he shall think fit.

Appointment of colonial medical committee.

3. (2) And be it further enacted that no person shall practise as physician, surgeon, accoucheur, surgeon-apothecary, apothecary, chemist, or druggist, in this Colony without taking out a licence to that effect from the Governor, or other person administering the Government as aforesaid; and previously to obtaining such licence any person wishing to practise as aforesaid shall submit his diploma or other certificate of his being duly qualified to practise such branch or branches of the medical profession as he shall profess to exercise, for the examination and approval of the said

Licence to medical practitioners, on exhibition of diploma to committee.

<sup>1</sup> Repealed by Ordinance No. 12, 1836; but this latter Ordinance not having been confirmed by the Home Government within three years of its enactment has become of no effect; and consequently Ordinance No. 82 has been revived, and is the present medical law. As to sale of intoxicating liquors by apothecaries, see par. 2, § 2, Act 28 of 1883 (Liquor).

<sup>2</sup> By Govt. Notice No. 715, of 23rd August, 1878, issued under Act 25 of 1878, the Colonial Secretary or Under Col. Secretary is empowered to sign these licences.

Ord. 82—1830.

Exception as to medical officers in Her Majesty's Service.

Licence to apothecaries after apprenticeship in the colony, and examination.

Penalty on practice without licence, £50.

Penalty on sale of drugs by merchants, &c., unless submitted to examination of committee, £50.

Precautions as to sale and custody of poisons.

Penalty on want of due caution as to poisons, and on sale of drugs of bad quality, not less than £5, nor more than £50: and liability to forfeiture of licence.

Preparations of medicines by Pharmacopœia Londinensis, unless otherwise directed.

committee: Provided, always, that it shall be lawful for any medical officer of His Majesty's land or sea service to exercise his profession without taking out such licence as aforesaid.

4. And be it further enacted that any person who has served as apprentice for a period not less than four years to any regularly licensed apothecary in this Colony may obtain a licence to practise as an apothecary on passing an examination before the said committee and to the satisfaction of the members thereof.

5. And be it further enacted that any person who shall practise any of the aforesaid branches of the medical profession, without such licence as aforesaid, shall on conviction be liable to a penalty of fifty pounds for each offence.

6. And be it further enacted that any merchant, trader, or dealer who shall import into this Colony any drugs or medicines, whether the same be patent or not, and shall vend the same without their having been first submitted to the examination of the said committee and a certificate obtained from them of their being of good quality, shall incur and be liable to a penalty of fifty pounds for each offence.

7. And be it further enacted that all apothecaries and vendors of medicines shall label all vessels or packages containing mineral acids, preparations of arsenic, opium, and other powerful medicines, commonly denominated poisons, with the word "Poison," and keep the same in secure places under lock and key, and shall take care that they be not sold in dangerous doses or quantities without a written permission from a Magistrate, or prescription from a regular physician or surgeon; and if it shall appear that any apothecary or vendor of medicines shall suffer such poisonous or dangerous medicines to be kept without due care, or shall sell or keep for sale in his possession any medicines or drugs of bad quality, he shall be liable on conviction before any competent Court to a penalty not less than five pounds and not more than fifty pounds, one-half of which shall go to the informer; and he shall further become liable to forfeiture of his licence.

8. And be it further enacted that all apothecaries, chemists, and druggists shall prepare their medicines according to the Pharmacopœia Londinensis, unless otherwise directed by the prescribing medical practitioner.

No. 15—1877.]

[August 8, 1877.

AN ACT

To Amend the Law relating to Stamp Duties.

\* \* \* \* \*

3. (1) From and after the first day of January next no licence under "the Stamp Act, 1864," as or for an apothecary, chemist or druggist shall be issued to any person who has not obtained the licence enabling him to practise as such mentioned in the third section of the Ordinance No. 82, intituled "Ordinance for Altering and Amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony;" and if any such licence under the said Stamp Act shall be issued to any such unlicensed person the same shall be void and of no effect.

Apothecary's licence to be issued to qualified practitioners only.

4. A licence as an apothecary, chemist or druggist issued under the said Stamp Act, 1864, shall cover all dealings as an apothecary, chemist and druggist, as well as all dealings covered by a retail shop licence, and must be taken out by every surgeon, doctor of medicine, or other person selling or supplying any medicines other than patent and homœopathic medicines and medicines commonly known as "Dutch medicines."

Apothecary's licence to cover certain dealings.

5. Every wholesale and every retail licence shall authorize the sale of patent and homœopathic medicines, of the medicines commonly known as "Dutch medicines," and of any article or thing which although used as a medicine is not solely used as such and is not mixed or prepared for use as a medicine; and no licence as an apothecary, chemist or druggist shall be necessary for the sale of any such things as in this section mentioned.

Must be taken out by surgeons, &c.

Medicines which may be sold under wholesale or retail licence.

\* \* \* \* \*

No. 6—1861.]

[August 14, 1861.

ACT

For Amending the Law regarding the Period of Time by the lapse of which certain Suits and Actions become barred by Prescription.

WHEREAS certain debts and demands of such a nature that they ought, if just and true, to have been recovered without any unreasonable delay, do not by law become barred by prescription until after the expiration of thirty years or upwards from the date, when they became due: And whereas it is expedient to amend the law in this respect so as to protect the public, and especially the heirs of deceased persons, against such debts and demands as

Preamble.

<sup>1</sup> For amount of licence payable by physicians, apothecaries, &c., see Act 20, 1884, "Stamps and Licences."

*k/k*

No. 6—1861.

aforesaid, when set up at a date so remote as to lead to a presumption that they must have been settled and satisfied, although from accident or inadvertence no positive evidence of that fact has been preserved: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws and usages repealed.

1. All former laws and usages in so far as they may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Action for liquid debts barred by prescription of eight years.

2. Except as hereinafter is excepted, no suit or action upon any bill of exchange, promissory note, or other liquid document of debt of such a nature as to be capable of sustaining a claim for the sort of interlocutory judgment commonly called a "provisional sentence" shall be capable of being brought at any time after the expiration of eight years from the time when the cause of action upon such liquid document first accrued, or in case any such cause of action shall have already accrued, then after the expiration of eight years from the time of the taking effect of this Act: Provided that nothing in this Act contained shall extend to or affect any mortgage bond general or special or any judgment of any Court in this Colony or elsewhere,

Suits and actions to which preceding section applies.

3. The provisions of the last preceding section shall extend and apply to the respective suits and actions following, that is to say: to suits and actions for money due for goods sold and delivered,—for money lent by the plaintiff to the defendant,—for money paid by the plaintiff for the use of the defendant,—for money had and received by the defendant for the use of the plaintiff (including the "*condictio indebiti*"),—for rent upon any lease or contract for hire,—for money claimed upon or by virtue of an admission of an amount due upon an account stated as settled, for money due upon an award of arbitrators,—for money due as the purchase money of fixed property,—for money claimed for work and labour done and materials for the same provided,—and for money claimed upon or by virtue of any policy of assurance.

Placaat of 1540 repealed.

4. The one hundred and sixty-fifth article of the Placaat of the Emperor Charles the V., of the 4th October, 1540, establishing in certain cases a prescription of two years, is hereby repealed, to the end that the substance thereof, with certain amendments, may be re-enacted by this Act.

Prescription of three years established in certain cases.

5. No suit or action for the fees or for the fees and disbursements of advocates, attorneys, public notaries, conveyancers, land surveyors, or persons practising any branch of the medical profession, or for the amount of any baker's, or butcher's, or tailor's, or dressmaker's, or boot and shoemaker's bill or account,—nor any suit or action for the salary or wages of any merchant's clerk or other persons employed in any merchant's or dealer's store, counting-house, or shop,—nor any suit or action for the wages as a servant of any person coming under the definition of the term

Advocates  
Attorneys  
Notaries  
Conveyancers  
Land Surveyors  
Doctors  
Bakers  
Butchers  
Tailors  
Dressmakers  
Shoemakers.

“servant” given in the Masters and Servants Act, No. 15 of 1856, shall (except as hereinafter is excepted) be capable of being brought at any time after the expiration of three years from the time when the cause of action in any such case as aforesaid first accrued or in case such cause or action shall have already accrued, then after the expiration of three years from the time of the taking effect of this Act: Provided that as often as any acknowledgment of or promise in writing to pay any such debt as is in this section mentioned, shall have been made or given at any time before the expiration of such term of three years, then such debt may be sued for at any time within eight years from the date of such acknowledgment or promise, or in case such acknowledgment or promise shall specify some future time for the payment of the debt, then within eight years from the date at which the said debt became, by or according to the tenor or effect of such acknowledgment or promise, due and payable. And provided that nothing in this section contained shall prevent the application to any such debt as is in this section mentioned of any of the provisions of the eighth section of this Act.

6. If at the time when any such cause of action as is in the second, third, and fifth sections of this Act mentioned, first accrued, the person to whom the same accrued shall have been a minor, or under coverture, or of unsound mind, or absent from the Colony, then such person, or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action shall have expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may be) next after the time at which the person to whom such cause of action first accrued shall have ceased to be under any such disability as aforesaid, or shall have died, whichever of these two events shall have first happened.

How in regard to minors or persons under legal disability.

7. Nothing in this Act contained shall extend to alter the existing law relative to the effect of a judicial interpellation by the creditor of his debtor in staying or interrupting the course of any incompleated term or period of prescription, which law shall apply in all respects to any term of prescription by this Act established precisely as if such term were the term now by law established.

This Act not to prevent a judicial interruption of term of prescription.

8. In any suit or action in this Colony in which any question shall arise concerning the effect, if any, of any acknowledgment of debt or any promise to pay any debt or any payment of interest on any debt, or any part payment of the principal of any debt made by any person whomsoever, whether the person sought to be charged in such suit or action or not, in taking any cause of action out of the operation of this Act, such question shall be judged of and determined in this Colony in like manner and by the same rules and principles as it would be judged of and determined in any of Her Majesty's Courts of Record at Westminster, in case

Questions as to the effect of an acknowledgment of debt in taking the case out of the operation of this Act.

No. 6—1861.

the effect of the same acknowledgment, promise, or payment were in question at the same time in any of such last-mentioned Courts.

Simple endorsement of payment not sufficient to take the case out of the operation of this Act.

9. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other liquid document, by or on behalf of the party to whom such payment shall be made, shall be deemed to be sufficient proof of such payment, so as to take the case out of the operation of this Act.

Prescription may affect certain items of claim and not the others.

10. If any suit or action shall be brought for the amount or balance of an account containing any number of items or matters of claim more than one of such a nature as are in this Act mentioned, no claim in respect of an item or matter which arose at a date beyond the period of prescription by this Act established, shall be claimable by reason only of some other matter of claim comprised in the same account, having first arisen within the said period.

How when person against whom cause of action has arisen is absent from the Colony.

11. If at the time when any such cause of action as is in this Act mentioned first accrued, the person against whom such cause of action had arisen shall be absent from this Colony, then the person to whom such cause of action so accrued shall have the same time after the return of such other person to this Colony, within which to bring his action as by this Act he would have had after such cause of action first accrued, in case the person against whom the same had arisen had then been within this Colony: Provided, also, that in case any such cause of action as aforesaid shall have already arisen against any person who shall be absent from this Colony at the time of the taking effect of this Act, such cause of action shall, for the purpose of this section, be deemed to have first accrued upon the day on which such person shall return to this Colony.

How in case of joint debtors when one is absent from the Colony.

12. Where any such cause of action as is in this Act mentioned lies against two or more joint debtors, the person to whom such cause of action shall have accrued shall not be entitled to any time beyond the time fixed by this Act, within which to commence any action or suit for enforcing such cause of action against any one or more of such joint debtors who shall not be absent from this Colony at the time when such cause of action first accrued, by reason only that some one or more of such joint debtors was or were at the time such cause of action so accrued absent from this Colony: Provided also, that the plaintiff in any such last mentioned action shall not be barred from maintaining an action against the joint debtor or joint debtors who was or were absent from the Colony at the time the cause of such action accrued, after his or their return to this Colony, by reason only that judgment for such cause of action was already recovered against one or more of such joint debtors who was not or were not absent from this Colony at the time in that behalf aforesaid.

13. Nothing in this Act contained shall be construed so as to deprive any Court in this Colony of any power which it may now by law possess to take into consideration as matter of evidence in any suit or action pending in such Court any lapse of time shorter than the period of prescription established by this Act, and to give such weight to such evidence as it may under the particular circumstances of the case appear to be entitled to.

No. 7—1865.  
Power of court to judge of shorter terms of prescription not affected.

14. This Act may be cited for all purposes as “The Prescription Amendment Act, 1861.”

Short title.

No. 7—1865.]

[October 10, 1865.

106. (1) The period of prescription in regard to immovable property in this Colony, and servitudes upon or connected therewith, shall, from and after the 1st day of January, 1867, be thirty years, instead of the third of a century.

Period of prescription and servitude limited to thirty years.

No. 21—1879.]

[Sept. 11, 1879.

ACT

To Authorize the Detention in the Gaols of this Colony of certain Persons sentenced to Imprisonment under Martial Law.

WHEREAS, in consequence of the engagement in rebellion and other acts of aggression against Her Majesty the Queen, of certain evil-disposed persons, the Governor did issue a proclamation, under his hand and under the public seal of this Colony, dated the 31st day of December, 1877, proclaiming and directing, amongst other things, that from and after the promulgation of such proclamation, martial law should be in force within the districts of Stutterheim and Komgha :

Preamble.

And whereas, in pursuance of the objects of the said proclamation, the Governor did issue a Government notice, bearing date the 1st day of January, 1878, and numbered 73, 1878, whereby, after reciting the objects of the operations then being carried on in the said divisions of Stutterheim and Komgha, and after reciting that special Commissioners would be permanently appointed at the principal stations in the location and its neighbourhood, and that one would be nominated to accompany every column which might have to act in the districts proclaimed : His Excellency was pleased to appoint certain persons in such notice named to administer justice in the districts proclaimed : And whereas it was expedient to issue, and the said Governor did issue, to the persons in the aforesaid notice appointed, a letter of instructions whereby, amongst

<sup>1</sup> For full text of this Act see “Land Beacons.”

No. 21—1879.

other things, such persons were informed and instructed that they were vested with all the powers of a Circuit Court, subject to the confirmation by Government of all sentences exceeding one year's imprisonment, and that all prisoners were to be sent to East London; and that all offenders against the law would be tried by the persons appointed as aforesaid, but more especially those Natives either taken with arms in their hands or who had in any way aided or abetted in the then prevailing disorder; and enumerating the several classes of offenders who might be brought for trial before the persons so appointed as aforesaid, and directing the different degrees of punishment to which such offenders might be sentenced, and stating and declaring the necessity of securing all the essentials of a fair trial of all offenders brought before such persons, and the means of securing such essentials: And whereas several persons engaged in acts of hostility and aggression against Her Majesty the Queen in the said proclaimed districts, were afterwards, from time to time, tried and sentenced by the persons so appointed as aforesaid, and are now imprisoned by virtue of such sentences in various of the gaols of this Colony: And whereas it is expedient that such sentences should be confirmed by the Legislature of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Sentences under martial law confirmed.

1. The several sentences pronounced by the persons, or any of them, specially appointed by the Government notice, dated 1st January, 1878, and numbered No. 73, 1878, upon persons tried by them for acts of rebellion, hostility, or aggression, under such authority, are hereby confirmed: And all persons now confined in any of the gaols of this Colony, under or by virtue of such sentences, shall continue liable to be so confined until the expiration of the sentences respectively passed upon them under the authority aforesaid.

Short title.

2. This Act may be cited the "Martial Law Prisoners Detention Act, 1879."

No. 13—1880.]

[July 29, 1880.

## ACT

## To Provide for the Detention within the Colony of certain Prisoners of War.

Preamble.

WHEREAS the persons named in the schedule to this Act have from time to time been captured in arms against Her Majesty the Queen, and have since such capture been, and now are, detained as prisoners of war: And whereas it is necessary for the preservation of the tranquillity of South Africa, and for the general safety, that



the said persons should continue to be detained and kept in custody as hereinafter provided; and that all due precautions should be taken to prevent them from joining and using their influence with the tribes to which they respectively belong: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. It shall and may be lawful for the Governor for the time being to detain and keep as prisoners of war the persons named in the schedule to this Act, or any of such persons, during the pleasure of the said Governor, in the custody of such officer or officers, in such place and under such restrictions as to the said Governor from time to time shall seem meet.

Authority to detain prisoners of war named in schedule.

2. It shall and may be lawful for the said Governor to provide sufficient means for the safe custody and maintenance as prisoners of war of the said persons and each of them during such time as the said Governor shall deem it desirable that such persons or any of them shall be detained and kept in custody as aforesaid.

Means for safe custody, &c., to be provided.

3. The place of detention shall be defined and fixed by proclamation, to be published in the *Government Gazette*, but may, from time to time, by like proclamation, be changed and altered as may be found expedient.

Place of detention to be fixed by proclamation.

4. It shall be lawful for the said Governor from time to time to make such regulations as may be considered necessary, in order to secure the safe custody and detention of such persons and each of them during the time they or he shall be detained and kept in custody for the purposes aforesaid, and to regulate the communication with the said persons and each of them.

Regulations to be made.

5. In case the said persons, or any of them, shall, during the time they or he shall be detained and kept in custody as aforesaid, proceed beyond the limits of the said place of detention without the permission, in writing, of the Secretary for Native Affairs, or in case they or any of them shall contravene any regulation which may be made as aforesaid, it shall be lawful for any person, with or without warrant, to apprehend them or him; and thereupon it shall be lawful for the said Governor to take such steps as may be considered necessary for the further and more effectual safe custody of the said offender or offenders during the remainder of the term of their detention and custody as aforesaid.

Prisoners going beyond limits to be apprehended, &c.

6. Every person who shall rescue or attempt to rescue, or aid or incite the said persons, or any of them, to escape, or attempt to escape, beyond the limits of the said place of detention, or shall knowingly harbour the said persons, or any of them, when they have so escaped, shall, on conviction before any competent Court, be liable to imprisonment, with or without hard labour, for any term not exceeding one year.

Penalties or attempt to rescue, or assist in escape of prisoners.

7. The said Governor and the commander or commanders of Her Majesty's naval or military forces for the time being, and all

Indemnity clause.

No. 13—1880.

persons acting under them or any or either of them, shall be, and they are, hereby jointly and severally indemnified, freed, and discharged from and against all actions, suits, and prosecutions whatsoever, whether criminal or civil, which might be brought or instituted in any of the Courts of this Colony for, or on account, or in respect of, any acts, matters, and things whatsoever done by the said Governor or the said commander or commanders of Her Majesty's naval or military forces, or by any person or persons acting under them or any or either of them respectively in any command or capacity, civil or military, in bringing or conveying the said persons, or any of them, within the limits of this Colony, and in detaining and keeping them, or any of them, in custody therein prior to the taking effect of this Act: Provided that all such acts, matters, and things shall have been done *bonâ fide* and properly in furtherance and execution of bringing or conveying the said persons, or any of them, within the limits of this Colony, and detaining and keeping them, or any of them, in custody therein as aforesaid: Provided also, that every such act, matter, or thing shall be presumed to have been done *bonâ fide* and properly, until the contrary shall be made to appear by the party complaining.

---

SCHEDULE.

Ngubo.  
 Nxito.  
 Joey.  
 Stock Tyali.  
 Jacobus Afrikaaner.  
 Klaas Pofadder.  
 John Adams.  
 Jan Kop or Kok (*alias* Sanagab or Zenekop).  
 Titus Lynx.  
 Piet Rooy.  
 David Diederick.  
 Carl Ruyter.

---

## PUBLIC HEALTH.

1. Act 4—1883, (Quarantine, Infectious Diseases).	4. Act 3—1883, (Cemeteries).
2. „ 10—1884, do.	5. „ 39—1885, (Contagious Diseases, Human).
3. „ 41—1885, do.	6. „ 8—1884, (Leprosy Repression).

No. 4—1883.]

[September 6, 1883.

## ACT

## To Amend the Law relating to Public Health.

WHEREAS it is expedient to amend the law relating to public health: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The laws mentioned in the first schedule hereto to the extent to which the same are therein expressed to be repealed shall be and the same are hereby repealed, except as to any things done, offences committed, or proceedings commenced or pending at the time of the taking effect of this Act.

## PART I.—GENERAL PROVISIONS.

2. In the construction of this Act the term “local authority” shall mean

The council or board of commissioners of any municipality;  
 The board of management of any community in which the “Villages Management Act, 1881,” is in operation;  
 A board consisting of not more than five persons nominated by the Governor for the purpose of carrying the provisions of this Act into effect, within any area to be fixed by the Governor by proclamation;  
 The Resident Magistrate, or Special Justice of the Peace (if any, or as the case may be,) residing in any town or village which is not a municipality, or in which the said “Villages Management Act” is not in operation, or in which no such board as aforesaid has been appointed to act; and, when there shall be no such Resident Magistrate, Special Justice of the Peace or board, any Justice of the Peace residing in such town or village. The area within which such Resident Magistrate or Special or other Justice of the Peace, as the case may be, shall exercise authority, shall be such as the Governor may by proclamation determine.

The term “quarantine” shall include in its meaning the interdiction of free communication with persons on land infected with disease or suspected of being so infected.

- No. 4—1883.      And the term “port officer” shall mean the Port Captain or Harbour Master of any port, or the officer for the time being performing duties usually performed by such officers.
- Municipalities may levy rates.      3. [Repealed by Act No. 41, 1885.]
- Tenants’ rates.      4. The council or commissioners of every municipality are hereby empowered to levy special rates upon all property liable to be rated for the purpose of defraying any expenses incurred or to be incurred under the provisions of this Act.
- Expenses when no power to levy rates.      When such council or commissioners are authorized to levy tenants’ rates, the special rates shall be levied as such, and all such rates shall be imposed, collected, and recovered in the same manner as ordinary rates.
- repealed by Act 40 of 1889*      5. <sup>(1)</sup> In case any expense shall be incurred in carrying out the provisions of this Act by any local authority not having by law the power to levy rates upon the landed property within the area over which such local authority shall exercise its powers, it shall be lawful for the Divisional Council of the division in which such area is situated, and such Divisional Council is hereby required upon the application in writing of such local authority stating the amount required to be raised for the purposes of this section to levy a rate upon all the rateable property within such area, and such rate shall be levied and collected by the said Divisional Council in all respects as if it were a rate lawfully levied by such council for its own purposes.
- Powers exercised by Governor may be revoked.      6. Any power by this Act authorized to be exercised by the Governor may be exercised from time to time, and any order, regulation or direction to be made or given by the Governor, may be revoked, altered, or varied as occasion may require.
- Quarantine to apply to small-pox.      7. The provisions of this Act and any regulations framed under this Act concerning quarantine or contagious or infectious diseases shall extend and apply to small-pox and to such other diseases as the Governor shall by proclamation declare are to be deemed contagious or infectious within the meaning of this Act.
- Publication of regulations.      8. All regulations made by the Governor under the provisions of this Act shall be published in the *Government Gazette*, and shall have effect from and after the date of such publication: and such regulations shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the next session.
- Magistrates’ Courts to have jurisdiction under this Act.      9. The Courts of the Resident Magistrates shall have jurisdiction in any prosecution for the contravention of the provisions of this Act, or any order or regulation made under this Act, in respect of any offence committed within the districts of such Magistrates respectively, and in the case of any offence committed in any port or upon the sea within three miles of the shore the Court of the

<sup>1</sup> See Act 41, 1885, *infra*.

Resident Magistrate of any district in which the person accused shall be found within six months after the commission of the act or offence charged, shall have such jurisdiction.

No. 4—1883.

Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act.

#### PART II.—QUARANTINE.

10. All vessels, as well Her Majesty's ships of war, and the ships of war of other nations, as others, arriving in the ports of this Colony, shall be liable to the provisions of this Act, and any regulations made under this Act, concerning quarantine and the prevention of infection.

Vessels of every kind subject to provisions of this Act.

11. The Governor may notify that any place, whether within or beyond the Colony, is infected with any infectious or contagious disease dangerous to the health of the people. Immediately after such notification

Notification of infectious disease by Governor and the consequences.

- (1) All vessels arriving at any port or place in the Colony from or having touched at any such infected place;
- (2) All vessels and boats receiving any person or thing from or out of any vessel coming from or having touched at any such infected place;
- (3) All persons or things on board of any vessel coming from or having touched at such infected place, or on board of any such vessel as is above mentioned in sub-section (2);

shall be liable to quarantine.

12. Any vessel arriving at any port or place in this Colony from any place within or beyond this Colony having any infectious or contagious disease on board, or on board of which any infectious or contagious disease may have appeared in the course of the voyage, or arriving under circumstances deemed to be suspicious as to infection or contagion, although such vessel shall not have arrived from any place declared to be infected, and any persons and things on board the same, shall be liable to quarantine.

Ships which have had infectious diseases during voyage.

13. All vessels and boats, whether coming from a place declared to be infected, or being otherwise liable to quarantine under the provisions of this Act, and all persons (as well pilots as others) and things, whether coming or brought in such vessels or boats, or going or put on board the same, either before or after the arrival of such vessels or boats at any place in the Colony, shall perform quarantine in such places for such time and in such manner as shall be directed by the Governor, and shall be subject to all the provisions contained in this Act, or in any regulations made under the authority of this Act concerning quarantine.

Vessels, &c., arriving from infected places to be quarantined.

14. Until any vessels and boats, persons and things, liable to quarantine shall respectively have performed, and shall be duly discharged from quarantine, no such persons or things shall come or be brought on shore, or go or be put on board any other vessel

Nothing to be landed till ship discharged from quarantine.

No. 4—1883.

or boat in order to be brought or come on shore in any place in this Colony, except in such manner, and in such cases, and by such authority as shall be directed or permitted by the Governor, or by any regulations made under the authority of this Act.

Penalties for breach of quarantine.

15. Any commander or master of a vessel arriving at any port or place in this Colony from any place beyond, or from, or having touched at any place declared by the Governor to be infected, within the Colony, and any person on board thereof, communicating or attempting to communicate with the shore, or with any other vessel, or with any boat from any vessel, or from the shore, or allowing any person on board so to do, otherwise than by signal, before such vessel shall have received pratique from the port officer or health officer, or other person duly authorized in this Act, and before the health flag has been hoisted in token thereof, and any person from the shore, or from any vessel in any of the ports of this Colony, or from any boat, except the officers authorized under this Act, boarding or going alongside any such vessel arriving in any of the said ports, or receiving into any boat any parcel or package, or other thing whatever, from on board such vessel, previously to such vessel having received pratique, in the mode hereinafter described, 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 six months.

Port Officers and others boarding vessels to remain on board till pratique granted.

16. If at any time it should be necessary for the port officer to board any vessel entering a port of this Colony, or to allow his boat's crew to board the same, or otherwise personally to communicate with such vessel, with the view of rendering assistance in case of danger, previously to such vessel having received pratique, all such persons who may have so communicated with the said vessel shall remain in quarantine, either on board such vessel, or in their own boat, until such time as the vessel with which they have so communicated may have obtained pratique, on pain of rendering themselves liable to the penalties hereinafter imposed on persons unlawfully communicating with the shore before pratique has been given; and if the vessel with which the port officer, or boat's crew, have communicated as aforesaid, be afterwards placed under quarantine by a competent authority, the said port officer, or boat's crew, shall remain in and be liable to quarantine.

Masters of ships to furnish declaration of health, &c.

17. On the arrival of any vessel in any port of this Colony, the commander or master thereof shall, upon being furnished by the port officer, or health officer, or other person duly authorized, with a printed declaration of health, according to the form in the second schedule hereto, fill up and sign the same, if he feels himself justified from the perfect state of health of every person on board so to do, and shall return the said declaration, so filled up and signed, to the officer as aforesaid; whereupon such vessel may be granted pratique; and the commander or master shall then hoist the union-

jack, or flag of the nation to which the vessel belongs, to the main-top-gallant-mast head, as the health flag, in token of such pratique having been duly granted. But no such pratique shall be deemed or taken to be so granted until duly signified by such health flag having been so hoisted.

No. 4—1888.

18. If the commander or master of any such vessel shall sign and deliver any declaration of health containing any false statement, or false answer to any question therein inserted, such commander or master shall, upon conviction, be liable to a penalty not exceeding two hundred pounds, or in default of payment, to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such penalty and such imprisonment.

Penalty for false statement.

19. If any commander or master of a vessel arriving in a port of this Colony should, from the ill state of health of any of the persons on board of his vessel, or from any other circumstances, not deem himself warranted to sign the declaration of the perfectly healthy state of the vessel, the port officer, or other person as the case may be, shall in every such case make every necessary inquiry into the state of health of the officers, passengers, crew, and others, and if there should be any sick persons on board into the nature and character of their complaints; and shall after such inquiry, either detain the said vessel in quarantine, or give her pratique as to him may appear fitting: Provided that when there may be any reasonable cause of doubt or suspicion, he shall not grant pratique, but shall place the vessel in quarantine, and report thereon, if the vessel is in Table Bay, to the Colonial Secretary, or if in any of the other ports of this Colony, to the Resident Magistrate thereat, or to the Justice of the Peace or other local authority nearest thereto, in order that further medical advice may be obtained.

If clean bill of health cannot be given inquiry to be made.

20. If the port officer or health officer should deem it necessary to place the vessel in quarantine, he shall notify the same to the commander or master thereof, and give him a copy of this Act, and of any regulations made under this Act concerning quarantine, and order him to hoist a yellow flag at the fore-top-gallant-mast head, and shall forthwith report the same to the Colonial Secretary, or other chief local authority as aforesaid of the district in which the port is situated, in order that the necessary measures may be taken for cutting off all communication with such vessel, for such time as may be needful, and, under proper precautions to be superintended by the health officer, or other person duly appointed, for furnishing the said vessel with any supplies she may be in want of; and if the commander or master of any vessel so placed in quarantine have not a yellow flag on board, the health officer or port officer shall order one to be furnished forthwith, at the expense of the said commander or master, who shall hoist the same, or cause it to be hoisted, as directed, and to be kept up during the day, so long as the vessel

In case of quarantine, duty of Port Officer.

No. 4—1883.

may be detained in quarantine, under a penalty not exceeding twenty pounds; and during the night, the commander or master of any vessel so placed in quarantine shall, in lieu of such yellow flag, cause to be hoisted and kept at the fore-top-gallant mast head, two lighted lanterns, one over the other, under a similar penalty not exceeding twenty pounds.

In what cases Port Officer may give pratique.

21. In case of the illness, or other necessary absence, of the health officer, the port officer may give pratique to any vessel whereof the commander or master has signed the health certificate as aforesaid: Provided such vessel has not touched at, or communicated with vessels coming from any infected port, in which case the port officer shall not give pratique, but a competent officer shall be expressly appointed to act for and perform the functions of the health officer.

Powers of Magistrates and Justices of the Peace where no Health or Port Officer.

22. At any port of this Colony for which no health officer or port officer is appointed, the Resident Magistrate, or any officer of Customs, or in the absence of any such officer, any Justice of the Peace or field-cornet at or near such port, may, in the event of the casual arrival of a vessel thereat, act, or depute some competent person to act, as health officer and port officer; and the said Resident Magistrate, or other officer as aforesaid, and any person by him deputed to act, is hereby authorized and required, as far as circumstances will permit, to perform all the duties assigned by this Act to the health officer and port officer respectively, and is to be considered and obeyed as such.

Power to quarantine.

23. The Resident Magistrate, or in the absence of such officer, any Justice of the Peace, at or near any port of this Colony other than Table Bay, is hereby authorized and required to detain any vessel in quarantine, and to prevent all communication therewith in case of actual necessity (such necessity to be certified by the health officer or other person duly appointed to visit vessels at such port), and shall forthwith report the same to the Colonial Secretary; and the health officers and port officers at the several ports of the Colony are hereby authorized and required, in case of necessity, to place all vessels in quarantine in the manner directed by the provisions of this Act, until report thereof be made to the Colonial Secretary, or to a Resident Magistrate, Justice of the Peace, or other competent local authority as aforesaid.

Masters and others in quarantine to be subject to regulations made by competent officer.

24. All commanders or masters of vessels, and other persons liable to quarantine, who may have been placed in quarantine by a competent officer as aforesaid, and all persons having had any intercourse or communication with them, shall be subject, in respect to such quarantine, during the period they are detained therein, to such orders as they may receive from the health officer, or port officer, or other competent officer acting for them; and the said officers are hereby authorized and required to enforce all due obedience to the said orders, and, in case of necessity, to call in others to their assistance: and any person who is liable to or



under quarantine, refusing or neglecting to obey such orders, or attempting to evade the performance of quarantine shall, upon conviction, be liable to a penalty not exceeding twenty pounds, and in default of payment, to imprisonment for a period not exceeding three months.

25. If, in the case of any person placed in quarantine, either on board ship, or in any lazaret, or other place allotted for the performance of quarantine, it should be necessary, for the due security of the public health, that guards be placed over such person, either in boats or on shore, it shall be lawful for such guards, if an attempt at escape should be made by any such person so placed in quarantine, to resist the same by open force, and to use their arms in case of absolute necessity; and such guards shall be held justified for the same, in the event of any bodily injury being inflicted on any such person so attempting to break quarantine.

Guards, and power to use force.

26. The Governor may do all or any of the following things:

Powers to be exercised by the Governor.

- (1) Appoint stations or places for the performance of quarantine where all vessels liable to quarantine, and the crews, passengers, and persons on board thereof shall perform the same.
- (2) Appoint lazarets and other places where the crews, passengers, and other persons, and the things which may be on board the said vessels shall be detained and kept for the performance of quarantine.
- (3) Appoint and remove superintendents of such lazarets stations, or places, and such other officers as may be necessary for carrying out the provisions of this Act, or any regulations made in pursuance of this Act concerning quarantine.
- (4) Make regulations concerning quarantine and the prevention of infection, and make such orders, and give such directions as shall appear to be necessary to cut off all communication between any person infected, or under the circumstances likely to be infected, with any contagious or infectious disease, and the rest of the inhabitants of the Colony.
- (5) Make such orders and regulations and give such directions as he may deem fit for shortening the time of quarantine to be performed by particular vessels or particular persons and things, or for absolutely or conditionally releasing them or any of them from quarantine.
- (6) Appoint limits around any quarantine station, lazaret, or other places within which it shall not be lawful for any person, or any vessel or boats to go or be brought.
- (7) Attach a penalty for the contravention of any regulation or order made in pursuance of this Act not exceeding

No. 4—1883.

twenty pounds, and prescribe a term of imprisonment either with or without hard labour, in default of payment, not exceeding three months.

- (8) Order or direct that all or any of the powers, duties, or acts, authorized or required to be performed by the Governor at any port or place in this Colony may be exercised, performed, or done by any local authority, or by any officer or person appointed by the Governor subject to such restrictions as he may impose.

Penalties for offences against this Act.

27. Any person convicted of any of the following acts or offences shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment :

- (1) If being a person liable to quarantine, he shall wilfully refuse or neglect to repair, when required, to a quarantine station, lazaret or other place appointed for performing quarantine.
- (2) If having been placed in a quarantine station or lazaret, he shall escape or attempt to escape from the same before quarantine has been duly performed.
- (3) If being the master or a person in charge of any vessel, liable to perform quarantine, he shall quit, or knowingly permit or suffer any person to quit, such vessel, by going on shore, or by going on board any other vessel, before such quarantine shall be fully performed, unless by licence granted by virtue of any orders or regulations made by the Governor.
- (4) If being the master or person in charge of any vessel, liable to quarantine, he shall not within a reasonable time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed to the place appointed for such vessel and lading to perform quarantine.
- (5) If having come in any vessel liable to quarantine, or having gone on board any such vessel, he shall either before or after the arrival of such vessel at any place within this Colony, quit such vessel (unless by licence granted by virtue of any orders or regulations made by the Governor), by going on shore, or by going on board any other vessel, or any boat, with intent to go on shore, before such vessel, so liable to quarantine shall be regularly discharged from the performance thereof.
- (6) If he shall wilfully and without leave go within the limits assigned or appointed by the Governor, around any quarantine station, lazaret, or other place for the performance of quarantine.
- (7) If being a person whose duty it shall be to execute, or

- carry out any of the provisions of this Act, or any order or regulation made, or direction given under the provisions of this Act concerning quarantine, he shall knowingly or wilfully be guilty of any breach or neglect of his duty.
- (8) If he shall convey, or remove, or secrete, or conceal for the purpose of conveying or removing, anything from any vessel actually performing quarantine, or from any quarantine station, lazaret, or other place where such thing shall be performing quarantine.
  - (9) If not being authorized under this Act or otherwise, he shall communicate with any vessel placed under quarantine or with any persons under quarantine on board any vessel or at any quarantine station, lazaret, or other place.
  - (10) If being a superintendent or other person in charge of, or a guard over any vessel, person, or thing performing quarantine, he shall connive at or assist in the breach of any of the provisions of this Act or any regulations made under this Act concerning quarantine, or shall desert from his duty.
  - (11) If he shall contravene any of the provisions of this Act, or of any order or regulations made by the Governor under the provisions of this Act, concerning quarantine in respect of which no other penalty shall have been expressly provided.

28. Any person may without warrant arrest any person who shall, contrary to the provisions of this Act, or of any order or regulations made under this Act concerning quarantine, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret or place appointed for performing quarantine, for the purpose of taking such person before any Magistrate or Justice of the Peace. Any Resident Magistrate or Justice of the Peace may grant a warrant for apprehending and conveying any such person to the vessel from which he shall have come or have escaped, or to any vessel or lazaret or place appointed for performing quarantine, or for confining such person in any place of safe custody, not being a public prison, until such person can be conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Governor as to the disposal of such person. And until such person shall be conveyed to such place or the Governor shall have given such directions as aforesaid, such Resident Magistrate or Justice of the Peace may make any order that may be deemed necessary in that behalf.

Powers to arrest persons breaking quarantine.

29. Any health officer, or superintendent of any quarantine station or other place where quarantine is to be performed, may prescribe such measures as may be necessary for cleansing, puri-

Provisions for cleansing and disinfecting.

///

No. 4—1883.

fyng, and disinfecting any vessel in quarantine, and the passengers and crew thereof, and the cargo therein, and may order the destruction of any clothing or materials which cannot be cleansed, purified or disinfected.

For opening and airing things.

30. All things liable to quarantine under this Act may be opened and aired in such place and for such time and in such manner as shall be directed by the Governor by any order, or by any regulations made under this Act.

Supplies to crews and passengers of quarantined ships.

31. During the detention of the crew and passengers of any vessel in quarantine, whether on board or on shore, the commander or master of such vessel shall provide and supply provisions for the said crew and passengers on the same scale as during a voyage. If he shall omit to do so, provisions may be supplied by the superintendent or person in charge of the place at which such vessel is detained, and the expenses incurred in so doing may be recovered by such superintendent or other person, as a debt due from the commander or master, or the owner, or both, and such debt shall be a charge on the vessel.

### PART III.—INFECTIOUS DISEASES AND HOSPITALS.

Regulations to be made or directions given by Governor to local authority in infected places.

32. The Governor may make regulations or give directions for all or any of the following purposes, which regulations and directions shall be acted upon by the local authority immediately any portion of the Colony is affected by or threatened with small-pox, or any epidemic, endemic, infectious, or contagious disease :

- (1) For house to house visitation.
- (2) For the speedy interment of the dead.
- (3) For the conduct and direction of the route of funerals.
- (4) For providing medical aid and accommodation.
- (5) For the detention and isolation of persons suffering from or under circumstances likely to be infected with such disease, and for preventing the spread of disease.
- (6) For the promotion of cleansing, ventilation, and disinfection.
- (7) For preventing the overcrowding of any house or part of a house so as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.

Penalty for contravention thereof.

Any person who contravenes any regulation made by the Governor under this section, or willfully obstructs any person acting under the authority of or in carrying out any such regulations, shall upon conviction be liable to a penalty not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months, or to both such fine and such imprisonment.

Duties of local authority.

33. The local authority shall superintend and see to the execution of such regulations and directions as aforesaid, and shall appoint and pay medical or other officers or persons, and do and

provide all such acts, matters and things as may be necessary for mitigating any such disease, and for superintending or aiding in the carrying out of such regulations, or for carrying out the same as the case may require. The local authority may from time to time commence or direct any prosecution or legal proceedings for or in respect of the contravention of this Act or any regulations made under this Act.

No. 4—1883.

34. Where any local authority is of opinion, on the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice, in writing, to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice. If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty not exceeding ten pounds and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default. Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

Power to order disinfection.

35. When any householder knows that a person within the house occupied by him is suffering from small-pox or any other disease declared by the Governor to be infectious, he shall immediately give notice thereof to the local authority of the place on which he dwells. It shall be the duty of the medical practitioner in attendance in such case to inform the householder as early as possible of the infectious nature of the disease. Any person neglecting or refusing to comply with the provisions of this section, shall be liable to a penalty not exceeding ten pounds.

Householder to give notice of small-pox, &amp;c.

36. Any local authority may do any of the following things :

What local authority may do.

- (1) Direct the destruction of any bedding, clothing or other articles which have been exposed to infection from any infectious disease, and may give compensation for the same.
- (2) Provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.
- (3) Provide and maintain vehicles suitable for the conveyance of persons suffering under any infectious disease, and

No. 4—1883.

Who may be removed to hospitals.

may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

37. When any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district any person who is suffering from any infectious disease, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, or who is not under medical treatment by some medical practitioner, may, on a certificate signed by a qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed by order of any Resident Magistrate or Justice of the Peace to such hospital or place at the cost of the local authority. An order under this section may be addressed to any constable or member of a Police Force, and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

Penalties for infected persons exposing themselves.

38. Any person who—

- (1) While suffering from any infectious disease wilfully exposes himself in any street, public place, shop, inn, railway carriage, or public conveyance, or enters any public conveyance without the consent of the owner, conductor or driver thereof, after notifying to such owner, conductor, or driver that he is so suffering; or
- (2) Being in charge of any person so suffering, so exposes such sufferer; or
- (3) Gives, lends, sells, transmits or exposes, any bedding clothing, rags, or other things which have been exposed to infection from any such disease; unless the same shall have been disinfected to the satisfaction of the local authority,

shall be liable to a penalty not exceeding ten pounds; and in default of payment to imprisonment with or without hard labour for any period not exceeding three months, and a person who while suffering from any such disease, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the Court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

Exceptions.

No proceeding under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected, provided such transmission be made in accordance with the instructions of the local authority previously obtained.

Power of summary removal of infected persons found in public places.

39. Any person found in any road, street, or other public place suffering from small-pox, or any disease declared by the Governor to be deemed contagious or infectious, may be summarily removed

No. 4—1883.

by any local authority or person authorized to carry the provisions of this Act into operation, to the residence of such diseased person, or if he shall have none, or none in which he could be properly treated for such disease, to any public hospital or lazaret, or to any place appointed by such local authority, for the reception or detention of persons suffering from contagious or infectious disease, and such person may be detained in any such hospital, lazaret, or other place, until it shall be certified by a qualified medical practitioner that he may safely be discharged.

40. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance, after it has to his knowledge conveyed any person suffering from an infectious disease; and if he fails to do so he shall be liable to a penalty not exceeding ten pounds; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

Disinfection of public vehicles.

41. Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any infectious disease, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section, the keeper of any hotel shall be deemed to let for hire part of a house to any person admitted as a guest into such hotel.

Penalties for letting infected premises on hire.

42. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, shall be liable to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding three months.

Penalties for false answers.

43. Any local authority may provide hospitals or temporary places for the reception of the sick, or persons who may have come in contact with the sick, and for that purpose may

Powers of local authority to provide hospitals.

- (1) Build such hospitals or places of reception; or
- (2) Contract for the use of any premises for the purpose of such hospital or place of reception; or
- (3) Enter into any agreement with any person for the reception of the sick on payment of such annual or other sum as may be agreed upon.

Two or more local authorities may combine in providing a common hospital.

44. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick

Expenses by local authority.

No. 4—1883.

(whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him or from his estate in the event of his dying in such hospital or place.

Powers of entry,  
&c.

45. The officers of any local authority, or any person authorized in writing by any such officer, shall have power to enter on any premises for the purpose of carrying out, or superintending the carrying out, of the provisions of this Act, or any regulations framed under this Act.

Penalties for resist-  
ance.

46. Any person wilfully refusing entrance to any officer of a local authority or any person duly authorized in writing as aforesaid, to any premises, and any person obstructing, or using foul, violent, or insulting language to any such officer or person while in the execution of any of the provisions of this Act, or any regulation made under this Act, shall upon conviction, be liable to a penalty not exceeding ten pounds, and, in default of payment, to imprisonment, with or without hard labour, for any period not exceeding three months.

Penalties for non-  
vaccinated person re-  
fusing to be vaccinat-  
ed.

47. In case of the prevalence of small-pox the local authority may require any person within the limits over which such local authority shall have authority, to give proof that such person has been successfully vaccinated, and if any person who shall not give proof of having been vaccinated, shall refuse to allow himself to be vaccinated, such person shall, upon conviction, be liable successively in respect of each refusal to a penalty not exceeding two pounds, or, in default of payment, to imprisonment for any period not exceeding seven days.

Removal of bodies  
of persons dying of  
infectious disease.

48. Where the body of any person who has died of any infectious disease is retained in a room where persons live or sleep, or where any dead body is in such a state as to endanger the health of the inmates of the house or room in which such body is retained, any Resident Magistrate or Justice of the Peace may, upon production of a certificate, signed by a qualified medical practitioner, order the body to be removed at the cost of the local authority to such place as such Magistrate or Justice of the Peace may direct, and may direct the body to be buried within a time to be stated in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so stated, and do bury the same, it shall be the duty of the local authority to cause such body to be buried, but any expense incurred in the removal and burial of the body may be recovered from any person who but for the removal of such body and its burial by the local authority would have been obliged to cause the same to be buried. Any person disobeying or obstructing the execution of any such order made by a Resident Magistrate or Justice of the Peace shall be liable to a penalty not exceeding ten pounds.

When Governor  
may revoke power of  
local authority.

49. If at any time it shall appear to the Governor that any local authority has failed or neglected or refused to carry out any



of the provisions of this Act, or any regulations made under this Act, which it was the duty of such local authority to carry out, the Governor may declare all the powers and authorities vested in such local authority under this Act, to be thenceforth transferred and vested in such other local authority, or in a board consisting of not more than five persons as he may appoint, and may from time to time revoke, alter, or vary any order or direction made under the provisions of this section.

No. 4—1883.

50. All district surgeons and medical officers shall give any information they may acquire in regard to the diseases referred to in this Act to the local authority forthwith, and shall be bound to attend to or inspect any case or place, or report on any matter relative to this Act, and the district surgeons shall be entitled to charge and receive from the local authority in all such cases a fee of two shillings and sixpence for each certificate required, and other medical officers a fee of five shillings, actual travelling expenses to be paid in all cases over and above such fees.

Duties of District Surgeons and others.

## PART IV.—VACCINATION.

51. In this part of this Act the words and expressions following shall have the meanings hereafter respectively attached to them, that is to say :

Interpretation.

The word "parent" shall include the father and mother of a legitimate child, and the mother of an illegitimate child.

The words "medical practitioner" shall mean a medical practitioner authorized to practise in this Colony, under any law now or hereafter to be in force in this Colony.

The term "lymph" shall mean lymph taken from a heifer or from a fully formed vaccine vesicle, on the day week after vaccination, and before any areola has been formed ; the subject from which such vaccine lymph is taken being a healthy infant or child who has not previously been vaccinated, or a healthy young heifer.

52. The Colonial Secretary shall at all times cause to be kept at such places as the Governor shall appoint, a supply of pure lymph for the purpose of furnishing on application and without payment to district surgeons and to medical practitioners such reasonable quantities of such lymph as may be required. The expense of providing, keeping, and supplying such lymph shall be defrayed out of moneys provided by Parliament for the purpose of this Act.

District Surgeons to be supplied with lymph.

53. The Governor may issue regulations providing for the vaccination and revaccination of persons gratuitously by the district surgeons, or persons specially appointed as vaccinators, and for appointing places for the performance of vaccination, and also for giving from time to time notice of the days and hours at which the district surgeon, or other vaccinator appointed, will attend at such place to vaccinate all persons not already successfully vaccinated who may then appear there.

Regulations for gratuitous vaccination.

No. 4—1883.

Vaccinated person  
to attend to be in-  
spected.

54. When the operation of vaccinating or revaccinating any person over the age of fourteen years is performed by the district surgeon or vaccinator appointed by the Governor without charge to such person, the district surgeon or vaccinator may require such person to attend at the same or some other place on the same day in the following week, in order that such person may be inspected, and the result of the operation ascertained; and the district surgeon or vaccinator shall, if required, deliver to the person vaccinated or revaccinated who shall attend, a certificate stating the result of the operation. If any such person shall fail to attend, or to permit the district surgeon or vaccinator to ascertain the result of the operation, he shall be liable to a penalty not exceeding ten shillings.

Penalty for neglect.

Children to be vac-  
cinated within one  
year of birth.

55. The parent of every child born in this Colony after the first day of January, one thousand eight hundred and eighty-four, shall within twelve months after the birth of such child, or when by reason of the death, illness, absence, or inability of the parent or other cause, any other person shall have the custody of such child, such person shall within twelve months after receiving the custody of such child, cause such child to be vaccinated by some medical practitioner. As often as any such child shall be taken to a district surgeon, or person specially appointed by the Governor as vaccinator, such district surgeon or vaccinator shall, subject to any regulations framed by the Governor, vaccinate such child without charge.

Vaccinated child to  
be produced for in-  
spection a week after  
vaccination.

56. In every case in which a child shall be vaccinated by a district surgeon or vaccinator appointed by the Governor free of charge, the parent or other person, as the case may be, having custody of such child, shall cause such child to be taken upon the same day in the following week to the district surgeon or vaccinator by whom the operation was performed, in order that he may inspect such child and ascertain by inspection the result of the operation; and if he sees fit take from such child lymph for the performance of other operations; and in the event of the operation being unsuccessful such parent or other person shall, if the district surgeon or vaccinator so direct, cause the child to be forthwith again vaccinated, and subsequently inspected as on the previous occasion.

Unsuccessful vac-  
nation.

57. If any district surgeon, vaccinator specially appointed, or medical practitioner shall be of opinion that any child whom he has three times unsuccessfully vaccinated, is not susceptible of successful vaccination, or that a child, brought to him for vaccination, has had the small-pox, he shall deliver to the parent of such child a certificate according to the fact; and the parent or such person as aforesaid shall thereafter not be required to cause such child to be vaccinated.

Penalty for refus-  
ing to have lymph  
extracted.

58. Every parent or person having the custody of any child under the age of fourteen years who shall neglect to have or cause

such child to be vaccinated, or, after vaccination, gratuitously to be inspected according to the provisions in this Act respectively contained, or who shall refuse to permit the district surgeon or vaccinator specially appointed to remove or retain a reasonable quantity of lymph from the arm of any such child gratuitously vaccinated according to the provisions of this part of this Act, and shall not in any of the said cases render a reasonable excuse for such neglect shall, upon conviction, be liable to a penalty not exceeding two pounds.

No. 4—1883.

59. If any Resident Magistrate shall have information or have reason to believe that any child under the age of fourteen years within his district has not been successfully vaccinated, he may cause notice to be given to the parent or person having the custody of such child to procure its being vaccinated within a period to be stated, not being less than seven days, and if such notice be disregarded such Resident Magistrate may summons such parent or person to appear with the child, before him, at a certain time and place, and if the Resident Magistrate shall find after such examination as he shall deem necessary, that the child has not been vaccinated nor has already had the small-pox he may, if he see fit, make an order directing the child to be vaccinated within a certain time. If at the expiration of such time the child shall not have been vaccinated or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be liable to a penalty not exceeding two pounds. And if any parent or other person as aforesaid, shall fail to appear to any such summons, or to produce such child, such parent or person shall be liable in respect of each act and successively to a penalty not exceeding two pounds.

Duties of Magistrates when children suspected of not being vaccinated.

60. No person who has not been vaccinated shall be appointed, or if appointed prior to the taking effect of this Act, promoted to any office in the public service.

No unvaccinated person eligible for civil service.

61. Every child admitted to any school which shall be maintained or aided by any grant from public funds, shall be vaccinated by the district surgeon or a vaccinator specially appointed as aforesaid, unless such child shall have been previously vaccinated.

Children attending public schools.

62. The Governor may order the inmates of prisons, convict stations, lunatic asylums, reformatories, hospitals, and other places where the poor or sick are received, to be vaccinated upon or after their entrance, and may declare an age after which vaccination or revaccination under this section shall not be compulsory.

Inmates of prisons, &c., &c.

#### PART V.—CEMETERIES. (1)

63. No cemetery or burial-ground shall hereafter be established or opened in, or within the limits assigned for, any city, town, or

No cemetery to be established without leave from Governor.

<sup>1</sup> See also Act 3, 1883 (Cemeteries).

No. 4—1883.

village in this Colony without the leave of the Governor previously obtained.

How and when  
cemeteries may be  
closed.

64. If it shall be made to appear to the Governor that burials in any cemetery or burial-ground now existing or hereafter to be established are, or are likely to be, injurious to the public health, the Governor may by an order or notice to be published in the *Government Gazette* direct that after a time to be mentioned in such order, not being less than six months from the date thereof, burials in such cemetery or burial-ground shall be discontinued, wholly or subject to any exceptions or qualifications mentioned in the same or any subsequent order or notice, and may from time to time postpone the time mentioned in such order or notice for the discontinuance of burials, or otherwise alter or vary any such order or notice.

Penalties for burials  
after such closing.

65. If after the expiration of the time mentioned in any such order or notice, any person shall bury any body in, or shall act or assist in or shall suffer or permit the burial of any body in any cemetery or burial-ground, or within the limits in which burials have by any such order or notice been ordered to be discontinued or prohibited, such person shall upon conviction be liable to a penalty not exceeding fifty pounds.

Short title.

66. This Act may be cited as the "Public Health Act, 1883."

#### THE FIRST SCHEDULE.

Number and Year.	Title.	Extent of Repeal.
No. 1, 1856.	For preventing the spread of Contagious or Infectious Diseases.	The whole.
No. 16, 1857.	To Consolidate the Laws relating to Quarantine and Port Regulations.	The Quarantine Regulations enacted by Sections three to eighteen inclusive and the Schedule A.

#### THE SECOND SCHEDULE.

##### FORM OF DECLARATION OF HEALTH.

1. Name of vessel and commander or master.
2. From what port and whither bound?
3. When sailed.
4. At what intermediate ports or places touched on the voyage, and date of sailing thence?
5. With what vessel communicated during the voyage.

6. Date of each such communication.

7. Did any contagious or infectious disease prevail at the port from which you sailed? If so, what was the nature of such disease?

8. If you touched at any port or communicated with any vessel on the voyage was any contagious or infectious disease prevailing at such port, or on board such vessel? If so state the nature of the disease.

9. Have you any sickness on board at present? If so, what is that sickness, and what number of cases have you under treatment?

10. Has any case of small-pox, or any form of eruptive skin disease, fever, scarlatina, plague, cholera, or other infectious or contagious disease, occurred on board during the voyage? If so, state the number of cases, and the dates of attack and convalescence or termination of the first and last cases of the disease.

11. Have the clothes and bedding used by those persons who have suffered from contagious or infectious disease during the voyage been either destroyed or passed through boiling water?

12. What means, if any, were adopted for preventing the spread of any infectious or contagious disease which occurred during the voyage?

I do hereby declare that the several answers to the questions contained in the above schedule are correct, and that the vessel under my command is in a perfectly healthy state.

Given under my hand this                      day of                      18

\_\_\_\_\_  
Commander or Master.

NOTE.—If the above declaration of health contains any false statement or answer to any question therein inserted, the commander or master signing the same will be liable to a penalty not exceeding £200, or in default of payment, to imprisonment with or without hard labour for a period not exceeding twelve months, or to both such penalty and such imprisonment. If the vessel is not in a healthy state the words "and that the vessel under my command is in a perfectly healthy state" are to be erased.

No. 10—1884.]

[July 11, 1884.

## ACT

### To Provide for the more Effectual Working of the Public Health Act of 1883.

WHEREAS it is desirable to provide for the more effectual working of the Public Health Act of 1883 within certain portions of Griqualand West, and to provide for the due levying of rates for the purposes of that Act on claim property in mines and otherwise: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The Governor may constitute a board to consist of five persons, of whom the Civil Commissioner of Kimberley shall be one, for the purpose of carrying out the provisions of the "Public Health Act of 1883" within such area as he may define within the Division of Kimberley, the Municipality of Beaconsfield, and the respective Mines and Mining Areas of Kimberley, De Beer's,

Preamble.

Governor to constitute a Board of five persons.  
C.C. of Kimberley to be one.

- No. 10—1884. Du Toit's Pan and Bultfontein. Such board shall be deemed a "local authority" for the purposes of the "Public Health Act of 1883" and of this Act.
- Selection of remaining four. 2. Of the remaining four persons to be appointed by the Governor, one shall be selected from the members of the Borough Council of Kimberley, one from the members of the Town Council of Beaconsfield, and two from the members of the mining boards or committees of management as the case may be of the said mines.
- Three to form a quorum. 3. Three of the members of the board constituted under this Act shall form a quorum for the dispatch of business, and in case any member shall absent himself without leave from three consecutive meetings of the board, or from the division of Kimberley for one month, his seat shall become vacant, and another member may thereupon be appointed by the Governor in his place.
- Local authority to levy rates. 4. Subject to the provisions hereinafter in this Act contained the said "local authority" shall, for the purposes of the said Public Health Act, have power to levy and recover rates upon all property liable to assessment, within the borough of Kimberley and municipality of Beaconsfield, and upon all claims and other property within the respective mining areas included within the area under its jurisdiction.
- How value of rateable property to be ascertained. 5. The value of the rateable property upon which such local authority may levy rates shall be the value according to the latest assessment made for the purpose of the said borough of Kimberley and municipality of Beaconsfield, and for the purpose of the respective mining boards or committees of management as the case may be. The said Borough Council of Kimberley, the Town Council of Beaconsfield, and the several mining boards and committees of management aforesaid, shall respectively furnish to the "local authority" copies of their valuation or assessment rolls within ten days after delivery of a notice in writing calling for copies.
- In case valuation roll be not furnished. 6. In case of default in furnishing any copy of such valuation or assessment roll, the "local authority" may either apply to a competent Court to compel the body in default to furnish such copy, or proceed to frame such roll, and for that purpose the "local authority" is hereby invested with all the powers and authority of the body so in default.
- Collection of rates already imposed. 7. The Divisional Council of the Division of Kimberley shall complete the collection of the rate amounting to three farthings in the £ already imposed by such council upon property liable to assessment other than property within the mining areas for the purposes of the said "Public Health Act," and shall from time to time pay over the proceeds of such rate to the said "local authority," but no further rate for such purposes shall be levied, until the said "local authority" have levied and collected a rate of not less than three farthings in the £ on the claim and other property within the mining areas aforesaid.
- Payment over to "local authority."

8. The "local authority" created by this Act shall take over and discharge all debts which may have been contracted by the "local authority" already existing, for the purpose of carrying out the provisions of the said "Public Health Act;" and shall be invested with all property belonging to such last mentioned "local authority."

No. 10—1884.  
New "local authority" to discharge debts of old one.

9. During the prevalence of any epidemic all householders, district surgeons, medical officers and medical practitioners shall report any case or cases of sickness which may come under their notice, and the symptoms of which to their knowledge are similar to the symptoms of the prevailing epidemic, to the Board of Health, or any board appointed under the provisions of this Act; the said cases to be reported within twelve hours under a penalty not exceeding twenty pounds for each default.

During epidemic all cases of sickness to be reported to Board of Health.

10. The Governor may, when he shall deem fit, abolish the "Board of Health" heretofore constituted for the district of Kimberley, or the board to be constituted under the provisions of this Act.

Power to Governor to abolish Board of Health.

11. This Act may be cited as the "Public Health Extension Act, 1884."

Short title.

No. 41—1885.]

[August 11, 1885.]

### ACT

#### To Amend the "Public Health Act, 1883."

WHEREAS it is expedient in certain respects to amend the Act No. 4 of 1883, commonly called the "Public Health Act, 1883:" Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The third section of the said Act is hereby repealed.

2. It shall be lawful for the Governor, out of such moneys as may be appropriated by Parliament for the purpose, to advance to any local authority for the purposes of the said Act such sum as he may deem desirable: and one-half of such amount as shall be satisfactorily proved to have been expended by any local authority for the purposes of preventing the spread of or suppressing contagious or infectious disease, or for quarantine purposes, shall be paid out of the Public Treasury.

Section 3 of Act 4 of 1883 repealed.  
Governor may make advances to local authority.

Half the amount expended for certain purposes of Act 4 of 1883 to be paid by Treasury.

3. As often as any local authority, as defined by the second section of "The Public Health Act, 1883," shall apply to the Divisional Council of any division to levy a rate upon the rateable property within the area in which such local authority has been appointed to act in terms of the fifth section of the said Act, it shall be lawful for the Divisional Council, in addition to levying the rates in the said section mentioned, to levy a rate upon all huts or

Rate on huts and dwellings to be levied in proportion of 1s. for each hut for every farthing in the £.

*Repealed  
by Act 40  
of 1889*

No. 41—1885.

dwellings within such area erected upon Crown land not liable otherwise to be rated, such rate to be in the proportion of one shilling for each hut or dwelling for every farthing in the pound levied upon the assessed owner of rateable property.

How to be collected.

4. The rate in the last preceding section mentioned shall be collected by the Inspectors of Native Locations (if any) within the said area, or such other officer as the Governor may appoint.

No. 3—1883.]

[September 6, 1883.

## ACT

To Facilitate the Establishment of Public Cemeteries and to provide for the Management thereof. <sup>(1)</sup>

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Trustees.

1. The Governor may from time to time appoint trustees, not being fewer than three nor more than seven, for the management of any public cemetery, and every such appointment shall be notified in the *Government Gazette*.

Removal of trustees.

2. The Governor may from time to time remove any trustee of any such cemetery, and upon the removal, death, or resignation of any trustee, appoint another in his place.

Trustees may hold and mortgage land.

3. The trustees, for the time being, so appointed, shall have power to acquire, hold and alienate land for the purposes of this Act, and may raise money on mortgage of any land so held.

Vesting of land in trustees.

4. The legal estate in all lands held by any such trustees in trust for the purposes of this Act shall vest in the trustees for the time being, and the production of the *Government Gazette* containing a notice of the appointment of any trustee, accompanied by a solemn declaration that such trustee then holds office, shall be sufficient proof of the appointment and capacity of such trustee.

Grants may be made of land.

5. Grants of land for the establishment of any public cemetery under this Act may be made—

- (1) Of Crown land by the Governor, with the concurrence of both Houses of Parliament, as provided by the twelfth section of “The Crown Lands Act, 1878.”
- (2) Of land vested in any municipality by the council or commissioners of such municipality, proceeding in accordance with the provisions of any law or municipal regulation requiring due notice of the intention to alienate and the consent of the Governor.

Municipalities, &amp;c., may grant money aids.

6. The commissioners or council of any municipality, any Divisional Council, or any Board of Management created under the “Villages Management Act, 1881,” may from funds at the disposal of such Municipality, Divisional Council or Board of

<sup>1</sup> See also Part V, Act 4, 1883, *supra*.



Management, grant any sum of money in aid of the establishment, and from time to time in aid of the maintenance of any cemetery established under this Act, any existing law to the contrary notwithstanding.

7. (1) The trustees of any such cemetery shall, from time to time, have power to do all or any of the following things :

Powers of trustees.

- (1) To enclose any land held in trust for the purposes of this Act with proper and sufficient walls, rails, or fences.
- (2) To erect suitable gates or entrances.
- (3) To lay out and ornament such cemetery in such manner as shall be most suitable and convenient for the burial of the dead.
- (4) To embellish the same with walks, avenues, roads, trees, and shrubs.
- (5) To preserve, maintain, and keep in a cleanly and orderly state and condition, and to cause to be so maintained and kept the whole of any such cemetery, and its walls and fences, and all monuments, tombstones, enclosures, buildings, erections, walks, trees and shrubs therein or belonging thereto.
- (6) To sell under such conditions and restrictions as they shall think proper the exclusive right of burial, or of constructing vaults with the exclusive right of burial therein either in perpetuity or for a limited period, in such parts of such cemetery as may be appropriated for that purpose.
- (7) To fix a scale of fees payable for any burial plot, and on any vault or grave being dug and made, and on any monument or tombstone being erected or placed in any part of any such cemetery.
- (8) To permit any grave to be dug or made in such cemetery, and any monument or tombstone to be erected or placed in any part of such cemetery as they may think fit, upon payment to them of the fees fixed in the scale aforesaid.
- (9) To define the positions of all graves and vaults permitted to be made in such cemetery, the depth of the graves and construction of coffins to be admitted into vaults, and the covering of vaults so as to prevent the escape of noxious exhalations.
- (10) To protect the buildings, monuments, tombs, shrubberies plantations, and enclosures therein and thereof from disturbance or damage.
- (11) To make such arrangements as they may think fit for conveying, or for regulating and facilitating the conveyance of, the bodies of the dead from the place of death to any cemetery.
- (12) To do and perform, and cause to be done and performed,

<sup>1</sup> For loans to trustees see Act 29, 1885 (Printed under Loans).

- No. 3—1883. all such acts, matters and things as may be necessary and proper for any of the purposes of this Act.
- Restrictions as to vaults. 8. Every vault shall be so constructed that no portion thereof shall be above the level of the earth immediately adjoining or surrounding the said vault.
- Provision for burial of the poor. 9. The trustees of every such cemetery shall cause to be set apart a portion thereof for the burial of poor persons free of charge and shall cause to be buried therein the body of any poor person upon production of an order for that purpose from the Resident Magistrate of the district.
- Trustees may make rules. 10. The trustees of any cemetery shall have power and authority from time to time to make rules and regulations for the execution of their powers under this Act, for regulating their proceedings, the duties of their servants and officers, and preserving order at and convening their meetings. None of such rules shall be contrary to this or any other Act, nor to the conditions of any grant or transfer of land held by such trustees. All such rules and regulations shall be submitted for the approval of the Governor, and when approved and published in the *Government Gazette*, shall have force and effect.
- Quorum of trustees. 11. If the number of trustees appointed shall be three, the powers by this Act conferred may be executed by any two of them, and if the number shall be four or more such powers may be executed by any three of them.
- Majority to decide questions. 12. The majority of the votes of the members present at any meeting of trustees shall determine all questions which may be discussed or considered at such meeting.
- Chairman. 13. The trustees may choose one of their number to be chairman, and if the votes shall in any case be equally divided the chairman shall have a casting vote in addition to his deliberative vote.
- Monuments and tomb-stones. 14. When any person desires to erect and place any monument or tombstone in any part of any such cemetery he shall, before permission is given, submit a plan of the monument or tombstone proposed to be erected and placed to the trustees of such cemetery, who may withhold their permission and prevent the erection of any monument which shall appear to them to be inappropriate or unbecoming.
- Position of such to be determined by trustees. 15. The trustees of any such cemetery shall fix and determine the position of any monument which may be proposed to be erected according to the description, size, and character thereof, having reference to the general plan for ornamenting the cemetery in an appropriate manner.
- Power to remove the same. 16. If any monument, tomb, or other erection shall have been built or erected contrary to the terms and conditions upon which permission to erect or construct the same was granted, or in case such terms and conditions or the regulations of the cemetery have not been complied with, the trustee may cause such monument, tomb, or other erection to be taken down and removed.

17. Before any body shall be permitted to be interred in any vault, or in any place of burial the exclusive right to which for burial purposes shall have been granted, sold, or let by the trustees as a family or private burial-place, the trustees or any officer or servant employed by them may require satisfactory proof that the person for the time being entitled as owner to the exclusive right of burial in such vault or other place has consented, or would not object to such interment taking place therein.

No. 3—1883.  
As to burials in places the exclusive right to which has been acquired by individuals.

18. Any person digging or making any vault, grave or tombstone, or erecting or placing any monument in any public cemetery by and with the permission of the trustees thereof, and upon payment of the prescribed fees, shall, subject to the terms and conditions of such permission, be entitled to maintain and keep up, or to have maintained and kept up, as the case may be, such vault, grave, monument or tombstone for the sole and separate use of such person and his representatives for ever, or for such time as by such terms and conditions may be stipulated.

Right to keep up and maintain tombstones, &c.

19. When the members of any religious denomination desire at their own expense to build in any such cemetery a suitable mortuary church, or chapel for the performance of the rites and ceremonies in the burial of the dead according to the usages of such denomination, if the plans, specifications, elevations, and models thereof, and other buildings and conveniences thereto be first submitted to and approved by the trustees, such trustees may permit the same to be erected and built within such part of such cemetery as shall be set apart for such denomination upon such terms as may be agreed upon.

How chapels may be erected.

20. The minister of any denomination for which any portion of any such cemetery shall be especially set apart may have access and admission to such portion at all times as he shall see fit, subject to any rules to be made by the trustees and approved of by the Governor, and any such minister may freely exercise his spiritual functions therein without hindrance or disturbance of the trustees of such cemetery or any other person; provided that it shall not be competent for such trustees by any rule or regulation or by any act, matter, or thing to interfere directly or indirectly with the orderly performance of any religious ceremony in the burial of the dead according to the usage or practice of the communion to which the deceased may have belonged.

Ministers' right of access to chapels, &c

21. The trustees of every such cemetery shall keep a full and particular account of all moneys received and expended by them, and shall send an abstract of such account up to the thirtieth day of June next after their appointment, and subsequently to the same date in every year, to the office of the Colonial Secretary. Such account shall be certified to be correct by not fewer than two of such trustees, and shall from time to time contain such particulars as the Governor shall require. The Governor may order an inspection and examination or periodical inspections and examinations

Accounts to be kept.

*mmmm*

- No. 3—1883  
— — —
- of the books, accounts, and vouchers of the trustees of every such cemetery.
- Penalty for not keeping said accounts. 22. Every trustee omitting to keep such account, and to send such abstract thereof, to the Colonial Secretary as aforesaid, and every trustee failing to produce the books, accounts, and vouchers aforesaid in obedience to any order made by the Governor shall, upon conviction, be liable to a penalty not exceeding twenty pounds, to be recovered in the Court of the Resident Magistrate.
- Registration of burials. 23. All burials within any public cemetery shall be registered in a book to be provided by the trustees and kept for that purpose. Such book shall be in such form as may be prescribed by any regulations made under this Act, and shall be regularly kept by some person appointed by the trustees to do that duty; and in such book shall be distinguished in what parts of the cemetery the several bodies (the burials of which are entered therein) are buried.
- Returns of deaths and the causes thereof. The trustees shall cause to be made at such times, in such manner, and to such officer or person as the Governor may direct, a return of the names, addresses, dates of death and causes of death so far as ascertained, of the persons whose bodies have been interred in such cemetery.
- Penalty for wilfully injuring cemeteries, &c. 24. Any person who shall wantonly or wilfully destroy, or do, or cause to be done, any damage to any monument, vault, tombstone, building, erection railing, fence, tree, shrub, or plant, in or belonging to any cemetery, shall, upon conviction before any Resident Magistrate of this Colony, be liable for every such offence to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months, or to both such penalty or such imprisonment.
- Damages for injuries not wilful. 25. Any person who shall do or cause to be done any injury to any such monument, vault, tombstone, building, erection, railing, shrub, tree, plant, or any other damage to any such cemetery, whether the same be done wilfully or wantonly or otherwise, shall be liable, irrespective of any such penalty as aforesaid, to pay a reasonable sum of money as damages or for compensation, which sum of money shall be recoverable in any Court of competent jurisdiction by the trustees of the cemetery or by any person injured by such damage, but not by both such trustees and such person in respect of the same act or offence.
- Animals found trespassing may be impounded. 26. Any animal which may be impounded under the Pound Laws or Regulations (as the case may be), in force in any place where any such cemetery is situated, found trespassing in any cemetery, may be impounded by the trustees of such cemetery, or by any officer or servant employed by them, and the owner of any animal so impounded shall be liable to pay in lieu of any other trespass money, such sum not exceeding ten shillings in respect of each animal so found as aforesaid as may be prescribed by regulations to be made under the provisions of this Act, exclusive of

mileage, herding, or other pound fees, payable according to the laws or regulations applicable to such pound.

No. 3—1883.

27. The fifth section of the "Police Offences Act, 1882," shall be in operation in and within the limits prescribed for every public cemetery, under the management of trustees appointed under this Act, and for the purposes of the said fifth section every part of every such cemetery shall be deemed to be a public place or public street: Provided that in case by this Act any higher punishment or penalty shall be prescribed for any act or offence in the said section mentioned, such higher punishment or penalty may be imposed; and notwithstanding anything contained in the twenty-first section of the said Police Offences Act, all fines and penalties recovered under the said fifth section in respect of any offence committed within any cemetery shall be paid to the trustees of such cemetery.

Cemeteries to be named "public places."

28. Any trustee or any officer or servant of the trustees of any cemetery or any person called to aid or assist any such trustee, officer, or servant may without warrant take into custody any person who shall commit or be in the act of committing any offence against this Act, or any offence mentioned in the fifth section of the "Police Offences Act, 1882," in any such cemetery, and whose name and place of abode shall be unknown to the person so arresting, and the person arrested may be detained until he can be delivered into the custody of a constable or policeman, to be dealt with according to law.

Trustees and other officers may arrest without warrant persons contravening this Act.

29. The trustees of any cemetery shall be authorized to prosecute all persons who may contravene any of the provisions of this Act, and may by any regulations to be made as aforesaid name some officer, servant, or other person to prosecute on their behalf, or may grant any special power or authority to any person for such purpose.

And may prosecute such persons.

30. All moneys arising from fines and penalties imposed by this Act shall, when recovered, be paid to the trustees of the cemetery in respect whereof such fine or penalty may have been imposed for the purposes of such cemetery.

Fines and penalties to go to trustees.

31. The Council or Commissioners of any Municipality, which has heretofore established or shall hereafter establish any public cemetery may, by regulations to be framed and approved of in the manner by law provided, declare such cemetery to be subject to the provisions of this Act, and thereupon such council or commissioners shall be deemed to be trustees appointed under the provisions of this Act, and shall have and exercise all the rights and powers, and be liable to all the duties and obligations of trustees.

Existing cemeteries may be brought under operation of this Act.

32. This Act may be cited as the "Cemeteries Act, 1883."

Short title.

No. 39.—1885.]

[\*

## ACT

For the better prevention of certain Contagious Diseases.

Preamble.

WHEREAS it is desirable to prevent, as far as may be, the spread of certain contagious diseases: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

## PRELIMINARY.

Short title.

1. This Act may be cited as “ The Contagious Diseases Prevention Act, 1885. ”

Definition of contagious disease.

2. In this Act the term “ contagious disease ” shall be taken to mean any venereal disease, including gonorrhœa.

## EXTENT OF ACT.

Local application of Act by proclamation.

3. The places, districts, or areas to which Part I of this Act shall apply, shall be the places, districts, or areas mentioned in the first schedule to this Act, and such other places, districts, or areas as the Governor shall, from time to time, declare by proclamation to be published in the *Gazette*.

Power to rescind, &amp;c., such proclamation.

4. The Governor shall have the power to rescind any such proclamation as in the preceding section is mentioned, and the limits of every place, district, or area, whether mentioned in the said schedule or declared by such proclamation as aforesaid, may be extended, curtailed, or otherwise altered, from time to time by like proclamation to be published in like manner.

Application of part II.

5. Part II of this Act shall apply to the several districts of the Colony.

## PART I.

## MEDICAL INSPECTORS AND HOSPITALS.

Appointment of medical inspector.

6. It shall be lawful for the Governor to appoint some duly qualified medical practitioner or practitioners to be medical inspector or inspectors of contagious diseases for each of the places, districts, or areas within which Part I of this Act shall be in force.

Provision for hospital accommodation

7. The Governor may from time to time provide any buildings or parts of buildings, or set apart any ward or wards of any hospital as and for hospitals for the purposes of Part I of this Act, and every such hospital shall be placed under the control or management of such person or persons as to the Governor may from time to time seem fit.

Hospital regulations made by medical inspector.

8. The medical inspector or inspectors of the place, district, or area within which any hospital as aforesaid shall be situate, shall make regulations for the management and government of such hospital and the conduct of the inmates; provided such regulations

\* Not Promulgated when this Edition was passing through the Press.

be not inconsistent with the provisions of Part I of this Act, and may from time to time alter any such regulations, but all such regulations and alterations thereof shall be subject to the approval of the Governor.

No. 39—1985.

9. A printed copy of regulations purporting to be regulations of any hospital as aforesaid, or a written copy thereof, provided such written copy be signed by the medical inspector or inspectors of the place, district, or area aforesaid, shall be evidence of the regulations of such hospital and of the due making and approval thereof.

Copy of regulations good evidence.

PERIODICAL MEDICAL EXAMINATIONS.

10. Where an information or statement in writing on oath is laid before any Resident Magistrate having jurisdiction in any place, district, or area wherein Part I of this Act shall be in force, to the effect that the party making such information or statement has good cause to believe (and giving his reasons for such belief) that a female therein named is a common prostitute, and either is resident within such place, district, or area as aforesaid, or being resident outside such place, district, or area has within fourteen days before the making of such information or statement been within such place, district or area as aforesaid for the purposes of prostitution, the said Resident Magistrate may if he thinks fit issue a notice thereof addressed to such female fixing a time and place for her attendance to answer to what is contained in such information or statement, which notice he shall cause to be served upon her.

Process to compel appearance of reputed prostitute to undergo inquiry, upon sworn statement.

11. If the female on whom such a notice as aforesaid is served neglects or refuses to appear herself or by some person on her behalf at the time and place appointed in the notice or at some other time and place appointed by adjournment, and it is shown on oath to the said Resident Magistrate that the notice aforesaid was served on her a reasonable time before the time appointed for her appearance, or that reasonable notice of such adjournment was given to her as the case may be, she may be arrested by warrant of the said Resident Magistrate in order that she may be brought before him to answer as aforesaid.

Arrest for default of appearance of reputed prostitute after proper notice.

12. At the time and place mentioned in the said notice, or at some other time and place appointed by adjournment, in case the female shall appear herself, or by some one on her behalf, or as soon as conveniently may be, in case she shall have been arrested upon warrant as aforesaid, the said Resident Magistrate shall investigate the truth of the said information or statement, and on oath being made before him, substantiating to his satisfaction what is contained in the said information or statement, he may, if he thinks fit, order that the said female be subjected to a periodical medical examination by any medical inspector or inspectors appointed under the sixth section hereof, for the purpose of ascer-

Magistrate if satisfied of truth of sworn statement may order periodical medical examination of female.

- No. 39--1885.  
Such order to operate as warrant to medical inspector.
- Form and service of order.
- Voluntary submission of female to examination.
- Endorsement on written submission of time and place of examination.
- Notice to female.
- Medical inspector to appoint times and places for subsequent examinations, with notice to female.
- Penalty on female not submitting herself to examination.
- Order for examination to continue in force notwithstanding.
- taining, at the time of each such examination, whether she is affected with a contagious disease, and thereupon she shall be subjected to such periodical medical examination, and shall be bound to undergo the same, and the said order shall be a sufficient warrant for such medical inspector or inspectors as aforesaid to conduct such examination accordingly.
13. The order aforesaid shall specify the time and place at which the female aforesaid shall attend for the first examination, and a copy thereof shall be served on the female.
14. Any female in any place, district, or area to which Part I of this Act applies may voluntarily, by a submission in writing, signed by her in the presence of any Resident Magistrate or any medical inspector for such place, district, or area, and attested by such Resident Magistrate or medical inspector, subject herself to a periodical medical examination as hereby provided, and the said female shall thereupon become subject to the provisions of Part I of this Act in the same manner as if an order for such examination had been duly made by a Resident Magistrate as aforesaid.
15. The Resident Magistrate or medical inspector in whose presence the said submission shall be signed shall endorse upon the said submission the time and place at which the female shall attend for the first examination, and a copy of such endorsement shall be served on the female.
16. The medical inspector or inspectors aforesaid having regard to the circumstances of each case shall at the first examination of each female examined by him or them, and afterwards from time to time as occasion shall require, prescribe the times and places at which she is required to attend again for examination, and he or they shall from time to time give or cause to be given to each such female notice of the times and places aforesaid.
17. If any female subjected to periodical medical examination, whether by order of a Resident Magistrate or upon voluntary submission as aforesaid, at any time temporarily absent herself in order to avoid submitting herself to such examination on any occasion to which she ought so to submit herself, or refuses or wilfully neglects to submit herself to such examination on any such occasion, then and in every such case such female shall be guilty of an offence against Part I of this Act, and on conviction before the Resident Magistrate of the district within which such examination should have taken place or before the Resident Magistrate of the district wherein she may be found, be liable to imprisonment with or without hard labour and with or without spare diet in the case of the first offence for any term not exceeding one month, and in case of a second or any subsequent offence for any term not exceeding three months with or without hard labour and with or without spare diet.
18. If any such female is convicted of and imprisoned for the offence of absenting herself or of refusing or neglecting to submit



herself to examination as aforesaid, the order subjecting her to periodical medical examination shall be in force after and notwithstanding her imprisonment. No. 39—1885.  
ing punishment for  
disobedience.

DETENTION IN HOSPITAL.

19. If, upon any medical examination as aforesaid, the female examined is found to be affected with a contagious disease, she shall thereupon be liable to be detained in a hospital, subject and according to the provisions of Part I of this Act, and the medical inspector or inspectors by whom such examination shall have been made shall sign a certificate to the effect that she is affected with a contagious disease, naming the hospital in which she is to be placed, and he or they shall cause a duplicate of such certificate to be delivered to the female. Female found affect-  
ed with C. D. may be  
detained in hospital  
upon medical certifi-  
cate.

20. Any female to whom any such certificate as in the preceding section mentioned relates, may, if she think fit, proceed to the hospital named in that certificate, and place herself there for medical treatment; but if, after the said duplicate certificate is delivered to her she neglects, or refuses forthwith to do so, she may be apprehended by any police constable, and conveyed to that hospital, and placed there for medical treatment, and the certificate of the medical inspector or inspectors as aforesaid shall be a sufficient warrant or authority to him for so doing. Arrest for medical  
treatment of female  
not proceeding to  
hospital on such cer-  
tificate.

21. If any female found to be affected with a contagious disease as in the nineteenth section mentioned, shall not willingly submit to proceed to hospital as aforesaid, she shall be at liberty before apprehension to appeal to and after apprehension to claim to be taken before the Resident Magistrate of the district wherein she may reside or practise prostitution, who shall inquire into the matter and hear the objection of such female and take the evidence on oath of the medical inspector or inspectors, and of any other medical practitioners who may have examined the female, and on determination of the matter either cancel the order of detention or declare that the same shall have full force and effect. Appeal by female  
to magistrate against  
certificate ordering  
detention.

22. Where a female certified by any medical inspector or inspectors to be affected with a contagious disease, places herself, or is placed as aforesaid, in a hospital for medical treatment, she shall be detained there for that purpose until discharged by the medical inspector or inspectors of the place, district, or area within which the hospital shall be by writing under his or their hand. Female in hospital  
to be detained till  
discharged by medi-  
cal inspector.

23. The Resident Magistrate of any district wherein any hospital may be, may, if in any case it appears to him expedient, by order signed by him, direct the transfer of any female detained in such hospital for medical treatment from that hospital to another named in the order of transfer. Transfer of female  
from one hospital to  
another.

24. No female shall be detained under any one certificate for a longer period than six months. Limit of period of  
detention.

No. 89—1885.

Detained female  
may claim inquiry by  
magistrate, who may  
discharge her.

25. If any female detained in any hospital considers herself entitled to be discharged therefrom, and such discharge is refused, such female shall on her request be conveyed before the Resident Magistrate of the district wherein the hospital may be, who if he is satisfied upon reasonable evidence, that she is free from a contagious disease shall discharge her from such hospital.

Legal custody of  
female conveyed or  
transferred to or de-  
tained in hospital.

26. Every female conveyed or transferred under this Act to any hospital shall, while being so conveyed or transferred, and also while detained there, be deemed to be legally in the custody of the person conveying or transferring or detaining her, notwithstanding that she may be for that purpose removed out of one into another jurisdiction.

Penalty on female  
escaping from hos-  
pital or not conform-  
ing to regulations.

27. If any female who shall have been admitted into or shall be detained in any hospital under Part I of this Act, shall make or attempt to make her escape therefrom without being duly discharged, or if any such female shall refuse or neglect to conform to the regulations of such hospital during the period for which she shall be lawfully detained therein, she shall be liable on conviction before the Resident Magistrate of the district wherein such hospital may be, to imprisonment with or without hard labour and with or without spare diet, for any period not exceeding one month, and the execution of such sentence of imprisonment may at the said Resident Magistrate's discretion be suspended until such female shall be lawfully discharged from the said hospital.

Penalty on female  
leaving hospital un-  
cured and practising  
prostitution without  
certificate of freedom  
from C.D. by medi-  
cal inspector.

28. If, on any female leaving any hospital, a notice in writing is given to her by the medical inspector or inspectors of the place, district, or area within which the hospital may be, to the effect that she is still affected with a contagious disease, and she is afterwards in any place for the purpose of prostitution while still so affected, she shall be guilty of an offence under Part I of this Act, and on conviction before the Resident Magistrate of the district wherein she may reside or practise prostitution, shall be liable for each offence to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding one month.

#### RELIEF FROM EXAMINATION.

Application by fe-  
male for relief from  
examination.

29. If any female, subject to a periodical medical examination under this Act (either on her own submission, or under the order of a Resident Magistrate) and not being under detention in a hospital as hereinbefore provided, shall desire to be relieved from such examination, she may apply in writing in that behalf to the Resident Magistrate of the district wherein she may be then residing, or to the Resident Magistrate of the district wherein she was practising prostitution at the time when she was subjected to such examination as aforesaid; and such Resident Magistrate shall appoint a time and place for the hearing of such application and shall cause to be served on such female a notice of such appointment.

30. If on the hearing of the application in the last section mentioned it is shown to the satisfaction of the Resident Magistrate that the applicant has ceased to be a common prostitute, or if the applicant with the approval of the said Resident Magistrate shall enter into a recognizance with or without sureties as to the said Resident Magistrate shall seem meet for her good behaviour during three calendar months thereafter, such Resident Magistrate may order that she be relieved from subjection to periodical examination as aforesaid.

No. 39--1885.  
Grounds for relief from examination.

Recognizance.

31. Every such recognizance shall be deemed to be forfeited if at any time during the term for which it shall be entered into the female to whom it relates shall be within the limits of any district, place, or area within which Part I of this Act shall be in force in any public thoroughfare, street, or place for the purpose of prostitution, or otherwise within such limits shall conduct herself as a common prostitute.

Forfeiture of recognizance.

32. If upon any such recognizance as aforesaid becoming forfeited as aforesaid, or upon the expiration of the term thereof, the female to whom it relates shall within the limits in the last preceding section mentioned be in any public thoroughfare, street, or place for the purpose of prostitution, or shall otherwise within such limits conduct herself as a common prostitute, she shall be liable to be dealt with under Part I of this Act as if she had not been relieved from examination as aforesaid, and any order relieving her from such examination shall be deemed to be cancelled.

Consequences of practising prostitution after forfeiture of recognizance.

#### PENALTIES FOR HARBOURING, &c.

33. If any person being the owner or occupier of any house, room, or place, within the limits of any district, place or area, to which Part I of this Act shall apply, or being in charge thereof, or a manager or assistant in the management or charge thereof, having reasonable cause to believe any female to be a common prostitute and to be affected with a contagious disease, shall induce or suffer her to resort to or be in that house, room or place, for the purpose of prostitution, he shall be guilty of an offence against Part I of this Act, and shall be liable on conviction before the Resident Magistrate of the district, to be imprisoned with or without hard labour for any period not exceeding three months, or to pay a fine not exceeding twenty pounds, or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months unless such fine be sooner paid: Provided, always, that a conviction under this section shall not exempt the offender from any penal or other consequences to which he may be liable for keeping or being concerned in keeping a disorderly house, or a brothel, or for the nuisance thereby occasioned.

Penalties for harbouring diseased common prostitute.

No. 39—1885.

## PROCEDURE, &amp;c.

Procedure: powers  
of magistrate.

34. Every Resident Magistrate in entertaining any case or making any investigation under Part I of this Act, shall be at liberty, unless the female otherwise desires, to order that no person have access to or be or remain in the room or place in which he may sit for the purposes of such case or investigation without his consent or permission, but nothing herein contained shall be taken or construed to have the effect of limiting any other power which such Resident Magistrate may have of ordering such room or place to be cleared, or of directing that any person or persons be removed from such room or place.

## MISCELLANEOUS, &amp;c.

Record to be kept  
by medical inspec-  
tors.

35. Every medical inspector shall keep a record of the case of every female examined by him under Part I of this Act, and such record shall at all times be open to the inspection of the Resident Magistrate, and of any other person who may be authorized thereto by the Governor.

Penalty for state-  
ment against female  
without reasonable  
cause.

36. If it shall appear to any Resident Magistrate, before whom any female shall appear personally, or by some person in her behalf, to answer to what is contained in any information or statement laid before the said Resident Magistrate under Part I of this Act, that the person making such information or statement did so without reasonable or probable cause, the said Resident Magistrate shall have the power to impose on such person a penalty of not exceeding twenty pounds, and in default of payment, to order him to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid.

Penalties for false  
statement and rights  
of action to female  
reserved.

37. Nothing in the last section contained shall have the effect of relieving the person making such information or statement from any of the pains or penalties to which the law would otherwise subject him for anything done or committed in and about the making of such information or statement, or of depriving any female of any right of action which she otherwise may have by reason of the making of such information or statement.

## PART II.

PROVISIONS RELATING TO AFFECTED PERSONS OTHER THAN THOSE  
REFERRED TO IN

## PART I.

Magistrate after  
inquiry upon report  
by medical inspector  
or district surgeon  
may authorize plac-  
ing under medical  
treatment any per-  
son.

38. If any medical inspector under Part I of this Act shall have good ground to believe that any person whether male or female within the place, district, or area, for which he may be medical inspector, is affected by contagious disease to such an extent as to render the spread of such disease probable, or if the district

surgeon of any district wherein Part I of this Act shall not be in force, shall have good ground to believe that any person within his district is so affected as aforesaid, it shall be the duty of such medical inspector or district surgeon, in case such person is not under medical treatment by some duly qualified medical practitioner, to report that fact to the Resident Magistrate, who shall thereupon make inquiry into the circumstances, and if upon such inquiry such Resident Magistrate shall deem fit so to do, it shall and may be lawful for him to authorize the said medical inspector or district surgeon to require the person so affected to place himself or herself under medical treatment by the said medical inspector or district surgeon, or some other duly qualified medical practitioner to be selected by such affected person, and to attend for that purpose at the time and place from time to time fixed by the said medical inspector or district surgeon or duly qualified practitioner until released from such attendance by the said medical inspector or district surgeon or duly qualified practitioner.

39. The inquiry in the last preceding section mentioned shall be held by the said Resident Magistrate privately, and the result of any such inquiry and the contents of any report, certificate, or notice made or given by any medical inspector or district surgeon, shall not be communicated or published by any person unless with the consent of such affected person to any person, save and except the said Resident Magistrate, medical inspector, district surgeon, or affected person, or parents or guardian of such affected person: Provided that notwithstanding anything herein contained the result of such inquiry, and the contents of any report, certificate, or notice, as aforesaid, may be disclosed and proved for the purposes of any legal proceeding in any Court having jurisdiction.

Inquiry private.  
Results not to be  
made public.

40. If any person shall contravene the provisions of the last preceding section by disclosing or publishing, without such consent, as therein mentioned, to any person other than those in the last preceding section mentioned, the result of any inquiry or the contents of any report, certificate, or notice, as aforesaid, he shall be liable upon conviction before the Resident Magistrate of the district, to a fine of not exceeding twenty pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding fourteen days unless such fine be sooner paid.

Penalty for pub-  
lication of results of  
inquiry.

41. If any person duly required by any medical inspector or district surgeon, as in the thirty-eighth section mentioned, to place himself or herself under medical treatment, shall neglect or refuse to attend for that purpose at any time or place fixed by the said medical inspector, or district surgeon, or medical practitioner, such person shall be liable to a penalty of not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding one month, unless such fine be sooner paid.

Penalty for not  
attending as required  
for medical treat-  
ment.

No. 39—1885.

PART III.

FORMS, NOTICES AND GENERAL PROVISIONS.

Service of notices, &c.

42. Every notice, order, or other instrument by this Act required to be served on any person shall be served by delivery thereof to such person for him or her, at his or her last known place of abode, or by delivery thereof to him or her personally.

Forms in Schedule 2 sufficient.

43. The forms of certificates, orders, and other instruments given in the second schedule to this Act, or forms to the like effect, with such variations and additions as circumstances require, may be used for the purposes therein indicated, and according to the directions therein contained, and instruments in these forms shall (as regards the form thereof) be valid and sufficient.

Signed notices, &c., good evidence, and presumed to be duly signed.

44. In any proceeding under this Act any notice, order, certificate, copy of regulations, or other instrument purporting to be signed by a Resident Magistrate, inspector or inspectors, or district surgeon shall, on production, be received in evidence, and shall be presumed to have been duly signed by the person, and in the character by whom, and in which it purports to be signed, until the contrary is shown.

Prostitution not legalised. Retention of colonial law.

45. This Act shall not have the effect of legalizing prostitution or of exempting any person engaged in or practising the same from such pains and penalties as may by the existing law of the Colony attach thereto.

Schedule I.

SCHEDULES.

THE FIRST SCHEDULE.

Name of Places, Districts, or Areas.

1. The Cape District, including Cape Town.
2. The district of Simon's Town.
3. The district of Port Elizabeth.
4. The district of King William's Town.
5. The district of East London.

Schedule II.

THE SECOND SCHEDULE.

Forms.

Form (A.)

(A.)

Notice for attendance of Female.

To A.B., of.....

Take notice that an information or statement upon oath, a copy whereof is annexed hereto, has been laid before me, and that in accordance with the provisions of the Contagious Diseases Prevention Act, 1885, the truth thereof will be enquired into before me at ....., on the ....day of ..... at .... o'clock in the ..... noon.

You are, therefore, to appear, yourself or by some person on your behalf, before me at that place and time, to answer to what is contained in the said information or statement.

If you do not so appear you are liable to be arrested and brought before me in custody.

If you prefer it you may by a submission in writing, signed by you in the presence of a Resident Magistrate or of a Medical Inspector under the said Act for the place, district or area of ..... and attested by him, subject yourself to a periodical examination by a Medical Inspector or Inspectors appointed under the said Act. If you do so before the time above appointed for your appearance, and give notice thereof at my office at ....., it will not be necessary for you to appear before me.

Dated this .... day of .....

(Signed) .....

Resident Magistrate of .....

(B.)

Form (B.)

Order subjecting Female to Examination.

In pursuance of the Contagious Diseases Prevention Act, 1885, I ....., Resident Magistrate for the district of ....., do order that ....., of ..... be subject to a periodical medical examination by the Medical Inspector or Inspectors for the time being appointed under that Act, for the place, district, or area of ....., for the purpose of ascertaining at such examination whether she is affected with a contagious disease within the meaning of the said Act, and that she attend for the first examination at ....., on the .... day of ....., at .... o'clock in the .... noon.

(Signed) .....

Resident Magistrate of .....

(C.)

Form (C.)

Voluntary Submission to Examination.

*The Contagious Diseases Prevention Act, 1885.*

I, A.B., of ....., in pursuance of the above-mentioned Act, by this submission, voluntarily subject myself to a periodical medical examination by the Medical Inspector or Inspectors for .....

Dated this .... day of ....., 18 ...

(Signed) .....

Attested (Resident Magistrate or Medical Inspector under X.Y. the said Act for .....).

2394 PUBLIC HEALTH (CONTAGIOUS DISEASES).

No. 39—1885.  
Form (D.)

(D.)

Notice by Medical Inspector to Females of Times, &c., of Examination.

To A. B., of .....

Take notice, that in pursuance of the Contagious Diseases Prevention Act, 1885, you are required to attend for medical examination as follows:

..... (here state times and places of examination).

Dated this .... day of ....., 18 ...

(Signed) E. F.,

Medical Inspector for .....

Form (E.)

(E.)

Certificate of Medical Inspector.

In pursuance of the Contagious Diseases Prevention Act, 1885, I hereby certify that I have this day examined A. B., ..... of ..... and that she is affected with a Contagious Disease within the meaning of Part I of that Act; and the hospital in which she is to be placed under Part I of the said Act is the ..... hospital.

Dated this .... day of ....., 18 ...

(Signed) E. F.,

Medical Inspector for .....

Form (F.)

(F.)

Order by Resident Magistrate for Transfer.

By virtue of the power in this behalf vested in me by the Contagious Diseases Prevention Act, 1885, I hereby order that A.B., ..... of ....., now detained under Part I of that Act in the hospital of ....., for medical treatment, be transferred thence to the hospital of .....

Dated this .... day of ....., 18...

(Signed) M. N.,

Resident Magistrate of .....



(G.)

No. 39—1885.  
Form (G.)

Notice to Female leaving Hospital who may be still affected.

*The Contagious Diseases Prevention Act, 1885.*

To A.B.

As you are now leaving this hospital, I hereby, in pursuance of the above-mentioned Act, give you notice that you are still affected with a contagious disease.

Dated this . . . . day of . . . . .

(Signed) G. H.,

Medical Inspector for the district of . . . . .

NOTE.—The above-mentioned Act provides as follows :

If on any female leaving any hospital a notice in writing is given to her by the Medical Inspector or Inspectors of the place, district, or area within which the hospital may be, to the effect that she is still affected with a contagious disease, and she is afterwards in any place for the purpose of prostitution, while still so affected, she shall be guilty of an offence under Part I of this Act, and on conviction before the Resident Magistrate of the district wherein she may reside or practise prostitution, shall be liable for each offence to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding one month.

(H.)

Form (H.)

Application to be relieved from Examination.

To L.M., Esq., Resident Magistrate of . . . . .

I, A.B., . . . . . of . . . . ., being in pursuance of the Contagious Diseases Prevention Act, 1885, subject to a periodical medical examination on my own submission [or under the order of L.M., Esq., as the case may be], dated the . . . . day of . . . . ., do hereby apply to be relieved therefrom.

Dated this . . . . day of . . . . ., 18...

(Signed) A. B.

(I.)

Form (I.)

Report to Resident Magistrate by Medical Inspector or District Surgeon, under section 38 of the Contagious Diseases Prevention Act, 1885.

To L. M., Esq., Resident Magistrate of ———.

I, A. B. [Medical Inspector or District Surgeon of ———, as the case may be], do hereby report that C. D., of ———, is affected by contagious disease under such circumstances as to cause the spread of such disease probable, and that [he or she] is not under medical treatment by any duly qualified medical practitioner. I beg to request

No. 8 1884.

that you will have due inquiry made accordingly, and, if you should so think fit, that thereupon authority be given to me to require the said C. D. to place [himself or herself] under medical treatment by some duly qualified person.

Dated this — day of ———.

(Signed) A. B.

Form (J.)

(J.)

Notice by Medical Inspector or District Surgeon to affected person requiring such person to place himself or herself under medical treatment under section 38 of the Contagious Diseases Prevention Act, 1885.

To C. D., of ———.

Being duly authorized by the Resident Magistrate of ———, I hereby require you to place yourself under medical treatment by me or by some duly qualified medical practitioner to be selected by you. You are required to attend for such treatment at ——— on ———.

Dated this — day of ———, 18 —.

(Signed) X. Y.

No. 8—1884.]

[ \*

## ACT

## To Check the Spread of the Disease known as Leprosy.

Preamble.

WHEREAS the disease of Leprosy is prevalent in this Colony and has lately been spreading and continues to spread; and it is desirable to check the extension of such disease, and, if possible, to exterminate it: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

How persons suffering from leprosy to be dealt with.

1. Whenever it shall be certified to the Governor, by the district surgeon of any district, or by any other duly qualified medical practitioner, and by a Field-cornet or Justice of the Peace, that any person is suffering from the disease known as leprosy, and that the fact of such person being at large is likely to spread such disease, the Governor may, by warrant under the hand of the Colonial Secretary or Under Colonial Secretary, order that such person shall be removed to such asylum or hospital as he shall appoint, to be there detained during the Governor's pleasure, and kept apart from contact with all other inmates of such asylum or hospital who are not afflicted with the same disease; Provided,

\* Not promulgated when this edition was passing through the press.

always, that every such person, while so detained, shall have the liberty and privilege of seeing his friends and legal advisers at all reasonable times under such regulations in force for the time being, as the Governor may provide in that behalf.

No. 8—1884.

2. Every asylum or hospital in which males shall be detained under the provisions of this Act shall be separated entirely from any asylum or hospital in which females shall be detained.

Males to be kept apart from females.

3. When any person shall be detained under the provisions of this Act the maintenance of such person shall, until further provision be made therefor, be defrayed out of the Colonial Revenues: Provided, always, that all sums so paid may be recovered from the estate, if any, of such person, or from any person or persons liable by law to contribute towards the maintenance of such detained person, by the Civil Commissioner of the district in which such estate is situate, or in which the person or persons so liable shall reside.

Provision for maintenance of persons detained under this Act.

4. Notwithstanding the provisions of the last preceding section, it shall be lawful for the superintendent or keeper of any such hospital or asylum, in all cases in which a person detained under the provisions of this Act shall be possessed of sufficient means to defray the expense of his maintenance in any such hospital or asylum, to make a special agreement with such person for his maintenance while so detained.

Special agreement may be made with detained person for maintenance.

5. All district surgeons and medical officers shall give any information which may be required in regard to the disease referred to in this Act by the local authority appointed under the "Public Health Act, 1883," or by any Resident Magistrate, and shall be bound to attend to or inspect any case, or report on any matter relative to this Act, and every such surgeon or medical officer shall be entitled to charge and receive from such local authority or otherwise such reasonable fee as the Governor shall by any regulation in that behalf provide for each certificate required together with some reasonable amount for travelling expenses as such regulation shall prescribe.

District surgeons and other medical officers to inspect cases and make reports at reasonable fees.

6. The Governor may, from time to time, make, alter, and amend such regulations as he may deem to be advisable for the better and more effectually carrying out the provisions of this Act.

Governor may make regulations.

7. This Act may be cited as the "Leprosy Repression Act, 1884."

Short title.

No. 15.—Sd. H. G. Smith.]

[December 12, 1884.

### Ordinance for amending the Law relative to Public Meetings.

WHEREAS by a proclamation of His Excellency the then Governor, Lord Charles Henry Somerset, bearing date the 24th

Preamble.

mm

Ord 15—1848.

Repeal of proclamation as to public meetings.

Time of taking effect.

of May, 1822, the said Governor saw fit to declare and enact that public meetings convened without the sanction and authority of the Governor for the time being, or when such sanction or authority cannot be conveniently obtained without the sanction and authority of the chief local Magistrate, for the discussion of public measures and political subjects were and should be deemed to be contrary to law: And whereas there is nothing in the state and condition of this Colony which requires or justifies the continuance of a restraint so inconvenient and invidious upon that liberty of speech and freedom of discussion which Her Majesty vouchsafes to regard as the birthright of her subjects: And whereas it is expedient to remove the said restraint: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid of the 24th May, 1822, and every other law heretofore in force in this Colony, whereby public meetings for the discussion of public measures and political subjects are declared or constituted illegal, unless held with or under the previous sanction and authority of the Governor of the Colony for the time being or of some other functionary or Magistrate, shall be repealed, and the same are hereby repealed accordingly.

2. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

---

## RAILWAYS.

---

- |   |   |
|---|---|
| 1. Act 19—1861, (Regulation).                 | 7. Act 31—1884, (Green Point and Sea Point).            |
| 2. „ 19—1877, do.                             | 8. „ 3—1882, (Imvani and Indwe Railway and Coal Mines.) |
| 3. „ 16—1882, § 2, do.                        | 9. „ 11—1886, do.                                       |
| 4. „ 16—1883, (Cape Central Railway Company). |   |
| 5. „ 32—1886, do.                             |   |
| 6. „ 5—1881, (Graham's Town and Port Alfred). |   |

No. 19—1861.]

[August 14, 1861.

### ACT

#### For the Regulation of Railways in this Colony. (1)

Preamble.

WHEREAS it is expedient for the public safety and advantage to provide for the regulation in certain respects of railways in this Colony: Be it enacted by the Governor of the Cape of Cape Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

---

<sup>1</sup> The provisions of this Act (save the 29th and 30th sections) are applied to the Government Railways by the Acts authorizing their construction. These are printed under "Loans."

1. It shall be lawful for the board of directors of any railway company owning or working any railway in this Colony from time to time to make such by-laws as they shall think fit for the purpose of regulating the conduct, whilst on duty, of the officers and servants of the company and for providing for the due management of the affairs of the company in all respects whatever, and from time to time to alter and repeal such by-laws and to make others, and such by-laws shall be printed and a copy of such by-laws shall be given to every officer and servant of the company affected thereby.

No. 19 - 1861.  
Railway companies may make their own by-laws.

2. No by-law affecting or imposing penalties upon persons other than servants of the company shall be of any force or effect until it shall have been approved of by the Governor, with the advice of the Executive Council, and published in the *Government Gazette*.

Certain by-laws to be approved by Governor.

3. It shall be lawful for any officer of any railway company or for any police constable duly appointed, and all such persons as such officer or constable may call to his assistance, to apprehend without warrant any engine-driver, wagon-driver, guard, porter, servant, or other person employed by any railway company in conducting traffic upon the railway belonging to such company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, or who shall commit any offence against any of the by-laws, rules, or regulations of the said company which shall have been published as aforesaid in the *Government Gazette*, or who shall wilfully, maliciously, or negligently do or omit to do any act by doing or omitting which the life or limb of any person passing along or being upon such railway, or the works or appurtenances thereof, respectively, shall be or might be injured or endangered, or the passage of any engines, carriages, or trains, shall be or might be obstructed or impeded, and to convey such person so apprehended with all convenient dispatch before the Resident Magistrate of the district or place within which such offence shall be committed; and every such person so offending shall upon conviction be liable to be imprisoned with or without hard labour for any term not exceeding two months, or to pay any fine not exceeding ten pounds sterling, or to both such imprisonment and such fine: Provided that if the person offending shall be charged with the contravention of any such by-law as aforesaid he shall be liable to the fine provided by such by-law, and to none other: Provided, also, that if any person sentenced under and by virtue of any such by-law shall not upon conviction forthwith pay or secure the fine imposed upon him he shall be liable to be imprisoned with or without hard labour for any term not exceeding one month.

Officers of company or police constables may apprehend servants of company committing certain offences.

Punishment.

Contravention of by-law punishable by fine.

4. Every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in and

Punishment for obstructing passage or endangering safety of passengers.

No. 19—1861.

upon the same, or shall aid or assist therein, shall, being convicted thereof, be liable to be imprisoned, with or without hard labour for any term not exceeding two years. (<sup>1</sup>)

Persons obstructing officers or trespassing on railway how to be dealt with.

5. If any person shall wilfully obstruct or impede any officer of any railway company in the execution of his duty upon any railway or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway or any of the stations or other works connected therewith, and shall refuse to quit the same upon request to him made by any officer of the said company, every such person so offending shall and may be apprehended without warrant by any such officer or agent or any person whom he may call to his assistance, until such offender or offenders can be taken before the Resident Magistrate of the district or place wherein such offence shall be committed, and every such person so offending shall upon conviction be liable to a fine not exceeding five pounds sterling, and in default of payment thereof to imprisonment with or without hard labour for any term not exceeding one month.

Accidents to cuttings or embankments.

And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening, or being apprehended, to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways for the purpose of repairing or renewing the same and to do such works as may be necessary for the purpose, be it enacted as follows :

Adjoining lands may be entered upon to prevent or repair such accidents.

6. It shall be lawful for the Governor to empower, by any writing under the hand of the Colonial Secretary, any railway company in case of any accident or slip happening, or being apprehended, to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid without having obtained the previous authority of the Governor; but in any such case such railway company shall within forty-eight hours after such entry make a report to the Governor specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the Governor shall, after considering the said report certify that their exercise is not necessary for the public safety: Provided, also, that such works shall be as little injurious to the adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch; and that full compensation shall be made to the owner and occupiers of such lands for the loss or injury or incon-

Compensation to owners of lands.

<sup>1</sup> Amended by Act No. 19, 1877, *infra*.

venience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are, by the Act under which the said railway shall have been constructed directed to be settled; and in case there be no such Act, then by suit or action in some competent Court.

7. If any person shall wilfully obstruct any person acting under authority of any railway company acting in the lawful exercise of their power in setting out the line of the railway, or shall wilfully pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall upon conviction be liable to a fine not exceeding five pounds, and in default of payment to imprisonment with or without hard labour, for any term not exceeding one month.

Punishment for obstructing officers acting under preceding section.

8. If on demand any person fail to pay the tolls due to any railway company in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the same shall have been removed from the premises of the company, to sell or detain any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the moneys arising from such sale to retain the tolls payable as aforesaid and all charges and expenses of such detention and sale, rendering the overplus, if any, of the moneys arising from such sale and such of the carriages and goods as shall remain unsold to the person entitled thereto, or it shall be lawful for the company, if they shall so elect, to recover any such tolls by action at law: Provided that fourteen days' notice of such sale shall have been previously given in the *Government Gazette* and some other local newspaper.

Tolls due to railway company how to be recovered.

9. If any difference shall arise between any toll-collector or other officer or servant of the railway company, and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such railway, respecting the weight, quantity, quality, or nature of such carriage or goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon measurement or examination such goods appear to be of greater weight or quantity or of any other nature than that stated by the person who shall be in charge thereof, then the owner of such carriage, and the owner of such goods shall be liable to pay the costs of such measurement and examination; but if such goods appear to be of the same or less weight or quantity than, and of the same nature as, shall have been stated by the person in charge thereof, then the company shall pay such costs, and they shall also pay to the owner of such carriage or to the respective owners of such goods such damage, if any, as shall have arisen from such detention.

How in case of dispute as to amount of toll payable.

No. 19—1861.

Persons wilfully evading payment of fare may be fined or imprisoned.

10. If any person shall travel or attempt to travel in any carriage of any railway company without having previously paid his fare and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance shall knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance and with intent to avoid payment thereof, or if any person shall knowingly or wilfully refuse or neglect on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit, upon conviction, any sum not exceeding forty shillings, and upon non-payment thereof shall be liable to be imprisoned with or without hard labour for any period not exceeding seven days.

Offenders against preceding section may be detained by company's officers.

11. Any person committing or attempting to commit any such offence as in the last preceding section mentioned, may be detained by any officer or servant of the company, and all constables or other officers of the law proper for the execution of criminal warrants may lawfully detain such person until he can conveniently be taken before the Resident Magistrate of the district or place in which the offence shall have been committed, to be dealt with according to law.

Dangerous goods carried on railways how to be treated.

12. No person shall be entitled to carry or to require the company to carry upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods or articles which in the judgment of the company may be of a dangerous nature; and which shall be described in any by-law of the said company, and if any person send by the railway any such goods without distinctly marking their nature upon the outside of the package containing the same, or otherwise giving notice in writing to the bookkeeper or other servant of the company with whom the same are left at the time of so sending the same, he shall, upon conviction, incur a fine not exceeding twenty pounds for every such offence, and upon non-payment thereof shall be liable to be imprisoned with or without hard labour for any term not exceeding six months.

Such goods may be refused on suspicion.

13. It shall be lawful for the company to refuse to take any parcel that they may suspect to contain any such dangerous goods or articles as aforesaid, or to require such parcel to be opened to ascertain the contents.

Parcels may be opened.

On the removal of toll collector or other officer, all matters and things in his custody to be delivered up to the company.

14. If any collector of tolls or other officer employed by the company shall be discharged, or suspended from his office, or die, or abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any other of the family, or the legal representative of any such collector or other officer, refuse or neglect after seven days' notice in writing to that effect, to deliver up to the company or to any person appointed by them for that purpose, any station, dwelling-house, office, or other building with its appurtenances, or any books, papers, or other matters belonging to



the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to the Resident Magistrate of the district or place where such building, books, papers, or other matters shall be, it shall be lawful for such Resident Magistrate to order any constable, with proper assistance, to enter upon such station or other building and to remove any person found therein, and to take possession thereof and of any such books, papers, or other matters, and to deliver the same to the company or any person appointed by them to receive the same.

15. (1) Any person guilty of any of the offences hereafter in this section described, shall, upon conviction, be liable to be imprisoned and kept at hard labour for any term not exceeding twenty-one years, that is to say :

Punishment for certain offences.

1. If he shall wilfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall wilfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall wilfully or maliciously make or show, hide, or remove, any signal or light upon or near to any railway, or shall wilfully or maliciously turn, move, or divert any points or other machinery thereof, or do or cause to be done any other matter or thing with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, or injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway.

Maliciously obstructing course of railway.

2. If such person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being upon or in such carriage, tender, engine, or truck.

Throwing stones, &c. With intent to endanger personal safety.

3. If such person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building, belonging or appertaining to any railway.

Setting fire to railway buildings.

4. If such person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is by the last preceding section made punishable.

Or to goods in buildings.

16. It shall be lawful for any person whomsoever to apprehend without warrant any person who shall be found committing any of the offences in the last preceding section mentioned, and to convey him to prison, or deliver him to some constable or other officer of the law to be so conveyed, in order to his being dealt with according to law.

Any person may apprehend offenders.

<sup>1</sup> Amended by Act 19, 1877, *infra*.

No. 19—1861.

Company not liable for certain losses or injuries.

17. No railway company shall be liable for the loss of or injury to any article or articles or property of the description following; (that is to say), gold or silver coin of this realm or of any Foreign State, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of any bank of the Colony of the Cape of Good Hope or elsewhere, orders, notes, or securities for payment of money, English or Foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs or lace, or any of them, contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger on any railway, when the value of such article or articles or property aforesaid, contained in such parcel or package shall exceed the sum of ten pounds, unless at the time of delivery thereof at the office, warehouse or receiving-house of such railway company or to their bookkeeper or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

Unless risk has been paid for.

Charges for increased risk to be notified and affixed.

18. As often as any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such railway company to demand and receive an increased rate of charge, to be notified by some notice affixed in legible character in some public or conspicuous part of the office, warehouse, or other receiving-house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage, as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such articles as aforesaid at such office, shall be bound by such notice without further proof of the same having come to their knowledge.

Proof necessary in regard to value of articles lost or injured.

19. No railway company shall be bound as to the value of any such parcel or package as aforesaid by the value so declared as aforesaid, but they shall in all cases be entitled to require from the party suing in respect of any loss thereof or injury thereto proof of the actual value of the contents by other evidence, and the railway company shall be liable for such damages only as shall be so proved, not exceeding the declared value together with the increased charges before mentioned.

20. No greater damages shall be recovered from any railway company for the loss of or for any injury done to any animals beyond the sums hereinafter mentioned (that is to say) for any horse forty pounds, for any neat cattle per head twelve pounds, for any sheep or pigs per head, two pounds, unless the person sending or delivering the same to such company shall at the time of such delivery have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive, by way of compensation for the increased risk and care they occasioned a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge: Provided, that such percentage or increased rate of charge shall be duly notified by some such by-law as aforesaid: Provided also, that the proof of the value of such animals, articles, goods and things and the amount of the injury done thereto shall in all cases lie upon the person claiming compensation for such loss or injury.

No. 19—1861.

Damages for loss or injury of animals carried on railway.

21. Every railway company shall cause the short particulars of the several offences for which any punishment or penalty is provided by the Act, or by any by-law affecting persons other than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, in the English and Dutch languages, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed.

Particulars of offences against this Act or by-laws to be affixed at certain places.

22. Every company shall manage, regulate, work, and use their railway and every portion thereof in a proper and safe manner, and according to the system of management from time to time adopted on the generality of English railways for the conveyance of passengers, animals, minerals, goods, merchandize, and other traffic whatsoever on the railway, and the reception, accommodation, and delivery of the traffic whatsoever, and the reception and transmission by the electric telegraph and delivery of messages, and in all other respects duly keep the same open for the convenient and safe use thereof by the public.

Company to regulate use of railway according to English system.

23. Every company shall engage and employ on and about their railway, and every portion thereof, such a number of competent and careful managers, station-masters, clerks, engine-drivers, stokers, guards, pointsmen, watchmen, porters, labourers, and other officers and servants as shall be proper and sufficient for the efficient and safe management and working of the same and the proper accommodation of the public with reference thereto.

Company to employ sufficient number of competent officers, servants, &amp;c.

No. 19—1861.  
To provide or maintain proper locomotives, &c.

24. Every company shall provide and maintain in complete repair and in an efficient working state and good condition, and employ and use for the purposes of the traffic whatsoever on the railway, and the general accommodation of the public with reference thereto, all such locomotive and other engines and other power, horses, carriages, trucks, carts, machinery, apparatus, utensils, implements, and things whatsoever as shall be fully adequate in that behalf.

Company to afford all just facilities for traffic.

25. Every railway company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivery of traffic upon and from the railway belonging to or worked by such company, and no company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Tolls or fares to be charged equally to all persons.

26. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances, and no reduction or advance in any such tolls, fares, or rates shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Traffic accounts to be kept.

27. Every company shall duly ascertain and keep full, true, and perfect accounts of all passengers, animals, minerals, goods, merchandize, and other traffic whatsoever conveyed upon their railway or any part thereof, and of all the receipts, credits, payments, and liabilities in respect of the management, regulation, maintenance, repair, insurance, working, and uses of the railway, and the reception, accommodation, transmission, and delivery of the traffic thereon, and of their receipts and credits from all other sources, and their payments and liabilities on all other accounts; and the accounts to be so kept shall comprise all such names, places, dates, numbers, distances, quantities, qualities, weights, measure, and other particulars as shall be proper and sufficient for the full elucidation thereof, and such company shall duly obtain and preserve all such vouchers and documents and other evidence as shall be proper and sufficient for the verification of the accounts to be so kept.

Penalty for contravening sections 22 and 27.

28. Any company contravening any of the foregoing regulations contained in sections twenty-two to twenty-seven shall, for every such contravention, incur the forfeiture of a sum not exceeding fifty pounds, to be recovered by civil action with costs of suit by Her Majesty's Attorney-General in any competent Court.

29. All railway companies shall be obliged to erect and keep in repair, to the satisfaction of the Colonial Engineer or such other person as the Governor may appoint, good and sufficient fences along and throughout the whole of their respective lines. Any company failing or neglecting to do so, after being in writing requested so to do by such Engineer or other person so appointed shall be liable to pay to the Colonial Treasury the sum of five pounds for every day after the receipt of such notice during which such company shall fail or neglect to put such fence into proper repair, such sum or sums to be recovered, with costs of suit, by action in any competent Court at the suit of Her Majesty's Attorney-General.

No. 19—1861.  
Railways to be fenced in.

30. If the railway cross any public road on a level, the company shall erect and at all times maintain good and sufficient gates across such roads on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway; and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: Provided, always, that it shall be lawful for the Governor of this Colony in any case in which he is satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Provision in cases where roads are crossed on a level.

Penalty for neglecting to close gates.

Gates may be kept constantly closed across railway.

31. Where the railway crosses any road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Governor of this Colony.

As to crossings on levels adjoining stations.

32. This Act may be cited for all purposes as "The Regulation of Railways Act, 1861."

Short title of Act.

No. 19—1877.]

[August 8, 1877.

## ACT

To provide for the more effectual Punishment of certain Offenders.

WHEREAS it is advisable to extend the provisions of the Act No. 21 of 1869, intituled "An Act to make better provision for the Punishment of Juvenile Offenders convicted in Courts of Resident Magistrates," to all convictions of juvenile offenders in Courts of Resident Magistrates, and to provide that persons convicted of contravening the third section of the "Forest and Herbage Preservation Act, 1859," and the fourth and fifteenth sections of "The Regulation of Railways Act, 1861," may be punished by whipping: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Amending section  
2 of Act 21 of 1869.

1. The said Act No. 21 of 1869 shall be read and construed as if the words "for which the punishment of whipping might be lawfully inflicted in case of a second or subsequent conviction" in the second section thereof were omitted therefrom.

Amending Act 18,  
1859, and Act 19,  
1861.

2. Any person who may be convicted of any offence made punishable by the third section of the "Forest and Herbage Preservation Act, 1859," or by the fourth or fifteenth sections of "The Regulation of Railways Act, 1861," shall be liable in addition to or in lieu of the punishment provided for any such offence in or by the said sections to corporal punishment in any number of lashes, or cuts with a cane or rod, not exceeding twenty-five.

No. 16—1882 (1).]

[June 21, 1882.

\* \* \* \* \*

Jurisdiction of Magistrates in cases of crimes committed on lines of railway or within 10 miles of a line.

2. Where any crime or offence shall be committed on any person or in respect of any property upon any line of railway, or within a distance of ten miles from any line of railway, on either side thereof, such crime or offence may be dealt with, enquired of, tried, determined, and punished by the Resident Magistrate of any district in or through any part whereof or within such distance from the boundary whereof such line of railway passes, in the same manner as if such crime or offence had been actually or wholly committed in the district of such Magistrate.

\* \* \* \* \*

<sup>1</sup> For full text of this Act see "Resident Magistrates."

No. 16—1883.]

[September 27, 1883.

## ACT

To Authorize a Company styled the Cape Central Railways (Limited) to Construct a Line of Railway from Worcester *via* Robertson to Roodewal (Kogman's Kloof).<sup>(1)</sup>

WHEREAS the House of Assembly did, on the 8th June, 1882, resolve as follows:—"That this House is of opinion that the extension of a Branch Line of Railway from Worcester *via* Robertson to Roodewal in that division, is desirable and necessary for the development of the trade of Robertson, Montagu, Swellendam, Riversdale and part of Caledon, and should be commenced at an early date, and that the Government be requested to undertake this work as soon as possible:"

Preamble.

And whereas Government is unprepared to immediately construct the said line of railway, but have intimated their willingness to recommend the granting of a subsidy and other facilities to any company who will undertake to construct the same:

And whereas a company styled the Cape Central Railways (Limited), duly registered with a capital of one million pounds sterling, is willing, and has been formed to undertake the construction and working of the said railway: and whereas it is expedient that the said company should be authorized to construct, equip and work the said railway upon the terms in this Act contained:

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The Company styled the Cape Central Railways (Limited), whereof Sir Alfred Slade, Bart., Ernest Villiers, the Honourable Wellington Patrick Talbot, Lord Chetwynd, Spencer Chapman, John Dick Peddie, M.P., John R. Cuthbert are directors, shall be, and is hereby authorized and empowered to construct, equip, maintain, and work a railway similar to railway lines already constructed in this Colony on a gauge of not less than three feet six inches wide, and at a gradient of not more than one in forty, at a junction with the Beaufort West Extension Railway at or near Worcester, and thence *via* Robertson to Roodewal in that division, as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except in so far as the said plans may be inconsistent with any of the provisions of this Act, or any deviation or alteration therefrom as hereinafter provided.

Cape Central Railways Company authorised to construct and work line of railway as shown on plans.

<sup>1</sup> See Act 32, 1886, *infra*.

No. 16—1883.

Route of railway  
and powers of deviation.

2. The said railway shall commence at such a convenient junction point with the Beaufort West Extension Railway at Worcester as may be hereafter agreed between the Commissioner of Crown Lands and Public Works and the directors, thence across lands belonging to the Consistory of the Dutch Reformed Church at Worcester, and thence across or over or near the following lands and farms that is to say:—Worcester Commonage, Roodewal, Nootgedacht, Witte Kop, Willige Rivier, Lot 221, Naude's Dam, Kole Fontein, Lange Vallei, Middelburg, Outspan, Hex Rivier or aan de Gooree, Gorree aan de Breede Rivier, Goree's Hoogte, Zand Rivier, Outspan (Robertson), Over het Roode Zand, Goedemoed, Riet Vallei, Kraaibosch Vlake, (otherwise Kraalbosch Vlake), Zandvliet, Goree, Roodewal Outspan at Kogman's Kloof: Provided always that it shall be lawful for the said company to deviate from and vary the said line, as shown by the said plans, at the request of any owner or owners through whose lands the said line may pass, or to such extent as may be allowed by the said Commissioner of Crown Lands and Public Works upon the request of the directors.

Powers to enter  
upon any lands for  
purpose of survey.

3. The directors may, by any person thereto duly authorized in writing, enter upon any land for the purpose of surveying the same and of probing and boring in order to ascertain the nature of the soil, or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Power to take  
Crown lands for con-  
struction and main-  
tenance of line.

4. The directors may, with the consent of the Commissioner of Crown Lands and Public Works, enter upon and take possession of and hold and retain for the purposes of this Act, free of charge, so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also with the like consent, may enter upon any Crown land lying convenient to the said railway, and dig for, excavate, and carry away all stones, clay or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the said company upon any such land not being land reasonably required for the actual working of the said railway which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Powers conferred  
by Road Act No. 9  
of 1858 given to the  
Directors.

5. All and singular the powers which are by the Public Roads Act No. 9, 1858, bestowed upon the commissioners of roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the directors, precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway



were a public road : Provided that the extent of the land taken for the railway shall not exceed in width fifty feet for the formation line, and sufficient additional width required for the slopes, drainage, stations, approach roads, and all other works, matters and things which may be requisite or necessary for the efficient construction, maintenance and working of the said railway.

No. 16—1883.

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858 shall, *mutatis mutandis*, extend and apply to the said railway. Also protection of sections 56 and 57 of the same Act.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the directors to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road : And said directors shall be bound to make all such cuttings, embankments, and approaches with all such culverts and drains, and all such repairs, as may be requisite to make good the street or road across, or over, or under the said railway, at gradients not exceeding one foot in twenty feet ; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid. Provisions in case railway crosses any street or road.

8. Nothing in this Act contained shall prevent any streets or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places : Provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings. Streets or roads may cross railway.

9. It shall be lawful for the directors to exercise all and singular the powers by this Act conferred upon them by or through an agent in this Colony, duly appointed : Provided that notice of every appointment of any such agent, and of his name and address in this Colony, shall from time to time be published in the *Gazette*. Directors may act by duly appointed agents.

10. The said railway, or any portion thereof, shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers : Provided that in the event of any difference arising between the officer so appointed and the company, such difference or dispute shall be settled by arbitration. Railway not to be opened until certificate of Government officer obtained.

11. Upon the completion of the said railway, or any portion thereof as aforesaid, the directors shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861." Regulation of Railways Act, 1861, to apply.

12. The provisions of the Act No. 37 of 1879 shall apply, *mutatis mutandis*, to opening gates or leaving the same unclosed or unfastened whether the same be done by the owners or occupiers of land adjoining the railway, or by any other person. Regulations as to gates, &c.

No. 16—1883.

Conveyance of  
plant, &c., on Gov-  
ernment lines of  
railway.

13. All plant and material required for the construction and equipment of the said railway and its appurtenances shall be carried and conveyed over the existing Government lines of railway at a rate not exceeding one penny and one half-penny per ton per mile.

On completion of  
the railway to  
Robertson Governor  
to pay to the direc-  
tors the sum of  
£50,000.

14. So soon as the said railway is constructed as far as Robertson, and the Government officer shall have certified that such portion of the said line is sufficiently completed for the safe conveyance of passengers as hereinbefore mentioned, the Governor is hereby authorized to pay to the directors the sum of fifty thousand pounds. And on the completion of the said line to Roodewal, and after the granting of the Government officer's certificate that the whole line is sufficiently completed for the safe conveyance of passengers as hereinbefore mentioned, then the Governor is hereby authorized and empowered to pay to the directors of the said company or their agent the further sum of twenty-five thousand pounds.

On completion to  
Roodewal a further  
sum of £25,000.

Time for complet-  
ing railway.

15. The directors shall be bound and are hereby required to finish and complete the said railway within three years, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods: Provided that the said company shall be bound to commence the said railway not later than one year from and after the taking effect of this Act: Failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Telegraph or tele-  
phone to be con-  
structed subject to  
Act 20 of 1861.

16. The directors are hereby further authorized and empowered to construct, erect and work for the purposes of the said railway and no other, a telegraph and telephone, or either, along or near the line of railway, subject to the provision of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

After twenty years  
Government may  
purchase the railway,  
telegraph or tele-  
phone.

17. At any time after the expiration of twenty years from the date of opening for public traffic the said railway or any section thereof, the Colonial Government shall have the right, if so disposed, to purchase from the directors, on giving six months' notice to this effect in three consecutive issues of the *Gazette* of the Colony, and the directors shall be bound six months after date of the first publication of the said notice to sell to the Colonial Government the said railway, and also all buildings and plots of land acquired by the company and used in connection with the working of the said railway, together with all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, as also any telegraph or telephone and apparatus, wire, instruments, and every matter or thing connected with the working therewith in possession of the company under this Act, upon such terms as may be agreed upon between the company and the Colonial Government, and, failing such agreement, at a price to be settled by arbitration.

Arbitration pro-  
vided for.

18. For the purposes of any land taken, or any arbitration under this Act, the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

No. 16—1883.

Lands and Arbitration Clauses Act incorporated.

19. The directors shall and may sue and be sued within this Colony by the name or style of the "Cape Central Railways (Limited)," and the service of process upon the agent of the said company, at his office or place of business in this Colony, shall be good service of such process.

Name or style of Company.

20. In this Act, save where there is anything inconsistent herewith, the following terms shall have the meanings set against them respectively:

Interpretation of terms.

- (1) "The Company," the Company styled the Cape Central Railways (Limited).
- (2) "The Directors," the directors for the time being of the said company.

21. This Act may be cited for all purposes as "The Cape Central Railways Act, 1883."

Short title.

No. 32—1886.]

[July 6, 1886.]

## ACT

To Authorize the Cape Central Railways (Limited) to Construct a Line of Railway from Roodewal (Kogman's Kloof) to Montagu.

WHEREAS it is desirable to have the Line of Railway now under construction from Worcester to Roodewal extended to Montagu:

Preamble.

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The Company styled the Cape Central Railways (Limited) shall be and is hereby authorized and empowered to construct, equip, maintain and work a railway similar to railway lines already constructed in this Colony on a gauge of not less than three feet six inches wide, and at a gradient of not more than one in forty, in continuation of the Company's line to Roodewal (Kogman's Kloof), as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except in so far as the said plans may be inconsistent with any of the provisions of this Act, or any deviation or alteration therefrom as hereinafter provided.

Cape Central Railways Company authorized to construct and work line of railway as shown on plans.

2. The said railway shall commence at the terminus of the line of the railway now being constructed by the Cape Central Railways (Limited) under Act 16 of 1883, thence across or over or near the farms of Gorree Karpas, Sadowa, Roodeberg, Grant No. 1007, Drooge Kloof, Keur Kloof, Aasvogel Krantz, Fontein Kloof,

Route of railway and powers of deviation.

000

No. 32—1886.

along, over or upon the main road through Kogman's Kloof, and terminating at or on the outspan at the village of Montagu, in accordance with the plans and sections deposited with the Clerk of the House of Assembly: Provided always that it shall be lawful for the said company to deviate from and vary the said line, as shown by the said plans, at the request of any owner or owners through whose lands the said line may pass or to such extent as may be allowed by the Commissioner of Crown Lands and Public Works upon the request of the directors.

Certain provisions of Cape Central Railways Act, 1883, applicable to Railway now authorized.

3. The provisions of "The Cape Central Railways Act, 1883," with the exception of the first, second, fourteenth, fifteenth and twenty-first sections thereof, are hereby incorporated, and shall extend and apply to the railway hereby authorized to be constructed, as if the same had been included in the said Act: save and except as to the application of the eleventh section, that it shall not be compulsory upon the company to fence so much of the line passing through Kogman's Kloof as the Commissioner of Crown Lands and Public Works may deem it unnecessary to cause to be fenced.

Company to construct road through Kogman's Kloof.

4. The company shall at its own cost, construct, to the satisfaction of the Divisional Council of Robertson, a road through Kogman's Kloof, for wagon traffic, in place of so much of the existing road as may be taken for the purposes of the said railway.

Time for completing railway.

5. The directors shall be bound and are hereby required to finish and complete the said railway within one year, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods: Provided that the said company shall be bound to commence the said railway not later than one year from and after the taking effect of this Act: Failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Short title.

6. This Act may be cited for all purposes as "The Cape Central Railways Extension Act, 1886."

No. 5—1881.]

[June 16, 1881.]

## ACT

### To Authorize the Construction of a Railway from Graham's Town to Port Alfred.

Præamble.

WHEREAS the House of Assembly did on the 23rd day of July, 1880, resolve as follows:—"That this House is prepared to recommend a grant of £50,000 to any company or individual who shall construct a railway similar in all respects to the railway lines already constructed in this Colony, on a gauge of not less than three feet six inches, and at a gradient of not more than one in forty, between Port Alfred and Graham's Town within a period of

five years, to be paid upon the completion of the said railway in a condition fit for traffic:” And whereas the Legislative Council did, on the 24th day of July, 1880, assent to and concur in such resolution: and whereas it is necessary and expedient to empower the Governor to carry out the said resolution: and whereas it is necessary to confer upon any individual or company who may construct such railway the powers of expropriation of land and other powers necessary for the purpose of such construction: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. It shall be lawful for the Governor to contract and agree with any individual or joint-stock company willing to construct the railway in the preamble to this Act mentioned, at his or their own expense, to pay to him or them the sum of £50,000 upon the completion of the said railway within the term of five years from the entering into of any such contract, according to the conditions mentioned in the said preamble.

Governor may give £50,000 to persons making the railway.

2. Such individual or company as aforesaid (hereinafter in this Act styled “the contractor”) shall, upon the completion of such contract with the Governor, be and is hereby authorized and empowered to construct and work a railway between Port Alfred and Graham’s Town according to plans to be submitted to the Governor, and referred to in such contract, and to erect and work a telegraph along the line, subject to the provisions of the Act No. 20 of 1861, entitled “An Act for the Regulation of Electric Telegraphs.”

Authority of contractor to construct railway.

3. The contractor may, by any persons thereto duly authorized in writing, enter upon any land for the purpose of surveying the same, and of probing and boring in order to ascertain the nature of the soil or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Power of entry on lands for purposes of survey.

4. The contractor may, subject to any limitation contained in the contract with the Government, enter upon and take possession of and hold and retain for the purposes of this Act, free of charge, so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also enter upon any Crown land lying convenient to the said railway, and dig for, excavate, and carry away all stones, clay, or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the contractor upon any such land which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Contractor may enter on Crown land free of charge.

2416 RAILWAYS (GRAHAM'S TOWN AND PORT ALFRED).

No. 5—7881.

Powers conferred  
by Road Act 9 of  
1858 given to con-  
tractor.

5. All and singular the powers which are by the Public Roads Act, No. 9, 1858, bestowed upon the commissioners of roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the contractor precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that if any land or materials belonging to any person who shall be absent from the Colony, or whose place of residence shall be unknown to such contractor, shall be required for the making or maintaining of the said railway, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9, 1858, upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor: Provided also that it shall not be necessary before the exercise of any such powers as aforesaid that any proceeding shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for such contractor to enter upon, take possession of and use any land or materials which may be required for the purpose of the said railway, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in manner provided by the twelfth and thirteenth sections of the said Act No. 9, 1858: Provided, further, that no brick-field, garden, orchard, plantation, or ground ornamentally planted, shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof: and provided, lastly, that the extent of the land taken for the railway shall not exceed in width thirty feet for the formation line, and sufficient additional width required for the slopes, drainage, fencing, and stations and approach roads thereto, and that in so doing as little damage as possible shall be done to such lands as aforesaid.

Also protection of  
Sections 56 and 57 of  
same Act.

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, and to any buildings and works connected therewith, shall, *mutatis mutandis*, extend and apply to injuries done to the said railway and any buildings connected therewith.

Provisions in cases  
where railway crosses  
any street or road.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the contractor to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road; and such contractor shall be bound to make all such cuttings, embankments, and approaches with all such culverts and drains and all such repairs as may be requisite to make

good the street or road across or over or under the said railway at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid.

No. 5—1881.

8. Nothing in this Act contained shall prevent any streets or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places: provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

Streets or roads may be made crossing railway.

9. It shall be lawful for the contractor to exercise all and singular the powers by this Act conferred upon such contractor, by or through an agent in this Colony, duly appointed; provided that notice of every appointment of any such agent, and of his name and address in this Colony, shall from time to time be published in the *Government Gazette*, and in one or more newspapers published in Graham's Town.

Contractor may act by duly appointed agent.

10. The said railway shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers, and the cost of obtaining such certificate shall be borne by the contractor.

Railway not to be opened until certificate of Government officer obtained.

11. At any time after the expiration of twenty years after the date of opening of traffic of the said railway, or of any section thereof, the Colonial Government shall have the right, if so disposed, to purchase from the proprietor or proprietors of the said railway, and such proprietor or proprietors shall be bound, if required so to do, to sell to such Government the said railway with all fixed property appurtenant thereto, lying within the limits of deviation aforesaid, and all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, together with the telegraph and apparatus, upon such terms as may be agreed upon. If the said Government and the said proprietor or proprietors cannot agree upon the terms upon which such purchase shall be made, all questions in dispute between them with reference thereto shall be submitted to three arbitrators, one to be nominated by the said Government, one by the said proprietor or proprietors, and the third to be selected by the two arbitrators so nominated; and if the two first mentioned arbitrators shall not agree on the selection of such third arbitrator within thirty days of their being nominated as aforesaid, then it shall be competent for the Supreme Court or Court of the Eastern Districts, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators or the majority of them on all questions submitted to them shall be final and conclusive, and shall be made a rule or order of the Supreme Court or Court of the Eastern Districts: provided that the said Govern-

After 20 years' traffic Government may purchase the railway.

Arbitration.

No. 31—1884. ment shall not purchase the said railway or take any proceedings under this section without the consent of both Houses of Parliament first had and obtained.

Regulation of Act 19 of 1861 to apply to this railway. 12. Upon the completion of the said railway the individual or company which shall have constructed the same shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861."

Short title. 13. This Act may be cited as the "Graham's Town and Port Alfred Railway Act, 1881."

No. 31—1884.]

[July 25, 1884.

ACT

To Authorize a Company, to be styled the Green Point and Sea Point Railway Company (Limited), to construct a Line from Cape Town to Sea Point.

Preamble.

WHEREAS it is desirable and expedient that a company should be formed under the Limited Liability Act 23 of 1861, for the purpose of constructing, maintaining, and working a line of railway from Cape Town to Green Point and Sea Point : and whereas certain steps have already been taken by the appointment of a provisional committee who have undertaken to defray preliminary expenses towards the promotion of this object : and whereas plans and sections of the said railway are now deposited in the office of the Clerk of the House of Assembly and in the office of the Civil Commissioner for the Cape division :

And whereas a company, to be styled the "Green Point and Sea Point Railway Company (Limited)," is about to be formed to undertake the construction, equipment and working of the said railway : And whereas it is expedient that the said company so to be formed should be authorized to construct, equip and work the said railway upon the terms in this Act contained :

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

Style of company.

1. The company to be styled "The Green and Sea Point Railway Company (Limited)," whereof

Provisional committee.

Carle G. Akerberg (Swedish Consul),  
 Chas. Aiken Fairbridge (Fairbridge and Arderne, Solicitors,  
 &c.),  
 Thomas E. Fuller, M.L.A. (General Manager U.S.S. Co.),  
 Willem J. van der Ven,  
 Casper Henry van Zyl (Van Zyl, Buisinne & Leonard,  
 Solicitors, &c.),  
 John Carl Smith (Merchant),



Charles Edward Solomon (Saul Solomon & Co.),  
 Hercules Petrus du Preez, M.L.A. (Solicitor, &c.),  
 Andrew McMeekan (Merchant),  
 Lachlan McLean (Donald Currie & Co.),  
 E. B. J. Knox, C.E.,  
 William McLeod (McLeod & Shayer),  
 H. C. Stephan (Stephan Bros., Merchants),  
 Johan Jansen (Johan Jansen & Co., Brokers),  
 David de Waal (De Waal & De Kock, Merchants),  
 Henry Solomon, senior (Merchant),  
 Capt. James Anderson, Marine Surveyor,

are the provisional committee, shall be and is hereby authorized and empowered to construct, equip, maintain and work a railway similar to railway lines already constructed in this Colony, on a gauge of three feet six inches wide, at a gradient of not more than one in sixty-three, from a junction with the Western Line of Railway, at or near the Cape Town Railway Station, and thence *via* the Dock Road to Sea Point, within the limits of deviation shown on the plans duly lodged with the Clerk of the House of Assembly, save and except in so far as the said plans may be inconsistent with any of the provisions of this Act, or any alteration as hereinafter provided.

2 The said railway shall commence at such a convenient junction point with the Western Railway System, Cape Town, as may be hereafter agreed between the Commissioner of Crown Lands and Public Works and the directors; thence following the line of the Dock Road in proximity to, or over and along the Colonial Government Railway line or portion thereof, on to vacant portion of Harbour Board property, crossing lower end of Bree-street through vacant Harbour Board property, across unnamed road and along unmade street, between the properties belonging to Messrs. Robertson and Bain; thence crossing Chiappini-street, unnamed street, and Alfred-street; thence over vacant Imperial Government ground into private road at back of Amsterdam Battery, thence across Ebenezer Road along Public Road, and crossing Harbour Board enclosures at back of cottages and docks skirting the Imperial Government Magazine Reserve at the back of Gallows Hill, passing through an unused Moslem burial-ground, crossing Public Road and Commonage to point where road leading to Mouille Point joins main road to Sea Point; thence next to main road on commonage belonging to Cape Town and Green Point Municipality and Turf Club, to Three Anchor Bay; thence along seaside of Beach Road to Sea View, Villa Maria, Bordeaux, and on to Mont Desir, opposite residence of Saul Solomon, Esq.; thence through back gardens of property opposite residence of Henry Solomon, Esq., to the termination about two and a half chains beyond the property of J. Cavanagh, Esq.: Provided that within the limits of deviation on Crown land or land vested

Route of railway  
and power of deviation.

No. 31—1884.

in the Colonial Government for special purposes, the route of the said line shall be subject to the approval of the Commissioner of Crown Lands and Public Works: and further that the running powers given hereby over the Colonial Government Railway line shall be upon such terms as to payment and otherwise and subject to such regulations as the Governor may from time to time determine.

Powers of entry,  
&c.

3. The directors may, by any persons thereto duly authorized in writing, enter upon any land for the purpose of surveying the same, and of probing and boring in order to ascertain the nature of the soil, or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Power to take  
Crown lands.

4. The directors may, with the permission of the Commissioner of Crown Lands and Public Works, enter upon and take possession of and hold and retain for the purposes of this Act, free of charge, so much of any waste Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also enter upon any waste Crown land lying convenient to the said railway, and dig for, excavate and carry away all stones, clay or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the said company upon any such land, not being land reasonably required for the actual working of the said railway, which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof: And provided also that the term waste Crown land shall not be taken to apply to land which has been or may be acquired by the Colonial Government or any public body representing the Colonial Government, by purchase or otherwise, for any special purpose, or to land which has been or may be reclaimed from the sea.

Powers under Road  
Act 9 of 1858 con-  
ferred on directors.

5. All and singular the powers which are by the Public Roads Act No. 9 of 1858 bestowed upon the Commissioners of Roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the directors, precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that the extent of the land taken for the railway shall not exceed in width thirty feet for the formation line, and sufficient additional width required for the slopes, drainage, stations, approach roads, and all other works, matters and things which may be requisite or necessary for the efficient construction, maintenance and working of the said railway: And provided further that in the calculation of the price or compensa-

tion to be paid to any person under the provisions of the twelfth section of Act No. 9 of 1858, in respect of any land belonging to him and expropriated under this Act, shall be included all damage caused to him by the construction of the said railway across his land.

No. 31—1884.

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858 shall, *mutatis mutandis*, extend and apply to the said railway.

Provisions of 56th and 57th sections of such Act to apply.

7. At all places where the lines of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the directors to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road: And said directors shall be bound to make all such cuttings, embankments and approaches, with all such culverts and drains, and all such repairs, as may be requisite to make good the street or road across, or over, or under the said railway, at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments and approaches, culverts and drains as aforesaid.

In case of railway crossing street or road.

8. Nothing in this Act contained shall prevent any street or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places: Provided that the said authority shall be liable to make good all damage occasioned by such works.

Streets or roads may cross railway.

9. It shall be lawful for the directors to exercise all and singular the powers by this Act conferred upon them by or through an agent or agents, duly appointed in writing.

Directors may act by agents.

10. The said railway, or any portion thereof, shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers: And the cost of obtaining such a certificate shall be borne by the company.

Railway to be opened when certificate of Government officer obtained.

11. Upon the completion of the said railway, or any portion thereof as aforesaid, the directors shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861."

Regulations of Railway Act to apply.

12. The directors shall be bound and are hereby required to finish and complete the said railway within two years, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods: Provided that the said company shall be bound to commence the said railway not later than one year from and after the taking effect of this Act: Failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Railway to be completed in 2 years.

- No. 31—1884. 13. The directors are hereby further authorized and empowered to construct, erect and work for the purposes of the said railway and no other, a telegraph and telephone, or either, along or near the line of railway, subject to the provisions of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."
- Power to construct telegraph or telephone for purposes of railway.
- Lands and Arbitration Clauses Act incorporated. 14. For the purposes of any land taken, or any arbitration under this Act the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.
- How company to sue and be sued. 15. The directors shall and may sue and be sued within this Colony by the name or style of the "Green Point and Sea Point Railway Company (Limited)," and the service of process upon the agent of the said company, at his office or place of business in this Colony, shall be good service of such process.
- Interpretation clause. 16. In this Act, save where there is anything inconsistent herewith, the following terms shall have the meanings set against them respectively:
- (1) "The Company," the company styled the "Green Point Railway Company (Limited)."
  - (2) "The Directors," the directors for the time being of the said company.
- Short title. 17. This Act may be cited for all purposes as "The Green Point and Sea Point Railway Company's Act, 1884."

No. 3—1882.]

[May 31, 1882.

## ACT

To Authorize the Construction of a Railway from Imvani on the East London and Queen's Town Railway to the Indwe Coal Mines, by a Company or an Individual. (1)

Preamble.

WHEREAS the House of Assembly did on the 23rd day of June, 1881, resolve as follows:—That this House, in consideration of the advantages that would result to the country from the construction of a railway, either from the Imvani to the Indwe Coal Fields, or from the said Coal Fields to a point at or near Putter's Kraal, or both such lines, and from the opening and working of the Coal Fields, recommends the grant to any company or individual who shall within two years engage to construct a railway at a gauge and on a gradient to be approved of by the Government, the following that is to say a sum of money equal to one-fifth of the cost, according to an estimate to be approved of by the Government, of the construction of the said railway line or lines, together with a right to the said company or individual to select, prospect,

<sup>1</sup> Amended by Act 11, 1886, *infra*.

No. 3—1882.

and work exclusively a coal-bearing section of land in the vicinity of the Indwe, being Crown lands of not more than five hundred acres, subject to a royalty of sixpence per ton : provided that such contribution shall only become due and payable on the completion of the said railway to the satisfaction of the Government ; and provided, further, that when the earnings of the said railway are sufficient, after defraying working expenses, to pay the proprietors interest or dividend at the rate of five per cent. per annum, the surplus shall be distributed *pro rata* between the proprietors and the Government : And whereas it is expedient to empower the Governor to carry out the said resolution with certain alterations as hereafter mentioned : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

1. It shall be lawful for the Governor to contract and agree with any individual or individuals or joint-stock company willing to construct the railway in the preamble to this Act mentioned at his or their own expense and hereinafter in this Act styled the contractor, to pay or grant, as the case may be, to the contractor upon the completion of the said railways within the term of five years from the entering into of any such contract, to the satisfaction of Government—

Governor may contract with persons to construct railway mentioned in preamble.

- a. A sum of money not exceeding fifty thousand pounds sterling. £50,000 to be paid on completion.
- b. An area of not more than one thousand acres of coal-bearing land at the Indwe aforesaid, the site of which shall be settled by mutual agreement between the Governor and the contractor. Area of 1,000 acres of coal-bearing land may be granted.
- c. In lieu of one moiety of the said sum of money in subsection A of this clause mentioned, at the option of the contractor, an area not exceeding twenty-five thousand morgen of land at such place or places contiguous to the said line of railway from Imvani aforesaid to the said Indwe Coal Fields as may be agreed upon between the Governor and the contractor. 25,000 morgen of land may be granted in lieu of the £50,000.

2. The contractor, upon the completion of such contract with the Governor, shall be and is hereby authorized and empowered to construct, work, (and possess and hold in full and free property subject to the provisions of this Act) a railway between Imvani aforesaid and the said Indwe Coal Fields or any portion or portions of the said Coal Fields according to plans to be submitted to the Governor and referred to in such contract, and construct and work as also possess and hold a telegraph, along the said line subject to the provisions of the Act No. 20 of 1861, entitled “An Act for the Regulation of Electric Telegraphs.”

Powers to construct and work given to contractor.

3. The contractor may himself or by any person or persons duly authorized in writing by the contractor, for the purpose of constructing the said railway, or preparing therefor, enter upon

Power of entry on land.

No. 3—1882.

any land, and inspect, survey, bore and probe, the same, making full compensation to the occupier of the said land, for any damage thereby occasioned, the same to be recoverable by action in any competent Court within three months from the date upon which such damage is alleged to have been committed.

Power to take  
Crown lands.

4. The contractor may, subject to any limitation contained in the contract with the Government, enter upon, and take possession of, and hold and retain for the purposes of this Act, free of charge, so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also enter upon any Crown land lying convenient to the said railway, and dig for, excavate and carry away, all stones, clay or other material required for the purposes of the said railway free of charge; provided that nothing in this Act contained shall establish any servitude in favour of the contractor upon any such land, not being land reasonably required for the actual working of the said railway, which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Power given by  
Public Roads Act,  
1858, conferred on  
contractor.

5. All and singular the powers which are by the Public Roads Act No. 9, 1858, bestowed upon the Commissioners of Roads in regard to taking and acquiring land and materials necessary for the making or repairing of any such main road, as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the contractor precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that if any lands or materials belonging to any person who shall be absent from the Colony or whose place of residence shall be unknown to such contractor shall be required for the making or maintaining of the said railway, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9, 1858, upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor: Provided also that it shall not be necessary before the exercise of any such powers as aforesaid that any proceedings shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for such contractor to enter upon, take possession of, and use any land or materials which may be required for the purpose of the said railway, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in manner provided by the twelfth and thirteenth sections of the said Act No. 9, 1858: Provided, further, that no brick-field, garden, orchard, plantation, or ground ornamentally planted shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof; and, provided lastly, that the extent of the land taken for

the railway shall not exceed in width thirty feet for the formation line, and sufficient additional required for the slopes, drainage, fencing, and stations, and approach-roads thereto, and that in so doing as little damage as possible shall be done to such lands as aforesaid.

No. 3—1882.

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, and to any buildings and works connected therewith, shall, *mutatis mutandis*, extend and apply to injuries done to the said railway and any buildings connected therewith.

Provisions of 56th and 57th sections of Public Roads Act to apply to these works

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the contractor to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road; and such contractor shall be bound to make all such crossings, embankments, and approaches, with all such culverts and drains, and all such repairs as may be requisite to make good the street or road across or over or under the said railway at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid.

Crossings of roads, bridges, viaducts, &c., to be made.

8. Nothing in this Act contained shall prevent any street or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places, provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

Streets may be made crossing line of railway.

9. The contractor shall be bound as soon as the proposed line of railway or any portion thereof is ready for public traffic when required by the proprietors of lands adjoining such portion to fence the same in a proper manner, and to erect and maintain in order proper swing gates at each side of the line where there is a reasonable necessity that a passage across the line should be left to such proprietors and where public roads cross the line.

Line to be fenced.

10. The provisions of the Act No. 37 of 1879 shall apply, *mutatis mutandis*, to opening the said gates or leaving the same unclosed or unfastened whether the same be done by the owners or occupiers of land adjoining the railway mentioned in the last section or by any other person.

Act 37 of 1879 to apply to this line.

11. It shall be lawful for the contractor to exercise all and singular the powers by this Act conferred upon such contractor, by or through an agent in this Colony duly appointed; provided that notice of every appointment of any such agent, and of his name and address in this Colony shall from time to time be published in the *Government Gazette* and in one or more newspapers published in King William's Town, East London and Queen's Town.

Contractor may exercise powers given through duly appointed agent.

- No. 3--1882.  
Government officer to certify completion of line.
12. The said railway shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers, and the cost of obtaining such certificate shall be borne by the contractor.
- Privileges and conditions of Act 19 of 1861 to attach to contractor.
13. Upon the completion of the said railway, the contractor shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861," save and except the 29th and 30th sections thereof, which shall not apply in the premises.
- Right of contractor to excavate.
14. The contractor shall have the full right to excavate and mine for, and to work and remove coal and clays in, upon, and from the said coal-bearing land, and shall be bound to pay to the Government the sum of sixpence sterling upon and for every ton of coal taken from the said coal-bearing land, and for the purpose of this Act a ton shall be taken to mean 2,352 lbs. weight.
- Royalty payable on coal.
15. The payments aforesaid shall be made quarterly to the Civil Commissioner of the division in which the said coal-bearing land is situated, or to such other person as the Governor shall from time to time nominate and appoint; and the manager, agent, or other person in charge of, or superintending, the works upon such coal-bearing land, shall, within fourteen days after the expiration of each quarter, make and deliver to such Civil Commissioner, or other person, a solemn declaration, in the form as nearly as is material in the schedule to this Act, stating the quantity of coal raised from the said land during the then previous quarter.
- Payments of royalty to be made quarterly.
16. The contractor shall be bound to keep a book or books in which shall be duly entered the true quantity of coal which shall be taken from the said coal-bearing land for the purpose of reckoning the amount to be paid to Government quarterly as aforesaid, and such books shall be open to inspection by the said Civil Commissioner or any person authorized by him or by the Governor, in writing, to inspect the same at all reasonable times, and for every contravention of the provisions of this section or any of them by the contractor or his servants, and for every declaration delivered by any officer or servant of the contractor to any Civil Commissioner or other person as in the last preceding section mentioned, which shall contain any false statement as to the quantity of coal taken from such land, the contractor shall be liable to forfeit to the Colonial Government the sum of one hundred pounds sterling to be recovered in any competent Court at suit of the Treasurer-General of the Colony, together with the amount of loss which the Colonial Government shall have sustained by reason of such default, but the payment of such penalty by the contractor shall not be deemed to exempt the person making any such declaration from prosecution for any wilfully false statement therein contained.
- Books to be kept by contractor of coal findings.
17. At any time after the expiration of twenty years from the date of opening for public traffic the said railway or any section
- Power of Governor to take over railway at expiration of 20 years.



thereof, the Colonial Government shall have the right, if so disposed, to purchase from the contractor, on giving six months' notice to this effect by publishing the same as a Government notice in three consecutive issues of the *Government Gazette* of the Colony, and the contractor shall be bound six months after date of the first publication of the said notice to sell to the Colonial Government the said railway, and also all buildings and plots of land acquired by the contractor under this Act and used in connection with the working of the said railway, together with all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, as also the said telegraph and apparatus, wire, instruments, and every matter or thing connected with the working thereof in possession of the contractor under this Act upon the following terms, that is to say:—The purchase shall be effected for such an amount as at the rate of five pounds per centum would produce a yearly income equal to the average for the three years next before the day of the first publication of the notice of the intention of the Government to purchase as aforesaid, of the net receipts or profits arising from the working of the said railway after deducting therefrom the working expenses of all kinds of the said railway, during the said term of three years, and also the average yearly cost of maintaining and repairing the said railway during the said term of three years, and upon payment by the Colonial Government to the contractor of the purchase amount so ascertained, the said railway, together with all buildings and plots of land connected with the working thereof and all rolling stock, machinery, engines, tools, and material of all kinds which shall be upon or in the said railway or the said buildings or plots of ground made use of in the working thereof at the date of the first publication of the intention of the Colonial Government to purchase as aforesaid, and which rolling stock, tramways, engines, tools, and material shall have been brought thither for the purpose of being made use of in or in connection with the said railway, or the working thereof shall thereupon by virtue of this Act vest in the Colonial Government.

Terms of purchase.

18. In case the Colonial Government and the contractor shall not agree upon a sum as truly representing the net average income during the last three preceding years in the last section of this Act mentioned, the question in dispute between them in reference thereto, shall be submitted to three arbitrators, one to be nominated by the said Government, one by the said contractor, and the third to be selected by the two arbitrators so nominated, and the said contractor shall be bound to give such arbitrators full access to all books, accounts and documents of every kind in his possession, power or custody in any way relating to the before-mentioned receipts, profits and expenses during the said three years, and if the said two first mentioned arbitrators shall not agree upon the selection of the third arbitrator, then it shall be compe-

Reference to arbitration in case of difference as to average income of railway.

No. 3—1882.

tent for the Supreme Court, or the Court of the Eastern Districts, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators, or the majority of them, on all questions submitted to them shall be final and conclusive, and shall be made a rule or order of the Supreme Court or Eastern Districts Court: Provided that the said Government shall not purchase the said railway or take any proceedings under the last preceding section of this Act, without the consent of both Houses of Parliament first had and obtained.

Power of Govern-  
ment to take posses-  
sion of line if not  
completed within 5  
years.

19. Should the contractor fail in completing the construction of the said railway within the said term of five years and in obtaining the certificate in the 12th section of this Act mentioned, the Colonial Government shall be entitled forthwith to take possession of the said railway, together with all rails and sleepers laid down thereon for traffic, and together with all fixed property erected or constructed by the contractor, for the purposes of the said railway, upon ground not previously alienated by Government, and the contractor shall, in such case, have no claim for compensation, for or in respect of the said railway, rails, sleepers, and fixed property, or of the labour expended by the contractor in connection therewith: Provided, however, that should the contractor be prevented from finishing the construction of the said railway within the said term of five years by reason of native wars or disturbances, an extension of time, equivalent to the time during which the said construction shall have been so prevented, shall be granted to the contractor, and in such case the completion of the construction of the said railway by the contractor within the said extended term shall be considered and operate for all the purposes of this Act as if the said construction had been completed within the said term of five years, anything hereinbefore to the contrary contained notwithstanding.

Exception.

Short title.

20. This Act may be cited as the "Imvani and Indwe Railway and Coal Mines Act, 1882."

---

SCHEDULE.

*I, A. B., [state the capacity of declarant], do solemnly and sincerely declare that the quantity of coal raised from the land worked by [state name or designation of contractor or company] under the provisions of the "Imvani and Indwe Railway and Coal Mines Act, 1882," during the quarter ended on the            day of            18    is            tons and no more, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, intituled "An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oath and affidavits."*

Declared at            )  
this    day of            )  
Before me            )

No. 11—1886.]

[July 6, 1886.]

## ACT

To Amend in certain respects the “Imvani and Indwe Railway and Coal Mines Act,” No. 3 of 1882.

WHEREAS by the Act No. 3 of 1882, being the “Imvani and Indwe Railway and Coal Mines Act,” the Governor was authorized to contract and agree with any individual or individuals or joint stock company willing to construct a railway either from the Imvani to the Indwe Coal Fields, or from the said Coal Fields to a point at or near Putter’s Kraal, or both such lines, upon certain terms and conditions mentioned in such Act: And whereas it may be expedient that such railway should not be constructed either from Imvani or from a point at or near Putter’s Kraal but from some other place or point on the East London and Queen’s Town Railway: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to consent to the substitution of some other point or points on the East London and Queen’s Town Railway, between Imvani and Molteno, in lieu of Imvani or Putter’s Kraal, as the place or point from, or from near to which the said Indwe Coal Fields Railway line or lines shall be constructed, anything in the said Act No. 3 of 1882 to the contrary notwithstanding: And upon such consent of the Governor being given, all the provisions of such last mentioned Act shall *mutatis mutandis*, apply to the Indwe Coal Fields line or lines to be constructed under the authority of this Act.

Governor may consent to some other points than those of Imvani and Putter’s Kraal as starting point of Indwe Coal Fields railway.

2. Whenever the word Indwe appears in the said Act No. 3 of 1882, or in this Act, it shall be taken to mean the Indwe Coal Fields: And for the purposes of both the said Acts such Coal Fields shall not be held to extend to a greater distance than ten miles in any direction from the entrance to the Coal Mine now being worked at Indwe.

Meaning of the word Indwe; area comprised by Indwe Coal Fields.

3. So soon as the line of railway is in a fit condition, and before the said railway is opened for traffic, the directors or proprietors for the time being shall frame terms and conditions, and a tariff of charges for the conveyance of passengers, live stock and goods, and such terms, conditions, and tariff shall be submitted to the Governor for approval, and if approved shall be published in the *Gazette* for general information: Provided always that the said terms and conditions and the rates so chargeable may from time to time be altered by the directors or proprietors with the consent of the Governor; and provided, further, that this shall not apply to any such line which may be constructed under any existing agreement.

Tariff of charges to be approved by Governor, but not to affect existing agreement.

4. This Act may be cited as the “Imvani and Indwe Railway and Coal Mines Act Amendment Act, 1886.”

Short title.

PPP

No. 7—1879.]

[January 27, 1882.

## ACT

## To Provide for the Establishment and Management of Reformatory Institutions for Youthful Criminals.

Preamble.

WHEREAS it is desirable to establish reformatory institutions for youthful criminals in this Colony, and to provide for the management and maintenance of the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Reformatory institutions to be established.

1. <sup>(1)</sup> It shall be lawful for the Governor to establish, for the purposes of this Act, reformatory institutions for the reception and custody of youthful criminals, and in every such institution the males shall be kept separate and apart from the females.

Who may be sent to them.

2. Convicted children only shall be sent to or detained at any reformatory institution.

Until what age.

3. No convicted child shall be detained at any reformatory institution after he or she shall have attained the age of sixteen years.

Convicted child may be sentenced to detention in institution in addition to imprisonment.

4. Whenever any child shall hereafter be convicted of any offence, either upon indictment or on summary conviction punishable by imprisonment, it shall be lawful for the Judge or other competent Court by which such child shall be convicted, in addition to the sentence which may then and there be passed as a punishment for the said offence, to direct such child to be sent, at the expiration of such sentence, to any reformatory institution established under this Act, to be there detained until he or she reaches the age of sixteen years; or for such shorter period as such Judge or other competent Court may think fit; or such Judge or other competent Court may, if such Judge or Court deem fit, send such child to any reformatory institution in lieu and instead of sentencing such child to imprisonment, or may, at the expiration of any sentence, or instead of sentencing such child to imprisonment, order that such child shall be bound to some useful calling or occupation for such period as such Judge or Court shall think fit, but not longer, however, than until such child shall attain the age of sixteen years.

Or may be sent to institution in lieu of imprisonment.

Children now in prison how to be dealt with.

5. If any child shall, at the time of the taking effect of this Act, be in any prison of this Colony under sentence for an offence punishable by imprisonment, the keeper of the gaol, in which such child shall be imprisoned, shall take such child before the Resident Magistrate of the district, and such Resident Magistrate, if he think fit, shall direct such child to be sent to and detained in any

<sup>1</sup> Porter Reformatory established by Proclamation No. 11, 1882, in *Gazette*, 27th January, 1882.

reformatory institution, pursuant to this Act: Provided always, that no such child, as last aforesaid, shall be sent to or detained in any reformatory institution for any longer period than such unexpired term.

No. 7—1879.

6. Whenever any child shall be directed to be detained in any institution established under this Act, the Judge or any other competent Court shall issue a warrant for that purpose, setting forth the crime of which such child shall have been convicted, and the period for which such child shall be detained in the reformatory institution to which such child shall be sent.

Warrant to detain child.

7. The warrant in the last preceding section mentioned, or a duplicate thereof, shall be forwarded to the superintendent or matron of the reformatory institution with the child, and shall be a sufficient warrant for the conveyance of the child thither, and its detention therein.

To whom warrant to be forwarded.

8. In every action for anything done in obedience to any such warrant as aforesaid, it shall be sufficient for the defendant to justify under such warrant alone, without setting forth the previous proceedings, and the production of such warrant shall be sufficient evidence in support of such a plea.

Warrant sufficient defence to action.

9. Every warrant issued under this Act shall be executed and obeyed by the person to whom the same is directed and delivered, and the production thereof, with a statement annexed thereto, signed by the superintendent or matron of any reformatory institution, that the child named in such warrant was duly received into, and is, at the signing thereof, detained in such reformatory institution, shall in all proceedings whatever be sufficient evidence of the facts by this Act required to be stated in such warrant, and of the subsequent detention and identity of the child named therein.

How warrant to be obeyed, &c.  
Production of it in evidence.

10. The Governor may, at any time during the detention of any inmate in a reformatory institution, remove any such inmate to any other reformatory institution established under this Act, and may also order the release of any such inmate from the reformatory institution in which he or she may be detained, and he or she shall upon the production of such order (which shall be under the hand of the Colonial or Under Colonial Secretary) be discharged accordingly.

Power of removal from one institution to another.

11. At any time before the expiration of the warrant authorizing the detention of any inmate in a reformatory institution, the Resident Magistrate of the district in which such institution is situate, or of the district in which such child shall then be detained, may bind any such inmate as apprentice to any useful calling or occupation as he may think fit, in the same manner in which destitute children are now authorized to be bound by the law of this Colony; and such binding shall be as effectual as if such child were of full age and had bound himself: Provided that, if such child should have one or more parents or guardians alive, no

Power to bind inmate as apprentice.

No. 7—1879.

such apprenticeship shall take place without the consent of such parents or guardians.

Provisions of article of apprenticeship.

12. The Resident Magistrate may, in any articles of apprenticeship under this Act, provide that such portion of the wages to become due to such apprentice as he may think fit, shall be deposited, at such times and in such manner as he shall determine, in any savings or other 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.

Who may visit institutions.

13. All members of the Executive Council, all members of the Legislature, all Judges of the Supreme Court, and all Resident Magistrates and Justices of the Peace, shall be entitled to visit every reformatory institution, and shall have admission to the same accordingly, and all such visitors, as aforesaid, shall also be entitled to have access, at convenient times, to every child apprenticed or bound under this Act.

Visitors' book. Entries therein.

14. Every person who, by virtue of the last preceding section, shall visit any such reformatory institution may inscribe in a book (to be for that purpose provided and kept by the superintendent or matron of such reformatory institution) any remarks or observations, signed by such visitor, which he may think fit to make touching or concerning such reformatory institution, and the superintendent, matron, teachers, officers, servants, or inmates thereof, or any of them, and every such book shall be carefully preserved by every such superintendent or matron, and any superintendent or matron obliterating or destroying any such books of any such remarks or observations or any signature thereto, shall, on conviction before the Resident Magistrate of the district, be liable to a penalty not exceeding ten pounds, and in default of payment shall be liable to imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Penalties for allowing escapes.

15. If the superintendent or matron of any reformatory institution, or any teacher, officer, or servant thereof, shall voluntarily or negligently allow any inmate thereof to escape therefrom, every such offender shall on conviction thereof before the Resident Magistrate of the district forfeit and pay any sum not exceeding twenty pounds, and in default of payment shall be liable to imprisonment, with or without hard labour, for any period not exceeding six months, unless such such fine be sooner paid.

Penalties to inmates violating rules of institution.

16. If any inmate of any reformatory institution shall wilfully violate any of the rules and regulations hereinafter authorized to be made for the preservation of order, decency, cleanliness, or health of the inmates of such reformatory institution, such inmate shall be brought before the Resident Magistrate of the district,

who shall inquire into the complaint made against such inmate; and upon proof that such inmate has wilfully violated any of the rules and regulations aforesaid, such Resident Magistrate may, if such inmate be a male, order him to be whipped in manner herein-after provided; or in lieu of whipping, and whether such inmate be a male or female, order such inmate to be punished by being fed on spare diet for any period not exceeding three days: Provided, always, that in awarding such punishment, regard shall be had by such Resident Magistrate to the age and apparent constitution of such inmate.

17. Every order made by any Resident Magistrate under the provisions of the last preceding section shall be in writing, and shall be in accordance with the provisions of such section. Order to be in writing.

18. In case any whipping shall be ordered under the provisions of the 16th section of this Act, the order, sentence, or conviction, ordering such sentence, shall specify the number of cuts to be inflicted; and in case of an offender under the age of fourteen years, such number shall not exceed twelve, and in no case shall exceed twenty; and in all cases the instrument used shall be a cane; and on the occasion of every such whipping, there shall be present the superintendent or matron of the reformatory institution, and one or more of the teachers and officers thereof, who shall sign in the record-book the minute recording the particulars of such whipping. In cases of whipping.

19. If any inmate of any reformatory institution shall abscond therefrom, or wilfully damage or destroy any property belonging to such institution, such inmate, if a male, shall upon conviction thereof before the Resident Magistrate of the district, be liable, at the discretion of such Magistrate, to be whipped in manner herein-before provided or, whether male or female, to be fed on spare diet as hereinbefore provided: And such inmate, if he or she has absconded, may be ordered by such Magistrate to be sent back to the institution, and to be there detained till he or she attains the age of sixteen years or for such shorter period as such Resident Magistrate shall think fit. Absconding or escaping. Penalties.

20. If any child apprenticed or bound under the provisions of this Act shall desert or abscond from the service of his master, it shall be lawful for any Court before whom such apprentice shall be brought, upon proof to the satisfaction of such Court, in addition to any punishment which may be inflicted, either to order the child to return to the service of such master, or that such child shall be detained in any reformatory institution until such child shall attain the age of sixteen years, or for any shorter period. Apprentices absconding. Penalties.

21. Any person who shall directly or indirectly counsel or induce, by letter or otherwise, any inmate of any reformatory institution to abscond or escape therefrom, or break his apprenticeship and abscond from his master, before such inmate shall have been regularly discharged or before the expiration of such apprentice- Accessories to escape or absconding.

No. 7—1879.

ship, or who shall aid or abet any such inmate in absconding or escaping, or who knowing such inmate to have absconded or escaped, shall harbour or conceal, or assist in harbouring or concealing, such inmate, or prevent him or her from returning to such reformatory institution, or to his master shall, on conviction thereof, forfeit and pay any sum not exceeding twenty pounds, or at the discretion of the Court before which such conviction shall be had, be imprisoned for any term not exceeding six months, and with or without hard labour.

Penalties for communicating with inmates without proper permission.

22. Any person who, without the authority or permission of the Colonial Secretary or Under Colonial Secretary, or of the Resident Magistrate of the district, or of the superintendent of the institution (except the persons mentioned in the 13th section of this Act) shall hold communication with any inmate of any reformatory institution, and any person who shall enter such reformatory institution, or any building, yard or ground attached or belonging thereto, and shall not depart therefrom when required so to do by the superintendent, matron or other officer or servant of such institution, shall, on conviction, forfeit and pay any sum not exceeding ten pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding three months, unless such fine be sooner paid.

Appointment of officer under this Act—how proved.

23. Production of the *Government Gazette* containing any proclamation of any place as a reformatory institution under this Act, or notifying the appointment of any person as any officer under this Act, shall be conclusive evidence of the facts stated therein in any action, suit, or proceeding in any of the Courts of this Colony.

Limitation of actions against officers.

24. If any action or suit be brought against any person for anything done in pursuance of this Act, the same shall be commenced within six calendar months next after the act complained of; and notice in writing of such action and the cause thereof shall be given to the defendant one calendar month at least before such action; and the defendant in any such action or suit may, at his election, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereon: And if a judgment for the defendant or an absolution from the instance be pronounced, or if the plaintiff discontinue his action or suit after the defendant shall have appeared, or if upon exception judgment shall be given against the plaintiff, then the defendant shall recover costs as between party and party, and have such remedy for recovering the same as any defendant has or may have in ordinary cases.

Sections 47, 48, and 49 of Act 20 of 1856 to apply.

25. The provisions of the forty-seventh, forty-eighth, and forty-ninth sections of Act No. 20 of 1856, shall *mutatis mutandis*, extend and apply to cases in which any offender shall be directed to be detained in any reformatory institution, or apprenticed or bound as aforesaid, or sentenced to be whipped, whatever may be the number of cuts to which the offender shall have been sentenced.



26. The Governor may from time to time make and shall publish in the *Government Gazette* all such rules and regulations for the good government, management, and inspection of reformatory institutions under this Act, and for the visitation and inspection of children, apprenticed or bound as aforesaid, and for the maintenance of cleanliness, order, and decency among the inmates of such reformatory institutions, and all such rules and regulations shall have the same force of law as if they had been included in and formed part of this Act.

No. 7—1879.  
Rules and regulations to be framed.

27. This Act may be cited as the "Reformatory Institutions Act, 1879."

Short title.

RESIDENT MAGISTRATES' COURTS.

- |  |   |
|--|---|
| <p>1. Ord. 6—1839, (Recovery of Fines and Penalties).<br/>                 2. " 5—1848, Disputed Water Rights).<br/>                 3. Act 20—1856, (Consolidation Act).<br/>                 4. " 9—1857, do.<br/>                 5. " 12—1860, (Increased Jurisdiction).<br/>                 6. " 10—1865, (Review of sentences of R.M. Courts within Eastern Districts of Colony).</p> | <p>7. Act 12—1869, (Duties of R.M. Clerks may be performed by R.M.)<br/>                 8. " 21—1869, (Punishment of Juvenile Offenders).<br/>                 9. " 19—1877. do.<br/>                 10. " 21—1876, (Jurisdiction).<br/>                 11. " 16—1882, (Amending Act 20 of 1856).<br/>                 12. " 43—1885, do.<br/>                 13. " 17—1886, §§ 12 and 13, do. do.<br/>                 14. " 31—1886, (Enrolled Agents).</p> |
|--|---|

No. 6.—Sd. George Napier.]

[August 14, 1839.

Ordinance for the more effectual Recovery of Fines and Penalties before Justices of the Peace and Resident Magistrates on conviction of Offenders in this Colony; and for the application of the same in certain cases.

WHEREAS in some of the Laws and Ordinances which are now in force in this Colony whereby fines and penalties are imposed on persons for certain offences therein mentioned no adequate provision is made for the recovery of the said fines and penalties: And whereas it is expedient that all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on offenders by any Law or Ordinance in this Colony for the recovery of which no provision has been or shall be expressly made in such Law or Ordinance should be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing and publication of this Ordinance all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on persons for offences by any Law or Ordinance which now is or at any time hereafter shall be in force in this Colony for the recovery

Preamble.

Fines and penalties not exceeding forty pounds, recovery of.

Ord. 6—1839.

of which no provision has been or shall be expressly made in such Law or Ordinance shall be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed, and shall in case of non-payment thereof be levied by warrant of distress and sale of the goods and chattels of the offender or offenders or enforced at the discretion of such Resident Magistrate by such special commitment in execution as is hereinafter prescribed for and declared to be generally applicable to the recovery of fines and penalties inflicted by any of the laws of this Colony.

Imprisonment substituted where *nulla bona* for payment of fine.

2. And whereas by several Laws and Ordinances which are now in force in this Colony certain fines and penalties are inflicted on persons convicted of certain offences which are directed to be recovered before a Justice of the Peace or Resident Magistrate within their respective jurisdictions, who is authorized to issue forth his warrant for levying such fines and penalties by distress and sale of the goods and chattels of the offender or offenders, but no further remedy is provided in case no sufficient goods and chattels of such offender or offenders can be found whereon to levy such fines and penalties, for remedy whereof be it further enacted that from and after the passing and publication of this Ordinance, whenever it shall appear to any such Justice of the Peace or Resident Magistrate by whom any fine or penalty shall be adjudged to be paid upon the return of any such warrant of distress that no sufficient goods and chattels of the offender or offenders can be found whereon to levy such fine or penalty within the jurisdiction of such Justice of the Peace or Resident Magistrate, it shall be lawful for such Justice of the Peace or Resident Magistrate to issue forth his warrant for committing such offender or offenders to the common gaol for any term not exceeding three calendar months, unless such fine or penalty shall be sooner paid; or in case it shall appear to the satisfaction of such Justice of the Peace or Resident Magistrate, either by the confession of the offender or offenders or otherwise, that he, she, or they hath not or have not sufficient goods or chattels within the jurisdiction of such Justice of the Peace or Resident Magistrate whereon to levy such fine or penalty, such Justice of the Peace or Resident Magistrate may at his discretion without issuing any warrant of distress proceed to the commitment of such offender or offenders in such and the like manner as if a warrant of distress had been issued and a return of *nulla bona* made thereon as aforesaid.

Release from imprisonment on payment of fine.

3. And be it further enacted that in case any offender or offenders committed to the common gaol for non-payment of any such fine or penalty shall at any time during the period of his, her, or their imprisonment pay or cause to be paid to the keeper of such common gaol the full amount of such fine or penalty it shall be lawful for such keeper of such common gaol and he is hereby required forthwith to discharge such offender or offenders from his custody.

4. And be it further enacted that all fines and penalties recovered under any of the Laws or Ordinances of this Colony shall unless it be otherwise expressly provided by such Laws or Ordinances respectively be paid and applied as follows, that is to say, a part not exceeding one-half or less than one-fourth thereof shall be paid to the informer and the remainder into the Colonial Treasury.

Ord. 5—1848.  
Application of  
fines.

No. 5—Sd. H. G. Smith.]

[June 27, 1848.

Ordinance for enabling Resident Magistrates to exercise in regard to disputed Rights of Water certain Powers formerly exercised by Landdrost and Heemraden.

WHEREAS in times of drought, disputes not unfrequently arise between farmers and others respecting the enjoyment of the water running through and over their respective properties; And whereas, before the abolition of the Boards of Landdrost and Heemraden such disputes were cognizable by such boards, which were accustomed to settle and arrange the same speedily and at small expense. And whereas since the abolition of the said boards on the 31st of December, 1827, no local Court or functionary has had any jurisdiction or authority touching or concerning such disputes, which alone could be entertained by the Supreme Court of the Colony or by some Circuit Court: And whereas recourse in the first instance to either of such Courts is necessarily attended with delay in a class of cases in which a speedy remedy is particularly important, while the expense of resorting to the same is often disproportioned to the injury complained of, whereby wrong-doers, calculating upon probable impunity, are emboldened to deprive their neighbours of their just rights: And whereas, by the Ordinance No. 77, bearing date the 30th October, 1830, and entitled "Ordinance for the better defining and fixing the Duties and Functions of the Civil Commissioners of this Colony," all such duties as were formerly performed by the Landdrosts of the same districts and which had not by any other Ordinances been appointed to be performed by the Resident Magistrates or any other officers were directed to be performed by such Civil Commissioners: And whereas no law or ordinance has yet bestowed upon such Civil Commissioners or any other officers the powers or any of them which were formerly exercised by the Board of Landdrost and Heemraden: And whereas it will be expedient in regard to disputes and questions about water to bestow the jurisdiction and authority hereinafter mentioned upon the Resident Magistrates rather than upon the Civil Commissioners, the same being of a judicial nature: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council

Preamble.

Repeal of repug-  
nant laws.

Ord. 5—1848.

thereof, that anything in the Royal Letters Patent granted by His late Majesty King William the Fourth, bearing date at Westminster, the 4th of May, in the second year of his reign, and commonly called the Charter of Justice, or in the Ordinance No. 33, bearing date the 19th of December, 1827, entitled "Ordinance for creating Resident Magistrates and Clerks of the Peace in certain districts and places in this Colony," or in any other law or ordinance heretofore in force in this Colony which shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Powers of board of landdrost and heemraden in regard to water disputes vested in courts of resident magistrates.

2. And be it enacted that the respective Courts of Resident Magistrates shall possess and exercise in regard to all complaints and disputes arising within their respective districts relative to the wrongful diversion or appropriation of water or injury to or obstructions in watercourses the same powers, jurisdiction, and authority which the former Board of Landdrost and Heemraden of the same district or of any district which embraced the territory now constituting the district of the Resident Magistrate, together with other territory, possessed and exercised in like cases. Provided, always, that nothing herein contained shall be construed so as to confer upon any Resident Magistrate the right or power to frame or enforce any new distribution of any stream or supply of water or to alter rights to water as subsisting at the time of the commencement and taking effect of this Ordinance. But in regard to the vindication of all subsisting rights, whether arising from regulations duly made by any former Board of Landdrost and Heemraden or from contract, condition, prescription, or other legal source, or origin, the Resident Magistrate shall adjudge and determine in like manner as Landdrost and Heemraden might, if now in existence have lawfully adjudged and determined.

Limit of damages.

Provided, however, that except in a case in which by some written record, act, or instrument preserved of record and having the force of law some greater sum is fixed by way of damages or penalty for the act complained of and proved before such Magistrate, such Magistrate, acting under the provisions of this Ordinance, shall not be authorized in any civil case to award any damages or in any criminal case to impose any fine exceeding the sums to which his general jurisdiction in civil and criminal cases respectively is limited.

Rules of procedure in magistrate's court.

3. And be it enacted that in adjudicating upon all such cases and questions as aforesaid the Resident Magistrate shall proceed according to the rules and regulations in force for the time being in regard to the Courts of Resident Magistrate, and every judgment or sentence of any such Magistrate shall be liable to be brought in appeal or review before the Supreme or any competent Circuit Court in manner and form as shall by such rules and regulations be in that behalf provided. And the said Supreme or Circuit Court

may reverse or alter the judgment of the said Magistrate in such manner as justice shall require; and in case the record of the Resident Magistrate shall not appear to such Court to furnish sufficient evidence or information for the due determination of the case may remit the same to the Resident Magistrate with instructions in regard to the taking and setting out of further evidence or information; or such Supreme or Circuit Court may order the parties or either of them to produce at some convenient time in such Court such further proof as shall seem necessary or desirable; or such Court may take such other course as shall seem to tend to the most speedy and the least expensive settlement of the case.

No. 20—1856.  
Review in supreme  
or circuit court.

4. And be it enacted that nothing in this Ordinance contained shall be deemed or taken to impair the rights of Her Majesty the Queen in regard to rivers, streams, or water courses, or to prevent her from regulating the same in any manner in which she might before the passing of this Ordinance lawfully have regulated the same by virtue of her Royal prerogative or any powers or authorities in that behalf expressly or by implication reserved to or vested in Her said Majesty.

Reservation of  
rights of the crown.

5. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

No. 20—1856.]

[June 4, 1856.

### AN ACT

For Amending and Consolidating the Laws relative to the Courts of Resident Magistrates. (1)

WHEREAS it is expedient to amend and consolidate the laws relative to the courts, jurisdiction, powers, and duties of the Resident Magistrates within this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Courts of Resident Magistrates shall be, and the same are hereby declared to be, erected, constituted, and established for and within each of the following districts, that is to say,—Cape Town and the district thereof, Wynberg, Simon's Town, Malmesbury, Piquetberg, Stellenbosch, the Paarl, Worcester, Tulbagh, Clan-

Districts in which  
courts are establish-  
ed.

<sup>1</sup> Act 12, 1869, provides that any act which is required to be done by the Clerk to any Resident Magistrate may be done by such Magistrate himself. § 13, Act 16, 1882, provides that the process of Courts of Resident Magistrates for summoning any person, whether as a party or a witness in any case, civil or criminal, may be signed by the Clerks of such Courts.

This Act may be cited as "The Resident Magistrates' Court Act, 1856." See § 8, Act 21, 1876.

No. 20—1856.

william, Swellendam, Riversdale, Caledon, Beaufort, George, Aliwal, Uitenhage, Port Elizabeth, Albany, Fort Beaufort, Bathurst, Stockenstrom, Somerset, Victoria, Fort Peddie, Albert, Queen's Town, Graaff-Reinet, Richmond, Cradock, Colesberg, East London, Alexandria, Prince Albert, Victoria West, Bredasdorp, Calvinia, Middelburg, Aliwal North, Oudtshoorn, and Namaqualand; and the said Courts shall be respectively holden by and before the Resident Magistrates for the districts aforesaid.

Establishment of courts by proclamation.

2. It shall and may be lawful for the Governor of this Colony, by any proclamation to be by him, from time to time, issued for that purpose, and published in the *Government Gazette*, to erect, constitute, and establish Courts of Resident Magistrates, to be held for and within such districts, respectively, as the said Governor shall think fit, which Courts shall respectively be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

Fixing limits of magistracy.

3. It shall and may be lawful for the Governor of this Colony, by any proclamation to be by him issued for that purpose, and published in the *Government Gazette*, on the passing of this Act, and thereafter from time to time as occasion may seem to him to require, to define, fix, and appoint the local limits of the territory which shall be comprehended and included in any of the aforesaid districts, whether in the first section mentioned or such as shall hereafter be created, and within which the Resident Magistrate for such district shall have and exercise jurisdiction and authority: and whenever the said Governor shall deem it to be inexpedient or unnecessary that any of the said Courts shall continue to be holden for and within any of the districts aforesaid, then and in every such case it shall and may be lawful for the said Governor, by any proclamation to be by him issued for that purpose, and published as aforesaid, to abolish such Court and the office of Resident Magistrate for such district, as also to annex any such district, or any part thereof, to any other district or districts; and every district, or part thereof, which shall be so annexed as aforesaid to any other district, shall thereby become and be within and subject to the jurisdiction and authority of the Resident Magistrate for the district to which it shall be so annexed; and whenever any Court shall be erected under or by virtue of the power and authority in that behalf in the second section of this Act mentioned, and the district assigned for the exercise of the jurisdiction of such Court shall comprise territory which was, before then, either wholly or in part, within the jurisdiction of some other Court or Courts of Resident Magistrate, then and thereupon such territory shall wholly cease to be within or subject to the jurisdiction of such other Court or Courts. (1)

Alteration of districts.

Revival of abolished magistracies.

4. Whenever the said Governor shall, by any proclamation to be by him issued for that purpose, repeal any such proclamation by

<sup>1</sup> See also § 55, *infra*.

which the Court of, and the office of the Resident Magistrate for any district was abolished, thereupon, and by virtue of such repeal, such Court and such office shall of new become and be created, constituted, and established, in like manner, and to all intents and purposes, as if the same had never been abolished in manner aforesaid.

5. Every person who shall hereafter be appointed the Resident Magistrate for any district, shall be so appointed by the Governor of this Colony, under the great seal thereof; and it shall and may be lawful for the said Governor when and so often as, by reason of the death, sickness, absence, or other incapacity of any Resident Magistrate, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as and in the said stead of such Resident Magistrate, within his district; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, under and by virtue of such his appointment, shall be as legal, valid, and effectual, to all intents and purposes, as if the same had been done and performed by or before the Resident Magistrate instead of whom such person shall have been so appointed to act: Provided, always, that no Resident Magistrate of any district existing at the time of the commencing and taking effect of this Act, and of which the local limits shall not be changed by any such proclamation as is in the third section mentioned, need be appointed anew, but shall, without any fresh appointment, be deemed and taken to be the Resident Magistrate of such district.

Appointment of magistrates.

6. Every person who shall in manner aforesaid be appointed to be a Resident Magistrate, or to act as or in the stead of any Resident Magistrate, shall, before exercising any of the functions of his office, take the oath of office set forth in the schedule hereunto annexed, marked A, before the Chief Justice or any of the Judges of the Supreme Court, or before the Clerk of the Peace, or any Justice of the Peace, for the district for or in which such person is appointed to act, who are hereby empowered and required to administer the same; and every such person shall, so soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded, and shall subscribe the same, in the record book of the proceedings of his Court, or of the Court in which he shall so have been appointed to act, as the case may be.

Oath to be taken by magistrates.

7. The Courts of the Resident Magistrates aforesaid shall be respectively Courts of Record, and the pleadings and proceedings of the said Courts shall be carried on, and the sentences, decrees, judgments, and orders thereof, pronounced and declared in open Court, and not otherwise; and the several pleadings and proceedings of the said Courts shall be in the English language<sup>(1)</sup>; and in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *viva voce*, and in open Court.

Nature of courts.

<sup>1</sup> But see Act 21 of 1884, as to use of Dutch Language.

No. 20—1856.  
Civil jurisdiction  
of magistrates.  
Vide also sections  
10, 53, 55, and 56.

8. Every Resident Magistrate of the Colony shall have, in all civil cases brought or instituted against any person residing within the district for which such Resident Magistrate shall have been appointed, the jurisdiction following, that is to say :

1. [Superseded by § 5, Act 43, 1885.]
2. In all cases (except as hereinafter is excepted) in which the debt or damages demanded shall not exceed twenty pounds sterling. <sup>(1)</sup>
3. No such Magistrate shall have jurisdiction in, or cognizance of, any action or suit wherein the title to any lands or tenements, or the title to any fee, duty, or office is in question, or any action or suit to try the validity of any will or other testamentary instrument, or any action or suit whereby rights in future can be bound: Provided that any such Magistrate may, in the course of any action or suit to recover damages for criminal conversation with the wife of the plaintiff or for the amount or value of necessaries lawfully supplied to the wife of any person, determine upon or in regard to the fact of marriage, and may, in the course of any action or suit for the amount or value of maintenance lawfully supplied to the child, legitimate or illegitimate, of any person, determine upon the question of affiliation, so far as may be necessary for the decision of any such action or suit, without thereby binding, or being deemed or taken to bind, rights in future: Provided, however, that the evidence in every such case as aforesaid shall be recorded by the Magistrate, and that the same may be put in as proof, by either plaintiff or defendant, in any subsequent suit or action in the same Court, between the same parties, in which the matters in question in the former suit or action shall again come into dispute.

4. [Superseded by § 5, Act 43, 1885.]

Protest of bill of  
exchange or promis-  
sory note under £20  
not necessary.

9. In any action or suit brought in the Court of any Resident Magistrate upon any bill of exchange or promissory note, for any sum under twenty pounds, against the drawer or any endorser thereof, it shall not be necessary to prove the dishonour of such bill or note, or notice of such dishonour, by a protest made by a public notary,—but such dishonour and notice thereof may be proved by the evidence of any competent witness: and no charge shall be allowed in the taxation of costs between party and party, for any such protest, should one have been made: Provided that, as often as notice of dishonour shall be necessary to be proved in regard to any bill or note, the reasonable horse-hire and other expenses of the person employed to give such notice shall be allowed to the successful party in the cause: Provided, however, that no horse-hire or other expenses shall be allowed in regard to any notice of dishonour

<sup>1</sup> Amended by § 5, Act 43, 1885.



given at any place within the two miles of the residence of the person causing the same to be given.

No. 20—1856.

10. The Resident Magistrates aforesaid shall, in their respective Courts, have jurisdiction in all actions of ejection against the occupier of any lands, tenements, or premises, situated within the local limits of their respective districts, at the suit of any person (or of his lawful attorney, administrator, or executor) under whom such occupier has holden or occupied the same in virtue of any lease, contract, or agreement; or at the suit of any person (or of his lawful attorney, administrator, or executor) whose name is enregistered in the land register of the Colony as the proprietor of any such lands, tenements, or premises, against the tenant or occupier thereof; or at the suit of any tenant (or his lawful attorney, administrator, or executor) holding a subsisting written lease of any such lands, tenements, or premises, under the person whose name is enregistered in the land register of the Colony as the proprietor thereof, against any occupier of such lands, tenements, or premises, whose right, or alleged right, of occupation is not derived from the person whose name is enregistered as aforesaid as the proprietor thereof: Provided always, that the title to the ownership of any of the lands, tenements, or premises aforesaid shall not in any such action be in question, but only the right of occupation: And provided, also, that it shall not be shown by the defendant that the right to the occupation of any such lands, tenements, or premises, during the term or period as to which the right of occupation shall be in dispute, is to him of the clear value of forty pounds sterling, or upwards.

Jurisdiction in ejection.

11. Every such Court as aforesaid may make orders concerning the time or times, and by what instalments, any debt or costs for which judgment shall be obtained in the said Court shall be paid, and all such moneys shall be paid into Court, unless the said Court shall otherwise direct; and every such order shall be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates provided.

Payment of debt by instalments.

12. Whenever any Court shall give judgment for the payment of money, the amount shall be recoverable—in case of default, or failure of payment thereof forthwith, or at the time or times, and in the manner, ordered by the said Court—by execution against the movable property of the party against whom such judgment shall be given; which execution shall be sued out and executed in manner and form as in that behalf directed by the rules and regulations aforesaid. <sup>(1)</sup>

Recovery of sums adjudged.

13. Whenever there shall not be found within the district of the Resident Magistrate, from or out of whose Court such execution shall issue, sufficient movables of such person from which the debt or costs can be levied, by virtue of any writ or warrant issued by such Magistrate, such writ or warrant, when endorsed by the Resi-

Recovery of debts beyond district of magistrate adjudging

<sup>1</sup> Rules 40, *et seq.*

- No. 20—1856.      dent Magistrate of any other district (and every Resident Magistrate is hereby authorized and required, on production to him of any such writ or warrant, to endorse the same), shall have the like force and effect, and may be executed by the officer or person to whom such writ or warrant shall be directed, within the district of the Magistrate by whom it has been endorsed, as if it had been issued by such last mentioned Magistrate for execution of any sentence or judgment of his Court.
- Effect of failure to pay instalment as adjudged.      14. Whenever any such Court as aforesaid shall have made any order for the payment of any sum of money, by instalment, execution upon the judgment recovered against the debtor shall not issue until after default made in the payment of some instalment according to such order, and execution, or successive executions, may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court shall order, either at the time of making the original order, or at any subsequent sitting of the Court.
- What goods not attachable.      15. In respect of any process of execution issued against any person out of any such Court as aforesaid, the wearing apparel and bedding of such person and his family, as well as the tools and implements of his trade, to the value of five pounds, on the whole, shall be protected from seizure, and shall not be attached or sold.
- Decree of civil imprisonment.      16. Whenever it shall appear from or by the return of the messenger of any of the Courts aforesaid to any process of execution, whereby such messenger was required to cause to be levied and raised of the movable property of any defendant the amount of any debt and costs recovered by the judgment of the said Court by any plaintiff, that such messenger had not found any such movable property, or had found sufficient of the same wherewith to satisfy only some part or portion of such debt or costs as aforesaid, then, and in that case, it shall and may be lawful for the clerk of the said Court, and he is hereby required, upon the application of the said plaintiff, or his lawful agent, to issue and deliver to the messenger of the said Court a summons for the said defendant, calling upon him to appear and show why a decree of civil imprisonment should not be pronounced against him, which summons shall, in substance and effect, be in the form in that behalf in the schedule to this Act contained. <sup>(1)</sup>
- Warrant of imprisonment.      17. When and as often as any such Court as aforesaid shall make a decree of civil imprisonment against any defendant, the process for the execution of the same shall be by warrant under the hands of the Resident Magistrate, which warrant shall, in substance and effect, be in the form in that behalf in the schedule to this act contained. <sup>(2)</sup>
- Imprisonment, and maintenance during.      18. The keeper of whatever prison shall in any such warrant be mentioned and referred to, shall receive into his custody, and

<sup>1</sup> Rule 48.

<sup>2</sup> Rule 49.

retain therein, according to the tenor of such warrant, the person against whom the same shall have been sued out: Provided, always, that the plaintiff suing out the same shall pay and satisfy the charges for the maintenance of the defendant, precisely as if such defendant had been committed under or by virtue of a decree of civil imprisonment, made or granted by the Supreme or any Circuit Court: And provided, also, that it shall and may be lawful for such keeper as aforesaid, in case any such charges shall remain unsatisfied, to discharge the debtor from custody forthwith: And provided, further, that such charges as aforesaid for maintenance shall be one shilling per day, payable weekly in advance, and shall be paid by the keeper of the prison into the hands of the imprisoned debtor.

19. When and as often as any defendant, summoned as aforesaid to show why a decree of civil imprisonment shall not be made or granted against him, shall propose terms of settlement to the plaintiff, which terms the said plaintiff shall agree to accept, or shall propose terms of settlement which although the said plaintiff shall refuse to accept the same, shall yet be deemed by the said Court to be fair and reasonable, or shall make it appear that he is incapable of paying or settling <sup>(1)</sup> the amount of the debt or damages, or any part thereof; it shall and may be lawful for the said Court, either to withhold the said decree, or to grant the same, with such certain stay of execution, or other equitable condition, as shall best tend to carry into effect or secure the performance of the terms of settlement agreed upon between the parties, when such terms there are, or, when there are none such, then as shall best tend to carry into effect and secure the performance of any terms proposed by the defendant, which, by the said Court, shall be deemed fair and reasonable, and as such be approved and adopted, or otherwise, as shall best tend to meet the merits of the case.

Circumstances under which decree of imprisonment may be withheld.

20. No defendant shall be detained in prison, under any such warrant as aforesaid, in any case in which the debt and costs mentioned in such warrant shall together amount to less than five pounds for any period longer than one month; nor in any case whatever for any period longer than three months; and no defendant once discharged shall ever be again arrested for the same debt or cause of action: Provided, always, that when any defendant shall be discharged from prison, by reason merely that any such period as aforesaid has expired, such imprisonment shall not be deemed to be a satisfaction of the debt, damages, or costs for which he was taken in execution, so as to prevent the plaintiff from having further execution against the property of such defendant: And provided, also, that every defendant imprisoned under any such warrant shall be discharged forthwith upon payment of the amount of debt and costs mentioned in the said warrant.

Period of imprisonment and effect of liberation.

<sup>1</sup> See § 6, Act 8, 1879.

No. 20—1856.

Costs of proceedings for imprisonment.

21. The costs and charges of every summons for civil imprisonment and for the service of the same, and of every decree made in pursuance thereof, shall be the same as those, for the time being, respectively fixed in regard to other summonses or judgments by the schedule or table of fees appointed and authorized to be taken by the officers of the Courts of Resident Magistrates respectively, and the costs and charges of every warrant issued upon or by virtue of any such decree, and of the execution of the same, shall be payable and paid according to the scale in the schedule to this Act set forth.

Costs of proceedings for imprisonment, by whom payable.

22. All and singular the costs and charges in the last preceding section mentioned shall be payable and paid by the plaintiff, who shall not (except as hereinafter excepted) recover or have the same, or any of them, from the defendant: Provided, always, that if, in any case in which any such decree of civil imprisonment shall be made or granted, it shall be made to appear to the Court, at the time of granting the same, that the non-payment by the said defendant of the debt and costs due by him, and then in question, is vexatious, it shall and may be lawful for such Court to allow against such defendant the costs and charges aforesaid, or any part thereof, which to the Court shall seem fit: And provided, also, that nothing in this section contained shall be constructed so as to affect any settlements, by means of terms offered by the defendant and accepted by the plaintiff, or to prevent the Court from taking such costs and charges into its consideration, in any case in which terms are proposed by the defendant as fair and reasonable, for the purpose of being sanctioned by the said Court, and carried into effect by its authority.

Proceedings for recovery of possession of house, &c., upon return of *nulla bona* to action for rent.

23. When and as often as a judgment of any such Court as aforesaid shall have been obtained for the amount of any rent of any house, land, or premises held by the defendant from or under the plaintiff, due and in arrear, and it shall appear by the messenger's return to any process of execution issued upon the said judgment, that no movable property has been found wherewith to satisfy the debt and costs mentioned in such process, or any part thereof, it shall and may be lawful for the clerk of the said Court, and he is hereby required, upon the application of the said plaintiff, to issue and deliver to the messenger of the said Court a summons for the said defendant, calling upon him to appear and show why he should not be condemned to deliver up to the said plaintiff possession of the house, land, or premises by the said defendant held from the said plaintiff, and in respect of which the rent recovered as aforesaid shall be due and owing; which summons shall, in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained <sup>(1)</sup>: Provided, always, that no claim or demand for the delivery up of such possession shall be made under or by virtue of

<sup>1</sup> Rule 50.

the provisions of this section in any case in which the lease or contract of hire, or the time or term thereof yet to come and unexpired, shall be respectively of a nature or value which would exclude the jurisdiction of any Court of Resident Magistrate, under or by virtue of the tenth section of this Act.

No. 20—1556.

24. Upon the hearing of every case in which such delivery up of possession as aforesaid shall be claimed, it shall and may be lawful for the Court of Resident Magistrate in which the same shall be pending, upon proof of such return as aforesaid to the process of execution, to condemn the said defendant to deliver up such possession forthwith, but without costs; and thereupon such Court shall, upon the application of the plaintiff, grant a warrant authorizing and requiring the messenger of the said Court to put the plaintiff into possession of the house, land, or premises in question; which warrant shall, in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of the Resident Magistrates contained, <sup>(1)</sup> and which warrant it shall and may be lawful for such messenger to execute as against the defendant, and all persons claiming from, through, or under him; and thereupon every previous contract or agreement for the hire or use of such house, land, or premises by the said defendant, from the said plaintiff, shall become and be wholly evicted, avoided, and from thenceforth absolutely determined: Provided always, that the execution of such warrant shall not operate as a satisfaction or extinguishment of the rent recovered by such judgment.

Decree for delivery of possession, and its effects.

25. If it shall be made to appear to any such Court as aforesaid, at the time of the hearing of any action brought for the recovery of any such rent as aforesaid, either by the admission of the defendant, or otherwise, and whether such defendant shall personally appear at any such hearing or not, that there is no movable property to be found against which to execute any process of execution, the said Court may then, and without the issue of any such process or any fresh summons, condemn the defendant to deliver up possession as aforesaid, in like manner as if he had been duly summoned in manner and form as in the twenty-fourth section of this Act mentioned.

Court in a certain case may, in an action for rent, decree delivery up of possession  
Warrant of execution or subsequent summons

26. When and as often as the landlord of any house, land, or premises, situate within the jurisdiction of any Resident Magistrate, shall make an oath before such magistrate that an amount of rent, not exceeding the amount to which the jurisdiction of the Court of such Resident Magistrate is limited, is due and in arrear in regard to the said house, land, or premises, and that the said rent has been demanded for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property in and upon the said premises, in order to defeat and avoid the payment of the rent so due and in arrear, and shall enter into security, together with some one as his

Arrest of goods in security for rent.

<sup>1</sup> Rule 51.

No. 20—1856.

surety, to be approved of by the said Magistrate, to prosecute in such Court as aforesaid, if need be, a suit for the recovery of such rent so in arrear, and also to pay and satisfy all damages, costs, and charges which the tenant of such house, land, or premises, or any other person, may sustain or incur, by reason of or in connection with the distress or seizure hereinafter mentioned, if the said landlord shall fail to prove that the rent aforesaid is really due and in arrear; then, and in that case, it shall and may be lawful for such Magistrate to issue an order in writing, directed to the messenger of the said Court, authorizing and requiring him to seize and arrest, if need be, so much of the movable property in or upon the place or premises in question, and by law distrainable for rent in arrear, as may be sufficient to satisfy the amount of rent due and in arrear, together with the costs and charges of the action aforesaid, to be afterwards, if need be, instituted for the recovery thereof; and such affidavit, security, and order, respectively, shall, in substance and effect, be in the forms in the rules and regulations of the Courts of Resident Magistrates in that behalf contained: (1) Provided, always, that whenever any such order shall be applied for at the time of suing out, or after having sued out, a summons of the Court aforesaid, for the recovery of the rent in respect of which such order shall be needed, the form of such security as aforesaid shall be modified accordingly: And provided also, that in case of failure made in fulfilling any of the stipulations or conditions contained in such security, then any order made in reference to the same, and everything done under the same, shall be, *ab initio*, null or void, and the landlord and his surety shall be answerable for any damage, loss, or injury, which the tenant aforesaid, or any other person, may have sustained by reason or in consequence of such order.

Execution of arrest  
in security of rent.

27. The messenger aforesaid, in the execution of any such order as aforesaid, shall repair to the house, land, or premises in question within such space of time as he would be bound to repair to the same were such house, land, or premises the house of a defendant against whom such order was process of execution on a judgment or sentence of the Court, and shall demand payment of the amount of the rent mentioned in such order, and, failing to obtain such payment, he shall require that so much movable property so distrainable as aforesaid be pointed out as such messenger may deem sufficient to satisfy the exigency of such order; and if such requisition be complied with, the said messenger shall make an inventory of such property, and lay an attachment thereon; but if no such property be pointed out, the said messenger shall attach, under inventory, as much of such property as he himself may deem sufficient for the purpose aforesaid.

Copy of inventory  
to be handed to the  
tenant.

28. The said messenger shall deliver a copy of the said inventory, signed by himself, to the tenant, or, if he be not

<sup>1</sup> Rules 52, 53 and 54.

No. 20—1856.

present, or will not accept it, shall leave the same upon the premises; and such inventory shall have subjoined thereto a notice, which shall, in substance and effect, be conformable to the form in that behalf in the rules and regulations of Courts of Resident Magistrates contained <sup>(1)</sup>.

29. When any tenant, in regard to whose rent in arrear movable property has been arrested under any such warrant as aforesaid, will undertake in writing, together with some other person, to be approved by such messenger, as his surety, that the said movable property shall be forthcoming, to answer process of execution in any action for recovery of the rent alleged to be in arrear, if the landlord shall not be sooner satisfied in respect to the said rent, then the said messenger shall leave the said movable property upon the premises where the same was found; and such undertaking as aforesaid shall in substance and effect, be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained <sup>(2)</sup>.

When security found for rent, goods arrested shall be left with the tenant.

30. If the tenant will not undertake, in manner and form as in the last preceding section mentioned, then the messenger aforesaid shall either remove the movable property arrested to some convenient place of security; or, should it be inconvenient to remove the same, shall leave it upon the premises, in the charge and custody of some person for him, to await the issue of the proceedings taken, or to be taken, in regard to the rent due and in arrear.

When no such security found, goods arrested how to be kept.

31. If any person shall dispose of, conceal, embezzle, or receive any movable property attached under and by virtue of any such order as aforesaid, knowing the same to have been attached, and with intent to defeat the said attachment, such person shall, on conviction thereof, be liable to be imprisoned, with or without hard labour, for any period not exceeding six months.

Embezzlement, &c., of goods arrested, how punishable.

32. Where any person whose movable property has been attached under any such order as aforesaid, shall admit the amount of rent due and in arrear, and shall be minded, in order to save expense, to consent to an immediate sale thereof, it shall and may be lawful for the Resident Magistrate by whom the said order was issued, upon such consent being certified to him by such person, both in person and in writing, to grant another order, directed to the messenger aforesaid, authorizing and requiring him to sell, on some convenient day, and at some convenient place, to be specified in such order, the said movable property, or so much thereof as shall be necessary to satisfy the amount of rent due and in arrear, together with the charges of the said sale, which shall be the same as would by law be payable if such sale were a sale under process of execution of the Resident Magistrate's Court; and such order shall, in substance and effect, be in the form in that behalf in the

Goods arrested may, with consent of tenant, be sold at once.

<sup>1</sup> Rule 55.

<sup>2</sup> Rule 56.

No. 20—1856.

rules and regulations of the Courts of Resident Magistrates contained <sup>(1)</sup>; and every such sale may be made by the said messenger without taking out any licence as an auctioneer, and shall be made publicly, and for ready money, to the highest bidder; and a notice of every such sale shall be affixed at the door of the Court-house of the said Resident Magistrate, and at, or as near as may be to, the place where the sale is actually to take place, for seven days at least before the day appointed for such sale: Provided always, that it shall be competent for the tenant at any time before such sale, to pay the amount of rent due and in arrear, together with such further sum, not exceeding fifteen shillings, as the Magistrate shall tax and allow for the costs and charges of such messenger about such seizure and arrest as aforesaid; and thereupon the movable property arrested shall be restored.

Appeal against judgment of magistrates.

33. It shall and may be lawful for any person, being a party to any civil suit or action depending in the Court of any Resident Magistrate within this Colony, to appeal against any final judgment, decree, or sentence of such Court, or against any rule or order made by such Court in any such civil suit or action, having the effect of a final or definitive sentence, to the Supreme Court, or to the Circuit Court which shall next be holden for the district of such Resident Magistrate: and in every case in which any such appeal shall be made, the Resident Magistrates shall, and are hereby respectively empowered, either to direct that the judgment, decree, rule, order, or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended pending such appeal, as to the said Resident Magistrates respectively, may, in each case, appear to be most consistent with real and substantial justice; and in case any Resident Magistrate shall direct any such judgment, decree, rule, order, or sentence, to be carried into execution, the person in whose favour the same shall have been given shall, before the execution thereof, enter in good and sufficient security, to be approved by such Resident Magistrate, for the due performance of such judgment or order, as the Court to which such appeal shall be made shall think fit to make thereupon; and in case any Resident Magistrate shall direct the execution of any such judgment, decree, rule, order, or sentence to be suspended pending such appeal, such Resident Magistrate shall and may, whenever it shall appear to him necessary, and consistent with real and substantial justice so to do, require the person against whom such judgment, decree, rule, order, or sentence shall have been given, before any order for the suspension of any such execution is made, to enter into good and sufficient security, to be approved by such Resident Magistrate, for the due performance of such judgment or order, as the Court to which such appeal shall be made shall think fit to make thereupon: Provided always, that every such appeal shall be taken, entered,

When appeal made, judgment may be either executed or suspended.

At what time appeal to be taken.

<sup>1</sup> Rule 57.



and made within such time and in such manner as is directed and required by the rules and regulations, <sup>(1)</sup> for the time being, of the Courts of Resident Magistrates: And the said Supreme Court or the said Circuit Court may reverse or alter the judgment of the said Court of Resident Magistrate, as justice shall require,—and in case the record of the Resident Magistrate shall not appear to the Supreme or Circuit Court (as the case may be) to furnish sufficient evidence or information for the due determination of the case, may remit the said record to the Court of the Resident Magistrate, with instructions in regard to the taking or setting out of further evidence or information; or such Supreme or Circuit Court may order the parties, or either of them, to produce, at some convenient time, in such Court, such further proof as shall seem necessary or desirable; or such Court may take such other course as may lead to the just, speedy, and, as much as may be, inexpensive settlement of the case, making such order in regard to costs as justice shall require.

No. 20—1856.

Procedure on appeal.

34. If any action shall, after the commencement of this Act, be commenced in the Supreme Court, or any Circuit Court, for or upon any cause of action, other than some one of those in the next succeeding section mentioned, for which cause an action might have been commenced in some Court of Resident Magistrate, and judgment shall be given for the plaintiff for a sum less than forty pounds, if such action be founded upon a liquid document, as in the eighth section of this Act mentioned, or less than twenty pounds, if such action be not founded upon a liquid document, such plaintiff shall not recover any costs exceeding the estimated amount of the costs which he would, in the same case, have recovered in the Court of Resident Magistrate, had he brought his action therein; and if judgment shall be given in favour of the defendant, he shall be entitled to his costs, as between attorney and client, unless, in either case, the Court trying the action shall find, and record, that the said action, from its nature and circumstances was fit to be brought into such Court.

Costs where action, competent before magistrate, is brought in superior court.

Costs.

35. In all cases in which the plaintiff resides in a district other than that in which the defendant resides, and no part of the cause of action arose in such last mentioned district, and in all cases where a claim or demand is founded upon any notarial or other mortgage bond, or bill of exchange, or promissory note, of which the lawful holder, for valuable consideration, does not reside in the same district with the defendant, and in all cases in which any action shall be brought against any officer of any such Court, for or on account of anything relating to his conduct in his office, the plaintiff may, at his election, bring his action in the Supreme Court, or any competent Circuit Court, although some Court of Resident Magistrate might have had jurisdiction, and the question of the costs in such action shall be judged of by the Court in which

Cases in which action may be brought in supreme or circuit court.

Costs.

<sup>1</sup> Rules 33, 34, 35, 59 and 60.

No. 20-1856.

it is brought, in like manner as if it could not have been brought in any other.

Enrolment of practitioners.

36. <sup>(1)</sup> It shall and may be lawful for every Court of Resident Magistrate to admit and enrol, as agents in the said Court, so many persons of full age, and of good fame and character, as shall be desirous to be so enrolled, and shall pay for such enrolment, if in the Court of the Resident Magistrate for Cape Town, and the district thereof, and the Cape district, or in the Courts of the Resident Magistrates for Albany and Port Elizabeth respectively, the sum of twenty pounds, and if in any other Court of Resident Magistrate, the sum of ten pounds, to be paid by such Magistrate into the Colonial Treasury: Provided that every agent enrolled in any one Court shall be entitled to be enrolled in any other, without the payment of any further sum, save and except that an agent enrolled in any Court other than one of the three in this section mentioned, who shall desire to be enrolled in any of the said three Courts, shall be liable to pay an additional sum of ten pounds.

Jurisdiction of court over enrolled practitioners.

37. Every such Court shall possess and exercise over, or in respect of, all agents so enrolled the like powers and authorities as the Supreme Court possesses and exercises over, or in respect of the attorneys thereof, and may summarily inquire into any charge of misconduct preferred against any agent, and should the same prove to be well founded, may remove such agent from the roll of agents, either absolutely or conditionally, or may suspend such agent from practice in the said Court, for a limited period, in all cases in which, under similar circumstances, arising in or out of proceedings in the said Supreme Court, any attorney thereof might lawfully have been, by the said Court, proceeded against and punished in the same manner: Provided always, that every Resident Magistrate shall record the evidence upon which he shall have ordered any such removal or suspension, and that any agent who shall conceive himself to be aggrieved by any such removal or suspension, may bring the same in review before the Supreme Court, or any Circuit Court for the district in which such removal or suspension was ordered, which Supreme Court or other Court may set aside the same; and when and as often as any such removal or suspension shall be set aside, no costs shall be awarded against the Magistrate ordering the same, in case he shall appear to have acted *bonâ fide*, and upon reasonable and probable cause: Provided always, that although such removal or suspension shall not be brought in review, the Magistrate so removing or suspending any agent shall nevertheless transmit to the Registrar of the Supreme Court, a certified record of the evidence upon which the said removal or suspension was grounded; and it shall be lawful for the said Court, in case it should deem such removal or suspension one fit to be rescinded or reconsidered, to make such order in the matter as shall to justice appertain.

---

<sup>1</sup> See § 8, Act 43, 1885, and Act 31, 1886.

38. <sup>(1)</sup> No agent shall (except as hereinafter excepted) recover from his client or employer, for, or on account of the work and labour by such agent expended in and about the prosecuting or defending of any civil action or proceeding in any Court of Resident Magistrate, any greater sum than seven shillings and sixpence in liquid cases, or ten shillings and sixpence in all other cases and proceedings: Provided always, that nothing herein contained shall be taken or construed so as to render invalid any agreement in writing signed by the party sought to be charged, or his lawful agent, whereby any greater or lesser sum than either of the sums aforesaid shall be stipulated or undertaken to be paid.

No. 20—1856.  
Fees recoverable by enrolled practitioners from client.

39. <sup>(1)</sup> The party, whether plaintiff or defendant, in whose favour any judgment of any Court of Resident Magistrate in any civil action or proceeding shall be pronounced, shall, subject to the conditions hereinafter mentioned, be allowed, in the taxation of costs against the opposite party, the expense of the agent, if any, employed by the party successful, according to the scale aforesaid of seven shillings and sixpence in liquid, and ten shillings and sixpence in other cases: Provided always, that nothing herein contained shall be construed so as to deprive any such Court of any discretionary power which it may now by law possess, to refuse costs to any suitor to whom it would, in the judgment of such Court, be inequitable to allow the same.

Fees recoverable from opposite party, in regard to employment of an enrolled agent.

40. Any advocate of the Supreme Court may appear and plead in any civil action or proceeding depending in any Court of Resident Magistrate: Provided always, that nothing shall be allowed to any plaintiff, for the expense of such advocate, when the sum recovered shall be under ten pounds, nor to any defendant, when the sum demanded was under ten pounds, nor shall the expense of such advocate be allowed in any case, without the leave of the said Court of Resident Magistrate; which leave such Magistrate shall only grant in case he be of opinion that the action or proceeding was of such a nature as to render the employment of an advocate reasonable and proper: And provided, also, that the expense of such advocate shall not be allowed unless he shall have been instructed by some such agent as aforesaid, or some such attorney as in the next succeeding section mentioned, whose expense shall also be allowed: And provided, further, that the sum to be allowed for the expense of an advocate, in any taxation of costs between party and party, shall never be more or less than one pound and one shilling.

Advocates may appear.  
Costs.

41. Every attorney duly admitted to practise in the Supreme or any Circuit Court, shall be entitled to practise in any Court of Resident Magistrate, without payment or enrolment, but shall be considered, in the taxation of costs, and in other respects, as an enrolled agent.

Attorneys to be deemed enrolled agents.

<sup>1</sup> See § 7, Act 21, 1876, *infra*. The fees mentioned herein have been altered by Rules of Supreme Court promulgated 4th January, 1878.

No. 20—1856.

Jurisdiction in criminal cases.  
Vide also sections 44, 55, and 56.  
Punishments.

42. (1) The Resident Magistrates of the Colony shall respectively, have jurisdiction in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation, or banishment from this Colony: Provided always, that it shall not be lawful for any such Resident Magistrate to punish any offender in any higher or more severe manner than by fine, not exceeding the amount of ten pounds sterling, or by imprisonment, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for a period not exceeding three months, or by a whipping, privately, in prison, not exceeding thirty-six lashes: Provided that the punishment of whipping shall not be inflicted except in the case of a second or subsequent conviction of some crime or offence within the space of two years: Provided, also, that any offender may be punished by both such fine and such imprisonment, or by both such imprisonment and such whipping, but the offender shall not for the same offence be punished both by fine and by whipping: And provided, also, that in regard to the infliction of spare diet or solitary confinement, the Resident Magistrates shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences, and be by the Governor issued for their guidance: And provided, further, that nothing herein contained shall be construed so as to prevent any Resident Magistrate from inflicting any other or greater punishment than the punishment aforesaid, when and as often as he is or shall be authorized so to do by any special law or ordinance now in force or hereafter to be enacted.

Females not to be liable to corporal punishment, or to labour in a public place.

Jurisdiction as to offences committed beyond local limits of magistracy.

43. It shall not be lawful for any Court of Resident Magistrate, in any case, to sentence or adjudge any female to receive personal correction, or to hard labour on any road, street, or public place.

44. No Resident Magistrate shall have jurisdiction, except as is hereinafter excepted and provided, in any case of any crime or offence committed without the local limits of the district within which such Magistrate shall have been appointed to exercise jurisdiction: Provided that when any crime or offence shall be committed on the boundary or boundaries of two or more districts, or within the distance of two miles of any such boundary or boundaries, or shall be begun in one district and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished in any of the said districts, in the same manner as if it had been actually and wholly committed therein: And provided also, that where any crime or offence shall be committed in respect of any property in or upon any cart, wagon, coach, or other carriage whatever, employed on any journey through any part of this Colony, such crime or offence may be dealt with, inquired of, tried, determined, and punished in any district through any part whereof or on, or within the distance of two miles of the

<sup>1</sup> Printed as amended by § 4, Act 21, 1876.

boundary whereof such coach, wagon, cart, or carriage, shall have passed in the course of the journey during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district. <sup>(1)</sup>

No. 20—1856.

45. Every person, upon trial on any criminal charge in any Court of Resident Magistrate, shall be entitled to make his defence by counsel, or by attorney, or by any such agent as is hereinbefore in the thirty-sixth section of this Act mentioned: Provided, however, that nothing herein contained shall extend to alter or affect the law heretofore in force, regarding the admission of legal advisers upon any preparatory examination. <sup>(2)</sup>

Accused persons may make their defence by counsel, attorney, or agent.

46. Every Resident Magistrate shall prepare and transmit to the Attorney-General of the Colony a report of every criminal case adjudicated upon by such Magistrate under and by virtue of his summary jurisdiction, showing the name and occupation of the party accused, the name and occupation of the complainant, the crime or offence charged, the judgment of the Court, and, in cases of conviction, the sentence pronounced. <sup>(3)</sup>

Report of summary criminal trials to be forwarded to Attorney-General.

47. When and as often as any Court of Resident Magistrate shall sentence any person, upon conviction, to be imprisoned, with or without hard labour, for any period not exceeding one month, <sup>(4)</sup> or to pay any fine exceeding five pounds or to receive any number of lashes [*exceeding twelve*] <sup>(5)</sup> the Magistrate pronouncing such sentence shall forward to the Registrar of the Supreme Court, <sup>(6)</sup> not later than one week next after the determination of the case, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append; and such Registrar shall, with all convenient speed, lay the same before one of the Judges of the Court, in chambers, for his consideration,—and in case the said proceedings shall appear to such Judge to be in accordance with real and substantial justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then, by the Registrar aforesaid, be returned to the Resident Magistrate by whom the same shall have been transmitted: Provided, always, that the execution of any sentence of imprisonment, with or without hard labour, or to pay a fine, shall not be suspended by the transmission of, or the obligation to transmit, the record aforesaid, unless the person sentenced shall give sufficient bail to surrender himself in order to undergo such imprisonment, or to pay a fine imposed upon him (as the case may be), in case the proceedings in the case shall

Certain judgments in criminal cases to be subject to the revision of a judge of the Supreme Court.

Manner of proceeding in bringing such cases before the judge.

<sup>1</sup> As to offences on Lines of Railway, see Act 16, 1882.

<sup>2</sup> See § 39, Ord. 40 (Criminal Procedure).

<sup>3</sup> As to Eastern Districts and Griqualand West, see § 36, Act 21, 1864, and § 19, Act 39, 1877, respectively.

<sup>4</sup> Printed as amended by § 2, Act 9, 1857.

<sup>5</sup> Words in brackets superseded by § 5, Act 21, 1876.

<sup>6</sup> As to Eastern Districts and Griqualand West, see Acts 10, 1865, and 39, 1877, § 20, respectively.

No. 20—1856.

be approved as aforesaid,—and in case a written notice to surrender or to pay (as the case may be), signed by the clerk of the Court of the convicting Magistrate, shall be served upon or for the person, at some place to be mentioned in the bail bond or recognizance; and every such notice requiring the surrender of the person, or payment of the fine (as the case may be), shall be served in manner and form as are prescribed and directed by the rules and regulations of the Courts of Resident Magistrates, in regard to the service of the summons on a defendant in a civil case. And if, in any case, a person sentenced to receive any number of lashes [*exceeding twelve*] <sup>(1)</sup> shall not be also condemned to be imprisoned for such a period as shall allow time for the Judge's certificate to be received before inflicting the said lashes, such person, in case he shall not give sufficient bail for his appearance after being served, at some place to be mentioned in the bail bond or recognizance, with a written notice, signed by such clerk as aforesaid, requiring him so to do, [*and in case he shall not desire to receive his punishment at once,* <sup>(2)</sup> *and be thereupon discharged (which desire shall be recorded, and signed by the prisoner, and also witnessed)*], shall be detained in custody until the proceedings in the case shall be returned as aforesaid: Provided, always, that in every case in which any person sentenced as aforesaid shall give bail as aforesaid, it shall be lawful for the Magistrate (should he so think fit) to take bail also for the cost and charge of serving such notice as aforesaid (if necessary), which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

When questions arise in such cases, how the same are to be disposed of.

48. If, upon considering the proceedings aforesaid, it shall appear to the Judge in chambers that the same are not in accordance with real and substantial justice, or that doubts exist whether or not they are in such accordance,—then it shall and may be lawful for such Judge to lay the same before the Supreme Court for its consideration; and the said Court, at any sitting thereof, shall have full power, jurisdiction, and authority to affirm, alter, or reverse the sentence of the Resident Magistrate's Court, and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper so to do, to remit such case to the said Resident Magistrate's Court, with such instructions relative to the further proceedings to be had in such case as the said Supreme Court shall think fit, and to make such order touching the suspension of the execution of any sentence against the person convicted, or the admitting such person to bail, or, generally, any matter or thing connected with such person or the proceedings in regard to him, as to the said Court shall seem calculated to promote the ends of real and substantial justice: Provided, also, that if, in any case, the said Court should desire to have any question of law

<sup>1</sup> Words in brackets superseded by § 5, Act 21, 1876.

<sup>2</sup> Words in brackets superseded by § 6, Act 17, 1874.

or fact, arising in any such case, argued at the bar, such Court may direct the same to be argued by the Attorney-General of the Colony, and by such other advocate as the said Court may appoint.

49. Every Resident Magistrate forwarding any such record, as is in the forty-seventh section of this Act mentioned, shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any attorney of the Supreme Court, duly acting for such convicted person, to peruse, and, if need be, take a copy of such record, whilst in the possession of the Registrar of the said Court, or of any of the judges thereof; and it shall be lawful for such attorney, should he so think fit, acting as aforesaid, to set down the case contained in such record for argument before the said Court, in like manner as if such record had been returned or transmitted to such Court in obedience to any summons of such Court, issued in or for an appeal from, or review of, a judgment of the Court of Resident Magistrate: Provided always, that a written notice shall, in every such case, whether prosecuted at the public instance, or at the instance of a private party, be served upon the Attorney-General of the Colony, at his office, in Cape Town, not less than forty-eight hours before the hour appointed for the argument, setting forth that such case has been so set down for argument, as well as the grounds or reasons upon which the judgment is sought to be reversed or altered. And provided, that whether the said judgment shall be confirmed, or shall be reversed or altered, no costs shall be payable by the prosecutor to the person convicted, or by the person convicted to the prosecutor. Provided, also, that no sentence contained in any record of proceedings, forwarded as in the forty-seventh section of this Act directed, which sentence shall have been pronounced in regard to what was by law an offence, sufficiently charged and proved, and lawfully punishable as by the said sentence directed, shall be reversed or altered, by reason merely that the degree of punishment awarded by such sentence may appear to the Court or judge considering such record to have been unusually or unnecessarily severe. And provided, lastly, that nothing herein contained shall extend to prevent such Court or Judge, or any other person, from making such representation to the Governor of this Colony, respecting the mitigation of any such sentence, as the circumstances of the case may appear to justify.

50. In actions and proceedings before the respective Courts of Resident Magistrates, whether civil or criminal, it shall and may be lawful for such Court, before or at the hearing, to amend any plaint or summons, or other record, in regard to the misdescription therein of any written instrument or paper writing relating to such action or proceeding, or of any contract, or any other particular or particulars: Provided that no such amendment be made, except in some particular which, in the judgment of such Court, is not material to the merits of the case, and by which the opposite party

No. 20-1856.

The person convicted may cause the case, as transmitted, to be set down for argument.

Amendment of  
plaint or summons.

No. 20—1856.

Costs.

cannot be prejudiced in the conduct of his action, prosecution, or defence: Provided also, that such amendment shall be made upon the payment of such costs to the other party, if any, as such Court shall judge reasonable: And provided further, that no misnomer in regard to the name of any person or any place shall vitiate any summons or other writ, or plaint, or proceeding, in case the place or person be therein described so as to be commonly known.

Suits by minors and married women competent in certain cases.

51. Persons under age, and married women, shall be entitled to sue in any Court of Resident Magistrate for any cause of action accruing to them, without being assisted by their guardians or husbands (as the case may be) unless the defendant shall show to the Court that any such minor or married woman (as the case may be) has a guardian or a husband (as the case may be), resident within the district of such Magistrate: Provided also, that if, after such proof by the defendant, the plaintiff shall make it appear that the assistance of such guardian or husband (as the case may be) has been solicited, and has, without just and reasonable grounds been refused, the Resident Magistrate may disallow the objection of the defendant, and permit the suit or action to proceed precisely as if such minor were of full age, or such married woman were unmarried.

Summoning of witnesses resident in another district.

52. Whenever any person whom it shall be necessary to examine as a witness in the course of any preparatory examination, or at the trial of any cause, whether civil or criminal, before any of the Resident Magistrates aforesaid, shall reside, or be for the time within any other district than that of such Magistrate, then, and in every such case, it shall and may be lawful for the said Magistrate to issue a summons for the attendance of such person before him, in the like form as is by law provided in respect of summonses to be issued in the like cases, for procuring or compelling the attendance of witnesses residing or being within the district of the Resident Magistrate issuing the same; and every such summons when endorsed by the Resident Magistrate or any Justice of the Peace for such other district, or by the Field-cornet of the Field-cornetcy within which the person so to be summoned resides for the time, or shall be found (who are hereby respectively authorized and required, on production to them of any such summons, to endorse the same), and being duly served and returned, by any person authorized to serve such a summons in either of the said districts, shall have in law the like effect in requiring the attendance of such person as aforesaid, before the Magistrate by whom the same was issued, and in rendering such person, if he shall fail so to attend, liable to every penalty provided for the non-attendance of persons summoned as witnesses, as if such person, at the time when such summons was served, had resided or been within the district of such last-mentioned Magistrate: Provided that, as often as any witness in any civil case brought in any Court of Resident Magistrate shall reside or be in a district other than that under the

Examination of witnesses resident in other districts, by interrogatories.



jurisdiction of such Court, it shall be lawful for the Court in which such civil action shall be brought, should it appear to be for the convenience of the witness, and to be consistent with the ends of justice, upon the request of either party, and after hearing the other party, to frame or approve of such interrogatories as either party shall desire to have put to such witness, and to forward the same (together with the reasonable expenses of such witness, which shall be advanced by the party desiring his examination) to the Resident Magistrate of the district within which such witness shall reside or be, who shall summon such witness to appear in his Court and, upon his appearance, shall take his evidence in manner and form as if a witness in a case pending in such last-mentioned Court, and shall put to such witness the interrogatories aforesaid, and all other questions calculated to obtain full and true answers to such interrogatories; and shall take down, or cause to be taken down, in writing, the evidence of such witness, and shall transmit the same, certified as correct, to the Resident Magistrate in whose Court such civil case shall be pending; and such evidence (subject to all lawful exceptions) shall be received as evidence in such case: Provided, also, that every witness so summoned by any Resident Magistrate to appear to answer any such interrogatories as aforesaid, shall be summoned in like manner, and be liable to the like penalties, in case of non-attendance, as if such summons was a summons to give evidence in the Court of such last-mentioned Resident Magistrate: And provided, lastly, that as often as any such witness, as in this section mentioned, in any case, civil or criminal, shall, after having been summoned to appear in the Court of some Resident Magistrate, other than that of the district in which such witness shall reside or be, fail to appear, it shall be lawful for the Resident Magistrate in whose Court he shall have been summoned to appear, to certify, under his hand, to the Resident Magistrate of the district in which such witness shall reside or be, that such witness, after being summoned to appear to give evidence in the case in question, made default in so doing; and thereupon it shall be lawful for such last-mentioned Resident Magistrate, and he is hereby required, to proceed against such witness, in regard to such default, in like manner, precisely, as if such witness had been summoned to appear as a witness in the Court of such last mentioned Resident Magistrate, and had made default; and such last mentioned Resident Magistrate shall certify to the Resident Magistrate in whose Court the actual default was made what shall have been done in regard to the witness so having made default.

Procedure in cases of examination upon interrogatories.

53. If any claim shall be made to, or in respect of, any movable property, taken in execution under the process, whether civil or criminal, of any Court of Resident Magistrate, or to or in respect of the proceeds or value thereof, by any person not being the party against whom such process was issued, it shall and may be lawful

Proceedings where third parties claim goods taken in execution.

No. 20—1856.

for the Court issuing such process, upon the application of the messenger, as well before as after any action brought against him, to issue a summons calling before the Court as well the party suing out such process as the party making such claim, which summons shall be in the form in that behalf in the rules and regulations of the Courts of Resident Magistrates contained <sup>(1)</sup>; and thereupon any action which may have been brought in any other Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the movable property in question was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action, after the issue of the summons aforesaid, and the Court of Resident Magistrate issuing such summons shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to such Court shall seem just and lawful, and such order shall be deemed to be a judgment of such Court, and shall be enforced and may be appealed from, in like manner and as any other judgment.

Contempts of court,  
what, and how pun-  
ishable.

54. If any person shall wilfully insult the Resident Magistrate during his sitting in any such Court, or any clerk, or messenger, or other officer of any such Court, during his attendance therein, or shall wilfully interrupt the proceedings of such Court, or otherwise misbehave in such Court, it shall be lawful for any constable or private person, by order of the said Court, to take such offender into custody, and to detain him until the rising of the Court; and the Resident Magistrate shall be empowered, if he shall think fit, by warrant under his hand, to commit any person so offending to prison, for any period not exceeding seven days, or to impose upon any such person a fine not exceeding five pounds, for every such offence, and in default of payment thereof to commit the offender to prison, for any time not exceeding seven days, unless the said fine be sooner paid. But in any case in which any such Court shall commit or fine any person, under the provisions of this section for contempt of Court, the Resident Magistrate shall without delay (and if in a country district, by the next succeeding post) transmit to the Registrar of the Supreme Court, for the consideration of a Judge in chambers, a statement, certified by such Magistrate to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement, so certified as aforesaid.

Records of inferior  
courts, how kept.

55. All the records and proceedings whatsoever of and belonging to any inferior Court, which has at any time heretofore existed within this Colony, shall be kept and preserved, where it has been provided by any law in force at the time of the passing of this Act that the same should now be deposited, and shall there remain until further or other provision respecting the custody of

<sup>1</sup> Rule 58.

the same shall be made by the Governor of this Colony, by any proclamation to be by him issued for that purpose; and all parties concerned shall and may have access and recourse to the said records and proceedings, and to the records and proceedings of any of the Courts created and established by or under this Act; and every judgment and sentence of any inferior Court which heretofore existed within any district of this Colony, shall and may be proceeded upon in the Court of the Resident Magistrate hereby created and established, having jurisdiction over a district comprising the town or village in which such former Court was holden, precisely as if the complaint or action whereon the same was given or pronounced had been originally commenced, and the said judgment or sentence given or pronounced in such last-mentioned Court. And if, at any time hereafter, Courts of Resident Magistrates should be created by any such proclamation as in the second section of this Act mentioned, and the district assigned for the jurisdiction of such Court by any such proclamation as is in the third section of this Act mentioned, should be composed of any territory before then under the jurisdiction of some other Court of Resident Magistrate, any judgment or sentence of such last mentioned Court, pronounced previously to the publication of such last mentioned proclamation, and affecting any person or any property in such territory, shall be as valid and effectual, and may be proceeded upon precisely in the same manner, as if such territory still remained under the jurisdiction of the Court by which such judgment or sentence was pronounced.

No. 20—1856.

Judgment of former inferior courts may be executed.

56. All proceedings prior to judgment or sentence which shall be pending in any Court of Resident Magistrate at the time of the commencement and taking effect of this Act may be proceeded with in any Court of Resident Magistrate established by this Act, in case such last mentioned Court be held in the same town or village in which such other Court was holden, and shall be a Court which would have jurisdiction in regard to such proceeding were the same commenced *de novo*.

Proceedings now pending may be continued.

57. And whereas a Court of Resident Magistrate exists, and is intended to be continued, at Simon's Town, and it is therefore unnecessary and inexpedient to maintain the Police Court in the said town, be it enacted, that the "Police Court of Simon's Town," as erected, constituted, and established by the Ordinance No. 4, of 1834, entitled "Ordinance for erecting, constituting, and establishing Police Courts to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the Judge of Police of Cape Town, and of the Justice of the Peace of Simon's Town, respectively," shall be abolished: and every clause, provision, matter, or thing in the said Ordinance contained, relative to the said Police Court, shall be repealed, and the same is hereby repealed accordingly.

Police court of Simon's Town abolished.

58. From and after the commencement and taking effect of this

Laws and ordinances repealed.

r/r

No. 20-1856.

Act, so much of the royal letters patent, commonly called the "Charter of Justice," as may be repugnant to or inconsistent with any of the provisions of this Act, also as the Ordinances respectively entitled "Ordinance of His Honour the Lieutenant-Governor in Council, for creating Resident Magistrates and Clerks of the Peace in certain districts and places in this Colony," dated 19th day of December, 1827, No. 33; "Ordinance of His Honour the Lieut.-Governor in Council for authorizing the Civil Commissioner of the Cape district to act within the district and residency of Simon's Town, and for establishing a board for the registration of marriages therein; and for repealing the proclamation of the 8th April, 1825, granting jurisdiction to the Government residents at Algoa Bay (now Port Elizabeth) and Port Frances, in certain criminal and civil cases," dated the 19th day of January, 1828, No. 38; "Ordinance of his Honour the Lieut.-Governor in Council, for establishing and regulating the Court of the Judge of Police and Resident Magistrate for Cape Town and the district thereof, and the Cape district, and for other purposes," dated the 19th day of March, 1828, No. 44, save and except in so far as, by the seventeenth section thereof, the messengers of the Courts of the Resident Magistrates are authorized to sell by auction goods taken in execution of the process of such Courts; "Ordinance of His Excellency the Governor for establishing boards for the registration of marriages at the Paarl and Port Elizabeth," dated the 29th day of July, 1829, No. 63; "Ordinance of His Excellency the Governor in Council, for extending the jurisdiction of Resident Magistrates, in certain cases of ejectment," dated the 1st day of September, 1829, No. 66; "Ordinance of His Excellency the Governor in Council, for annexing the district of Port Elizabeth to the district of Uitenhage, and for defining and appointing the local limits within which the Courts of the Resident Magistrates and Matrimonial Courts, within this Colony, shall respectively have and exercise jurisdiction," dated the 6th day of February, 1832, No. 89, save and except in so far as, by the fourth and fifth sections thereof, provision is made touching and concerning the Matrimonial Courts of this Colony; Ordinance No. 11 of 1836, entitled "Ordinance for rendering valid acts done and duties performed by persons appointed to act as and for certain Magistrates, and to empower the Governor to appoint assistant Magistrates;" Ordinance No. 1, of 1837, entitled "Ordinance for erecting certain Resident Magistrates' Courts within the Eastern Division of this Colony, and for defining the jurisdiction thereof;" Ordinance No. 1, of 1839, entitled "Ordinance for erecting certain Resident Magistrates' Courts in the Western Division of this Colony, and for defining the jurisdiction thereof;" Ordinance No. 14, of 1847, entitled "Ordinance for empowering the Governor of this Colony to establish Courts of Resident Magistrates,"—save and except in so far as any of the said Ordinances enact that certain acts, done previously to the passing thereof,

shall be legal, valid, and effectual, and save and except in so far as the said Ordinances, or any of them, may repeal the whole or any part of any former Law or Ordinance,—shall be repealed, and the same are hereby repealed accordingly.

No. 20—1856.

59. And whereas it is expedient to add to and, in some particulars, amend the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the Courts of the Resident Magistrates, respectively, of the Colony of the Cape of Good Hope, bearing date the 22nd March, 1828,—Be it enacted, that the same shall be, and they are hereby repealed; and that the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the Courts hereby erected, or authorized so to be, shall be the rules, orders, and regulations in that behalf in the schedule to this Act contained, marked B; and that every rule, order or regulation in the said schedule contained shall be deemed and taken to be of the same force and effect as if the same, or the substance thereof, had been embodied in so many enacting clauses of this Act: Provided that nothing herein, or in the said rules, orders, and regulations contained, shall prevent the application to the said rules, orders, and regulations of the Ordinance No. 8, 1852.

Rules of court set forth in schedule.

60. In the interpretation of this Act, the rules, orders, and regulations hereunto annexed, the term Governor shall be deemed and taken to mean the officer for the time being administering the Government of this Colony, and the term Resident Magistrate, the officer for the time being acting as such; and any word or words importing the singular number or the masculine gender only, shall respectively be understood to include several persons, matters, and things, as well as one person, matter, or thing, and females, as well as males, unless there be something in the subject or context repugnant to such construction.

Interpretation clause.

61. This Act shall commence and take effect from and after the promulgation thereof.

When Act to take effect.

---

### SCHEDULE A.

#### *Form of the Oath of Allegiance.*

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

#### *Form of Oath of Office.*

I, A. B., do promise and swear that I will faithfully and diligently execute, to the best of my abilities, the several duties of the office of Resident Magistrate. So help me God!

## SCHEDULE B. (1)

*Rules, Orders, and Regulations respecting the manner and form of proceeding in Civil and Criminal Cases before the Courts of the Resident Magistrates respectively of the Colony of the Cape of Good Hope.*

1. The jurisdiction in regard to civil cases belonging to any Court of Resident Magistrate is exercisable over or in respect of any person residing or inhabiting within the district assigned to, or appointed for, such Resident Magistrate.

2. [Repealed by § 4 Act 9, 1857.]

3. The clerk of the said Court shall, upon entering into his said office, take an oath for the faithful performance of his duty, in the form following :

I, A. B., do swear that I will truly and faithfully execute the office of clerk of this Court, without fear, favour, or affection for any one ; and that I will not, by myself or any other, receive or take, for my own use, any fee or reward for anything done by me in my said office ; and that I will not take, or permit or suffer any person under me to take, any other than such lawful fees as I shall be instructed to take or permit to be taken in my said office ; and for all such I will duly and faithfully account to the Civil Commissioner of this district, whensoever I am thereunto required. So help me God !

4. The oath of the messenger of the said Court shall be as follow :

I, A. B., do swear that, faithfully and diligently, I will serve the office of messenger of this Court, and execute all summonses and process thereof, without favour or affection for any one ; and that I will not, by myself or any other, take, receive, or demand any other than such lawful fees as I may be permitted by this Court to receive for anything done by me in my said office. So help me God !

5. The said messenger shall give security to the satisfaction of the Resident Magistrate for the due fulfilment of the duties of his office, and for the due and punctual payment by him, to the parties entitled thereto, of all moneys which shall come into his hands by virtue of his office.

6. The clerk of the said Court shall keep a book, ruled and divided into columns, headed and entitled according to the form set forth in the schedule hereunto annexed, marked E, which shall be called "The Civil Record Book of the Court of the Resident Magistrate, district of \_\_\_\_\_," and the said clerk shall enter therein, in manner hereinafter set forth, all proceedings in the said Court ; and the Resident Magistrate, once in every week, shall, before the rising of the Court, on any Court day, sign the same.

7. The clerk of the Court shall, upon the application and statement, personally or in writing, or by the lawful agent of any one having matter of complaint or demand against another, subject to the jurisdiction of the said Court, enter a plaint into the proper column of

<sup>1</sup> See § 13, Act 17, 1886, *infra*.

the said book, setting forth, shortly and distinctly, the names and places of abode of the said parties; the nature and grounds of the said complaint or demand; and the relief prayed; and the said plaintiff shall stand for, and be taken as, and in the place of, a declaration of the cause of action between the parties; and the said plaintiff shall be entered as near as is material in the forms and according to the precedents set forth in the schedule hereunto annexed, marked C.

8. After entering the plaintiff of the party complaining, the clerk of the said Court shall appoint and specify a day for the appearance of the said parties, with their witnesses, in order to the hearing of the said complaint at a reasonable time, according to the distance at which the party summoned lives from the said Court; and he shall inform the party complaining thereof; and the said clerk shall issue and deliver to the messenger of the said Court a summons for the party complained against, to appear before the said Court with his witnesses, if he have any, on the said day; and the said summons shall be, as near as may be, in the form following, that is to say,—

Court of the Resident Magistrate  
for the district of Albany.

Messenger of the Court,

Summon C. D., of (describing him so particularly that the officer of the Court may know where to find him), that he appear before the Court of the Resident Magistrate of this district, to be holden at Graham's Town on the day of next, at of the clock in the forenoon, with his witnesses, if he have any, to show why he hath not paid to A. B., of (describing him as in the plaintiff) the sum of which the said A. B. complains that he owes him for, &c. (following the statement in the plaintiff); or why he hath not satisfied A. B., of &c., the damage which the said A. B. complains that he has sustained, by reason that the said C. D., on or about, &c., broke down the fence, &c., of the said A. B., as the case may be—(following the statement in the plaintiff); and serve on the said C. D. a copy of this summons (and, where the action is founded on any document a copy of the said promissory note or other document, &c.;— or, and a copy of the account or bill of the said A. B., where the demand is upon account or bill), and return you on that day to the said Court what you have done on this summons.

Graham's Town, the 1st May, 185 .

J. M., Clerk to the Court of the Resident  
Magistrate of the district of Albany.

9. Where the party, against whom any summons or other process of the said Court is issued, resides at such a distance from the place where the said Court is holden, or where, from the number of such summonses or other process, the said messenger cannot possibly serve or execute the same, the said summonses or other process may be served or executed by his sufficient deputy, to be first approved of as such by the Resident Magistrate, who shall be paid by the said messenger, and for whom he shall be responsible.

No. 20—1886.

10. A copy of the said summons, together with copies of any documents, account, or bill, upon which the said complaint or demand is founded, shall be delivered to the messenger with the said summons, and shall be served, either personally on the said defendant, or left for him at his dwelling-house, with some one of his household, <sup>(1)</sup> at least forty-eight hours before the time therein specified for his appearance, where the party summoned lives within five miles of the place of holding the said Court; three days, where the said party lives at a greater distance than five miles, and not exceeding ten miles; and so on, one day in addition to forty-eight hours for every ten miles of distance at which the party summoned lives from the place of holding the said Court. But no case shall be dismissed for or on account of the omission to deliver the copy of any such document, account, or bill as aforesaid, in case it shall appear to the Court that such omission has not, in fact and in truth, prejudiced the defendant in respect of his defence.

11. If two or more persons, jointly sued, are partners in trade, the like service upon either of them shall be sufficient.

12. The messenger of the said Court shall endorse or annex to the summons the manner of his executing the same, and shall return the said summons to the clerk of the said Court.

13. It shall be permitted to any plaintiff or defendant in the said Court to appear and conduct his case by means of any person authorized by writing under his hand, to be filed with the clerk of the said Court; and when it shall be made to appear to the satisfaction of such Court that, by reason of the absence from home of any defendant, such written authority could not be obtained, then it shall be permitted to any one of his family, or any one having a general authority to manage his affairs in his absence, and willing to conduct the said case to appear for the defendant and conduct the same. But nothing shall, in the taxation of costs against either party, be allowed for the attendance or services of any person, not being enrolled in such Court to practise as an agent therein, nor an Attorney of the Supreme or Circuit Court, and not being an advocate of the Supreme Court of the Colony, instructed by such agent or attorney. And every such Court of Resident Magistrate, upon being satisfied that any person who appears to have a right of action is, from poverty, unable to sue out the process of such Court, may order all such process to issue without fee or charge. Provided, always, that such person, should he recover and receive sufficient from the other party, shall be liable to pay and make good all fees and charges so remitted.

14. On the Court day appointed for appearance of the parties, unless the said summons shall have been withdrawn, the clerk of the said Court shall cause the said parties, plaintiff and defendant, to be called; and if they, or any one duly authorized on their behalf, appear, he shall record the same, and the Court shall proceed to inquire of and determine the said complaint or demand; and the said clerk shall read over the plaint, and ask the defendant, or his agent, whether he will confess or deny the same; or where the complaint of the plaintiff is in respect of any sum of money alleged to be due to him, if he will make any like counter claim against the plaintiff; and the said clerk shall record his answer in the proper column of the record book.

<sup>1</sup> See also § 12, Act 17, 1886.



15. If the defendant deny the said complaint or demand, or make claim of any sum of money as due to him by the said plaintiff, the said plaintiff, or some one on his part, shall forthwith produce and exhibit to the Court any writings or documents whereon his complaint or demand may be founded, and shall also produce any witnesses he may require to have examined in support of the same.

16. The process of the said Court, for compelling the attendance of any person to give evidence therein, shall be by summons issued by the clerk of the said Court, and directed to the messenger thereof; and shall be served and returned by him, in the same manner as any other summons of the said Court; and the said summons may be sued out by either party requiring the attendance of any witness, and shall be, as near as is material, in the form following: that is to say,—

Court of Resident Magistrate of the District of Albany.

Messenger of the Court,

Summon A. B., of &c., C. D., of &c., and E. F., of &c., that, laying aside all and singular business and excuses, they and each of them appear in person before this Court, at Graham's Town, on the day of next, at of the clock in the forenoon, to testify and declare all and singular those things which they, or any of them, know in a certain case, now depending in the said Court, between I. K., plaintiff, and N. O., defendant; and that they, or either of them, by no means omit so to do at their peril. Serve on each of them, the said A. B., &c., a copy of this summons, and pay to the said A. B. the sum of , to the said C. D. the sum of , and to the said E. F. the sum of , for their travelling expenses, respectively,—and return to the said Court what you have done thereupon.

J. M., Clerk of the said Court.

Graham's Town, 1st May, 185 .

17. If any witness have in his possession or control any deed, instrument, or writing which the party requiring his attendance is desirous to show in evidence, then the said summons shall be in the form following, namely—(as in the former case, to the day of hearing, and then proceed as follows),—“And also that they bring with them, and produce at the time and place aforesaid, a certain deed or instrument in writing, bearing date, &c., (describing very accurately the thing to be produced), and then and there to testify and declare, &c.” (as before).

18. There shall be delivered to the said messenger, together with the said summons, so many copies thereof as there are witnesses to be summoned, and also such sum or sums of money, as the party for whom they are to be summoned intends that the said messenger shall pay or offer to the said witnesses respectively for their travelling expenses; and if any person, being duly summoned to give evidence, and his reasonable expenses being paid or offered to be paid to him, and having no sufficient excuse, shall neglect or refuse to attend or give evidence according to said summons, then the said Court shall impose upon the said person a fine for his default, not exceeding five pounds sterling; and for non-payment shall commit such person to

No. 20—1856.

the gaol of the said district for any time not exceeding fourteen days. Provided that as often as any person duly summoned shall fail to appear, it shall be lawful for the Resident Magistrate, in case no lawful cause for such non-appearance shall seem to him to exist, to issue his warrant for the apprehension of the party making default, in order that he may be brought up to give his evidence, and to be otherwise dealt with according to law.

19. If it shall appear to the said Court, upon oath, that any person, who is a material witness for either party to any cause, having been duly summoned, doth not attend at the hearing thereof, then the Resident Magistrate shall, at his discretion, either postpone the hearing of the said case to another day, then to be appointed by him, or else shall take the examination of such witnesses as appear, and suspend the further hearing of the said case to another day; which postponement or suspension, and the cause thereof, and the day appointed for the further hearing, the said clerk shall note in the column of the said record book entitled "day of hearing the case."

20. All persons examined or giving evidence in the said Court shall be examined orally and apart, and in open Court; and shall be sworn by the Resident Magistrate, according to the form of the religion they respectively profess, "to tell the truth, the whole truth, and nothing but the truth;" but all persons entitled by law to affirm, instead of taking an oath, may so affirm. Nothing herein contained shall extend to or affect the provisions of the sixth section of Ordinance No. 14, 1846. <sup>(1)</sup>

21. Whenever it shall appear necessary to the Resident Magistrate, before administering an oath, to examine the person touching his knowledge of the obligation thereof, he shall not merely ask such person generally, whether he understands the nature of the oath, but shall, after explaining to the said person that he is about to administer to him such oath, and the terms thereof,—further ask him:

1st. Whether he believes it to be wicked not to speak the truth?

2ndly. Whether he understands that the taking of such oath is calling upon God to witness that he does speak the truth.

3rdly. Whether he believes that God will hereafter punish any one who, upon oath, does not speak the truth?

4thly. Whether he considers the oath about to be administered to him binding upon him to speak the truth, and the whole truth?

22. The said Court may, at its discretion, and for the information of the said Court, examine the parties upon oath, or either or any of them. <sup>(2)</sup>

23. Where in the course of any case, it may be necessary for either party to produce and show to the Court any record, entry, or document of the said Court, it shall not be required of the said party to produce any office copy of such record, entry, or document; but the clerk of the said Court shall, at his request, produce and show, or refer to, the original.

24. In every civil case, the clerk of the Court shall take down the evidence and proceedings in writing, and shall also note any objections made by either party to any evidence received or to any evidence or any document tendered by either party to the Court.

<sup>1</sup> § 6, Ord. 14, 1846, repealed by § 11, Act 4, 1861. See § 12 of Act 4, 1861.

<sup>2</sup> But see § 2, Act 4, 1861.

25. The case on the part of the plaintiff having been heard, the defendant, or some one on his part, shall in like manner produce any writing or documents he may desire to have read to the Court, and any witness to be examined in support of his answer or denial: and the plaintiff shall be heard in reply thereto.

26. All judgments and sentences of the said Court shall be given in open Court, and shall be recorded by the clerk in the proper column of the said book.

27. Where any judgment shall be upon any debt, payable with interest thereon, the said interest shall be given up to the day of suing out the process of the Court for the execution thereof.

28. If neither the defendant, nor any one admitted for him, appear on the Court day appointed for that purpose, then the said Court, upon the request of the said plaintiff, and being satisfied by the return of the messenger of the said Court, endorsed upon the said summons, that the same hath been duly served, shall proceed to hear the said plaintiff and his witnesses, and cause the evidence to be taken down in writing, and shall give judgment thereon against the said defendant, in the full sum due by him or awarded against him by the Court; but the said judgment shall be only provisional in its nature, and no execution shall issue upon it until the plaintiff, together with some one as his surety, to be approved of by the said Court, shall give security for full restitution of the amount to be levied and raised under such judgment, should the same be reversed; and the form of such security shall be the same as that set forth in the thirty-fourth of these rules and regulations, save and except that the words "notwithstanding the said C. D. has noted an appeal against the same," shall be omitted in the body of the said form, and the word "cause" shall be substituted for the word "appeal" in the end thereof.

29. The defendant may, at any time within one month<sup>(1)</sup> after the levy made under any writ of execution issued by virtue of any such provisional judgment, take out a summons of the said Court, calling upon the plaintiff in the original action to show cause why the judgment obtained by him should not be reversed. And if it shall be made to appear to the said Court, by oath, that the defendant was absent from his home at the time when the summons of the said Court was served, and that he did not receive the same a sufficient time before the day of the return thereof to be able to obey the same, and that he did not absent himself from home for the purpose of avoiding the service of the said summons, or that, having been duly summoned, he was by just and reasonable cause prevented from attending the Court in pursuance of the said summons,—then the said Court shall order the said judgment to be opened, and shall permit the defendant to answer the said complaint or demand,—upon the terms, nevertheless, of payment of the costs incurred by his default, and that the evidence before given by the said plaintiff shall, on the re-hearing of the case, be read from the evidence and proceedings taken down by the clerk of the said Court, the said plaintiff being at liberty to bring further evidence, if he think fit; and upon the said re-hearing, the case, except as aforesaid, shall proceed as if the defendant had appeared on the original summons.

<sup>1</sup> Printed as amended by § 5, Act 9, 1857.

No. 20—1856.

30. If the defendant, or some one duly authorized on his behalf, do not, within one month (<sup>1</sup>) next after such levy, as aforesaid, take out such a summons as aforesaid, the provisional judgment shall become final,—and the security aforesaid shall become, *ipso facto*, null and void. But if, upon the hearing of any such summons, the judgment therein mentioned shall be reversed or set aside, then the defendant shall be entitled, without any cession, to sue upon the said security, for the recovery of the sums therein mentioned, less the costs incurred by his default.

31. If any person summoned to appear on any day to answer any complaint or demand, shall appear according to the said summons, and the party complaining shall make default, the Court shall adjudge the said plaint to be dismissed; or if he appear, and the judgment of the Court be for the defendant, the said Court shall adjudge to the said defendant his costs, to be taxed by the clerk of the said Court, in like manner as for the party complaining; and the said defendant shall be entitled to the like process of execution for the same.

32. After judgment of the Court against the party complaining, for default of appearance, the same may, upon payment of costs, be admitted to commence a new action for the same cause, and the Court may, in any case, when it shall see fit, absolve the defendant from that instance, instead of giving judgment in his favour, in which case the plaintiff, upon the payment of the costs awarded against him, may commence a new action for the same cause. But the judgment of the said Court, given in favour of the defendant, when pronounced after the hearing of the cause, is a perpetual bar to any other suit or action for the same cause.

33. Any party against whom any final judgment or sentence of the said Court has been given in any civil case (and an absolution from the instance shall be deemed to be such a final judgment or sentence), if he intend to appeal therefrom to any superior Court, shall, on the next Court day, make known his intention to the clerk of the said Court, who shall note his appeal, with the date thereof, in the proper column of the record book,—and the party appealing shall then deposit and lodge with the clerk of the said Court the sum of one pound seventeen shillings and sixpence, as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit, in the last column of the record book, immediately after the note of the said appeal; and thereupon the said appeal shall be allowed, but not otherwise. And any person abandoning his appeal within fourteen days next after he shall have noted the same, shall be entitled to receive back the said sum of one pound seventeen shillings and sixpence provided he have taken no proceedings in the appeal, save the noting thereof.

34. In any case where an appeal may have been duly noted, and the proper security for costs given, the said Court may direct that the judgment or sentence appealed from shall be carried into execution,—or that the execution thereof shall be suspended, pending the said appeal, as to the said Court may appear most consistent with justice:—and in every case where the said Court shall direct such judgment or sentence to be carried into execution, the party in whose favour the

<sup>1</sup> Printed as amended by § 5, Act 9, 1857.

same shall have been given shall, before the execution thereof, enter into security, together with some one as his surety, to be approved of by the said Court, for full restitution of the amount to be levied and raised under such judgment, should the same be reversed, as also for the due execution of any such further judgment, order, or decree as shall be afterwards pronounced upon or in respect of the said appeal. And the said security shall be, as near as may be, in the form following :

No. 20—1856.

Graham's Town, May 1, 185 .

A. B., of &c., Plaintiff,  
 against  
 C. D., of &c., Defendant.

Whereas the said A. B., on the            day of           , recovered, by judgment of the Court of the Resident Magistrate of the district of Albany, against the said C. D., the sum of           , together with the sum of           , for costs in a certain case before the said Court; and whereas the said Court has directed the said judgment, notwithstanding the said C. D. has noted an appeal against the same, to be carried into execution upon security being given for restitution: Now, therefore, the said A. B., and L. M., of           , farmer, as surety for him, the said A. B., hereby severally undertake and bind themselves, jointly and severally, to refund and make due restitution of the above several sums of            and           , should the judgment of the said Court be reversed; and, further, severally to conform to and execute such judgment, order, or decree, as shall be given and pronounced upon or in respect of such appeal.

In witness whereof, the said A. B. and L. M. have hereunto set their hands, on this 1st day of May, 185 .

(Signed)

A. B.

E. F., Clerk of the said Court.

L. M.

35. Where the party, who may have deposited with the clerk of the said Court the sum required as security for the costs of conducting the said appeal, shall not afterwards duly proceed thereon to judgment, the sum so deposited, in case the same shall not have been returned as in the thirty-third rule provided, shall be applied to the payment of the costs incurred by the opposite party; and if there be any surplus, the same shall be forfeited and disposed of in the same manner as fines otherwise imposed by the said Court.

36. At the time when judgment or sentence of the Court is given in any case, the clerk of the Court shall, at the request of the party in whose favour the same is given, ascertain and allow the necessary costs and expenses of the said suit against the party to be charged therewith; and in the said taxation he shall charge and allow all such necessary payments and disbursements made in the said case as are provided to be paid by the tariff of charges in the schedule hereunto annexed, marked D, and all such other reasonable sums of money as the party, in whose favour the said judgment or sentence is given, has paid in bringing before the Court any necessary witnesses or

No. 20—1856.

evidence, or otherwise: and where he shall think it reasonable to allow any expense not herein provided for, the same not being prohibited by any rule of the said Court, then he shall take the direction of the said Court thereon, and make his allowance accordingly.

37. Whenever the Court shall make an order for the payment of any debt or damages by instalments, such order shall be recorded by the clerk of the Court in the last column of the civil record book, in manner and form as shown by schedule E, hereinafter contained.

38. The party in whose favour any judgment or sentence of the said Court shall be given, in any civil case, in regard to which an appeal shall not have been noted, or, having been noted, shall have been withdrawn, may sue out of the office of the clerk of the said Court the process of the said Court for the execution thereof.

39. In all cases of appeal the said Court shall conform to and execute such judgments, orders, and decrees as shall be afterwards made and pronounced thereon, in like manner as any original judgment, sentence, or decree by the said Court could or might have been executed.

40. (1) The process for execution of any sentence or judgment of the said Court shall be by warrant under the hand of the Resident Magistrate, directed to the messenger of the said Court, as near as may be in the form following, that is to say,—

Court of the Resident Magistrate,  
District of Albany.

E. F., Messenger of the Court.

Whereas, in a certain case in this Court, before me, wherein A. B., of &c., was the plaintiff, and C. D., of &c., was the defendant (describing the parties as in the plaint), the said A. B., on the day of last by the judgment of the Court, recovered against the said C. D., the sum of , together with the sum of for his costs (which said judgment has been duly affirmed on appeal—if the case so be,—with the further sum of £ for costs thereon), as appears in the proceedings of the said Court; this is, therefore, to require you, that of the movable property of the said C. D., in this district, you cause to be levied and raised the debt (or damages) and costs aforesaid, together with your charges about the same, and pay to the said plaintiff the debt (or damages) and costs aforesaid, and return to the clerk of this Court, on or before the day of next, what you have done by virtue hereof; for which this shall be your warrant.

Given under my hand, at Graham's Town,  
this day of , 185 .

I. K., Clerk of the Court.

J. L.

41. Where any person, against whom any judgment of the Court shall have been given, shall, before any warrant shall have been taken out to levy in execution of the process of the said Court, appear before the said Court, and there deliver in to the clerk thereof an

<sup>1</sup> See § 12 of this Act.

inventory of goods, duly proved, upon oath, to belong to the said person, and to exceed in value the amount to be levied under such judgment, with the costs thereof, and shall then and there undertake, in writing, together with some one as his surety, that the goods or chattels contained in the said inventory shall be brought for sale at such time and place as the Court shall appoint, unless the person in whose behalf the said process was issued be sooner satisfied in respect of his debt or damages, as the case may be; then no further proceedings shall be had in respect of such judgment of the Court, until after the day so appointed for the sale of such goods or chattels; and the form of such security shall be in substance and as near as is material, according to the form prescribed in respect of the security hereinafter set forth for not making away with goods laid under legal attachment by the process of the said Court.

42. The messenger of the said Court shall, upon receiving the said warrant, repair to the house of the defendant, within twenty-four hours, if he live at the town or place where the said Court is holden,—or within forty-eight hours, if within five miles thereof,—or if at any greater distance therefrom, within so many days' distance in addition thereto as the said party resides therefrom, and there demand payment of the said debt or damages, and costs, or else require that so much movable property be pointed out as the said messenger may deem sufficient to satisfy the exigency of the said warrant; and if he comply therewith, the said messenger shall make inventory thereof, and lay a judicial attachment on the same; but if the debtor will not point out such property, and the judgment of the Court do not declare any to be specially bound, then the said messenger shall immediately lay an attachment under inventory on as much movable property belonging to the debtor as he may deem sufficient to satisfy the execution: and if the judgment of the Court declare any particular property to be specially bound, and liable to execution for the judgment, then the said messenger shall first take the same.

43. The said messenger shall deliver a copy of the said inventory, signed by himself, to the debtor, or, if he will not accept of it, shall leave the same on the premises; which inventory shall have subjoined thereto a notice in the following terms:

C. D.,

May 1st, 185 .

Take notice, that I have this day seized and laid under judicial attachment the articles comprised in the above inventory, in pursuance of a warrant to me directed under the hand of \_\_\_\_\_, Esq., Resident Magistrate for the district of Albany, whereby I am required to cause to be levied and raised of your movable property in this district, the sum of \_\_\_\_\_, and \_\_\_\_\_ costs, recovered against you by the judgment of the said Court, in a certain case wherein A. B. was the plaintiff, and yourself the defendant (as the case may be); and also for my charges in and about the said warrant.

I. K., Messenger of the said Court.

44. Where any person, whose movable property has been attached in execution of the process of the said Court, will undertake, in





as it may be inconvenient to remove, may leave the same upon the premises, in the charge and custody of some person for him, until the day appointed for the sale thereof.

46. If it shall appear, upon oath, to the Resident Magistrate of the said Court, that any person has made away with or disposed of any goods so left in his possession, under security as aforesaid, the said Magistrate shall forthwith issue his warrant for the apprehension of the said person, to answer for the said fraud according to law.

47. Any property sold in execution of the process of the said Court shall be sold publicly, and for ready money, by the said messenger or his deputy, so to be approved of by the said Court, to the highest bidder, at or as near to the place where the same was taken as may be convenient for the sale thereof; and the said messenger shall affix notice of the said sale, and of the day and place thereof, on the door of the Court-house, or on some other like public building, in the place where the said Court is holden; as also where, or as near as may be, the place where the said sale is actually to take place, seven days at least before the day appointed for the said sale; which day shall be not earlier than the fourteenth day from the time of seizure or attachment.

48. The form of summons in cases of civil imprisonment shall be as follows:

Court of the Resident Magistrate, District of Albany.

To A. B., Messenger of the Court.

Summon C. D., of (describe the defendant, as in the former process), that he appear before the Court of the Resident Magistrate of this district, to be holden at Graham's Town on the day of next, at o'clock in the forenoon, to show why a decree of civil imprisonment should not be made against him, at the suit of E. F., of (describe the plaintiff as in the former process), in respect of the non-payment of the sum of £ (insert the joint amount of debt and costs), recovered against the said C. D. by the said E. F., by a judgment of the said Court, bearing date the day of , 185 , and for the recovery of which sum a warrant of execution was, on the day of , last past, duly sued out against the movable property of the said C. D., and in regard to which warrant a return has been duly made that no movable property has been found, whereof could be made the amount stated in the said warrant or any part thereof (or whereof could be made more than the sum of £ parcel of the amount stated in the said warrant), and serve on the said C. D. a copy of this summons, and return you on the said day of next what you have done thereon.

Graham's Town, 1st , 185 .

G. H., Clerk to the Court of the Resident Magistrate of the District of Albany.

49. As often as the Resident Magistrate shall see cause to grant a decree of civil imprisonment, the defendant shall be committed to the

No. 20—1856.

gaol of the district by warrant under the hand of the Resident Magistrate, in the form following, that is to say,—

Court of the Resident Magistrate, District of Albany.

To A. B., Messenger of the Court, and to the Keeper of the Public Prison of the District of Albany.

These are to command you, the said messenger, to take C. D., of (describe as in the summons in the last preceding rule), and deliver him to the keeper of the public prison of the district aforesaid, together with this warrant, there to be safely kept until he shall have paid unto E. F., of (describe the plaintiff as in the summons aforesaid), the sum of £ , which the said E. F. recovered for his debt and costs by judgment of this Court, bearing date the day of , 185 , or until the expiration of months, from the day on which the said C. D. shall be received into the said prison by virtue of this warrant, whichever of the two shall first happen, or until the said E. F. shall be otherwise legally discharged; and for your so doing, this shall be your warrant.

Dated at Graham's Town, this day of , 185 .

R. G., Resident Magistrate of the District of Albany.

L. N., Clerk of the Court.

\* \* \* When a decree of civil imprisonment shall be made after an insufficient levy under process of execution against property, the words "parcel of the sum of £ ," should be inserted before the words "which the said E. F. recovered for his debt and costs," &c.

50. Every summons sued out for the recovery of possession of premises shall be, as near as may be, in the form following, that is to say,—

Court of the Resident Magistrate  
for the District of Albany.

To , Messenger of the said Court.

Summon C. D., of (describe the defendant as in the former process,) that he appear before the Court of the Resident Magistrate of this district, to be holden at on the day of next, at o'clock in the forenoon, to show why he shall not be condemned to yield and deliver up to A. B., of (describe the plaintiff as in the former process), possession of a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), held by the said C. D. from and under the said A. B., for the amount of certain rent or hire due and in arrear from the said C. D. to the said A. B., in regard to the said dwelling-house (or otherwise as before), amounting, together with costs, to the sum of £ , for which a warrant of execution was, on the day of last, duly sued out under a judgment of this Court, against the movable property of the said C. D., on which warrant a return has been duly made that no such movable property as

aforesaid has been found whereof could be made the amount stated in the said warrant, or any part thereof; and serve upon the said C. D. a copy of this summons, and return you on the said day of , 185 , what you have done thereon.

Dated at Graham's Town, this day of , 185 .

E. F., Clerk of the Court of the Resident Magistrate of Albany.

51. When a decree for the delivery up of possession shall be made, the warrant for the execution of the same shall, as near as may be, be in the form following, that is to say,—

Court of the Resident Magistrate for the District of  
To , Messenger of the said Court.

It having appeared to this Court that C. D., of (describe the tenant, as in the summons), holds from and under A. B., of (describe the landlord, as in the summons), a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), and that the said A. B., who has recovered judgment and sued out execution against the movable property of the said C. D., for the amount of certain rent of the said (name the sort of premises), due and in arrear, hath not had of the said movable property, or otherwise, the amount of the said rent, or any part thereof; and the said A. B. having afterwards, to wit, on day of , 185 , by the judgment of this Court, been duly decreed to be put into possession of the said (name again the sort of premises); this is, therefore, to authorize and require you to put the said A. B. into possession of the same, by removing therefrom the said C. D. and all other persons claiming from, through, or under him, for which this shall be your warrant; and return you on the day of , 185 , what you have done in pursuance thereof.

Given under my hand, at , this day of 185 .

Resident Magistrate for the District of .

E. F., Clerk of the Court.

52. The affidavit of rent in arrear, on which to ground an attachment of the movable property of the tenant, or upon the demised premises, shall be, as near as may be, in the form following, that is to say,—

A. B., of (describe the landlord), maketh oath and saith that C. D., of (describe the tenant), is justly and truly indebted to this deponent in the sum of £ for the arrears of a certain monthly (or yearly, &c., as the case may be) rent due and payable by the said C. D., to the said deponent, for the hire and occupation, from and under this deponent, of a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local

No. 20—1856.

situation), which said sum of £            has been demanded from the said C. D., for the space of seven days and upwards, reckoned from this day, but has not yet been paid (or, when the deponent believes that the property is about to be removed, then say, "on which premises there now are certain movables of the said C. D., which this deponent verily believes he is about to remove, in order to avoid the payment of the said rent.")

A. B.

Sworn before me, this    day of            185    , at    .

Resident Magistrate of the District of

53. When any person shall apply for an order to seize and arrest movables for rent in arrear, the form of security to be entered into on his part and behalf shall be, as near as may be, as follows, that is to say,—

Whereas A. B., of (describe the landlord), hath this day made oath before me that C. D., of (describe the tenant), holds from and under him, as tenant or occupant, a certain dwelling-house (or apartment, or other tenement or premises, according to the fact), and that there is now justly due and owing by the said C. D., to the said A. B., the sum of £            for    months' rent of the said dwelling-house (or otherwise, as the case may be): and whereas the said A. B., hath applied to me for an order for the seizure and arrest of movable property, according to the provisions of the Act in that behalf made and provided; and whereas E. F., of (describe the surety), hath agreed to join the said A. B., in giving the security in the said section mentioned; now, therefore, the said A. B., and the said E. F., do hereby jointly and severally promise and undertake, to and with the said Resident Magistrate, and his assigns, that the said A. B. shall, not later than the    day of    (date of the next day but one), unless the rent due and in arrear as aforesaid shall be sooner paid and satisfied, or unless the said C. D., shall sooner consent, under the provisions of the Act aforesaid, to a sale, without suit, of the movable property, which may be seized and arrested by virtue of the said order, "sue out from the Court of the said Resident Magistrate, a summons against the said C. D., for the recovery of the rent or hire aforesaid, and shall prosecute to same to judgment, without any unnecessary delay," and that the said A. B., and E. F., or either of them, at the option of the said Resident Magistrate or his assigns, shall pay, satisfy, and make good to, or for the use of, the said C. D., or whom else it may concern, all damage, costs, and charges which he or they may receive or sustain by reason of, or in connection with, the execution of the order aforesaid, in case the said A. B. shall fail to

prove, in the suit or action aforesaid, that the said amount of rent to be therein demanded is due and in arrear.

No. 20—1856.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_,  
before me, \_\_\_\_\_, Resident Magistrate.

(Signed) A. B.  
E. F.

\* \* \* When a summons shall have been sued out for the rent in arrear at or before the time of applying for the order to arrest, the words within inverted commas should be omitted, and the following words inserted in their stead: "Duly and without any unnecessary delay prosecute to judgment the pending suit or action by the said A. B., against the said C. D., for the recovery of the rent aforesaid, commenced by a summons sued out of the Court of the Resident Magistrate of this district, this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_ (or on the day of \_\_\_\_\_, 185 \_\_\_\_\_, as the case may be)."

54. Every order for arresting movables to meet a demand for rent in arrear shall be, as near as may be, in the form following, that is to say,—

To \_\_\_\_\_, Messenger of the Court of the  
Resident Magistrate for the District of \_\_\_\_\_.

This is to authorize and require you to repair, as by law provided, to the dwelling-house (or apartment, or other tenement or premises, according to the fact), situate at (describe the local situation), and there demand payment of the sum of £ \_\_\_\_\_, being the amount of certain rent or hire of the said (name the sort of premises), due by C. D. to A. B., of (describe the lessor), and in case such payment shall not be made, then require that so much movable property may be pointed out, by law distrainable for the rent so in arrear as you shall deem sufficient to satisfy the said sum of £ \_\_\_\_\_, and make an inventory of such property, and lay an attachment thereon under the provisions of the Act in that behalf made and provided; but if no such property shall be pointed out, then seize and arrest, according to the provisions of the said Act, so much of such property as you shall deem sufficient, and further act in that behalf as by the said Act directed; and return on the \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_, what you shall have done under this order.

Given under my hand, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_.

Resident Magistrate for the District of \_\_\_\_\_.

55. Whenever the messenger shall have attached any movables, under any such order as aforesaid, the notice to be subjoined to the inventory shall be, as near as may be, in the form following, that is to say,—

C. D.,

Take notice that I have this day seized and arrested the articles comprised in the above inventory, in pursuance of an order to me directed, under the hand of \_\_\_\_\_, Esq., Resident

sss 2

No. 20 -1856.

Magistrate for the district of \_\_\_\_\_, whereby I am authorized and required to seize and arrest movable property distrainable for rent, sufficient to satisfy to A. B. the sum of £ \_\_\_\_\_, due to him by you for rent in arrear, as well as my legal charges about the said order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_, at \_\_\_\_\_.

Messenger of the Court of the Resident Magistrate  
for the District of \_\_\_\_\_.

56. Should the person whose movables have been attached under any such order as aforesaid, be desirous to retain possession thereof, pending the event of the suit for the recovery of the rent alleged to be in arrear, the form of security to be entered into by and on behalf of such person shall be, as near as may be, as follows :

Whereas E. F., messenger of the Court of Resident Magistrate for the district of \_\_\_\_\_, by virtue of an order under the hand of \_\_\_\_\_, Esquire, Resident Magistrate of the said district, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_, has seized and arrested, in security for the sum of £ \_\_\_\_\_, being the amount of certain rent due and in arrear from C. D., of (describe the tenant), to A. B., of (describe the landlord), the undermentioned articles, to wit: (here enumerate the movable property arrested). Now, therefore, the said C. D. and G. H., of (describe the surety), do hereby jointly and severally promise and undertake, to and with the said E. F., that the said movable property shall not be made away with or disposed of, but that the same shall remain in possession of the said C. D., under the effect of the said arrest, to abide the event of a suit to be brought (or "the event of the suit brought") in the Court of the Resident Magistrate aforesaid by the said A. B. against the said C. D., for the recovery of the said rent or sum of £ \_\_\_\_\_; otherwise the said G. H. hereby undertakes and binds himself to pay and satisfy to the said A. B. the amount of any such judgment which he may recover against the said C. D. for the said rent or sum of £ \_\_\_\_\_, together with his costs of suit.

In witness whereof, the said C. D. and the said G. H. have hereunto set their hands, this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_.

E. F., Messenger of the said Court.

(Signed) A. B.  
G. H.

Witness, L. M.

57. In case any person whose movables have been attached, under any such order as aforesaid, shall, both in person and in writing, consent to an immediate sale of such movables, the order for such sale shall be, as near as may be, in the form following, that is to say,—

To E. F., Messenger of the Court of Resident Magistrate  
for the District of \_\_\_\_\_.

Whereas you did, on the \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_\_, in pursuance of an order to that effect by me issued seize and arrest, in security for rent due and in arrear, certain movable property,

then being in and upon certain premises, to wit, a dwelling-house (or apartment, or other tenement, according to the fact) situated at (state the local situation, as in the order for arrest), held and occupied by C. D. from and under A. B. (describe the landlord as in the order for arrest); and whereas the said C. D. hath appeared before me, and hath, in order to save the expense of prosecuting (or "further prosecuting," as the case may be) an action for the recovery of the said rent, admitted that he owes the same, amounting to the sum of £ , and hath also consented that the said movable property now under attachment should be sold in satisfaction, or part satisfaction, of the said sum: Now, therefore, these are to authorize and require you to sell, in manner and form as by the thirty-second section of the Act No. , of 1855, prescribed, on the day of , 185 , at , the said movable property, so attached as aforesaid, or so much thereof as may be necessary for the purpose of making of the proceeds the said sum of £ , so due and owing to the said A. B., and your legal charge for holding the said sale; and pay to the said A. B. the said sum, and retain your said charges, and return to me, in the Court of the Resident Magistrate of the district, on the day of , 185 , what you shall have done in pursuance hereof.

Given under my hand, this day of , 185 , at

Resident Magistrate of .

58. If any movable property, taken under and by virtue of any process of execution, issued out of any Court of Resident Magistrate, shall be claimed by any third party as his property, and not liable to such execution, the Court of Resident Magistrate out of which such process issued, upon which claim being reported by the messenger thereof, shall issue a summons, calling upon the plaintiff and the claimant to appear, in order to inquire into, and determine the question in dispute, and such summons shall be, as near as may be, in the form following, that is to say:

Court of the Resident Magistrate for the District of .

To E. F., Messenger of the said Court.

Summon A. B., of (describe the plaintiff in the former suit), and G. H., of (describe the claimant), that they severally appear before the Resident Magistrate of this district, to be holden at , on the day of 185 , at o'clock in the forenoon, with their respective witnesses, if they have any, then to have it determined and declared, by the judgment of the said Court, whether certain movable property, attached on the day of , 185 , by you, the said E. F., under and by virtue of a certain writ of execution, issued out of the said Court, commanding you, the said E. F., of the movable property of one C. D. to levy and raise certain sums of money in the said writ mentioned, and which

No. 20—1856.

movable property is claimed by the said G. H. as being his property, and not liable to such execution, be or be not the property of the said G. H., and be or be not so liable; and serve as well upon the said A. B. as upon the said G. H. a copy of this summons, and return you, on the said day of , 185 , what you have done on this summons.

R. G., Resident Magistrate.

Dated at , this day of , 185 .

L. M., Clerk of the Court.

59. <sup>(1)</sup> Where the judgment or sentence of the said Court in any case is appealed from, and the said appeal is duly prosecuted and allowed in manner provided for that purpose, the clerk of the said Court shall forthwith transmit the proceedings in the said case to the Registrar of the Supreme Court, or to the Registrar of the next Circuit Court for the said district, as the case may be, together with a certificate, under his hand, subjoined to the said proceedings, in the following terms:

I, L. M., clerk of the Court of Resident Magistrate for the district of Albany, hereby certify and declare that the above are the true proceedings in the case A. B. against C. D.; and that the said proceedings contain true notes of all evidence received by the said Court, objected to, or offered by either party, and rejected by the said Court, on the hearing of the said case.

Graham's Town, May 1, 185 .

L. M.

60. The clerk of the said Court shall, a sufficient time before the holding of any Circuit Court for the district, apprise the parties in appeal of the day and place of the holding thereof; and shall warn them to appear before the said Circuit Court, and prosecute the said case in appeal, and hear the determination thereof.

61. All fines imposed by the Court in any case, civil or criminal, shall be paid to the clerk of the said Court; and the same, together with all fees of office received by him in every month, shall be paid over on the first day of the following month to the Civil Commissioner of the division; and the said clerk shall deliver therewith an account in such form as the Civil Commissioner shall from time to time direct. And the officers of the said Court shall take such fees as are allowed in the tariff hereunto annexed, and the same shall be taken at the time when anything is required to be done by any officer, for which such fees are allowed, and together with the same, shall also be taken and charged the duty imposed by law upon any stamp, where the stamp is supplied by such officer.

#### IN CRIMINAL CASES.

62. All crimes and offences against the law, within the jurisdiction of the said Court, and which may have been committed by any person within any district of this Colony, may be prosecuted in the Court of the Resident Magistrate of the said district. <sup>(2)</sup>

<sup>1</sup> See § 33 of this Act.

<sup>2</sup> See §§ 42, 44, *ibid.*



63. Where the public prosecutor shall, by virtue of his office, have determined to prosecute any party in the said Court, for any crime or offence within the jurisdiction of the said Court, he shall forthwith lodge with the clerk of the Court a statement, in writing, of the charge or complaint against the said person, describing him by his name, surname, place of abode, and occupation or degree; and setting forth, shortly and distinctly, the nature of the said crime or offence, and the time and place at which the same was committed.

64. Any private person entitled to prosecute <sup>(1)</sup> for any crime or offence, may prosecute summarily for such crime or offence, by lodging his complaint in any Court of Resident Magistrate, having jurisdiction, nor shall any certificate of any Clerk of the Peace, or any other competent public prosecutor, to the effect that he declines to prosecute for such crime or offence, be necessary <sup>(2)</sup>. But any competent public prosecutor may, at any time before judgment, intervene in any such case and assume the management and conduct thereof, <sup>(3)</sup> and the clerk of the Court shall, in the column of the Criminal Record Book, hereafter mentioned, headed "Remarks, &c.," make an entry of such intervention.

65. The clerk of the Court shall keep a book, ruled and divided into columns, headed and entitled according to the form in the schedule hereunto annexed, marked F, which shall be called "The Criminal Record Book of the Court of the Resident Magistrate, District of \_\_\_\_\_," and the said clerk shall enter therein, in manner hereinafter set forth, all criminal proceedings in the said Court, and shall present the said book to the Resident Magistrate at the first sitting of the Court, upon every Court day; and the Resident Magistrate shall, before the rising of the said Court, sign the same.

66. The clerk of the Court shall, upon such complaint being lodged with him, either by the public prosecutor or any private party, forthwith enter into the proper columns of the Criminal Record Book, the name of the prosecutor, the name of the party charged, the crime or offence charged or complained of, the day of commitment of the party charged, and by whom committed, and any remarks which it may be proper to record.

67. All persons to be prosecuted upon any criminal charge in the said Court shall be brought to trial at the next possible Court day,—but whenever it shall be made to appear, on oath, to the satisfaction of the Resident Magistrate, that any criminal case cannot be proceeded in upon the day appointed for that purpose, without danger of defeating the ends of justice, he shall adjourn the hearing thereof to some future Court day, which day shall be specified by him; and the said adjournment, and the cause thereof, shall be noted by the clerk in the last column of the said Criminal Record Book. <sup>(4)</sup>

68. The clerk of the said Court shall, upon or after the lodging of the said complaint at the request of the prosecutor (and at his charge, where the prosecution is by a private party) <sup>(5)</sup>, issue and deliver

<sup>1</sup> See §§ 15—18 Ord, 40.

<sup>2</sup> See § 6, Ord. 73.

<sup>3</sup> See § 8, Ord. 73, and § 10, Ord. 8, 1852.

<sup>4</sup> See Rule 81.

<sup>5</sup> See §§ 2 and 8, Ord. 8, 1852, also Rules 10 and 84.

No. 20—1856.

to the messenger of the said Court, the process of the said Court for compelling the appearance of the said party to answer the charge, and of the witnesses in support thereof,—together with so many copies of the said process as there are persons to be summoned, if there be more than one; and the said messenger shall serve a copy thereof on any defendant, and shall at the same time explain to him the nature and exigency of the said process; and the said process shall be by summons under the hand of the Resident Magistrate, and shall be, as near as may be, in the form following:

Court of the Resident Magistrate, District of .

To J. P., Messenger of the Court.

You are hereby required and directed, in Her Majesty's name, on the sight hereof, to summon C. D., of &c. (describing him particularly), that he appear personally before this Court at Graham's Town, on the day of next, at o'clock in the forenoon, then to answer and abide the judgment of this Court, upon the complaint and information of E. F., Esq., who prosecutes in the name and on behalf of Her Majesty (or of G. H., of &c., describing him particularly), that the said C. D., on or about the day of last, violently beat and assaulted the said G. H., of &c., and summon M. N., of &c., O. P., of &c., and such persons (if any) as you shall be required by the said C. D. to summon on his behalf, that they, and each of them, be and appear personally, at the day and place aforesaid to testify all they, and each of them, know concerning the said charge. Serve on each of them, the said C. D., M. N., O. P., &c., a copy of this summons, and return to this Court, on that day, what you have done hereon.

Given under my hand, at , this day of , 185 .

J. L., Resident Magistrate  
of the said District.

J. M., Clerk of the said Court.

69. <sup>(1)</sup> Either party desiring to compel the attendance of any person to give evidence in any criminal case, may take out of the office of the clerk of the said Court the process of the Court for that purpose; and in like manner, when the party charged with any offence, is unable to pay the costs of such process, the clerk of the said Court shall summon, on his behalf such witnesses as he shall desire to have summoned, and shall satisfy the said clerk to be material and necessary for his defence; and the said process shall be, as near as may be, in one or other of the forms following:

Court of the Resident Magistrate, District of .

To J. P., Messenger of the Court.

You are hereby required, in Her Majesty's name, to summon A. B., of &c., C. D. of &c., and E. F., of &c., (describing them particularly), that they, and each of them, appear personally before this Court at , on the day of next, at o'clock in the forenoon, to testify and declare all they,

<sup>1</sup> See also § 8, Ord. 8, 1852, and § 2, Ord. 59.

and each of them, know concerning a certain charge preferred by the public prosecutor against J. A., of (describing particularly the person charged). Serve on each of them, the said A. B., &c., a copy of this summons, and return to this Court, on that day, what you have done hereon.

Given under my hand, at Graham's Town,  
the        day of        185 .

J. L., Resident Magistrate.  
of the said District

L. M., Clerk of the said Court.

Court of the Resident Magistrate, District of .  
To J. P., Messenger of the said Court

You are hereby required and directed to summon A. B., of &c., C. D., of &c., and E. F., of &c. (describing them particularly), that they, and each of them, appear personally before this Court at , on the day of next, at o'clock in the forenoon, to testify and declare all they, and each of them, know concerning a certain complaint preferred by G. H., of &c., against J. A., of &c.; and serve on each of them, the said A. B., &c., a copy of this summons, and return to this Court, on that day, what have you done hereon.

Given under my hand at Graham's Town,  
the        day of        , 185 .

J. L., Resident Magistrate.  
of the said District.

L. M., Clerk of the said Court.

70. The process of any such Court for summoning any person, whether as a party or a witness, to appear before that Court, when holden at any place, other than the ordinary and stated place for the holding of the same, may be issued by any Justice of the Peace, resident near the place at which such Court is intended to be holden, and who shall, by any proclamation of the Governor, be nominated and appointed to issue the said process<sup>(1)</sup>; and such process shall in substance correspond with the forms prescribed for process issued and delivered by the clerk of the Court, and shall state the place where the said Court is intended to be holden, and shall be directed to, and be executed by, such person as such Justice of the Peace shall nominate and appoint, and such person so nominated and appointed shall have and possess, in regard to the execution and return of such process, the like powers and authorities, and be entitled to the like fees, as the messenger of the said Court would have possessed or been entitled to, had the same been directed to and executed and returned by him, and such process shall at the foot be signed thus: "J. L., Justice of the Peace, duly authorized," and the same need not be signed by either the Resident Magistrate or the clerk of the Court.

71. All such process as in the last preceding section mentioned, shall have the like force and effect, in all respects, as if the same had been directed to the officer appointed to execute, ordinarily, the criminal

<sup>1</sup> Amended by Rule 11, Act 9, 1857.

No. 20—1856.

process of the said Court, and had been under the hand of the Resident Magistrate of the district, and signed, issued, and delivered by the clerk of the said Court: Provided always that nothing in this rule contained shall be construed so as to prevent the issue and delivery in common form by such clerk, of any process for requiring the appearance of any person before the said Court, at any place where such Court shall be appointed to be held.

72. No person shall be summoned to appear before any such Court, as aforesaid, at any place other than the ordinary and stated place for the holding of the said Court, to answer any charge, unless such person shall reside nearer to such other place than to the ordinary and stated place aforesaid; and any summons issued in contravention of the provisions of this rule shall be null and void.

73. If upon the day appointed for the appearance of any party to answer to any charge, he shall neglect to appear, and the Court shall be satisfied, upon the return of the messenger, or other person (as the case may be), that he was duly summoned, then the Resident Magistrate shall (on the request of the prosecutor) <sup>(1)</sup> issue his warrant for the apprehension of the said party, and shall also, if he think fit, impose on the said party for his default, a fine not exceeding five pounds sterling.<sup>(2)</sup>

74. If the prosecutor do not appear on the Court day appointed for appearance, the charge or complaint shall be dismissed <sup>(3)</sup>: and where the prosecutor, being a private party, does not appear, or appearing, the Court, upon hearing the charge or complaint, shall pronounce the same unfounded and vexatious, the Resident Magistrate shall award to the defendant, on his request, such costs as the said Magistrate may think fit. And in case of any such dismissal as aforesaid, the accused party shall not be again liable to prosecution on the same charge, save and except only that where the prosecutor was a private person no dismissal upon account of his non-appearance shall prevent the public prosecutor from afterwards, should he see fit, taking up the case.

75. In case of the non-attendance of any person, duly summoned to give evidence, and not having any lawful excuse allowed by the Court, the Resident Magistrate shall impose upon him the same fine as is provided for such default in civil cases before the said Court. <sup>(4)</sup>

76. Where any person shall, upon any Court day, appear before the said Court to prefer any complaint against another, who shall also appear thereto, and the said parties shall both be desirous of then proceeding therein, the Court shall, after the other business of the day has been concluded, cause the said complaint to be recorded; and shall forthwith hear and determine the same, or adjourn the hearing thereof to some following day, if the same be necessary,—as the Resident Magistrate shall see fit.

77. On the day of hearing, the Magistrate shall inquire into the said charge or complaint, by causing the clerk of the Court to read over the statement of the prosecutor, <sup>(5)</sup> and by hearing such witnesses

<sup>1</sup> See § 4, Ord. 8, 1852.

<sup>2</sup> For procedure in case of non-payment of fine, see Ord. 6, 1839.

<sup>3</sup> But see § 19, Ord. 40, and § 5, Ord. 8, 1852.

<sup>4</sup> See Rule 18 *supra*.

<sup>5</sup> See § 6, Ord. 8, 1852.

as he may produce in support of the charge; and, in like manner he shall hear any statement made by the defendant relevant thereto, and his witnesses, if any, in support thereof.

78. The Resident Magistrate shall hear and summarily decide upon each case, and his judgment and sentence shall be pronounced in open Court, and shall be recorded by the clerk in the proper column of the Criminal Record Book.

79. If the sentence of the said Court be for any higher degree of punishment than such as is prescribed by the Act for erecting and establishing the said Court, the said clerk shall also note in the last column of the said Criminal Record Book the particular law authorizing the said punishment, and giving jurisdiction to the said Court.

80. All persons examined, or giving evidence in the said Court in criminal cases, shall be examined and give evidence in the same (1) manner and form as is provided in civil cases before the said Court.

81. Any person acquitted upon any charge or complaint, or where the same shall be dismissed for want of prosecution thereof, shall forthwith be discharged out of custody. And any person who shall once have been called upon to plead to any charge, and who shall have pleaded not guilty thereto, shall be entitled to demand that he be either acquitted or found guilty. But nothing herein contained shall apply to any such case as is in the twenty-eighth section of Ordinance No. 40, or in the seventh and eighth sections of the Ordinance No. 73, mentioned: Provided, however, that the Court may, after a case has been partially heard, adjourn the further hearing thereof until some future time, in case it should be made to appear, by either the prosecutor or the party accused, that some witness or witnesses, material to the case, and who, without neglect or default of the party applying for the adjournment, are not present, will probably be present in case an adjournment be granted.

82. All persons sentenced by the Court of the Resident Magistrate in any district to undergo the punishment of imprisonment, shall be committed to the gaol of the said district, for the purposes aforesaid, by warrant under the hand of the said Resident Magistrate in the form following, that is to say,—

Court of the Resident Magistrate, District of

To the Gaoler or Keeper of her Majesty's Gaol  
for the District of

Whereas the undermentioned prisoners were this day respectively and duly convicted before me of the several offences undermentioned, and were for the said offences sentenced by me to undergo the several punishments respectively affixed to their names; this is, therefore, to require you, in Her Majesty's name, to receive the said several prisoners into your custody, and there safely keep them, until they shall have undergone the said punishment or shall be otherwise lawfully discharged therefrom.

<sup>1</sup> See Rules, 20 and 21.

No. 20—1856.

Prisoners' Names.	Sentence.	Of what offence convicted.
J. T.	One month's imprisonment, with hard labour.	Theft.
C. D.	Fined twenty shillings, and to be imprisoned until fine is paid.	Assault.
E. F.	To be imprisoned one week, and to receive private whipping of 24 lashes.	Theft.

Given under my hand, at           , this           day of           , 185 .

Witness, J. L.,

Resident Magistrate of the said District.

L. M., Clerk of the said Court.

83. In all cases of crimes or offences prosecuted in the said Court, where by law there is, or shall be, an appeal from the judgment or sentence thereof to any superior Court, the clerk of the Court shall make a note of any such appeal, and shall certify to the said superior Court the said proceedings in such cases, in like manner as is provided for certifying the proceedings in appeal from the judgment or sentence of the said Court in civil cases.

84. The service of all summonses in criminal cases in the said Court shall be made by the messenger of the said Court, or his lawful deputy, in the same manner as is provided to be done in civil cases before the said Court.

### SCHEDULE C.

#### FORMS OF PLAINTS.

March 1, 185 .

*In case of goods sold.*—A. B., of (Bathurst, of this district), farmer, complains of C. D., of the same place, baker (or if as executor, &c., then "A. B., as executor of E. F. complains of C. D."), that the said C. D. is indebted to him (as executor, E. F.) in the sum of five pounds sterling, for corn (or hay, or other things, briefly describing it) sold and delivered by the said A. B. to the said C. D. (or by E. F. in his lifetime), in or about the month of February last; which sum the said C. D. refuses to pay, and the said A. B. prays that he may be adjudged to pay the same.

*In case of demand for rent.*—For three months' rent, due from the said C. D. to the said A. B., on or about the 1st of February last, in respect of the occupation by the said C. D., of a house and garden of the said A. B. (as the case may be), situate at Bathurst; which sum, &c.

*For lodging.*—For meat, drink, washing, lodging, and other things found and provided by the said A. B. for the said C. D., between the months of December and February last; which sum, &c.

*For hire of horses.*—For the hire of a horse (or as the case may be) and cart of the said A. B., hired and used by the said C. D., for three weeks, in or about the month of February last; which sum, &c.

*For agistment.*—For the agistment, depasturing, and keeping fifty oxen and one hundred sheep, by the said A. B., for the said C. D., between the months of December and February last.

*For work and labour.*—For the work and labour of the said A. B., performed for the said C. D., at his request, on or about, &c.

*For same by servants.*—For the work and labour of the servants of and belonging to the said A. B., performed for the said C. D., at his request.

*For same by servants, horses, and carriages.*—For the work and labour of the said A. B., by himself (or his servants, or horses, carts, and carriages, as the case may be), performed by the said A. B. (or his servants, &c.), for the said C. D., at his request: and for timber, nails, &c. (as the case may be), provided by the said A. B. for the said C. D., and used in such work and labour.

*For wages.*—For wages due and payable from the said C. D. to the said A. B., for his service performed as the servant of the said C. D., between the months of December and February last.

*For money lent.*—For money lent by the said A. B. to the said C. D., in or about the month of February last.

*On note or bill of exchange.*—For principal and interest due to the said A. B., on a promissory note drawn by the said C. D., payable to one E. F., or order, and by him endorsed to the said A. B. (or on a bill of exchange, drawn by one E. F., and accepted by the said C. D., payable to the said A. B.)

*On a bond.*—For principal and interest due on a bond bearing date the        day of       , made and entered into by the said C. D., for the payment of       , and interest, on the        day of        last.

*For money due on an agreement.*—For principal and interest upon and by virtue of a certain agreement, bearing date, &c. (date of agreement), and made between, &c., whereby the said C. D. agreed to pay to the said A. B. the sum of £       , together with lawful interest on the same, on the        day of        now past.

*On an award.*—For money due to the said A. B., upon and by virtue of a certain award made by E. F., upon a submission by the said A. B., and the said C. D. to the arbitration of the said E. F., concerning certain matters in difference between them; and upon which reference the said E. F. awarded and ordered that the said C. D. should pay the sum of £        to the said A. B. on a certain day, now past.

*For detention of property.*—A. B., of       , farmer, complains that C. D., of the same place, farmer, hath possessed himself of a cow (or wagon or horse, or other thing detained), of the value of £       , or thereabouts, which he unjustly detains from the said A. B.; and the said A. B. prays he may be adjudged to restore to him the said cow, &c., or pay him the value of the same.

*For detention of property deposited.*—That the said A. B., in or about the month of        last, deposited and left several articles of household furniture and wearing apparel, the property of the said A. B., of the value of £       , or thereabouts, with the said C. D., to be safely kept for the said A. B., until he should have occasion for them; and the said A. B. saith that he has demanded the said household furniture, &c. (or caused the same to be demanded for him), but the said C. D. refuses to deliver up, and unjustly detains the same from him; and the said A. B. prays the said C. D. may be adjudged to restore to him the said household furniture, &c., or pay him the value of the same.

No. 20—1856.

*For damage sustained by improper driving.*—That, on or about the day of last, the said A. B. (or the servant of the said A. B.), was driving his cart, &c., on the public road between and , and the said C. D. (or the servant of the said C. D.) was also on the said road with a certain carriage, &c., under his care and direction; and the said C. D. (or the servant of the said C. D.) so improperly drove and directed his carriage and horses that thereby his carriage was forced and driven with great violence against the cart of the said A. B., and broke to pieces one of the wheels thereof; and the said A. B. was thereby damaged to the amount of £ , and the said C. D. refuses to make amends for the same; and the said A. B. prays he may be adjudged to pay the amount of the said damage.

*For wrongfully impounding cattle.*—That the said C. D., on or about the day of last, wrongfully impounded, or caused to be impounded, five oxen of the said A. B., and kept the same impounded, for five days, to the damage of the said A. B., of forty shillings; and the said A. B. prays, &c.

*For injury done by obstructing a stream of water, the right to the stream not being disputed.*—That the said C. D., on or about, &c., wrongfully obstructed a certain stream of water, which of right ought to run through the land of the said A. B., situate at Bathurst, by making dams in the same (or digging trenches, laying timber, &c., in the said stream), above the land of the said plaintiff; and the said A. B., was thereby deprived of the use of the said stream for the space of hours (or days), and hath sustained damage to the amount of £ ; and the said A. B. prays the said C. D. may be adjudged to pay the same.

*For wrongfully breaking down a dam in a stream of water.*—That the said A. B., having by right made a certain dam in a stream of water running near or through the land of the said A. B., situate at &c., whereby the said A. B. might lawfully pen up and detain the water of the said stream for hours in each day, so that the same might run upon the land or premises of the said A. B.; yet the said C. D., whilst the water was lawfully stopped by the said A. B., wrongfully broke down the said dam, to the damage of the said A. B. of £ ; and the said A. B. prays, &c.

*For wrongfully keeping back the water of a stream.*—That the said C. D. wrongfully detained and dammed up the water of a certain stream running through or near the land (or premises) respectively of the said A. B. and C. D., situate at, &c., and which, after passing through the land (or premises) of the said C. D., ought to have run into the land (or premises) of the said A. B.; and the said A. B. was thereby deprived of the use of the said stream for hours (or days), and hath sustained damage to the amount of £ ; and that the said A. B. prays, &c.

*For injury to land by cattle.*—That the said A. B. hath a piece of land adjoining to the land of the said C. D., the hedge (fence or ditch) between which belongs to the said C. D., and ought to be repaired by him; yet, through the want of repair of the said hedge, &c., the cattle of the said C. D., on or about the day of last, broke into the land of the said A. B., and eat up, trampled down, and destroyed the corn of the said A. B., there growing, whereby the said A. B. was damaged to the amount of five pounds sterling; and the said A. B. prays, &c.



*For injury sustained by obstructing a right of watercourse, the right itself not being disputed.*—That the said A. B. hath a right of watercourse through the land (or premises) of the said C. D., but the said C. D. on the day of , obstructed him in the exercise of his right, by stopping up the said watercourse, and the house (or premises) of the said A. B. were thereby flooded with water, to the damage of the said A. B. of £ ; and the said A. B. prays, &c.

*For obstructing a right of watercourse.*—That the said A. B. hath the right of discharging dirty water, &c., through a gutter which runs through the land (or premises) of the said C. D., but the said C. D., on or about, &c., obstructed him from using the said right, by stopping up the said gutter, to the damage, &c.; and the said A. B. prays, &c.

*For injury sustained by obstructing a right of road, the right itself not being disputed.*—Hath a right of way to pass and repass on foot (or with horses or other beast, or with carts and carriages) from and towards the land (or premises) of the said A. B., over the land of the said C. D., to and from the village of Bathurst; yet the said C. D. obstructs and hinders him in the said right; and especially on the day of prevented him from using the same by digging a ditch across the said way, &c., to damage, &c.; and the said A. B. prays, &c.

*For obstructing a right of road to fetch water.*—Hath a right to use a certain well or fountain of water, on the land (or premises) of the said C. D. (as before.)

*Leading water through the land of another.*—Hath the right of a stream of water through the land of C. D. to his own; yet, &c.

*Right of way to fetch water.*—Hath the right to pass over the land of C. D., to fetch water from a fountain, reservoir, &c., situate upon the land of E. F.

*For destroying fences, &c., and of injuries to land or cattle.*—That the said C. D., on or about the day of , broke down and destroyed a fence of the said A. B., at Bathurst, in the district of Albany, whereby the said A. B. hath sustained damage to the amount of £ ; &c. (or broke down the door of the house of the said A. B., and disturbed him in his peaceable possession thereof; or cut down two trees of the said A. B., of the value of £ ; or wrongfully trampled down and destroyed the corn of the said A. B.; or drove about or injured the sheep or cattle; or killed or wounded a dog, horse, &c., of the said A. B., of the value of £ ); and the said A. B. prays, &c.

*For an assault or injury to the person, wife, &c.*—That the said C. D., on &c., assaulted and ill-treated the said A. B. (or the wife or child, or or servant of the said A. B.), to the damage of the said A. B. of £ ; and the said A. B. prays, &c.

---

#### SCHEDULE D.

*Fees to be taken by the Officers of the Court of Resident Magistrate.*

[Repealed by Rule of Supreme Court framed under Section 7, Act 21, 1876, and published in *Gazette* of 4th January, 1878.]

CIVIL RECORD BOOK.				
No.	Parties.	Plaint.	Day of Issuing Summons.	Day of appearance of parties personally, or by whom.
1	Adams against Johnson.	<p>March 1st, 1848.</p> <p>John Adams, of Bathurst, in this district, farmer, complains of Thomas Johnson, of the same place, baker, that the said Thomas Johnson is indebted to him in the sum of £5 10s. 6d. sterling, for corn sold and delivered by the said John Adams to the said Thomas Johnson, in or about the month of December last, which sum the said Thomas Johnson refuses to pay; and the said John Adams prays he may be adjudged to pay the same.</p>	<p>1848.</p> <p>March 3rd.</p>	<p>March 10th, 1848, plaintiff in person, defendant by his son, Richard Johnson.</p>
2	Thompson against George.	<p>March 8th, 1848.</p> <p>Richard Thompson, of Graham's Town, in this district, baker, complains of John George of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George, in or about the months of December and February last; which sum, &amp;c.; and the said Richard Thompson, &amp;c.</p>	<p>March 1st.</p>	<p>March 3rd.—Defendant in person; plaintiff made default.</p>
3	Berry against Jones.	<p>John Berry, of Graham's Town, in this district, carpenter, complains of Isaac Jones, of the same place, farmer, that the said Isaac Jones is indebted to him in the sum of £9 sterling, for three months' rent, due from the said Isaac Jones to the said John Berry, on or about the 1st day of February last, in respect of the occupation by the said Isaac Jones of a house and garden of the said John Berry, situate at Bathurst, which sum, &amp;c.; and the said John Berry prays, &amp;c.</p>	<p>March 4th.</p>	<p>March 6th.—Plaintiff in person.</p>
4	Ward against Richards.	<p>Henry Ward, of Graham's Town, in this district, tailor, complains of John Richards, of the same place, farmer, that the said John Richards is indebted to him in the sum of £9 sterling, for three months' rent, due from the said John Richards to the said Henry Ward, on or about the 1st February last, in respect of the occupation by the said John Richards of a house and garden of the said Henry Ward, situate at Bathurst; which sum, &amp;c.; and the said Henry Ward prays, &amp;c.</p>	<p>March 4th.</p>	<p>March 6th.—Plaintiff in person.</p> <p>March 13th — Both parties in person (second appearance).</p>
5	Thompson against George.	<p>March 8th, 1848.</p> <p>Richard Thompson, of Graham's Town, in this district, baker, complains of John George, of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George, in or about the months of December and February last; which sum, &amp;c.; and the said Richard Thompson, &amp;c.</p>	<p>March 6th.</p>	<p>March 28th.—Both parties in person.</p>

E.

No. 20—1856.

DISTRICT OF ALBANY.			
Defence.	Day of hearing the case.	Judgment of the Court.	Subsequent proceedings and remarks.
Debt denied.	1848. March 10th.	For plaintiff, £5 10 6 1 10 6 costs. Ordered, that defendant pay by monthly instalments of £1, the first on the 1st of August, 1848. On default made in any payment, execution to issue for debt and costs still due.	Warrant for execution issued 10th March, 1848.
.....	.....	Defendant absolved from the instance. Costs adjudged to defendant against the plaintiff, 10s.	
Default.	March 6th.	Judgment for plaintiff, £9.  Final judgment, March 13th. Costs, £2.	Appeal noted March 14th. —£1 17s. 6d. deposited  March 20th, appeal allowed, May 10th, execution thereon [or—if the case so be—] March 24th, warrant of execution upon security of restitution.
Paid.	March 6th.	Judgment for plaintiff, £9.	Notice of judgment served on defendant March 10th, to appear on March 13th.
.....	Re-hearing, March 13th.	Opened on the appearance of John Richards, on March 13th; final judgment same day for defendant, Costs against plaintiff, £2 10s.	Warrant of execution at the suit of defendant, issued March 16th, 1848.
Admitted, but claims £3 for tea and other articles sold by the said John George to Richard Thompson, during the same period.	March 10th.	For plaintiff, judgment £2. Costs, 10s.	Warrant for execution issued 12th March, 1848.

ttt

## SCHEDULE F.

CRIMINAL RECORD BOOK.				DISTRICT OF ALBANY.				
Prosecutor.	Defendant.	Crime or Offence charged.	Day of commitment for trial, and by whom.	Day of lodging complaint with the clerk.	Day of hearing.	Judgment.	Sentence.	Remarks, &c.
1. Public Prosecutor.	J. T., of Graham's Town, in this district, labourer.	Stealing at Graham's Town a coat, the property of A. B., of the same place, shopkeeper.	1848. March 1st. J. L., Esq.	1848. ....	1848. March 20th.	Guilty.	One month's imprisonment with hard labour.	
2. Public Prosecutor.	C. D., E. F., and G. H., of Bathurst, in this district, farmers.	Violently assaulting and beating, at Bathurst, A.B., of the same place, farmer.	J. L., Esq., at large, on bail.	March 1st.	Same day.	Guilty.	Fined twenty shillings each.	Discharged on the same day, having paid the fine
3. A.B., of Bathurst, in this district, farmer.	C. D., of Graham's Town, in this district, shopkeeper.	Assault at Graham's Town.	.....	March 20th.	Same day.	Not Guilty.		
4. Public Prosecutor.	Jacob, servant of A. B., of Bathurst, in this district, farmer.	Stealing at Bathurst a sheep, the property of his master, on or about the 1st of February, 1848.	March 1st. L. M., Esq.	March 20th	April 20th.	Guilty.	One month's imprisonment with hard labour	
5. C.D., labourer.	E.F., canteenkeeper.	Selling wine at —, at unlawful hours.	.....	August 10th	Sept. 10th.	Guilty.	Fined ten pounds, which not being paid, defendant sentenced to one month's imprisonment, with hard labour.	Sentence founded on Ordinance No. 29, of 1846.

No. 9—1857.]

[June 29, 1857.]

## AN ACT

For Amending the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates." <sup>(1)</sup>

WHEREAS it is expedient to amend the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," by authorizing Courts of Resident Magistrates, held elsewhere than at the stated and ordinary place for holding such Courts, to try civil cases: And whereas, also, it is expedient to correct a manifest error in the forty-seventh section of the said Act, arising from the accidental insertion of the word "not," where the said word was not meant to be inserted, whereby the construction of the said section might be rendered doubtful and obscure: And whereas, also, it is expedient to make certain other amendments in the said Act, and in the rules, orders, or regulations contained in the schedule annexed thereto, marked B: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the Act aforesaid, No. 20, 1856, and of any of the rules, orders, or regulations of Court contained in the schedule to the said Act, marked B, as shall be repugnant to, or inconsistent with, any of the provisions of this Act, is hereby repealed.

Preamble.  
Repugnant parts of Act No. 20, 1856, repealed.

2. In the forty-seventh section of the said Act, the word "not," where it occurs in the third line of the said Act, as printed upon vellum, between the words "for any period" and the words "exceeding one month," is hereby struck out and expunged; and all Magistrates and other persons who have hitherto acted upon, or in reference to, the said section as if it had been originally printed and passed as now amended, are hereby indemnified and held harmless for having so done.

Forty-seventh section of Act No. 20, 1856, corrected.

3. The Courts of Resident Magistrate, held elsewhere than at the places fixed and appointed by proclamation of the Governor as the stated and ordinary places for holding such Courts, shall henceforth have and exercise the same jurisdiction in civil cases as that possessed by the said Courts, when held at the stated and ordinary places so fixed and appointed as aforesaid.

Periodical courts to have civil jurisdiction.

4. Rule No. 2, as set forth in the schedule aforesaid, marked B, is hereby repealed, and the rule No. 2, in the schedule to this Act, marked A, is hereby substituted in its place and stead.

Rule 2 in schedule B to Act No. 20, 1856, repealed.

5. In the rules numbered twenty-nine and thirty, in the said schedule set forth, the words "four months," are hereby struck out and expunged, and the words "one month" substituted in their room and stead.

Rules 29 and 30 altered.

<sup>1</sup> See Act 16, 1882.

No. 9—1857.

Additional rules in schedule B to this Act established.

Messenger of the court to be entitled to horse-hire.

6. The additional rules, orders, and regulations contained in the schedule to this Act, marked B, are hereby established and enacted.

7. [Repealed by Act 16, 1882]

8. The messenger of the Magistrate's Court, serving or executing any summons, warrant, or order, mentioned in the schedule, marked D, to the Act aforesaid, No. 20, 1856, shall be entitled in addition to the fees mentioned in the said schedule as fees to be taken by such messenger, to his reasonable horse-hire, <sup>(1)</sup> to be fixed by the Resident Magistrate: Provided that no messenger shall be entitled to any horse-hire in any case in which the place for the service of the summons, or the execution of the warrant or order, shall be within three miles of the place of holding the Court: And provided that no messenger shall be allowed horse-hire at a rate exceeding the rate, for the time being, which would be lawfully chargeable by a Deputy Sheriff, executing, in the same district, the process of the Supreme or of any Circuit Court.

#### SCHEDULE A.

Magistrate to hold courts at places and on days appointed by Governor.

Such courts to exercise the same jurisdiction in all places

Stated and ordinary places for holding court to be appointed for each magistracy.

Rule 2. The Resident Magistrate shall hold a Court at such place or places as the Governor shall, by proclamation, have appointed, and upon such days as shall, in regard to each Resident Magistrate, have been announced by Government notice, published in the *Government Gazette*. The places for the holding of the Court, as well as the days for the holding of the same, may be from time to time increased, diminished, or otherwise changed, by proclamation or Government notice, according as the change shall relate to the place or places, or to the days, of holding such Court; and every such Court when holden at more places than one within any district, shall have and exercise the same jurisdiction, civil and criminal, at every place at which it shall be held. But in all districts in which the Court of Resident Magistrate is appointed to be held at more places than one, some one place shall, by proclamation, be, in case it shall not have already been, announced as the stated and ordinary place for the holding of such Court.

#### SCHEDULE B.

ADDITIONAL RULES, ORDERS, and REGULATIONS, respecting the manner and form of proceeding in civil and criminal cases before the Courts of Resident Magistrates, respectively, of the Colony of the Cape of Good Hope.

##### IN CIVIL CASES.

Process of periodical court in civil cases may be issued by any person appointed thereto by Government notice.

Process to be in due form, and may be executed by any person appointed for that purpose.

1. The process of the Court of Resident Magistrate for summoning any person, whether as a party or a witness, in any Periodical Court, may be issued by any person, resident at or near the place where such Court is intended to be holden, who shall be nominated and appointed, by any Government notice in the *Government Gazette*, to issue the said process: And such process shall, in substance, correspond with the

<sup>1</sup> Charges fixed by Rule of Supreme Court published in *Gazette*, 4th January, 1878.

No. 9—1857.

forms prescribed by the rules of Court for process issued and delivered by the clerk of the Court, and shall state the place where the said Periodical Court is intended to be holden, and shall be directed to and be executed and returned by any such person as the Resident Magistrate shall from time to time, by any writing under his hand, nominate and appoint. And any such person so nominated and appointed shall have and possess the like powers and authorities, and be entitled to the like fees, as the messenger of the said Court would have been possessed of, or been entitled to, had the same process been directed to and executed and returned by him: and such process shall at the foot be signed thus, "A. B., appointed by Government notice of the \_\_\_\_\_, 185--," to issue the process of the Periodical Court at \_\_\_\_\_."

2. All such process as in the last preceding section mentioned shall have the like force and effect, in all respects, as if the same had been directed to the officer appointed to execute, ordinarily, the civil process of the said Court, and had been signed, issued, and delivered by the clerk of the said Court: Provided, always, that nothing in this rule contained shall be construed so as to prevent the issue and delivery, in common form, by such clerk, of any process for requiring the appearance of any person before the said Court, at any place where such Court shall be appointed to be held: Provided, also, that the clerk of the Court may, at the stated and ordinary place for holding the Court of Resident Magistrate, sign and issue process for any Periodical Court within the district, and may direct, and may deliver or transmit, such process to the person nominated and appointed as aforesaid, by the Resident Magistrate, to execute the process of such Periodical Court: who shall execute the same, and return the same, after execution, to the person authorized by Government notice as aforesaid to issue the process of such Periodical Court.

Process so issued, as aforesaid, to be of the same force as that issued by clerk of the court.

Clerk of court may issue process for periodical court.

Such process, how to be executed.

3. No person shall, without his own consent, be summoned, as the defendant in any civil action or proceeding, to appear before any Periodical Court, unless such person shall reside nearer to the place for holding such Periodical Court than to the ordinary and stated place for holding the Court of Resident Magistrate; and any summons issued in contravention of the provisions of this rule shall, upon the application of the defendant, be dismissed with costs.

Defendant residing nearer to district than to periodical court not to be sued before the latter without his consent.

Summons in contravention of this rule to be dismissed with costs.

4. The person so appointed as aforesaid to issue the process for any Periodical Court, shall be furnished with a book, corresponding to the Civil Record Book, mentioned in the sixth rule of the Courts of Resident Magistrates, which book shall be called "Civil Record Book of the Periodical Court at \_\_\_\_\_," and in which book such person as aforesaid shall make entries similar to the entries proper to be made in the Civil Record Book, kept by the clerk of the Court, and the Resident Magistrate, at every sitting of any Periodical Court, after the first sitting thereof, shall sign the said book, in attestation of its correctness.

Officer issuing process of periodical court to keep civil record book.

5. The several duties which are by the rules, orders, and regulations of the Courts of Resident Magistrates appointed to be performed by the clerk of the Court, shall be performed, in regard to any Periodical Court, by the person appointed as aforesaid to issue the process of such Periodical Court, who shall be entitled to demand, and shall receive and account for, the same fees which the clerk of the said Court would

To act also as clerk of the Court and receive fees.

No. 9 -1857.

Magistrate, or clerk of district court, if present, may act.

Judgment in civil cases to be issued by the officer issuing process, and to be executed by the messenger of the district court or other person thereto appointed.

Messenger of district court not bound to issue process of periodical court, but if so employed not to charge fees as in ordinary court.

Appeal from periodical court to be noted, within ten days, to the officer issuing process.

How such appeal to be prosecuted.

Costs in periodical court to be taxed by officer issuing process, under control of the magistrate.

In an appeal from periodical court, magistrate, and not clerk, to transmit proceedings.

Meaning of term "periodical court."

be by law entitled to demand and receive: Provided however, that the Resident Magistrate himself, or the clerk of the Court of Resident Magistrate of the district, if present, shall be entitled to perform, in any Periodical Court, such of the duties aforesaid as such Magistrate or clerk may see fit to undertake.

6. The process for the execution of any sentence or judgment, pronounced in any civil case determined in any Periodical Court, shall be issued by the person appointed as aforesaid to issue the process of such Periodical Court, and shall be directed to, and be executed and returned by, the messenger of the Resident Magistrate's Court of the district, or by such other person as the Resident Magistrate shall from time to time, by any writing under his hand, nominate and appoint; and every such last mentioned person shall have and possess the same powers and authorities, and be burthened with the same duties, and be entitled to the like fees, as if such person were himself the messenger aforesaid: Provided that the said messenger shall not be bound to execute the process of any Periodical Court, but that, should any such process be executed by him, his fees and charges for executing the same shall be calculated and regulated, precisely as if the place of holding such Periodical Court had been the stated and ordinary place for holding the Court of Resident Magistrate for the district, and such messenger shall not be entitled to claim fees or charges as if the said process had been issued to him from or out of the stated and ordinary Court. And a warrant for commitment in civil imprisonment, or for the delivery up of possession of premises, shall be deemed to be process of execution within the meaning of this rule.

7. Any party intending to appeal against any judgment or sentence of any Periodical Court shall make known his intention so to do to the person aforesaid appointed to issue the process of such Court at any time within ten days next after the day on which such judgment or sentence shall have been pronounced; and thereupon the thirty-third, thirty-fourth, and thirty-fifth rules of the Courts of Resident Magistrates shall apply to such appeal, precisely as if the said sentence or judgment had been pronounced by the Court of Resident Magistrate at the stated and ordinary place for holding the said Court, and as if the person so appointed to issue process were the clerk of the Court.

8. The taxation of costs and expenses, as in the thirty-sixth rule of the Courts of Resident Magistrates directed, shall be made in all Periodical Courts by the person appointed to issue the process of such Court, but under the immediate supervision and control of the Resident Magistrate who shall sign, or place his initials to, the bill of costs when taxed, in token that he has examined and approved of the charges therein contained.

9. As often as the judgment or sentence of any Periodical Court shall be appealed from, the Resident Magistrate, and not the clerk of the Court, shall transmit the proceedings in the fifty-ninth rule of the Courts of Resident Magistrates mentioned, and shall also transmit a certificate under the hand of such Magistrate, which certificate shall be, in substance, the same as the certificate in the said rule set forth.

10. In construing these rules, the words "Periodical Court" shall mean a Court of Resident Magistrate held elsewhere, within any district, than at the place appointed as the stated and ordinary place for the holding of such Court.



## IN CRIMINAL CASES.

No. 12—1860.

11. The process mentioned in the seventieth rule of the Courts of Resident Magistrates, may be issued by any person, whether a Justice of the Peace or not, who shall be appointed by any Government notice in the *Government Gazette* to issue the said process, and such person, whether a Justice of the Peace or not, may be appointed by such notice, and a proclamation shall not be necessary.

Process in criminal cases to be issued by any person appointed thereto by Government notice.

12. The person by whom the criminal process for any Periodical Court shall be issued, shall be entitled, subject to the discretion of the Resident Magistrate, to assist in conducting the prosecution in any criminal case which shall be pending therein.

Officer issuing process may conduct criminal prosecution.

No. 12—1860.]

[July 17, 1860.

## ACT

For Increasing the Jurisdiction of the Courts of Resident Magistrate in Criminal Cases, in which the Persons accused admit their Guilt.

WHEREAS, by the law of this Colony, every prisoner against whom a preparatory examination has been instituted, is asked by the Resident Magistrate or Justice of the Peace before whom such examination takes place, after the examination of the witnesses in support of the charge has been concluded, what he will say in answer to the charge against him, and is at the same time cautioned that he is not obliged to make any statement that may criminate himself, and that what he shall say may be used in evidence against him: And whereas the statement, if any, afterwards made by such prisoner is taken down in writing, and is, after being read over to him, subscribed by him, if he will subscribe the same, and also by the Magistrate, and by one person, at least, present at the making of such declaration: And whereas prisoners making their declarations do not infrequently in and by such declarations admit their guilt: And whereas, notwithstanding such admissions of guilt, every such prisoner must be detained in prison for trial by the Supreme or Circuit Court unless he can give bail, or unless the Attorney-General upon consideration of the preparatory examination should remit the case to the Court of the Resident Magistrate as a case proper for the summary jurisdiction of such Court: And whereas it is expedient that Courts of Resident Magistrate should be empowered in such cases of admitted guilt to pass sentences exceeding those which, in the exercise of their summary jurisdiction, they are competent to pass as often as the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that what the law constitutes a crime has really been committed, and that the prisoner has by his declaration voluntarily admitted that he is guilty of that crime, and that the case, from its nature

Preamble.

No. 12—1860.

and circumstances, is one proper to be dealt with by the Court of Resident Magistrate under such increased jurisdiction, instead of being reserved for the Supreme or Circuit Court: And whereas, whilst conferring upon the Courts of Resident Magistrate such increased jurisdiction, it will, at the same time, be proper to subject the proceedings of such Courts exercising such increased jurisdiction to the scrutiny of the Supreme Court or some of the Judges thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

When prisoner admits his guilt and preparatory examination contains proof of such guilt, Attorney-General may remit case to resident magistrate.

1. As often as any preparatory examination, taken against any prisoner for any crime or offence, in reference to which the prisoner shall in his declaration, duly made and certified, have voluntarily confessed himself guilty of the crime charged against him, shall have been transmitted to the Attorney-General for his consideration, and the said Attorney-General shall be satisfied that the preparatory examinations contain legal evidence of the prisoner's guilt, and shall see fit, with reference to the nature and circumstances of the case, to remit such case to the Court of the Resident Magistrate, such Court may sentence such prisoner [to imprisonment, with or without hard labour, for any period not exceeding two years, or, if a male, to a whipping, privately in prison, not exceeding thirty-six lashes,—or such offender may be punished both by such imprisonment and such whipping]: (1) Provided that all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall extend and apply to all sentences pronounced by virtue of the powers conferred by this Act in like manner, precisely, as to the sentences in the said forty-seventh section of the said Act No. 20, 1856, mentioned and set forth:

Sentence magistrate is empowered to pronounce.

Sentence liable to revision by judge in chambers.

Whipping not to be inflicted before sentence is confirmed by judge.

Provided, always, that the punishment of whipping shall in no case be inflicted until the proceedings are returned to the Magistrate with a Judge's certificate, as directed by the said section of the Act No. 20, 1856.

No. 10—1865.]

[October 10, 1865.]

## ACT

To give to the Judges of the Court of the Eastern Districts Jurisdiction in respect of Sentences of Courts of Resident Magistrates within the Eastern Districts requiring revision by the Judges of the Supreme Court.

Preamble.

WHEREAS by the forty-seventh section of the Act No. 20 of 1856, entitled "An Act for amending and consolidating the Laws

<sup>1</sup> Words in Italics superseded by § 4 Act 43, 1885.

relative to the Courts of Resident Magistrates," it is provided that as often as any Court of Resident Magistrate shall sentence any person to be imprisoned, with or without hard labour, for any period not exceeding one month, or to pay any fine exceeding five pounds, or to receive any number of lashes exceeding twelve, the Magistrate pronouncing such sentence shall forward to the Registrar of the Supreme Court the record of the proceedings in the case, to the end that the same shall be laid before one of the Judges of the Court, in chambers, for his consideration: And whereas it is expedient that all such sentences as aforesaid, pronounced by any Court of Resident Magistrate within the districts in and for which the Court of the Eastern Districts is established, should be forwarded to the Registrar of such last-mentioned Court, for the consideration of one of the Judges of the said Court: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 10—1865.

1. So much of the Act aforesaid, No. 20 of 1856, as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of Act No. 20 of 1856 repealed.

2. Every Resident Magistrate within the districts in and for which the Court of the Eastern Districts is, by "The Administration of Justice Act, 1864," established, who shall pronounce any such sentence as is in the forty-seventh section of the Act aforesaid, No. 20 of 1856 described, shall forward the records of the proceedings in the case in which such sentence shall have been pronounced to the Registrar of the Court of the Eastern Districts, and not to the Registrar of the Supreme Court; and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the said Act, No. 20 of 1856, shall apply to such Resident Magistrate, to the Registrar of the Court of the Eastern Districts, to the Judges of the said Court, and to the said Court itself, precisely as if the said Registrar, the said Judges, and the said Court had, in the said sections of the said Act, been named in place and stead of the Supreme Court and the Judges and Registrar thereof.

Revision of certain judgments of resident magistrates' courts in Eastern Districts transferred from Supreme to Eastern Districts Court.

No. 12—1869.]

[October 18, 1869.

## ACT

## For Facilitating the Dispatch of Business in the Courts of Resident Magistrates.

WHEREAS by the Act No. 20 of the year 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," it is enacted that the taking down of evidence in civil and criminal cases, and other acts, shall

Preamble.

2502 RESIDENT MAGISTRATES' COURTS (JUVENILE OFFENDERS).

No. 21—1869.

be performed by the clerks of the said Resident Magistrates: And whereas it is desirable, with a view to economy and to the better transaction of the business of such Courts, that such acts should be done either by the Resident Magistrate or by his clerk, as may be found convenient: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Duties of magistrate's clerk under Act 20 of 1856 may be performed by magistrate.

1. Any act which by the said Act No. 20 of 1856, or any schedule thereto, or by any other Act now in force, is required to be done by the clerk to any Resident Magistrate may henceforth be done by such Resident Magistrate himself or by his clerk, anything in any such Act or schedule to the contrary notwithstanding.

No. 21—1869.]

[October 18, 1869.

ACT

To Make Better Provision for the Punishment of Juvenile Offenders convicted in Courts of Resident Magistrates.

Preamble.

WHEREAS it is desirable to provide means for the more suitable punishment by Resident Magistrates throughout the Colony of juvenile offenders: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of sections 42 and 43 of Act No. 20, 1856, repealed.

1. So much of the forty-second and forty-third sections of the Act No. 20, 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," as shall be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Juvenile offender may be sentenced to private whipping.

2. (1) As often as any male person not exceeding the age of fourteen years shall be convicted, by or before any Court of Resident Magistrate of any crime or offence then it shall be in the discretion of the said Court, as well in the case of a first conviction as of any subsequent conviction, to sentence such offender to receive in private a moderate correction with a cane or rod, not exceeding fifteen cuts, which correction shall be administered by such person and in such place as the said Magistrate shall appoint.

Father of offender may administer correction.

3. In case the father or reputed father of any such offender shall, in person, express a desire to correct such offender himself in the manner adjudged by the Court, it shall be lawful for the Resident Magistrate to permit him to do so, in the presence of any suitable person, to be selected by such Magistrate, to witness the administration of such correction.

Where offender's age be unknown.

4. Should the age of any such offender be unknown, then it shall be lawful for the Court of Resident Magistrate before which

<sup>1</sup> Printed as amended by Act 19 of 1877, *infra*.

RESIDENT MAGISTRATES' COURTS (JUVENILE OFFENDERS). 2503

he shall be tried to judge of the age of such offender by his appearance, or according to such other materials for forming a judgment upon the subject as shall exist; and no error which shall be *bonâ fide* made by any Magistrate in judging of the age of any such offender shall vitiate or affect the sentence by which such offender shall be sentenced to receive, and shall have received, any such correction as aforesaid.

No. 19—1877.

No. 19—1877.]

[August 8, 1877.

ACT

To Provide for the more effectual Punishment of certain Offenders.

WHEREAS it is advisable to extend the provisions of the Act No. 21 of 1869, intituled "An Act to make better provision for the punishment of Juvenile Offenders convicted in Courts of Resident Magistrates," to all convictions of juvenile offenders in Courts of Resident Magistrates, and to provide that persons convicted of contravening the third section of the "Forest and Herbage Preservation Act, 1859," and the fourth and fifteenth sections of "The Regulation of Railways Act, 1861," may be punished by whipping: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The said Act No. 21 of 1869 shall be read and construed as if the words "for which the punishment of whipping might be lawfully inflicted in case of a second or subsequent conviction" in the second section thereof were omitted therefrom.

Amending section  
2 of Act 21 of 1869.

2. Any person who may be convicted of any offence made punishable by the third section of the "Forest and Herbage Preservation Act, 1859," or by the fourth or fifteenth sections of "The Regulation of Railways Act, 1861," shall be liable in addition to or in lieu of the punishment provided for any such offence in or by the said sections to corporal punishment in any number of lashes, or cuts with a cane or rod, not exceeding twenty-five.

Amending Act 18  
of 1859, and Act 19,  
1861.

No. 21—1876.]

[July 4, 1876.

ACT

To Amend the Law relating to the Jurisdiction and Powers of Resident Magistrates.

WHEREAS it is expedient to give increased jurisdiction and powers to Resident Magistrates in certain cases: Be it enacted by

Preamble.

No. 21—1876.

the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws and rules of court repealed.

1. So much of the Act No. 20 of 1856, intituled “An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates,” and of any rule, order, or regulation of any such Courts, and of any other Act in force in this Colony, as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

2. [Superseded by § 5 Act 43, 1885.]

Liquid cases over £40 may, on objection of defendant, and security given, be removed to superior court.

3. It shall also be lawful for the defendant, or any two or more of the defendants, if more than one, who may have been summoned to appear before a Court of Resident Magistrate in any such case as aforesaid, in which the sum demanded shall exceed forty pounds sterling, at any time before the hearing of such case, to give notice that he objects, or that they object, to the same being tried in the Court of Resident Magistrate, and if such defendant or defendants shall thereupon give security, to be approved of by the Resident Magistrate, for the amount claimed, and such further sum, not exceeding the sum of one hundred pounds sterling, as may be fixed by the said Resident Magistrate for costs already incurred in the Court of Resident Magistrate and which may be incurred in the superior Court, all proceedings in the Court of Resident Magistrate in any such action shall as to such defendant or defendants be stayed, and the said action, and all the proceedings therein, shall, if the plaintiff so wishes, be, as to such defendants, forthwith removed by order of the Resident Magistrate into such superior Court in this Colony having jurisdiction, as the plaintiff may elect, and upon such removal, the summons in the Court of Resident Magistrate shall, as to such defendant or defendants, stand as the summons in the Court into which the case is removed, the return day <sup>(1)</sup> thereof being the date of the order of removal, or if the removal is to a Circuit Court, the date of the first sitting of such Circuit Court: Provided, however, that it shall be lawful for the plaintiff, instead of requiring the said case to be removed, to issue a fresh summons against the said defendant or defendants in any competent Court upon payment to the said defendant or defendants of the costs already incurred by him or them in such Resident Magistrate's Court.

Or, upon payment of costs already incurred by defendants, plaintiff may issue fresh summons in any competent court.

Section 46, Act 20 of 1856, and Section 2, Act 17 of 1867, amended.

4. The forty-second section of the said Act No. 20 of 1856, and the second section of “The Cattle Theft Repression Amendment Act, 1867,” shall be read as if the words “without appeal or review” in the commencement thereof were omitted. And from and after the passing of this Act, any person who shall be convicted by the judgment of any Court of Resident Magistrate, and sentenced to any period of imprisonment, or to the payment of any fine, or to receive any number of lashes or cuts, may, if he think

<sup>1</sup> See § 6 Act 43, 1885.

fit, appeal against such conviction and sentence to the Supreme Court, or in the Eastern Districts, either to the Supreme Court or to the Court of the Eastern Districts or to the Circuit Court to be holden for the district in which the alleged offence was committed, as the person convicted may elect: Provided that within four days next after such conviction notice, in writing, be given to the clerk of the Court of the Resident Magistrate, by or on behalf of the person convicted, of his intention to appeal, and of the Court to which he elects to appeal: Provided further that no public or private prosecutor shall by virtue of this section be entitled to bring any case, either in appeal or under review, in any superior Court which could not before the passing of this Act be brought under such appeal or review: Provided also that every such appeal when made to the Supreme Court or to the Court of the Eastern Districts, shall be prosecuted within forty-one days after the giving of such notice, and, when made to the Circuit Court, shall be prosecuted at the next ensuing Circuit Court, and, if not so prosecuted, such conviction and sentence shall be and become final, and it shall not be competent thereafter to bring the same before any superior Court, either by appeal or review, anything contained in this Act or in the Charter of Justice to the contrary notwithstanding; and when any such appeal is made as aforesaid, the provisions of the forty-seventh section of the said Act No. 20 of 1856, in regard to the execution of any sentence of imprisonment for any period exceeding one month, or to pay any fine exceeding five pounds, or to receive any number of lashes or cuts, and the circumstances under which any such sentence may be suspended, shall apply, *mutatis mutandis*, to any sentence so appealed against.

5. The sixth section of the "Criminal Law Amendment Act, 1874," shall be read as if the words "where the number of lashes or cuts shall exceed twelve" were omitted therefrom.

Section 6, Act 17 of 1874 amended.

6. As often as any Resident Magistrate shall convict any person of stealing or receiving, knowing to have been stolen, any horse, mule, ass, head of horned cattle, sheep or goat, it shall be lawful for such Resident Magistrate to make such inquiry and give such judgment as in the fourth section of the "The Cattle Theft Repression Act, 1864," is mentioned, in like manner precisely as if the person so convicted had been committed for trial by such Resident Magistrate under the said section, and the provisions of the said last mentioned Act shall thereupon *mutatis mutandis* apply to such judgment, and the proceedings subsequent thereto, as if the same were a judgment given under the said last mentioned Act, the quashing of any such conviction being taken to be for the purposes of the said last mentioned Act an acquittal of the person accused.

Section 4, Act 16 of 1864, to apply to summary convictions of stealing or receiving stolen cattle.

7. (1) Notwithstanding anything contained in the thirty-eighth and thirty-ninth sections of the said Act, No. 20 of 1856, and in

<sup>1</sup> See also § 13 Act 17, 1886.

No. 21—1876.

Fees of attorneys and agents and officers in magistrates' courts, and allowances to witnesses in civil cases, may be altered by rule or order of Supreme Court.

the schedules to the said Act, it shall be lawful for the Judges of the Supreme Court by any rule or order (to be made in like manner as may from time to time be directed as to general rules and orders of the Supreme Court), to fix and from time to time to alter the fees and charges to be taken and made by attorneys and enrolled agents for or on account of the work and labour by them expended in and about or in connection with the prosecuting or defending of any civil action or proceeding in any Court of Resident Magistrate: the fees to be taken by the officers of the Court of Resident Magistrate, and also the allowances to witnesses in civil cases for personal attendance and travelling expenses <sup>(1)</sup>: Provided that until any such rule or order shall be made, and in so far as the same shall not extend, the fees and charges now by law fixed shall continue to be payable.

Short title.

8. This Act may be cited as "The Resident Magistrates' Court Act, 1876," and the Act No. 20 of 1856 as the "Resident Magistrates' Court Act, 1856."

No. 16—1882.]

[June 21, 1882.

## ACT

## To Amend the "Resident Magistrates' Courts Act, 1856."

Preamble.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. So much of the Act 20, 1856, the seventh section of the Act No. 9, 1857, and the Act No. 6, 1858, and so much of any other Act or of the rules, orders, and regulations of the Courts of Resident Magistrates as may be repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Jurisdiction of Magistrates in cases of crimes committed on lines of railway or within 10 miles of a line.

2. Where any crime or offence shall be committed on any person or in respect of any property upon any line of railway, or within a distance of ten miles from any line of railway, on either side thereof, such crime or offence may be dealt with, enquired of, tried, determined, and punished by the Resident Magistrate of any district in or through any part whereof or within such distance from the boundary whereof such line of railway passes, in the same manner as if such crime or offence had been actually or wholly committed in the district of such Magistrate.

Governor may appoint Assistant Magistrates.

3. The Governor may from time to time appoint for any district one or more fit and proper persons to be styled Assistant Resident Magistrates, and every Assistant Resident Magistrate shall, subject to the provisions of this Act, have and exercise all the power and jurisdiction of a Resident Magistrate in and for the district, or within the local limits for which he shall be appointed to act, in

Tariff in *Gazette*, 4th January, 1878.



all cases civil and criminal : Provided that nothing herein contained shall prevent the Governor from appointing an Acting Resident Magistrate in and for any district as often as circumstances shall require.

No. 16—1882.

4. Every Assistant Resident Magistrate shall be subordinate to the Resident Magistrate of the district, and shall act as such Assistant Resident Magistrate, When Assistant Magistrates may act as such.

- (1.) When so required to act at the stated and ordinary place of holding the Court of Resident Magistrate, by the Governor or by the Resident Magistrate, whether the Resident Magistrate be present or not, and such Assistant Resident Magistrate may act in the disposal of any cases assigned to him for disposal by the Governor, or by such Resident Magistrate, while the Resident Magistrate shall be acting in other cases.
- (2.) When so required to act at the place for holding any Periodical Court by the Governor or by the Resident Magistrate.
- (3.) During the absence of the Resident Magistrate on leave, duty, or from illness, or other unavoidable cause.
- (4.) At such place, or within such local limits as may be assigned by the Governor.

5. Every Assistant Resident Magistrate shall in every proceeding had before him be deemed to be acting lawfully and by sufficient authority until the contrary be proved. Presumption in favour of authority.

6. The Governor may appoint the Resident Magistrate or Assistant Resident Magistrate of any district to hold a Periodical Court in any district other than that in which such Resident Magistrate or Assistant Resident Magistrate shall have been appointed to act, and such Periodical Court held before such Magistrate, and all proceedings had therein, shall be of the same force and effect as if such Periodical Court had been held by or before the Resident Magistrate of the district within which such Court shall hold its sitting. Governor may direct Magistrates and Assistant Magistrates to hold periodical courts out of their own districts.

7. The term "Resident Magistrate," whenever it occurs in schedule B to the Act No. 9, 1857, shall be deemed to apply to the Resident Magistrate or Assistant Resident Magistrate, as the case may be, holding such Court, and as often as a Periodical Court shall be held under the powers of the last preceding section, the said term shall apply to such Magistrate or Assistant Resident Magistrate, and not to the Resident Magistrate of the district within which such Court shall be held. Term "Resident Magistrate" in schedule B to Act 9, of 1857, to apply to assistants also.

8. As often as any sentence pronounced at or by a Periodical Court as aforesaid, shall be a sentence coming under the provisions of the forty-seventh section of the Act No. 20 1856, the record in such case shall be forwarded to the Court of Review by the Magistrate, by or before whom such Court was held, and not by the Resident Magistrate of the district, and shall, after review, be Cases for review to be forwarded by the Magistrates actually holding the court.

No. 16—1882.

returned to the Magistrate from whom it shall have been received ; and in case the Court of Review should see cause to remit such case with instructions, relative to further proceedings therein, the said case shall be remitted to the Magistrate by whom the record was forwarded.

What shall be the courts of review.

9. The term " Court of Review," in the last preceding section mentioned, shall mean as to the districts over which the Court of the Eastern Districts of the Cape of Good Hope exercises jurisdiction, the said Court of the Eastern Districts, as to the districts over which the High Court of Griqualand exercises jurisdiction, the said High Court, and as to all other districts the Supreme Court.

Governor may extend area over which periodical court is held to places beyond actual district.

10. Whenever the place appointed for holding any Periodical Court shall be so near the boundary of any district that the inhabitants of any adjoining district can with ease and convenience resort thereto, the Governor may define any portion of any such adjoining district as an area over which the Magistrate, holding such Periodical Court, shall, for the purposes of such Court, have and exercise jurisdiction.

Persons within such areas under the jurisdiction of the court.

11. All persons residing within any such defined area as aforesaid, shall, for all proceedings, civil and criminal, be subject to the jurisdiction of such Periodical Court, as is in the last preceding section mentioned, as well as to the jurisdiction of the Court of the Resident Magistrate of the district to which such area belongs.

Governor may direct any number of courts of Resident Magistrate to be held in the same district.

12. The Governor may authorize and appoint, to be held in the same district, and at the same time, any number of Courts of Resident Magistrates, which the convenience of the public shall require, and may appoint for such district more Resident Magistrates than one, and every Magistrate appointed to act at any place other than the stated and ordinary place for holding the Court of Resident Magistrate in any district, shall be styled an Additional Resident Magistrate.

How process to be signed.

13. The process of the Courts of Resident Magistrates for summoning any person, whether as a party or a witness in any case, civil or criminal, may be signed by the clerks of such Courts, respectively, and shall be of the like force and effect, in all respects, as if the same had been under the hand of the Resident Magistrate.

Short title.

14. This Act may be cited for all purposes as " The Resident Magistrates' Courts Act, 1882."

Act No. 43—1885.]

[August 11, 1885.]

## ACT

## To Amend the Law relating to the Courts of Resident Magistrate.

WHEREAS it is expedient to amend the law relating to the Courts of Resident Magistrate: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. As often as any preparatory examination taken against any prisoner for any crime or offence shall have been transmitted to the Attorney-General for his consideration, and the Attorney-General shall be of opinion that the evidence taken at such preparatory examination is such as to require that the prisoner shall be put on his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the ends of justice, then and in that case it shall be lawful for the Attorney-General to remit the case for trial to the Court of the Resident Magistrate by whom the preparatory examination was taken, and such Court shall thereupon proceed to try the same in manner and form as in the twenty-ninth section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such Court may sentence him to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any period not exceeding one year, or to imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding thirty-six, or to both such fine and such imprisonment or to such imprisonment and such corporal punishment: Provided that the punishment of corporal punishment shall not be inflicted except in case of a second or subsequent conviction of some crime or offence within the space of three years.

In cases remitted by the Attorney-General, Magistrates may sentence to one year's imprisonment with or without hard labour; or 3 months with spare diet and with or without hard labour, or to thirty-six lashes in cases of previous conviction within three years.

2. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall extend and apply to all cases of convictions under this Act.

Forty-third, forty-seventh, forty-eighth, and forty-ninth sections of Act 20 of 1856 to apply.

3. The powers by this Act conferred upon the Attorney-General may be exercised by the Solicitor-General and the Crown Prosecutor within their respective jurisdictions.

Solicitor-General and Crown Prosecutor to have same powers as Attorney-General.

4. Nothing herein contained shall be taken to affect the provisions of the Acts Nos. 12 of 1860, and 17 of 1867, intituled respectively "An Act for increasing the jurisdiction of the Courts of Resident Magistrate in Criminal Cases, in which the persons accused admit their guilt," and "An Act to amend the Criminal Law in regard to Thefts of Stock." Provided that the Resident Magistrate may punish any prisoner convicted under Act 12 of 1860 by fine not

Acts 12 of 1860, & 17 of 1867, not affected.

Magistrate may impose fine of £100 or imprisonment of 2 years, or 36 lashes.

uuu

No. 43—1885.

exceeding one hundred pounds or by imprisonment with or without hard labour for any period not exceeding two years, or by corporal punishment not exceeding thirty-six lashes, or by both such fine and such imprisonment or both by such imprisonment and corporal punishment.

Jurisdiction extended in civil cases.

5. Notwithstanding anything contained in the first, second and fourth sub-sections of the eighth section of the Act No. 20 of 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," or in the second section of the Act No. 21 of 1876, entitled "An Act to Amend the Law relating to the Jurisdiction and Powers of Resident Magistrates," and also notwithstanding the provisions of any rule, order, or regulation of any such Courts, or of any other Act of Parliament contrary to or inconsistent with the provisions of this section, the jurisdiction of every Resident Magistrate is hereby extended

- (a) To all cases founded upon any bill of exchange, promissory note, good-fors, or other written acknowledgment of debt commonly called a liquid document, in which the sum demanded shall not exceed two hundred and fifty-pounds sterling.
- (b) To all cases commonly called illiquid for the recovery of the price of any merchandize, goods, or other movable property, when the amount demanded shall not exceed one hundred pounds sterling.

Provided that as often as any action or suit shall be brought upon any liquid document for any sum exceeding one hundred pounds, as aforesaid, the Resident Magistrate shall have jurisdiction to try any plea of set-off or compensation, or any cross case or claim in reconvention not exceeding the amount demanded by the plaintiff in his summons, whether the plaintiff shall or shall not succeed in proving the amount so demanded to be due.

Provisions of section 3 of Act 21 of 1876 to apply save as to return day of summons.

6. All and sundry the provisions of the third section of Act No. 21 of 1876, with regard to cases founded upon certain written acknowledgments of debt shall extend and apply and are hereby extended and applied to all cases, liquid or illiquid, in which the sum, thing, matter, debt, or damage demanded or in dispute shall exceed in amount or value the sum of forty pounds sterling: Provided, however, that in regard to liquid cases which shall be removed into any superior Court under the said section, the return day of the summons shall not be the date of the order of removal, but such convenient day, being a day on which such superior Court shall sit for the hearing of provisional cases, as the Magistrate shall in such order fix and appoint.

In cases of appeal, or review, magistrate to forward statement of facts and reasons.

7. Where the judgment of any Court of Resident Magistrate in any civil case shall be appealed from or brought under review by proceedings under Rule 190 of the Rules of the Supreme Court, the Magistrate by whom such judgment was granted shall deliver to

the Clerk of the Court, for transmission to the Registrar of the Court for hearing the appeal or review, a statement of the facts which he shall find to have been proved, and his reasons for the judgment pronounced.

No. 43—1885.

8. From and after the taking effect of this Act, no person in any district where not less than two attorneys are in practice, shall be admitted and enrolled as an agent in the Court of any Resident Magistrate, anything in the thirty-sixth section of the Act No. 20, 1856, notwithstanding, provided that all agents heretofore admitted and enrolled as agents shall continue as such, as if this Act had not been passed. <sup>(1)</sup>

Enrolled agents.

9. The second and third sections of the Ordinance of Griqualand West, numbered 13 of 1874, are hereby repealed.

Repeal of sections 2 and 3 of Ordinance 13 of 1874 of Griqualand West. Short title.

10. This Act may be cited as "The Magistrates' Jurisdiction Act, 1885."

No. 17—1886.]

[June 29, 1886.

ACT (2)

To Amend the Law relating to Appeals and the Duties of the Sheriff, and to make more convenient provision regarding Legal Process in certain cases.

12. The process mentioned in the tenth section of schedule B of Act No. 20 of 1856 may, in case neither the defendant nor any one of his household can be found after diligent search, be served by leaving the same at his usual or last known dwelling house or place of business.

Service of process under Act 20 of 1856.

\* \* \* \* \*

13. The Judges of the Supreme Court may (by any rules or orders to be made in like manner as by law provided for the making of general rules or orders of the Supreme Court), make rules or orders respecting the manner and form of proceeding in civil and criminal cases before the Courts of the Resident Magistrates; and any rules or orders so made shall be in addition to, or in place of the rules, orders, and regulations contained in schedule B to the "Resident Magistrates' Courts Act, 1856," or in any other Act relating to the said Courts.

Judges of Supreme Court may make rules and orders for Courts of Resident Magistrates.

\* \* \* \* \*

No. 31—1886.]

[July 6, 1886.

ACT

To Amend the Law relating to Enrolled Agents.

WHEREAS it is expedient to amend the law relating to enrolled agents practising in Courts of Resident Magistrate: Be it enacted

Preamble.

<sup>1</sup> But see Act 31, 1886, *infra*.

<sup>2</sup> Printed in full under "Administration of Justice."

No. 31—1886.

by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Amendment of eighth section of Act 43 of 1885.

1. Notwithstanding anything in the eighth section of the "Magistrates' Jurisdiction Act, 1885," contained, all agents admitted and enrolled in any Court of Resident Magistrate before the passing of the said Act shall be entitled to be admitted and enrolled, and to practise, in any other Court of Resident Magistrate, as if the said Act had not been passed: Provided that the Resident Magistrate to whom any application for admission and enrolment shall be made by any such agent may refuse to admit and enrol the applicant for any reason which would have warranted such refusal upon an original application under the provisions of the thirty-sixth section of the "Resident Magistrates' Courts Act, 1856."

Short title.

2. This Act may be cited as the "Enrolled Agents Act, 1886."

### ROADS AND BRIDGES.

1. Ord. No. 9—1846, (Preservation of Roads).	of	14. Act No. 11—1877, (Management of Roads, No. 9, 1858, amended).
2. Act No. 9—1858, (Management do.).		
3. ,, 23—1858, (Main Roads and Tolls).	15. ,, 37—1879, do. do.	
4. ,, 24—1858, (Road Rates).	16. ,, 27—1884, (Width of Roads).	
5. ,, 3—1859, (Main Roads and Tolls, 23, 1858, amended).	17. ,, 30—1885, (Proclamation of a Main Road, Port Alfred to Komgha).	
6. ,, 11—1859, (Management of Roads, 9, 1858, amended).	18. ,, 31—1885, (Management of Roads, No. 11, 1877, amended).	
7. ,, 5—1860, do. do.	19. ,, 6—1873, (Locomotives on Roads).	
8. ,, 1—1863, (Construction and Maintenance of Roads).	20. ,, 32—1868, (Main Northern Road).	
9. ,, 13—1863, (Tolls established).	21. ,, 5—1871, (Great do.).	
10. ,, 10—1864, (Construction and Maintenance of Roads).	22. ,, 26—1884, do.	
11. ,, 7—1869, (Tolls within Municipalities).	23. ,, 25—1864, (Construction of Bridges).	
12. ,, 3—1870, (Crown Lands Road Rates).	24. ,, 6—1867, (Fish River Bridge).	
13. ,, 22—1873, (Construction and Maintenance of Roads).	25. ,, 6—1877, (Great Kei do.).	
	26. ,, 15—1871, (Orange River do.).	
	27. ,, 12—1872, do.	
	28. ,, 26—1874, do.	
	29. ,, 11—1881, Vaal River do.).	
	30. ,, 12—1884, (Hope Town do.).	

No. 9—1846.—Sd. P. Maitland.] [February 28, 1846.

Ordinance for the better Preservation of the Public Roads and the Prevention of Accidents and Injuries thereon.

Preamble.

WHEREAS the proclamation of His Excellency the Right Honourable Du Pré, Earl of Caledon, Viscount Alexander and Baron Caledon of Caledon, &c., &c., &c., the then Governor of this Colony, bearing date the 23rd of June, 1809, for providing for the

safety of travellers and other the like purposes, has become in some respects insufficient to secure the ends intended; and it is therefore expedient to repeal the same and to make other provisions in its room and stead: And whereas the substance of the Ordinance No. 79 of 1830, entitled "Ordinance for preventing the practice of riding or driving carelessly or furiously on the frequented parts of the Public Roads of this Colony," may with advantage, be incorporated in the provisions of this Ordinance, and it is therefore expedient to repeal the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid and the Ordinance aforesaid shall respectively be repealed, and the same are hereby repealed accordingly.

Ord. 9—1846.

Repeal of former laws.

2. And be it enacted that the owner of every wagon or cart shall paint or cause to be painted in one or more straight line or lines upon some conspicuous part on the right or off-side of his wagon or cart or upon some board or plate firmly affixed to such side the Christian name and surname by which he is usually called and distinguished, together with the name of the district in which he resides, in legible letters not less than one inch in height, and shall continue the same thereupon so long as such wagon or cart shall be used upon any public road in this Colony; and every owner of any wagon or cart who shall use or allow the same to be used on any public road without having his name and district of residence painted thereon as aforesaid or who shall suffer the same to become illegible or who shall paint or cause to be painted any false name or district of residence shall upon conviction forfeit any sum not exceeding forty shillings. Provided that nothing in this section contained shall be construed to extend to any wagon or cart on springs and used solely for the conveyance of passengers or other persons.

Owner's name on wagon-plate.

Penalty.

3. (1) And be it enacted that the driver of any wagon or cart or other carriage which shall by the negligence or misbehaviour of such driver cause any hurt or damage to any person or cattle or to any other vehicle or to any goods conveyed in any other vehicle passing or being upon any public road; or of any wagon, cart, or other carriage which when meeting or being followed upon any public road by any other wagon, cart, or other carriage shall not together with the cattle drawing the same keep upon the left or near side of the road; or of any wagon, cart, or other carriage, which shall wantonly or unnecessarily prevent, hinder, or interrupt the free and rightful passage of any other wagon, cart, or carriage; or of any wagon, cart, or other carriage which upon any public road within four miles of Cape Town or in any town or village for which town or village no municipal

Misconduct of driver.

Side of road.

Obstruction.

Furious driving.

<sup>1</sup> Provisions of §§ 3-5, apply to all public roads, but not within municipalities where regulations provide for prevention of negligent, careless, or furious driving. Act 11 of 1877, § 6, *infra*. See also sub-sections 1, 2 and 3, of § 7, Act 27 of 1882 (Police Offences) and § 2, Act 13 of 1886 (Criminal Procedure).

- Ord. 9—1846. regulations for the prevention of negligent, careless, or furious driving shall be provided; or on any public road within the distance of two miles of any town or village other than Cape Town shall drive or be driven so negligently, carelessly, or furiously as to injure or endanger the person or property of any other person; or of any wagon, cart, or other carriage which shall having the oxen or other cattle used for drawing the same unyoked or detached therefrom be left (unless by reason of accident or other unavoidable cause) standing upon any part of the road aforesaid between Cape Town and Simon's Town or any part of the new road aforesaid between Cape Town and its terminus at the Eerste River, or of any wagon, cart, or other carriage the oxen or other cattle belonging to which or any of them shall be suffered while attached thereto to lie down to rest upon any part of either of the two last mentioned roads respectively, shall upon conviction forfeit any sum not exceeding forty shillings, Provided, always, that if the owner of any such wagon, cart, or other carriage shall be in or with the same when any contravention of this section shall be committed such owner and not the driver shall incur and be liable to the said forfeiture.
- Unyoking on certain parts of road. Penalty.
- Duty of leader of oxen. 4. And be it enacted that in case any wagon or cart being drawn by any number of oxen more than two shall be in motion upon any part of the public road from Cape Town and Simon's Town lying between Cape Town and the eighth milestone upon the said road or upon any part of the new road over the Cape Downs leading to or towards the interior lying between Cape Town and the fourth milestone from Cape Town upon the said road or upon any part of the road from Cape Town to and through the municipality of Green Point as far as where the said road intersects the limit of the said municipality farthest from Cape Town without having some person actually leading in the usual manner the foremost pair of oxen, or in case any such wagon or cart being upon any part of the road first in this section mentioned beyond the eighth milestone aforesaid or upon part of the road secondly in this section mentioned beyond the fourth milestone aforesaid which shall not, while approaching closely to and passing any other wagon, cart, or carriage followed or while being passed by any other wagon, cart, or carriage that is proceeding in the same direction, have some person actually leading the foremost pair of oxen, any person at the age of sixteen years or upwards employed and engaged to lead the said oxen and who shall be found wilfully or negligently not leading the same shall upon conviction forfeit any sum not exceeding forty shillings.
- Penalty.
- Penalty on owner who has not employed leader. 5. And be enacted that the owner of every such wagon or cart as in the last preceding section mentioned which shall be in motion aforesaid without such leading as aforesaid who shall not have employed and engaged some person of the age of sixteen years and upwards to act as leader in the usual manner shall upon



conviction forfeit any sum not exceeding forty shillings. Provided, also, that when and as often as no person of the age last mentioned shall be discovered with or near such wagon or cart who shall confess himself, or shall be otherwise shown to be employed and engaged to act as such leader it shall be deemed and taken *prima facie* that no such person has been so employed or engaged, and the owner aforesaid shall be liable unless he shall prove that some such leader as aforesaid was actually engaged and employed, in which case he shall be acquitted.

Ord. 9—1846.

6. And be it enacted that all fines, penalties, and forfeitures imposed by this Ordinance shall be recoverable in the Court of any Resident Magistrate without regard to the district in which the same shall have been incurred; and in case any offender shall not upon conviction pay the sum awarded such Magistrate is hereby authorized to commit him to prison, there to be kept to hard labour should the said Magistrate so order for any term not exceeding six weeks, unless the sum awarded shall be sooner paid or recovered. Provided, always, that it shall be competent for such Magistrate notwithstanding such committal to prison as aforesaid to authorize by warrant under his hand the amount adjudged to be forfeited (together with such costs if any as may be awarded under and by virtue of the forty-first section of this Ordinance) to be levied by distress and sale of the goods of the offender. And provided, also, that when and as often as any of the goods of the offender shall be within any district other than that of the convicting Magistrate, the Resident Magistrate of the district in which such goods shall be shall endorse any such warrant as aforesaid, after which it shall and may be executed in like manner as if the same had been issued by the Magistrate so endorsing it; and provided, also, that nothing in this section contained shall be construed so as to affect or impair the force and validity of the eighteenth or thirty-fifth or of the concluding clause of the thirtieth section of this Ordinance. And provided, also, that the keeper of every public prison shall receive into his charge and custody the body of any person committed by any Resident Magistrate whether of the district in which such prison is situate or not to be imprisoned under the provisions of this Ordinance for any contravention of the same.

Recovery of penalties.

7. And whereas it is expedient in order to prevent delay inconvenience, and expense that Magistrates should be created having in regard to such fines, penalties and forfeitures as aforesaid a certain concurrent jurisdiction with such Resident Magistrates as aforesaid: Be it therefore enacted that it shall and may be lawful for the Governor of this Colony from time to time to nominate and appoint in such places as he shall deem expedient so many fit and proper persons as he shall select, to be called and termed Road Magistrates, who shall severally and respectively have jurisdiction to try and determine all cases of offences alleged

Appointment by Governor of road magistrates.

- Ord. 9—1846. to have been committed in contravention of any of the provisions of the second, third, and fourth sections of this Ordinance and all other offences created by this Ordinance, in regard to which such Road Magistrates shall be expressly invested with jurisdiction, and to impose all fines, penalties, and forfeitures consequent thereon, and if it need be award imprisonment in as full and ample a manner as is hereinbefore provided in regard to the Court of Resident Magistrates.
- Their jurisdiction.
- Oaths of road magistrate. 8. And be it enacted that every such Road Magistrate shall before acting as such take the oath of allegiance and the oath of office in the first schedule hereunto annexed set forth, which oaths respectively any Resident Magistrate or Justice of the Peace is hereby empowered to administer.
- Summary exercise of jurisdiction. 9. And be it enacted that every such Road Magistrate as aforesaid shall act in and exercise the jurisdiction aforesaid in a purely summary manner, that is to say, when and as often as any person or persons shall under and by virtue of the provisions in that behalf hereafter contained bring or cause to be brought before such Road Magistrate at any place where he shall happen to be any wagon, cart, or other carriage, or owner or driver thereof, and shall complain that any offence against the provisions of the second or third sections of this Ordinance has been by it or by means of it committed such Road Magistrate shall record such complaint and shall forthwith hear and determine the same.
- Record book of complaints, &c. 10. And be it enacted that every complaint shall if possible before but at all events as soon as may be after the determination of the case be recorded by the Road Magistrate by entering in separate columns in a record book to be kept for that purpose the name and residence of the person complaining, the name and residence if known of the owner of the wagon, cart, or other carriage, by or by means of which the alleged offence has been committed, the description of such alleged offence, and the day of the hearing of the same.
- Judgment. 11. And be it enacted that every such Road Magistrate as aforesaid shall also record in a separate column in the said record book the judgment given by him in regard to any such complaint as soon as the same shall have been pronounced.
- Execution of judgment. 12. And be it enacted that in every case in which any such Road Magistrate shall see cause in regard to any such complaint to convict the party offending, being the owner of the wagon, cart, or other carriage, it shall and may be lawful for him in case the fine, penalty, or forfeiture imposed shall not be paid forthwith or in case sufficient security for the payment of the same shall not be given to issue a warrant under his hand directed to any person whom he shall name therein, authorizing such person to seize and attach any property, matter, or thing being in or upon such wagon, cart, or other carriage, sufficient to satisfy the exigency of the warrant, or failing such to seize and attach so many of the oxen or other

cattle belonging to or drawing the wagon, cart, or other carriage in regard to which such conviction shall have been had as may be deemed sufficient to satisfy the exigency of the warrant, and which number shall be specified in such warrant.

Ord. 9—1846.

13. And be it enacted that every such warrant shall in substance and effect be agreeable to the form in the second schedule hereunto annexed mentioned and set forth.

Form of warrant.

14. And be it enacted that when and as often as any oxen or other cattle shall be seized and attached under any such warrant as aforesaid they shall by the person named in the said warrant, be forwarded to the nearest public pound, the keeper of which is hereby required to receive the same, and at or as soon as may be after the expiration of ten days from the day of such seizure and attachment shall be publicly sold for ready money by the keeper of such pound (who shall not require any licence as an auctioneer in order to sell the same) to the highest bidder; provided that a notice of such sale shall be affixed by such pound-keeper at such pound and such other place if any as such Road Magistrate may order three days at least before the sale. And provided also that if the amount mentioned in any such warrant together with the reasonable expenses of seizing and sending such oxen or other cattle to the pound and the legal pound charges be sooner paid and satisfied to the Road Magistrate convicting, to be by him applied according to law, the said Magistrate shall grant his order for the restoration of the said oxen or other cattle, which shall be restored accordingly.

Manner of proceeding on attachment of cattle.

15. And be it enacted that the keeper of every pound by whom any such oxen or cattle shall be sold as aforesaid shall forthwith pay and hand over to the Road Magistrate convicting or any person by him authorized to receive the same the amount which shall have been realized by such sale; deducting only his legal and usual charges in regard to similar cattle impounded for the same time for other causes; and if after the payment of such charges and the reasonable expenses of the persons mentioned in such warrant as aforesaid and the amount of the fine, penalty, forfeiture imposed any surplus shall remain the same shall be paid upon demand to the owner of the oxen or other cattle seized and sold.

Application of proceeds.

16. And be it enacted that when and as often as any property, matter, or thing other than cattle shall be seized and attached under and by virtue of the provision in that behalf in the twelfth section of this Ordinance contained, the same shall be sold publicly and for ready money by the person to whom the warrant aforesaid shall be directed or by some other person to be approved of by the Road Magistrate issuing the same to the highest bidder at such place as such Magistrate shall direct for the sale thereof. Provided that a notice of every such sale shall be affixed at such place or places as the said Magistrate shall deem requisite seven days at least before the day appointed for such sale, which shall not be earlier than the

Manner of proceeding on attachment of property other than cattle.

Ord. 9—1846.

fourteenth day from the day of the seizure. And provided, also, that the person conducting such sale shall pay and hand over to the Road Magistrate, to be applied as in and by the forty-second section of this Ordinance is directed the whole amount of the proceeds realized thereby less such fee or charge not exceeding seven shillings and six pence as the said Magistrate shall deem reasonable and allow, and any surplus shall upon demand be paid to the person convicted. And provided, also, that if such last mentioned person shall pay or cause to be paid at any time before such sale as aforesaid the amount of the fine imposed, together with a fee of three shillings and six pence for the person who shall have made seizure the property seized shall be restored.

Imprisonment of driver on non-payment of fine.

17. And be it enacted that in every case in which the driver of any wagon, cart, or carriage shall be convicted by any Road Magistrate of contravening any of the provisions of the third section of this Ordinance, such Magistrate, in case the fine imposed shall not be forthwith paid and it shall appear that the offender may be committed to prison without thereby depriving the wagon, cart or other carriage of which he shall be in charge of a person necessary for the safe conduct of the same, shall forthwith commit such offender to prison, and his warrant for that purpose shall in substance and effect be agreeable to the form in the third schedule of this Ordinance mentioned and set forth.

Manner of proceeding when the immediate imprisonment of driver would endanger the safety of the master's property.

18. And be it enacted that in every case in which it shall appear that to commit to prison forthwith any driver convicted as in the last preceding section mentioned would have the effect of depriving the wagon, cart, or carriage of which he was in charge of a person necessary for the safe conduct of the same the Magistrate convicting (whether a Resident Magistrate or a Road Magistrate) shall instead of forthwith committing the offender cause to be seized and detained in some safe place some sufficient property, matter, or thing in, upon, or belonging to such wagon, cart, or carriage, by way of caution or security for the payment of the fine imposed or otherwise for the reappearance of such offender at some reasonable time to be fixed by the said Magistrate for such payment or reappearance. And when and as often as any property, matter, or thing shall be seized and detained under the provisions of this section the Magistrate causing such seizure or detention shall deliver to the person convicted a certificate which shall in substance and effect be agreeable to the form in the fourth schedule hereunto annexed, and shall allow him to depart. And in case the fine imposed shall not be paid, or failing that in case the offender shall not again appear on the day limited for such purpose in the said certificate, the property or thing seized and detained shall be treated and considered as if seized and attached under a warrant of the Magistrate granting such certificate against the goods and chattels of the offender, and shall be sold in case such Magistrate be a Resident Magistrate, by the messenger in manner and form as

by the rules of his Court in that behalf provided, and in case such Magistrate be a Road Magistrate by some person by him appointed for that purpose in manner and form as is hereinbefore in the sixteenth section of this Ordinance provided. Provided, always, that in case the fine imposed be paid or the offender again appear on or before the day in and by the said certificate limited for that purpose the property, article, matter or thing detained shall be restored.

Ord. 9—1846.

19. And be it enacted that the owner of any property, matter, or thing seized or detained under the circumstances in the last preceding section mentioned, shall be authorized either to pay the fine imposed for and on account of the offender, and to retain or recover the amount thereof from such offender, or otherwise to convey such offender to the Magistrate granting the certificate aforesaid, so as to produce such offender at any time before the expiration of the day limited in such certificate for that purpose. And whenever any such offender shall be so produced before any Resident Magistrate or Road Magistrate and shall not pay the fine imposed such Resident Magistrate or Road Magistrate shall forthwith commit him to prison, and the warrant to be issued by any Resident Magistrate for that purpose shall be in substance and effect agreeable to the form in the third schedule of this Ordinance mentioned and set forth.

Payment by master  
of fine in last section,or delivery up of  
offender.

20. And be it enacted that it shall and may be lawful for any person who shall witness or discover any contravention of the provisions of the second, third, or fourth sections of this Ordinance and for any other person whom he shall desire to assist him and shall be willing so to do to require and if necessary and practicable use all force necessary to compel the owner, driver, or other person or persons in charge of the wagon, cart, or other carriage by or by means of which such contravention shall have been committed forthwith to proceed with the wagon, cart, or other carriage in question and the oxen or other cattle belonging thereto to the residence or place of abode of whatever Resident Magistrate or Road Magistrate shall be or reside or be found nearest to the place where such wagon, cart, or other carriage shall be when so required to proceed as aforesaid, and such Resident Magistrate or Road Magistrate shall as soon as may be proceed to hear and determine the subject-matter of the complaint, and shall detain the wagon, cart, or other carriage in question to abide the issue of the investigation of the case. Provided that it shall not be lawful to require any such owner, driver, or other person as aforesaid to proceed to any Magistrate whose residence shall be distant three miles or upwards.

Authority of persons seeing contraventions of this ordinance to compel offenders to appear before magistrate ;

if within three miles.

21. And be it enacted that when and as often as any person witnessing or discovering any such contravention as aforesaid shall by reason of distance or other impediment find it impossible or deem it inexpedient to require any such wagon, cart, or other

Manner of proceeding when offender cannot at once be taken before magistrate.

Ord. 9—1846.

carriage to proceed to any Resident Magistrate or Road Magistrate, and in every case in which the residence of the nearest Resident Magistrate or Road Magistrate shall be distant three miles or upwards from the place at which any such contravention as aforesaid shall be witnessed or discovered and there shall be nearer than the nearest Resident Magistrate or Road Magistrate any Justice of the Peace, field-cornet, or gaoler, the person so witnessing or discovering any such contravention as aforesaid may require and compel such wagon, cart, or other carriage to proceed to whoever of the last mentioned persons can be most conveniently reached, and such Justice of the Peace, field-cornet, or gaoler is hereby authorized and empowered at his discretion either to detain the said wagon, cart, or other carriage with the oxen or other cattle thereto belonging, for any period not exceeding twelve hours, in order that during that period the case concerning it or them may be disposed of by some Resident Magistrate or Road Magistrate, should it be practicable so to do, or such Justice of the Peace, field-cornet, or gaoler may in case the owner of such wagon, cart, or other carriage shall be in charge of or with the same take, but without fee or reward and as near as may be in the form in the fifth schedule to this Ordinance set forth, the bond, obligation, or recognizance of such owner with or without sureties as may be thought fit, conditioned for the appearance of such owner before any Resident Magistrate whom the said owner and the person complaining shall agree to have inserted, and in case they shall not so agree then before the Resident Magistrate whom the Justice of the Peace, field-cornet, gaoler, or constable shall under the circumstances deem the most convenient, upon some convenient day to be after consulting such owner and person complaining fixed by the Justice of the Peace, field-cornet, or gaoler, and which day shall be mentioned in such bond, obligation or recognizance, then to answer the charge to be preferred against him; and upon such owner entering into such bond, obligation, or recognizance the wagon, cart, or other carriage in question, and the oxen used for drawing the same shall be allowed to depart. But if in any case the owner of the wagon, cart, or other carriage brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler should not in person be in charge of or present with the same then in place and stead of taking such bond, obligation, or recognizance as aforesaid such Justice of the Peace, field-cornet, or gaoler shall and may detain the alleged offender to answer the charge against him, provided his so doing would not have the effect of depriving any wagon, cart, or other carriage of a person necessary for the safe conduct of the same, but if such detention would have such effect such Justice of the Peace, field-cornet, or gaoler shall and may seize and detain and if he shall think fit forward to and place in the nearest public pound such a number of the oxen or other cattle belonging to such wagon, cart, or other carriage as he shall deem

Bond for appearance of owner before magistrate.

Detention of offender in default of bond;

or seizure of sufficient property.

sufficient to meet and satisfy any fine, penalty, or forfeiture which may be imposed for or in respect of the charge preferred; or should it be practicable shall seize and detain instead some property, matter, or thing in, upon, or belonging to such wagon, cart, or other carriage, and shall then permit and suffer such wagon, cart, or other carriage to depart, having first delivered a written statement to the owner or person in charge thereof of the day on which the case will come on to be investigated in and by the Court of the Resident Magistrate.

Ord. 9—1846.

22. And be it enacted that in every case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler such Justice of the Peace, field-cornet, gaoler, or constable shall take down in writing the name and residence of every person bringing the same or causing the same to be brought, and may require every such person to enter into a bond, obligation, or recognizance with or without sureties and as near as may be in the form in the sixth schedule to this Ordinance set forth to appear and give evidence in the Court of the Resident Magistrate, or in case such Justice of the Peace, field-cornet, or gaoler shall propose to detain the wagon, cart, or other carriage with the oxen or other cattle as aforesaid in order that the case may be brought before any Road Magistrate then before such Road Magistrate, touching and concerning such alleged offence; and in case no sufficient security either personally or by sureties shall when required be given by some person or persons so to appear and give evidence the wagon, cart, or other carriage shall, unless the matter complained of in regard thereto shall be apparent upon the view thereof and the Justice of the Peace, field-cornet, or gaoler shall himself think fit to prosecute be permitted to pursue its journey.

Provision for appearance of complainants on day of trial.

23. And be it enacted that if in any case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, field-cornet, or gaoler it shall appear to such Justice of the Peace, field-cornet, or gaoler that the complaint made is groundless and vexatious; the person preferring the same and neglecting to give sufficient security personally or by sureties to appear and give evidence as aforesaid may upon the request of the owner or person in charge of the wagon, cart, or other carriage in question be detained in custody until he shall be brought up before the Court of the Resident Magistrate, such owner or person in charge in his turn giving security to appear and give evidence in the said Court or in person abiding in order so to do when the said person or persons shall be brought before the same, which shall be as soon as reasonably may be.

Proceeding on frivolous and vexatious complaints.

24. And be it enacted that any person who shall to any Resident Magistrate, Road Magistrate, Justice of the Peace, field-cornet, or gaoler prefer by virtue or under pretext of this Ordinance any groundless and vexatious complaint against any other person or any

Penalty on such complaints.

Ord. 9—1846.

wagon, cart, or other carriage shall in addition to any civil action to which he may render himself liable forfeit upon conviction any sum not exceeding forty shillings.

Transmission of bonds for appearance to magistrate.

25. And be it enacted that in every case in which any Justice of the Peace, Field-cornet, or gaoler shall take from any such owner as aforesaid (whether resident in the district in which any alleged offence shall have been witnessed or discovered or not) any such bond, obligation, or recognizance as aforesaid he shall forthwith forward the same to the Resident Magistrate mentioned therein, together with the name and residence of every person complaining as aforesaid, as also any bond, obligation, or recognizance which may have been entered into by any such last mentioned person to appear and give his evidence in the Court of the Resident Magistrate at the time fixed in the bond, obligation, or recognizance of such owner as aforesaid for the hearing of the case.

Report of detention of cattle, &c., to magistrate.

26. And be it enacted that in every case in which any oxen or other cattle or any property, matter, or thing shall have been detained or impounded under and by virtue of the provision in that behalf hereinbefore set forth, by any Justice of the Peace, Field-cornet, or gaoler, such Justice of the Peace, Field-cornet, or gaoler shall transmit forthwith to the Resident Magistrate a report of what has been done in that behalf, mentioning the day named by him to the parties for the hearing of the case together with the name and residence of and the other matters and things concerning every person complaining, in manner and form as in the last clause of the last preceding section mentioned and set forth.

Duty of magistrate to sit for hearing of case on day fixed.

27. And be it enacted that it shall be the duty of every Resident Magistrate to whom any such bond, obligation, or recognizance as aforesaid or any such report as in the last preceding section mentioned shall be transmitted by any Justice of the Peace, Field-cornet, or gaoler to sit for the hearing of the case to which it relates upon the day which has been specified for the hearing of the same, and thereupon in the presence of the parties interested should both attend or in the absence of such of them if any as may make default to pronounce such judgment as shall to justice appertain.

Excussion of property detained on conviction of owner.

28. And be it enacted that if the Court of the Resident Magistrate shall see cause to convict any owner in any case in which it shall have been reported as aforesaid that any oxen or other cattle or any property, matter, or thing seized and detained have been detained and impounded as aforesaid by any Justice of the Peace, Field-cornet, or gaoler, the said oxen or other cattle shall and may be excussed in satisfaction of the judgment. Provided, always, that the pound fees or charges due and payable thereon shall be first deducted from the amount for which any such oxen or other cattle shall be sold; and that there shall be next deducted the expense of sending the same to pound by such Justice of the Peace; and that in case there shall then remain any surplus after



deducting the fine, penalty, or forfeiture imposed such surplus shall be paid over to such owner.

Ord. 9—1846.

29. And be it enacted that if the Court of the Resident Magistrate shall see cause to convict in his absence any driver in any case in which any oxen, cattle, property, article, matter, or thing, shall have been seized, detained, or impounded the same shall and may be executed in satisfaction of the judgment. Provided, always, that if such driver duly appear the thing seized, detained, or impounded shall be forthwith restored to the owner; and provided that it shall be competent for such owner at any time before the actual sale of the thing so seized, detained, or impounded to redeem the same by payment for and on account of the offenders of the fine imposed with reasonable charges to be assessed by the said Magistrate, and provided that if such owner shall produce to such Magistrate at any time before such sale aforesaid the convicted party (as he is hereby authorized to do) and shall pay such reasonable charges as aforesaid the thing seized, detained, or impounded shall be forthwith restored.

Conviction of driver in his absence.

Restoration of owner's property detained on driver's appearance.

30. And be it enacted that nothing in this Ordinance contained shall be construed so as to make it imperative or necessary for any person witnessing or discovering any contravention of this Ordinance to require the wagon, cart, or other carriage by or by means of which such contravention shall have taken place to proceed at once to any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, gaoler, or constable as aforesaid, but that such person may should he so think fit prosecute or cause to be prosecuted the party offending before any Court of Resident Magistrate which such person shall select. Provided, however, that no summons shall be issued by any such Court in any such case until such person shall have deposed on oath to the fact or facts charged to be or to have been such a contravention as aforesaid; and provided, also, that no person shall be summoned to appear before any such Court other than that of the district in which he resides, except such Court shall be appointed to be holden within the distance of twenty miles of such residence.

Prosecuted by summons,

at the district court or court within twenty miles of offender's residence.

31. And be it enacted that in every case in which any person shall have been summoned to appear before any Court of Resident Magistrate being that of the district in which he resides or some other such Court to be held within twenty miles of his residence to answer to the charge of contravening any of the provisions of this Ordinance; and such person shall not appear upon the day appointed for that purpose, then the said Court, upon being satisfied by the return of the messenger of such Court endorsed upon the summons or other credible evidence on oath that the said summons was duly served, may either proceed to hear the case in the absence of the person summoned and give final judgment and if necessary issue execution thereupon, or in case it should seem more expedient the Resident Magistrate may issue his warrant for

Proceeding and judgment on default of appearance.

Ord. 9—1846.

Execution.

the apprehension of the person so making default in manner and form as is by law provided in regard to a person neglecting to appear to answer any criminal charge. Provided, however, that when and as often as any case shall be heard in the absence of the defendant as aforesaid, and such person shall be convicted, process shall in the first instance issue only against his goods, and not either directly or alternatively against his person; and provided, also, that if it shall afterwards be made to appear that no goods have been found sufficient to satisfy the exigency of the writ or warrant of execution it shall and may be lawful for the Court having cognizance of the case then to issue a warrant against the defendant for committing him to the prison nearest to his residence in manner and form as such Court might have done forthwith in case such defendant had duly appeared or been apprehended and brought before the same.

Sentence without appeal or review.

32. <sup>(1)</sup> And be it enacted that every sentence or judgment of any Resident Magistrate or Road Magistrate given or pronounced in any case of alleged contravention of any the provisions of this Ordinance shall be final and conclusive and shall not be subject to be brought by way of appeal or review before any other Court, anything in the Charter of Justice or any other Law or Ordinance to the contrary notwithstanding.

Penalty on refusal to proceed to magistrate as required under 20th and 21st sections.

33. And be it enacted that if any person being in charge of any wagon, cart, or other carriage, whether the owner thereof or not, shall in any case in which he shall be required to proceed to any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, or gaoler under and by virtue of either the twentieth or the twenty-first sections of this Ordinance resist or refuse so doing or make any undue or unnecessary delay in so doing such person shall forfeit upon conviction any sum not exceeding five pounds. Provided, always, that the said forfeiture shall in no case attach or be inflicted except where it shall be proved that some one or more of the provisions of the second, third, or fourth sections of this Ordinance were actually contravened in the view of the person requiring the wagon, cart, or other carriage contravening the same to proceed as aforesaid.

Penalty for the kindling of fires near certain roads.

34. And be it enacted that if any person shall whether by day or night kindle, place, or have any fire upon the ground upon any part or within twenty yards on either side of the public road aforesaid from Cape Town to Simon's Town or of the new hard road aforesaid from Cape Town to its terminus at the Eerste River or of the public road from Cape Town to and through the municipality of Green Point; such person shall upon conviction forfeit any sum not exceeding two pounds, and it shall and may be lawful for any person finding any such fire forthwith to extinguish the same or cause the same to be extinguished: Provided, also, that it shall and may be lawful for His Excellency the Governor by any

<sup>1</sup> But see § 4, Act 21 of 1876 (Resident Magistrates' Courts).

proclamation or proclamations to be by him from time to time issued in that behalf to extend the provisions of this section to any other public road or part thereof.

Ord. 9—1846.

35. And be it enacted that it shall and may be lawful for any person in whose presence any such offence as is in the last preceding section mentioned shall be committed to apprehend without warrant the person offending and to deliver him to any Resident Magistrate, Road Magistrate, Field-cornet, constable or peace officer, who shall keep him in safe custody and with all reasonable dispatch convey him with the witness or witnesses before the nearest Resident Magistrate or Road Magistrate (which Road Magistrate shall have in regard to the said offence the same jurisdiction as a Resident Magistrate), to be dealt with according to law. Provided, always, that if in any case the person about to be apprehended as aforesaid shall be in actual charge of or belong to any wagon, cart, or other carriage the person apprehending shall unless there shall be on the spot some other person ready and willing with the consent of the person about to be apprehended to take charge of such wagon, cart, or other carriage cause the offender or some other person to conduct the said wagon, cart, or other carriage to such Resident Magistrate, Road Magistrate, or Field-cornet, or to some public pound or police station, there to be kept for the owner, by whom it may at any time be taken possession of, such owner, however, being bound before receiving possession thereof to pay and satisfy all reasonable charges and expenses attendant upon the keeping of the same and of the oxen or other cattle belonging thereto, and provided, also, that the warrant of committal by any Road Magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth; or such Resident Magistrate or Road Magistrate may in case it shall appear more conducive to the interest of the owner of such wagon, cart, or carriage, proceed in manner and form as in the eighteenth section is provided to seize and detain some property or such matter or thing and allow the said offender to depart; and thereupon all and singular the provisions of the said eighteenth and nineteenth sections of this Ordinance shall be applicable and be applied as fully as if the same were here again repeated.

Apprehension without warrant of offenders under last section.

Form of committal.

36. And be it enacted that the reasonable charges and expenses in the last preceding section mentioned shall be and constitute a debt due by and recoverable from the owner of the wagon, cart, or other carriage in regard to which or the oxen or other cattle belonging to which the same shall have been incurred, and in case such owner shall not himself be a party offending such charges and expenses shall be by him recoverable over from the offender. Provided, always, that in case of any dispute about the amount of any charges or expenses claimed under and by virtue of the last preceding or of the fourteenth, fifteenth, twenty-eighth, or

Payment of charges by owner or offender.

www

Ord. 9—1846.

fortieth sections of this Ordinance, and of which the amount shall not be ascertained by law such dispute shall be settled by the decision of any Resident Magistrate or Road Magistrate.

Presumption of ownership of oxen, &c., in owner of wagon.

37. And be it enacted that in all cases the oxen or other cattle drawing or belonging to any wagon, cart, or other carriage which shall under the provisions of the twentieth or twenty-first sections of this Ordinance be brought to or before any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, or gaoler shall be deemed to belong to the owner of such wagon, cart, or other carriage, and shall be liable to be seized and sold in satisfaction of any fine, penalty, or forfeiture incurred by such owner.

Definition of "owner" in regard to summons.

38. And be it enacted that when and as often as it shall be necessary to proceed by summons from the Resident Magistrate's Court in regard to any alleged contravention, by or by means of any wagon, cart, or other carriage, for which contravention the owner is hereinbefore declared to be liable, the several and respective persons following shall in the several and respective cases following be deemed to be for the purpose of incurring any fine, penalty, or forfeiture under the provisions of this Ordinance but not otherwise such owners, that is to say,—1st, the person whose name shall at the time of the alleged contravention be painted upon any wagon, cart, or other carriage, as the owner thereof, shall be deemed to be such owner and as such responsible, unless it shall be made to appear to the Court that his name was so upon the said wagon, cart, or other carriage, without his knowledge or consent; 2nd, the person having the right of property in any wagon, cart, or other such carriage which ought by the second section of this Ordinance to have the name of the owner legibly painted thereon, and which either has not any name so painted or has so painted the name of some person not being the person having such right of property without the knowledge or consent of such person, shall be deemed to be the owner and as such responsible; 3rd, the person having the right of property in any carriage of a species or description in regard to which the painting thereupon of the owner's name is not hereinbefore enjoined, shall be deemed to be the owner, should such person be present in or with such carriage at the time of any contravention complained of, or should such carriage be then under the care and management of any person as his servant or agent; but in every other case the owner of any such last mentioned carriage shall be deemed to be the person by whom or by whose servant or agent the same shall be driven or conducted at the time of any such contravention as aforesaid. Provided, always, that nothing herein contained shall be construed to extend so as to enable the messenger to attach in order to satisfy any fine, penalty, or forfeiture imposed upon any person as such owner as aforesaid anything except what would independently of this Ordinance be the property of such person.

39. (1) And be it enacted that any person who upon any road or in any place in which negligent, careless, or furious driving is hereinbefore by the third section of this Ordinance made punishable as therein mentioned shall ride so negligently, carelessly, or furiously as to injure or endanger the person or property of any other person shall upon conviction forfeit any sum not exceeding forty shillings.

Ord. 9—1846.  
Penalty on furious driving.

40. And be it enacted that every person offending against the provisions of the last preceding section may be apprehended without warrant in order to be brought before the nearest Resident Magistrate or Road Magistrate (which Road Magistrate shall have in regard to the said offence the same jurisdiction as a Resident Magistrate) in like manner and form as is by the thirty-fifth section of this Ordinance provided in regard to the offending person therein mentioned: Provided, also, that the horse or other animal upon which such person so offending as aforesaid shall then be riding may be detained and conducted to the Magistrate aforesaid by the person apprehending such person, and such horse may for the purpose of satisfying or making good the fine, penalty, or forfeiture incurred by any such person be deemed to be the property of the offender and be dealt with as such. And provided, further, that when and as often as any such horse shall be seized and attached under the warrant of any Road Magistrate to satisfy the sentence of any such Magistrate the person seizing and attaching the same may place such horse at livery instead of sending him to the public pound, in which case he shall give immediate notice to the messenger of the Court of the Resident Magistrate of the district in which such horse shall be detained, who shall proceed in regard to the sale thereof precisely as if such horse had been seized and attached by himself under and by virtue of a warrant of the said Resident Magistrate. Provided, always, that every such horse shall be restored upon the payment of the fine, penalty, or forfeiture imposed together with the reasonable charges and expenses of the horse's keep as also of the person who seized and attached the same under and by virtue of the warrant of the Road Magistrate aforesaid. And provided, further, that the warrant of committal by any Road Magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth.

Apprehension of persons furiously driving without warrant.

Property in and attachment of horse, &c.

Restoration of horse

Form of committal.

41. And be it enacted that it shall and may be lawful for any Resident Magistrate should he so think fit to award in regard to any prosecution by virtue or under pretext of any of the provisions of this Ordinance either to the party complaining or the party complained against such reasonable costs as might lawfully be awarded by such Magistrate in regard to any civil action pending in his Court, and such Resident Magistrate may commit to prison

Power of magistrate to award costs

<sup>1</sup> But see § 2, Act 13, of 1886, and sub-section 1, § 7, Act 27, 1882.

- Ord. 9—1846. any defendant adjudged to pay the same until the same shall be paid in like manner as is by the sixth section of this Ordinance provided, in regard to the fine, penalty, or forfeiture which such defendant shall have incurred. Provided, however, that all such costs as may be awarded against any complainant shall be recoverable in manner and form as costs awarded against a plaintiff in a civil suit or proceeding in such Court, except when the complainant shall appear to have committed the offence in the twenty-fourth section of this Ordinance mentioned and be thereof convicted, in which case the amount of such costs shall in the warrant of committal be added to the amount of the fine imposed.
- Appropriation of fines. 42. And be it enacted that the whole amount of every fine, penalty, and forfeiture levied upon conviction of any offence in contravention of any of the provisions of this Ordinance shall upon recovery thereof be paid to the person prosecuting the offender, unless such person shall decline to receive the same and direct some charitable or other appropriation thereof, in which case it shall be applied accordingly.
- Annual return of cases, &c., by road magistrate. 43. And be it enacted that every Road Magistrate shall on or before the 31st day of December now next ensuing and on or before the 31st day of December in each succeeding year prepare from his record book and transmit to His Excellency the Governor a statement in writing, showing the number of cases connected with this Ordinance by him determined, the names of the parties, the date of the hearing, the judgment pronounced, and the aggregate amount received or levied, and the mode in which that amount has been applied, and every such statement shall be vouched by having added thereto by such Road Magistrate the declaration following, that is to say, "I, ———, do solemnly and sincerely declare that the above is a true and correct statement regarding the several matters mentioned and set forth in the forty-third section of the Ordinance No. 9, of 1846," which declaration such Road Magistrate shall sign.
- Application to road magistrate of certain sections of Ordinance No. 32. 44. And be it enacted that the fifth and remaining sections of the Ordinance No. 32, of 1827, entitled, "Ordinance for creating Justices of the Peace in this Colony," shall apply and extend to all Road Magistrates appointed under and by virtue of the provisions of this Ordinance, and every person acting in obedience to any warrant of any such Road Magistrates or acting in aid of such person, precisely as if the said sections were herein again set forth and word for word repeated, substituting only Road Magistrate for Justice of the Peace whenever the former word occurs and such person as last aforesaid for the constable or other officer or person or persons acting by his order and in his aid in the tenth and twenty-first sections of the said Ordinance mentioned.
- Interpretation clause. 45. And be it enacted that in the interpretation of this Ordinance the term "Governor" shall mean the officer for the time being administering the Government of this Colony; and

that the term "Resident Magistrate" shall comprehend any officer for the time being acting as such; and that the term "carriage" shall comprehend every description of vehicle whether upon two wheels or more, or whether drawn by one horse or more, except when there is something in the context to restrict the meaning of the said term; and that the term "cattle" shall comprehend all animals used for draught; and that the singular number shall include several persons, animals, or things, as well as one person, animal, or thing, and that the masculine gender shall include females as well as males unless there be something in the context repugnant to such construction.

Ord. 9—1846.

46. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Exclusion of Natal

47. And be it enacted that this Ordinance shall commence and take effect from and after the first day of May next.

Time of taking effect.

#### SCHEDULE No. 1.

##### *Oath of Allegiance to be taken by the Road Magistrate.*

I, ———, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God!

Oath of allegiance.

##### *Oath of Office to be taken by the Road Magistrate.*

I, ———, do swear that faithfully and honestly and to the best of my ability and power I will discharge my duty as a Road Magistrate appointed under and by virtue of the Ordinance No. 9, of 1846. So help me God!

Oath of office.

#### SCHEDULE No. 2.

##### *Warrant referred to in the 13th Section of the above Ordinance.*

To ——— (name of the person to whom the warrant is directed).

Whereas ——— (name the known or alleged or supposed owner) or other the owner or owners of a certain (state the description of the carriage) now at this place (or if at the place of any Justice of the Peace, field-cornet, gaoler, or constable state where), has (or have) this day been convicted before me of the offence of contravening the Ordinance No. 9, 1846, and I have thereupon adjudged that for the said offence he (or they) do forfeit the sum of ——— (state the amount of the fine imposed), this is therefore to authorize and require you to seize and take possession of ——— (state the description of the property or as the case may be the number and species of the cattle to be seized) now belonging to the said (repeat the name of the carriage), and to treat and dispose of the same as by the said Ordinance is provided, in order that of the same may be levied and made the said sum of ———, together with your reasonable charges about the same; and for so doing this shall be your warrant. And return to me this warrant, endorsing thereupon what you shall have done under it.

Warrant under section 13.

Given under my hand at ———, this ——— day of ———, 18—.

(Signed) ———, Road Magistrate.

Ord. 9—1846.

## SCHEDULE No. 3.

*Warrant of Road Magistrates for committing to prison for offences under the 3rd, 34th, and 39th Sections of the above Ordinance.*

To the Gaoler or Keeper of Her Majesty's Gaol at ———.

Warrant under sections 3, 34, and 39.

Whereas ——— (name the offender) has been this day adjudged by me to forfeit and pay the sum of £ ——— for the offence of which he was convicted of contravening the ——— section (or ———) of the Ordinance No. 9, of 1846, but has not paid the said sum, this is therefore to require you to receive the said ——— into your custody and him safely to keep to hard labour, for the space of (state the period of imprisonment) now next ensuing, unless the said sum of £ ——— shall be sooner paid.

Given under my hand at ———, this ——— day of ——— 18—.

(Signed) ———, Road Magistrate.

\*.\* Should the imprisonment be meant to be without hard labour, the words "to hard labour" in the above form are to be omitted.

## SCHEDULE No. 4.

*Certificate mentioned in the 18th Section of the above Ordinance.*

Certificate under section 18.

This is to certify that ——— (name the offender) was this day adjudged by me to forfeit and pay me the sum of £ ——— for contravening the Ordinance No. 9, 1846, which fine he has not paid; wherefore and inasmuch as the said (name the offender) is needed to conduct the (state the description of the carriage) of which he is in charge, I have by virtue of the eighteenth section of the said Ordinance caused to be seized and detained (state the description of the property) as security for the payment of the said fine or otherwise for the reappearance before me of the said (name of the offender) on the ——— day of ——— next ensuing, at ——— o'clock of the forenoon, failing which the said (repeat the description of the property) will be dealt with as by the said eighteenth section is directed; of which all whom it may concern are required to take notice.

Given under my hand at ——— this day of ———, 18—.

(Signed) ———, Resident Magistrate or  
 " ———, Road Magistrate  
 (as the case may be).

## SCHEDULE No. 5.

*Recognizance mentioned in the 21st Section of the above Ordinance.*

Recognizance under section 21.

Before me ——— (state name and office of the person taking the recognizance) on this ——— day of ———, 18—, came and appeared ——— (name and residence of the owner of the carriage), who acknowledged himself to owe to our Lady the Queen the sum of £———, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said ——— (owner's name) is the owner of a certain (state the description of the carriage) detained under the provisions of the 21st section of the Ordinance No. 9, 1846, upon a charge of this



day (or otherwise according to the truth) having at or near —— (state the place) contravened the said Ordinance; now the condition of this recognizance is such that if the said owner shall personally appear before the Court of the Resident Magistrate of the district of —— between the hours of eleven and twelve o'clock on the forenoon of the —— day of —— next ensuing, then to answer any charge which shall be preferred against him of having so as aforesaid contravened the said Ordinance, and not to depart without the leave of the said Court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ——, Justice of the Peace  
(or otherwise as the case may be).

\* \* Should there be any surety to the recognizance, add his name and residence next after that of the owner, changing "himself" into "themselves," "his" into "their," and in place of "he" in the last clause of the obligation inserting again the name of the owner.

#### SCHEDULE No. 6.

*Recognizance mentioned in the 22nd Section of the above Ordinance.*

Before me —— (as in schedule No. 4) on this —— day of —— 18——, came and appeared —— (name and residence of the witness) who acknowledged himself to owe to our Lady the Queen the sum of £——, to be levied and made of his goods and chattels if he shall make default in the condition following: Recognizance under section 22.

Whereas the said —— hath this day brought or caused to be brought before me, —— (repeat the name), a certain (state the description of the carriage) whereof —— is named as the owner, complaining that by or by means of the same, and at or near —— (place) the Ordinance No. 9, of 1846, was this day (or otherwise according to the fact) contravened; now the condition of this recognizance is such that if the said (witness) shall personally appear before the Court of the Resident Magistrate for the district of —— (or before A. B., Esq., of ——, Road Magistrate, as the case may be) between the hours of eleven and twelve o'clock in the forenoon of the —— day of —— next ensuing (in case the witness is to appear before a Road Magistrate the hours will depend on the circumstances, and should be so stated), then and there to give evidence touching and concerning the said alleged contravention; and shall not depart without the leave of the Court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ——, Justice of the Peace  
(or otherwise as the case may be).

\* \* Should there be more witnesses than one, or one or more witnesses with sureties, the necessary changes will be understood from the note to form in schedule No. 5.

No. 9—1858.]

[June 5, 1858.

## AN ACT

To <sup>(1)</sup> Provide for the Management of the Public Roads of the Colony.

Preamble.

WHEREAS it is expedient to make other and better provision for the maintenance and improvement of the public roads of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

Previous laws repealed.

1. Except as hereinafter provided, Ordinance No. 8, 1843, entitled "An Ordinance for Improving the Public Roads of the Colony," and Ordinance No. 12, 1844, amending the aforesaid Ordinance, and Ordinance No. 17, 1847, declaring the meaning and construction of the 21st section of the aforesaid Ordinance, and Ordinance No. 7, 1848, amending and continuing certain provisions of the aforesaid Ordinance, shall be repealed from and after the last day of December next.

Main roads to be under the charge of the general government.

2. From and after the first day of January next, the several roads of the Colony, which may, by any Act of the Legislature of this Colony, be declared to be a main road, shall be under the charge of the general Government, as hereinafter provided, whose duty it shall be to make, maintain, <sup>(2)</sup> and improve such main roads so far as the funds placed at its disposal by this or any future Act will enable it.

3-6. [These sections relate to the winding up of the affairs of the Central Road Board, and are no longer applicable].

*Main Road.*

Main roads under control of Governor, and under charge of civil engineer, as chief commissioner, and assistant commissioners.

7. <sup>(3)</sup> The main roads of the Colony shall subject to the direction and control of the Governor, be under the charge of a Chief Commissioner and three Assistant Commissioners; and the Civil Engineer, for the time being, shall be the Chief Commissioner, and the Governor may appoint such Assistant Commissioners, with salaries not exceeding four hundred and fifty pounds a year each, and may, from time to time, for sufficient cause, suspend or remove such Assistant Commissioners; and the said Assistant Commissioners shall have charge of such parts of the main roads as shall, from time to time, be assigned to them by the Chief Commissioner, and shall be bound to superintend and execute all works placed under their management by the Chief Commissioner; and the duties of Assistant Civil Engineer may be conjoined with those of Assistant Commissioner of Roads.

Duties of Commissioners.

8. <sup>(3)</sup> No new line of main road shall be commenced, nor any

Main roads may not be commenced nor abandoned except with previous sanction of Parliament.

<sup>1</sup> Amended by subsequent Acts. Continued to 31st Dec., 1864, by Act 1 of 1863. Made perpetual as amended by Act 10 of 1864, *infra*.

<sup>2</sup> But see Act 10 of 1864, § 2, *infra*.

<sup>3</sup> See §§ 1 and 2, Act 5, 1863, *infra*.

Repealed by Act 40 of 1889

deviation made from any existing line of main road, nor any new work undertaken upon any existing main road, the cost of which work shall be estimated to exceed two hundred pounds (unless such new work shall be absolutely necessary to prevent the interruption of the communication on such road), except with the previous sanction of Parliament; and, in like manner, the charge of any line of main road shall not be abandoned without such previous sanction.

9. The chief commissioner of roads shall, on or before the 15th of February in each year, submit to the Governor, for presentation to Parliament, a statement of all moneys received and disbursed by him, for road purposes, during the preceding year; showing the amount received at each toll, and from every separate source of revenue, and the amount expended on each separate road or work, and the division of the Colony in which the same was expended: together with an estimate of the moneys receivable from each toll or other source of revenue, and of the amount required for the maintenance and improvement of each road during the current year, and a report upon the state of the several roads under his charge—of the works executed upon them during the past year—of works contemplated during the current year—and of lines of road which he may recommend to be declared main roads, and of any works which he may recommend for execution upon them.

No. 9—1858.

Chief commissioner to furnish annual reports for presentation to Parliament.

10. (1) The chief commissioner, or any assistant commissioner or any officer duly appointed by the Governor, and acting under the authority of the Governor, may enter upon, and take possession of, so much of any land belonging to Her Majesty the Queen as may be required for the purpose of any main road, and for the erection of toll-houses, toll-bars, residences for workmen, or for any other purpose relating to the execution of this Act; and they may enter upon all such land lying convenient to a main road, and there dig, get, and carry away any stone, clay, or other materials which may be required or serviceable for making or repairing any main road.

Commissioners may take possession of, and use, public lands for purposes of main roads.

11. (1) For the purpose of making any such main road, and of providing any such toll-houses and residences as aforesaid, and, generally, for any of the objects of this Act, the aforesaid commissioners of roads, or other officer by them duly authorized, are hereby invested, for the purpose of so doing, with all and singular the legal rights, if any, belonging to the Government of this Colony, in respect to the taking of any land, and the raising and carrying away materials for making and repairing public roads, whether such rights have been preserved to the said Government by the proclamation of His Excellency Sir John Francis Cradock, bearing date the 6th day of August, 1813,

Commissioners invested with powers of colonial government in regard to the taking of land or using materials for road purposes.

<sup>1</sup> The powers vested in the Commissioners by these sections are for the purposes of Act 10, 1864, vested in Divisional Councils. See Act 10 of 1864, § 3.

No. 9—1858.

permitting the conversion of lands on loan into places on perpetual quitrent, or have been created by express stipulation or condition in any grant of freehold property, or exist in any other way or manner whatsoever: Provided that no land be taken, or materials be raised or carried away as aforesaid, without previous notice to the proprietor thereof.

May treat for lands  
and materials.

12. (1) If any of the aforesaid commissioners of roads, acting under the authority of the Governor, should require to take or use any land, or to dig, get, or carry away any materials situated as aforesaid, belonging to any person who may not be bound by law to allow the said commissioner so to do, without requiring any recompense or payment, and who may think proper to require compensation from the said commissioner—or if he should require to use any land, or to take materials from any land that the Government may have a legal right to use, but which has been improved by cultivation, irrigation, or otherwise,—he may treat and agree with every such person for the purchase or hire, as the case may be, of any such lands or materials, and may enter into any contract relative to the obtaining of such land or materials, and for compensation for the use of such improved land, upon such terms and conditions as he shall judge expedient. And if any such person and the commissioner should not agree upon the purchase-money, or hire, or other recompense, to be respectively given and accepted, then the said commissioner shall cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money he shall deem sufficient, and requiring such person to state, in writing, to the said commissioner, or to some person by him appointed, within a certain limited time, to be specified in the said notice, whether he is willing to accept the sum therein mentioned, or not. And if such person should refuse to accept the sum offered, or neglect to reply to said notice, then the said commissioner shall by another notice, in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said commissioner, and for that purpose to transmit to the said commissioner within a certain reasonable time, to be specified in the said last mentioned notice, the name of some person whom he shall select to be an arbitrator, upon such arbitration, and the said commissioner, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared which shall be signed by the said commissioner and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain, amongst other things, a direction to the said arbitrators to set off against, and deduct from the amount of such recompense or compensation as would otherwise be claimable, the amount at which they shall estimate the

Disputes to be  
settled by arbitration

<sup>1</sup> See note to § 10.

benefit and advantage derived, or to be derived, by the person claiming recompense or compensation, by reason of the formation or improvement of the road in regard to which the question has arisen, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law, brought for or on account of the same subject-matter. And if such person as aforesaid, claiming such recompense or compensation, should neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said commissioner may lodge in some joint-stock bank in the Colony the sum of money offered by him as aforesaid in his first notice in this section mentioned, for or on account, and at the risk, of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said commissioner, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire, under the provisions of this section, and as if all acts by law required for vesting in the said commissioner a sufficient title to the use of, or property in, the land or materials aforesaid had been duly done and performed.

No. 9-1858.

How, if the other party neglect or refuse to appoint arbitrator.

13. (1) In case any of the said commissioners shall require to take or use any land, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorized, in his capacity as such guardian or curator, to treat and agree with the said commissioner for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made: and, in case of non-agreement, to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall, either by agreement or by arbitration, be payable by the said commissioner, for or on account of any land or materials in this section mentioned, shall be paid by the said commissioner to the Master of the Supreme Court, administering the Guardian's Fund, who is hereby authorized to receive the same, and to place the same to the credit of the minor or other person entitled to such moneys. And if, in any case, any person of full age shall, by way of fidei-commissary limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land as aforesaid, in which a minor, or other such person as aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials, as fixed by contract or by appraisement,

How to proceed if the owner be a minor.

Moneys in such case to be paid to Master.

How, if land be partly under fidei-commissary trust.

<sup>1</sup> See note to § 10.

No. 9—1858.

shall be paid, as aforesaid, to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest in the land shall be entitled, for life, or for the other period limited to draw the interest payable upon the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall, in a summary manner, upon hearing the parties interested, apportion the said sum, and order the share of the applicant to be paid out to him, leaving the share of the minor, or other person under disability, in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered; subject, however, at all times, to such orders as the Supreme Court aforesaid may, upon the motion of any person having an interest, see fit to make in regard to such moneys.

Tolls and toll-bars established.

14. (1) All toll-bars established on any main road by authority of any Act of the Legislature of the Colony, shall be maintained, and such persons as shall be authorized by the Governor so to do, shall be entitled to demand and receive thereat the several tolls authorized in such Act, until the said toll-bars or tolls, or any of them, be abolished, removed, or changed, with the consent of Parliament; and no new toll-bar may be established, or any new toll demanded upon any main road, except with the consent of Parliament.

Toll-keeper may prevent passage until rate is paid.

15. The person entitled to demand and receive the toll payable at any toll-bar or toll-gate may prevent the passing through such toll-bar or toll-gate, of any vehicle or animal on which any toll shall be payable, until such toll be paid: and if any person liable to any toll from whom it has been duly demanded, or who, by any act of his own, intended to prevent a due demand from being made, may have succeeded in preventing such due demand from being made, and who, without paying the said toll, and without the consent of the person entitled to demand the same, or without some other lawful authority, may have proceeded through or beyond the place where the same is of right demandable, shall incur a fine of not less than twenty shillings, and not more than ten pounds, to be recovered by suit or action in any competent Court; and in default of payment thereof, shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Penalty for wilfully evading toll.

Who exempt from payment of tolls.

16. (2) No toll shall be demanded at any bar to be established after the taking effect of this Act, on account of the use of any road by any vehicle or animal employed in conveying, or in returning from conveying, any gravel, stone, or other material for

<sup>1</sup> Amended by §§ 5, 6 and 7, Act 10, 1864. See also Act 7, 1869.

<sup>2</sup> For other exemptions see Alphabetical Index under "Tolls."

making or repairing the roads, or any buildings, matters, or things belonging thereto, or for any vehicle or animal used by any officer or soldier being in proper staff or regimental or military uniform, dress or undress, and on duty; or for any vehicle or animal used by any officer or member of any volunteer corps in uniform and on duty; and, further, no more than one full toll in any one day, to be computed from twelve of the clock at night to twelve of the clock of the next succeeding night, shall be demanded in respect of the same vehicle or animal for passing and repassing through the same toll-bar.

No. 9—1858.

17. (1) The chief commissioner aforesaid, acting under the authority of the Governor, may from time to time, if he shall deem fit, let or farm the tolls to be payable at any toll-bar on any main road, by tender or by public auction, to the highest and best bidder, for any term not exceeding one year in any case: Provided, always, that previously to every letting of such tolls, the said commissioner shall give, in some convenient manner, a public notice of the time and place at which tenders will be received, or any such auction as aforesaid will take place; and that the person who, at any such auction, is declared to be the highest bidder, or whose tender is accepted, shall be required to produce two sufficient sureties for the payment of the stipulated hire; and provided, also, that in every letting of such tolls, whether by tender or by auction, the said commissioner shall require the farmer or renter thereof to enter into a bond, with not less than two responsible sureties, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls, at the time and in the manner in that behalf to be in the said bond specified; and if any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same may have become due, then the said commissioner, acting under the authority aforesaid, may enter upon and take possession of the said tolls, and of all toll-houses or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and to re-let the said tolls, or otherwise to place a collector or collectors in receipt thereof, and in possession of the said houses and buildings, as to him may seem fit; and the sum for which the said renter or farmer may have been in default, together with all further instalments or payments stipulated to be made by the said farmer or renter, shall be due and demandable from him, in like manner and form as if he still remained in receipt of the said tolls, credit being given to him for whatever sums may be received on account of the said tolls, less the expense of collecting, in respect of the term for which the said tolls were let to the renter or farmer making default.

Farming of tolls.

Tenders to be invited, and securities required

How, if renter makes default.

18. (2) The chief commissioner, or, in case of any letting to hire every renter or farmer of any tolls, shall affix, or cause to be

Table of rates to be affixed at toll-bar.

<sup>1</sup> See § 5, Act 13, 1864.

<sup>2</sup> See note to § 17.

No. 9—1858.

affixed, in a conspicuous place, at each toll-bar whereat any toll is payable, a table of the tolls to be taken thereat, plainly and legibly painted or printed in the English and Dutch languages, under a penalty not exceeding five pounds, to be sued for by any person whatever in any competent Court, for his own use.

*Convicts.*

Convicts may be employed.

19. As often as the Governor may, in the exercise of his discretion, and of the power in that behalf by law reposed in him, order any number of convicts, sentenced to imprisonment with hard labour, to be employed upon the public roads in any division, the Chief Commissioner aforesaid, or the Divisional Council of such division, may receive such convicts, and retain the control and management of their labour: Provided that the Chief Commissioner aforesaid, and every such Divisional Council, shall, in regard to the particular road or place at which such convicts may be put to work, strictly conform to such instructions as the Governor may give in that behalf, and shall, moreover, yield obedience to all such rules, orders, and regulations touching the management, conduct, and discipline of the convicts so employed under them respectively, as the Governor may, from time to time, issue for their guidance: Provided, also, that the Chief Commissioner aforesaid, and Divisional Councils, shall not have any power to interfere with the training or discipline of any such convicts, which shall at all times continue to be regulated immediately and exclusively by the Governor.

But their discipline to be directed by the Governor.

*Divisional Roads.*

Divisional or branch roads to be under divisional councils.

20. The several Divisional Councils constituted under Act No. 5 (1) of 1855, shall, with such funds as are by this or any other Act placed at their disposal for such purpose, be charged with the duty of superintending, making, improving, and preserving all divisional or branch roads within their respective divisions.

What roads to be divisional roads.

21. (2) All roads which have at any time been proclaimed as branch roads shall be deemed and taken to be divisional roads; and the Governor may, from time to time, at the request of any Divisional Council, and by a proclamation to be by him issued in that behalf, declare any road in the division wherein such council is constituted, not being a main road, to be a divisional road, or any divisional road or branch road, proclaimed before the passing of this Act, to cease to be a divisional road.

Divisional council may, with sanction of Governor, establish tolls on divisional roads.

22. Every Divisional Council may, after having given six weeks' previous notice in the *Government Gazette* of their intention to establish a new toll, erect and establish, at such places as it may deem fit, upon any divisional road (3) under its charge, as many toll-bars as it may deem requisite, and may demand and receive

<sup>1</sup> Act 5 of 1855, repealed by Act 4 of 1865.

<sup>2</sup> Amended by §§ 2, 3 and 4, Act 11 of 1877, *infra*.

<sup>3</sup> Or main road. See Act 10 of 1864, § 6. See also Act 7, 1869.



thereat such reasonable tolls as it may deem proper, to be appropriated to the maintenance and improvement of any such roads: Provided, always, that no toll-bar shall be erected or established, and no toll shall be demanded or received, without the previous sanction of the Governor, to be published in a proclamation to be by him issued in that behalf.

No. 9—1858.

23. All toll-bars established on any other than a main <sup>(1)</sup> road at the time of the passing of this Act, shall continue to be legally established; and all tolls leviable thereat shall continue to be leviable and receivable by the Divisional Council of the division, as if the same had been established under this Act; and every Divisional Council may, from time to time, with the sanction of the Governor, published in a proclamation to be by him issued in that behalf, abolish or remove any such toll-bar, or abolish or alter any of the rates of toll now or hereafter existing within its division.

Tolls on divisional roads to be under control of divisional councils.

24. <sup>(2)</sup> The several Divisional Councils shall respectively possess and enjoy, in regard to divisional roads within their division, all and singular the various rights, powers, and authorities in regard to the appointment and removal of all necessary officers, the taking possession of lands and materials, whether of Her Majesty the Queen or of private persons, the erection of toll-houses or toll-bars, the taking of tolls, the renting or farming of tolls, and the protection of the tolls by penalties, and shall be bound to the performance of every duty and condition which have been hereinbefore severally conferred and imposed upon the Governor or the chief commissioner of roads aforesaid, in regard to main roads, in the same manner as if such rights, powers, authorities, duties, and conditions, conferred or imposed under the provisions of the ninth, tenth, eleventh, fourteenth, fifteenth, sixteenth, and seventeenth sections of this Act, had been herein set forth at length, and conferred or imposed, *totidem verbis*, on the several Divisional Councils.

Certain powers and rights conferred on divisional councils.

25. The following shall be included among the divisional roads of the Cape division, for the purposes of this Act, viz.: Sir Lowry-street from the Toll; through the Imhoff, Strand-street, down Bree-street, to the North Wharf; from the Lower Toll to the Town Market. And in consideration of the commissioners of the Cape Town Municipality keeping in repair those thoroughfares, the Divisional Council of the Cape division shall pay to the aforesaid municipality, out of every levy to be made under this Act, one-half of the amount raised from the property within the Municipality of Cape Town.

Certain roads in the Cape division declared divisional roads.

#### *Valuation and Assessment.*

26. All persons owning immovable property within any division, or any municipality within such division, excepting such

Assessment of immovable property for road purposes.

<sup>1</sup> All tolls now belong to Divisional Councils, Act 10 of 1864, § 4.

<sup>2</sup> As to main roads, see Act 10 of 1864, §§ 3, 4.

No. 9—1858.

property as is hereinafter specially exempted from assessment, shall be liable to be rated on account of such property for the maintenance of the public roads, in such manner and to such extent as is hereinafter provided by the forty-third section of this Act.

Divisional council  
to appoint valuers.

27. (1) Within three months after the passing of this Act, each Divisional Council shall appoint one or more competent valuers, for the purpose of valuing all and singular the immovable property situate in such division.

Certain properties  
exempt from assess-  
ment.

28. All immovable property belonging to Her Majesty the Queen, whether vested in her Colonial Government or otherwise, (2) and all immovable property vested in or belonging to any municipal board within this Colony, and all buildings appropriated to the purposes of public worship or gratuitous education, and all burial-grounds, shall be exempt from the liability to be assessed or rated under the provisions of this Act, so long as they continue to be so vested or appropriated as aforesaid.

[§§ 29-33, repealed by Act 4 of 1865, § 11.]

Divisional council  
to give notice for  
hearing objections to  
valuation.

34. As soon as the valuation aforesaid shall have been completed in any division, the Divisional Council of such division shall, by public notice in the *Government Gazette*, announce for general information that the said Divisional Council will, upon some day, and at some hour and place, to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided that such notice shall be published in the *Government Gazette*, for not less than thirty days before the day appointed therein for the holding of such court: Provided, also, that the same or a similar notice shall be published in at least one of any newspapers which may be published within such division, and shall be posted upon or near the Court-house of every Resident Magistrate's Court, whether stated or periodical, situated within such division, and in some conspicuous place at all public markets within such division; and the Divisional Council of such division shall adopt such other means of giving publicity to such notice as circumstances shall permit: Provided, however, that it shall not be necessary, in any suit or proceeding for the recovery of any rate, to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in the *Government Gazette*.

Divisional council  
to hear and decide  
objections.

35. (3) Upon the day and at the place mentioned in such notice, the Divisional Council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner, or other person on his behalf, and shall inquire into the merits of such objections, and for that purpose may take the oath or affirma-

<sup>1</sup> See Act 11 of 1859, § 5, *infra*, and Act 5 of 1860, § 2. Oath to be taken by valuator, Act 10 of 1864, § 36.

<sup>2</sup> Crown lands leased under Act 19 of 1864, are liable for road rates. Act 3 of 1870, *infra*.

<sup>3</sup> See § 38, Act 10, 1864, and §§ 4, *et seq.*, Act 5, 1860, *infra*.

tion of any person whom it shall see fit to examine (which oath or affirmation the presiding member of such Divisional Council is hereby authorized to administer), and shall confirm or correct any valuation objected to, as truth and justice shall require: Provided that the said Court may, if necessary, be adjourned from time to time, upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

No. 9—1855.

36. [Repealed by § 7 Act 11 of 1859, *infra*.]

37. The decision of the Divisional Council upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any Court or proceeding whatsoever.

Decision of divisional council to be final.

38. As soon as the valuation of the whole of the immovable property in any division shall have been completed <sup>(1)</sup> the Divisional Council may proceed to assess and impose, upon all persons liable thereto, such a rate as it may deem necessary and expedient for the purposes of this Act: Provided that no such rate shall be assessed until after the expiration of thirty days from the issue of a notice to the several members of the Divisional Council, which shall express the intention to propose such assessment, and after the publication of such notice for a similar period in the *Government Gazette*, and in at least one of any newspapers that may be published in the division; and provided, also, that no such rate shall exceed one <sup>(2)</sup> penny in the pound upon the value of the property liable to be rated; and that no general rate shall be imposed in the same division more frequently than once in twelve months.

After valuation, divisional council may assess a rate on the immovable property in the division.

39. Every rate so assessed as aforesaid shall become due and payable upon a certain day, to be fixed by the Divisional Council; of which day and of the amount of which rate the said council shall give at least thirty-one days' previous notice in the *Government Gazette*: Provided that the same or a similar notice shall also be published and posted, in like manner as is hereinbefore directed in the thirty-fourth <sup>(3)</sup> section, in regard to the certain notice therein mentioned: Provided, further, that it shall not be necessary, in any suit or proceeding for the recovery of any such rate, to prove anything further as to due notice thereof having been given than the publication of the announcement thereof in the *Government Gazette*.

Day to be fixed for collecting the rate, and notice thereof to be given.

40. <sup>(4)</sup> Whenever any Divisional Council has announced in the

Legal proceedings to be instituted, if rate not paid on day fixed.

<sup>1</sup> The valuation, when completed, must lie at the Civil Commissioner's Office for inspection. § 13, Act 5 of 1860, *infra*.

<sup>2</sup> Amended by §§ 8 and 9, Act 10 of 1864.

<sup>3</sup> Printed as amended by Act 11 of 1859, § 6.

<sup>4</sup> Provisions of these sections apply also to collection of rates for main roads Act 10 of 1864, § 10.

No. 9-1858.

*Government Gazette*, as hereinbefore required, the day on which any rate, duly assessed under this Act, will become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due by him to the Civil Commissioner of the division, or to any person whom the Divisional Council may have authorized to receive the same, on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings for the recovery of the amount.

In suing for recovery of rates.

Owner or occupier may be proceeded against.

41. <sup>(1)</sup> The several Divisional Councils may, in suing for the recovery of rates, proceed against the owner or occupier, either separately or both of them in one and the same action, each for the whole rate, in any competent Court, and recover the same by the judgment and process of such Court: Provided that any occupier of property on which a rate has been assessed, who is not the owner thereof, and who has not entered into such occupation, in pursuance of any agreement for becoming the owner thereof, shall, in the absence of any agreement to the contrary, be enabled to retain or recover from such owner the amount of any rate which he may have so paid, but not any costs or expenses which he may have incurred, or been condemned to pay in the course of any suit or action brought against him by the Divisional Council for non-payment of any such rate: Provided, also, that no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered upon the occupation thereof: And provided, further, that any person who, as occupier, may have become liable for any rate as aforesaid, shall continue to be liable for such rate, although he may have ceased to occupy the property in respect of which the rate had been imposed.

Valuation every five years.

42. The first valuation to be made, as aforesaid, in each division, for the purposes of this Act, shall subsist and be in force for five years from the date of the first assessment under this Act; at the expiration of which term, and of each successive term of five years, a fresh valuation shall be made, in the same manner as is hereinbefore directed with regard to the first valuation.

#### *Application of Funds.*

How funds of divisional council to be applied.

43. All moneys raised or received by any Divisional Council, from any source whatever, for the purposes of this Act, shall be appropriated, firstly, to defraying the expenses of valuation and assessment of property within its division, and the collection of rates under the foregoing provisions of this Act; secondly, to the making, improving, and maintaining the several divisional roads within its division, and the public dams upon such roads; and may also be appropriated, thirdly, to contributing towards the

<sup>1</sup> Provisions of these sections apply also to collection of rates for main roads, Act 10 of 1864, § 10.

making or improving of any main road which the Divisional Council may desire to have opened or improved in such division, and which work the Colonial Government may have agreed to undertake; fourthly, to the making or improving of any public road within the division, not being a main or divisional road; fifthly, to contributing towards the making or improving of any road or bridge, proposed to be made or improved in any adjoining division, which would be of so much benefit to the inhabitants of the division to which such Divisional Council belongs, as to make it desirable that it should contribute to such work; and sixthly, in asserting, by legal process, the right of the public to any public road within the division, not being a main road, which the Divisional Council shall ascertain to exist, and shall find to have been stopped up or otherwise obstructed by any person or persons whomsoever: (1) Provided, however, that nothing herein contained shall be construed so as to require any Divisional Council to resort to legal process for the purpose aforesaid, in any case in which they shall deem it expedient not to do so, nor to prevent any of Her Majesty's subjects from resorting to legal process in any such case as he may be advised or think fit.

44. Whereas, under Ordinances No. 8, of 1843, and No. 7, of 1848, one or more rates, not exceeding five in any case, have been assessed and levied in several divisions of the Colony, and have been expended by the late central board of commissioners of public roads in the construction, or improvement, or maintenance of main roads in those or other divisions; and whereas it is just that those divisions in which no rates, or a smaller number of rates than five, have been levied, should contribute, in the same proportion as other divisions, to the construction, improvement, and maintenance of main roads, but that at the same time the roads to which such rates are to be appropriated should be within the division in which the rates are levied, according to the intention of the aforesaid Ordinances; it is hereby enacted that every division in which a less number of rates than five has been assessed and levied, shall be required to contribute towards the construction, improvement, or maintenance of the main roads opened, or to be opened, within such division, a sum equal to that which it would have been required to contribute for such purpose if five rates had been levied in it, after deducting therefrom the amount of road rates actually paid in such division and received by the central board of commissioners of public roads, under the aforesaid Ordinances: Provided, always, that no such division shall be required to contribute more than one-half of the expense to be incurred by the Colonial Government, on any main road within such division; and every such contribution, to the extent of the amount of one year's rate, shall be payable in advance, as soon as any such road is declared a main road, and shall be paid by the Divisional Council

Certain divisions to contribute proportions of rates failed to be levied for main roads under previous laws.

Such contributions not to exceed half the expense of main road.

<sup>1</sup> See also § 86, Act 4, 1865, and § 1, Act 4, 1876.

No. 9—1858.

of the division, out of road rates leviable therein, to the Colonial Government, which, if more than three months elapse after the receipt of such money before the commencement of the work for which it was contributed, shall pay interest to the Divisional Council by whom it was contributed, at the rate of six per cent. per annum, during such further time as may elapse before the commencement of the work, or during which the Colonial Government, after having commenced, may stop or delay the further prosecution of the work: Provided, also, that if, in any division, any rates have been assessed and levied, but not expended therein, the amount so levied and not expended shall together with an addition of six per cent. interest per annum upon such amount, calculated from the expiration of six months from the date of the assessment of each such rate, be accounted as levied under this Act, and shall entitle such division to receive an equal amount from the public revenue, to be expended upon the main roads of such division, before any further rate be levied therein.

Before contributing to other roads, &c., divisional council to call meeting of landed proprietors.

45. Before any Divisional Council may contribute to the opening of any new line of main road within the division to which it belongs, or to the making or improving of any road or bridge in any other division, otherwise than according to the provisions of the forty-third section, it shall, by a notice to be published in the *Government Gazette*, and in every newspaper published in the division, call a meeting of the owners of immovable property liable to be assessed under this Act, to be held at some convenient place and time, to be named in such notice, such time to be at least thirty-one days after the issue of such notice, for the purpose of deciding whether any, and if so, what sum shall be contributed by such Divisional Council to such road or bridge, and upon what terms and conditions; and if, at such meeting, the majority in value of rateable property resolve that the Divisional Council be authorized to contribute a certain sum, then such Divisional Council may pay over to the Colonial Government, or the Divisional Council of the division in which such road or bridge may be, any sum not exceeding the sum named in such resolution, upon the terms and conditions approved at such meeting: Provided, however, that any Divisional Council may call such meetings as aforesaid, from time to time, for the purpose of increasing the amount of the contribution to any such road or bridge, or of varying the terms or conditions of such contribution; and that, if any such meeting as aforesaid should reject the proposal to contribute or to add to any previous contribution, no similar meeting shall be again called to consider the same proposal, until the expiration of six calendar months from the day on which such previous meeting was held.

When line of road passes through more than one division, respective councils to agree as to its construction, maintenance, &c.

46. Whenever any Divisional Council may decide upon making or improving, in its division, any line of road which leads to or through any other division, the said council shall communicate to the Divisional Council of the other division the course of the pro-

posed line, and the public purposes which the proposed work is meant to serve, and shall desire the concurrence of the last mentioned Divisional Council in the making or improving of such road; and any two or more Divisional Councils agreeing upon the making or improvement of a road which passes through any part of their several divisions, may arrange together as to the execution of the work on such road, and as to the contribution from one to the other of funds in aid of the execution of such work; and if any such Divisional Councils cannot agree as to the making, or improvement, or maintenance of a road in which they are jointly interested, or in which one of the divisions is interested, and the other divisions do not consider themselves to be interested, and if they are willing to submit to the arbitration of the chief (1) commissioner aforesaid, the said commissioner shall consider and arbitrate in such matter, and his arbitration, confirmed by the Governor, shall be binding upon the parties, and final.

No. 9—1858.

Arbitration.

47. Whenever any Divisional Council should refuse or neglect to maintain in proper repair any divisional road within the division, any number of persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies, through which such divisional road may pass, being not less than three-fourths in value of the persons so liable within the said field-cornetcy or field-cornetcies, may apply in writing to the said Divisional Council, and demand that such divisional road may be put in proper repair: upon the receipt of which demand the said Divisional Council shall be bound, within a reasonable time, to put such road into proper repair; and no fresh road rates levied after the receipt of such demand within such field-cornetcy or field-cornetcies shall be appropriated to any other purpose than the repair of such road, until the repair thereof be completed: Provided, always, that the foregoing provision shall not apply in any case in which any Divisional Council may prove that it has expended in the repair of other roads in the said field-cornetcy or field-cornetcies, within the preceding three years, the sums which it has received as road rates leviable therein during that period.

How, if divisional council neglect roads.

48. Whenever the majority of any persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies, in a division, being not less than three-fourths in value of persons so liable within such field-cornetcy or field-cornetcies, should desire to have a road situate therein, which is not a main or divisional road, made, improved, or repaired, they may apply to the Divisional Council in writing, setting forth their wishes, and request that a special additional rate, not exceeding in any one year the amount of one penny in the pound upon the value of the immovable property within such field-cornetcy or field-cornetcies liable to be rated, may be levied upon such property, for the purpose of being appropriated by the Divisional Council, or by a

With consent of landed proprietors, a special rate may be levied for roads other than main or divisional roads.

<sup>1</sup> See Act 1 of 1863, § 2.

No. 9—1868.

committee of the inhabitants of such field-cornetcy or field-cornet-  
cies, to be approved by the Divisional Council, to the purpose  
aforesaid; and every such Divisional Council shall be bound to  
comply with such application within three months after it has  
received an application for its imposition.

*Miscellaneous.*

Divisional council  
may enter into con-  
tracts.

49. Every Divisional Council acting in pursuance of the  
provisions of this Act may, from time to time, enter into any  
contract with any person or company for any work to be done, or  
for any materials or things to be furnished for the purposes of this  
Act; and all contracts upon which the price or sum to be paid  
may exceed ten pounds sterling shall be in writing, and shall  
specify the work to be done, or the materials or things to be  
supplied, and the price or sum to be paid for the same respectively;  
and, in the case of work to be done, the time within which the same  
shall be completed; and shall provide some penalty to be suffered  
in case of non-performance of the contract, and shall be signed by  
not less than two members of the Divisional Council, and also by  
the person or persons contracting; which contract, or a copy  
thereof, shall be entered in a book to be kept for that purpose.

50. [Repealed by Act 4 of 1865, § 76.]

Chief commission-  
er may enter into  
contract with divi-  
sional council for  
making or repairing  
certain divisional  
roads.

51. The Chief Commissioner aforesaid, acting under the autho-  
rity of the Governor, may enter into a contract with any Divisional  
Council, for the making, improving, repairing, or maintaining of any  
main road, or part of a main road, within the division to which such  
council belongs; and any Divisional Council may enter into a  
contract with the said Chief Commissioner for the making,  
improving, repairing, or maintaining of any divisional road being  
in immediate connection with a main road in such division.

Disposal of surplus  
moneys.

52. Whenever the funds at the disposal of any Divisional  
Council may exceed the amount immediately required for carrying  
into effect the objects of this Act, every such council may deposit  
the surplus in any joint-stock bank or banks in the Colony, or may  
lay it out at interest, upon Government debentures.

Grants from public  
treasury to be ap-  
plied to specific  
works only.

53. Whenever any sum of money may be granted from the  
Public Treasury to any Divisional Council, in aid of any specific  
work upon a public road within such division, such money shall be  
applied to the special purpose stated in such grant, and to none  
other; and the accounts of the Divisional Council shall be so  
framed and kept as to show such application.

Divisional council  
to furnish annual  
accounts of receipts  
and expenditure.

54. <sup>(1)</sup> Every Divisional Council shall cause an exact and  
particular account to be kept, and to be made up and balanced at  
the end of each year, of all moneys raised, collected, or otherwise  
received by such Divisional Council, or by any person on its behalf,  
under the provisions of this Act, and of all disbursements made  
and expenses incurred by the said Divisional Council, distinguishing

<sup>1</sup> See also Acts 10 of 1864, § 35 and 4 of 1865, § 83.



the amount derived from each source of receipt; and to furnish a copy of such account, together with all necessary vouchers, to the Governor, in order that the same, after having been audited by the Auditor of the Colony, may be laid before both Houses of Parliament.

No. 9—1858.  
To be presented to Parliament.

55. All the assets, claims, and demands of the lately existing Divisional Road Board of any division, and not realized or recovered by the Divisional Council of the said division, by virtue of the thirty-first section aforesaid of the Act No. 5, 1855, shall vest in such Divisional Council for the purposes of this Act; and all liabilities of such Divisional Board not paid or satisfied by such Divisional Council under the said thirty-first section, shall survive against such Divisional Council, and be recoverable from such Divisional Council in like manner as it could have been recovered from the former Divisional Board, in case the Ordinance No. 8, 1843, were still in force.

Assets and liabilities of divisional road boards transferred to divisional councils.

56. If any person maliciously cut, break down, destroy, or injure any public road, whether main road or divisional road, or any toll-bar or toll-house, building or work of any kind whatever, erected or made under the authority of this Act, or being upon, or belonging to, any public road within the Colony, it shall be lawful for any person who may see the offence committed to apprehend, and also for any other person to assist in apprehending, the offender, and by the authority of this Act, and without any warrant, to deliver him to any Field-cornet, constable, or peace officer, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate within whose district the offence has been committed; and if the person or persons accused be convicted of any such offence by any such Resident Magistrate, he or they shall forfeit, severally and respectively, any sum not exceeding three pounds for every such offence, and shall also make full satisfaction for the damage which may have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender or offenders, and the other moiety shall be paid, in case of damage or injury to any road, not being a main road, to the Divisional Council of the division in which such offence was committed, to be by it applied for the purposes of this Act,—and in case of damage or injury to any main road, to the <sup>(1)</sup> Colonial Treasury; and if any such offender do not, upon such conviction, pay the said forfeiture and satisfaction, such Magistrate shall commit him to prison, there to be kept to hard labour, if such Magistrate so order, for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid: Provided, always, that nothing herein contained shall prevent the <sup>(2)</sup> Chief Commissioner, acting for the Colonial Government, or the said

Penalties on persons wilfully injuring property protected by this Act.

<sup>1</sup> Amended by Act 10 of 1864, § 39.

<sup>2</sup> See Act 10 of 1864, § 39.

No. 9—1858.

Divisional Council, from bringing any action for damages before the Supreme or Circuit Court having jurisdiction, should it consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate: Provided that the said Divisional Council shall be competent to prosecute in any case of damage or injury to any road, not being a main road, <sup>(1)</sup> without previously applying to the public prosecutor: Provided, also, that any person who shall maliciously, and without reasonable and probable cause, apprehend any person, without warrant, for an alleged contravention of this section, shall, upon conviction, be liable to the same penalty as that by this section provided for the contravention thereof.

Injuries inflicted through carelessness, how to be redressed.

57. If any person should, through carelessness, do damage or injury to any of the matters or things in the last preceding section mentioned, any Resident Magistrate having jurisdiction shall, upon the application or complaint of any <sup>(1)</sup> commissioner, chief or assistant, or of the Divisional Council within whose division such damage or injury may have been done, according as such damage shall have been done to a main road, or some road other than a main road, summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, examine the matter of complaint, and may award such sum of money, by way of satisfaction to the party complaining for such damage, as to such Resident Magistrate may appear reasonable; and in case of neglect or refusal forthwith to pay such money, together with all expenses attending the recovery thereof, such Resident Magistrate may sentence the party so neglecting or refusing, to any period of imprisonment not exceeding fourteen days: Provided, however, that nothing herein contained shall prevent the Chief <sup>(1)</sup> Commissioner, acting for the Colonial Government, or any such Divisional Council, from bringing any civil action for damages against any person doing such damage or injury as aforesaid, before the Supreme Court or any Circuit Court having jurisdiction, should he or they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

Certain properties vested in colonial government and divisional councils respectively.

58. The right to and property in all and singular the public roads in any division, and to and in all gates, bars, sheds, houses, buildings, toll-houses, public dams, upon or belonging to any public road within any division, and to and in all materials for road-making, horses, oxen, implements, utensils, and things whatsoever, which may be provided or taken over by the Colonial Government or the Divisional Council of any division, and used in the performance of the trust by this Act reposed in them respectively, shall vest in the said Government or Divisional Council, who respectively shall be authorized and entitled to administer and dispose of any of the said matters or things in whatever mode shall seem most beneficial.

<sup>1</sup> See Act 10 of 1864, § 39.

59. (1) This Act shall commence and take effect from and after the first of January, 1859, except in so far as is otherwise provided by the third section of this Act, and shall be and continue in force until the 31st December, 1863, and no longer.

No. 23—1858.  
Commencement and  
duration of Act.

No. 23—1858.]

[June 5, 1858.

## AN ACT

### For Declaring Main Roads and Regulating Tolls.

WHEREAS, by the second section of an Act <sup>(2)</sup> made and passed during this present session of Parliament, entitled "An Act to Provide for the Management of the Public Roads of the Colony," it is provided that, from and after the first day of January next, the several roads of the Colony, which may, by any Act of the Legislature of this Colony, be declared to be main roads, shall be under the charge of the general government, as by the said Act provided, whose duty it shall be to make, maintain, and improve such main roads, so far as the funds placed at its disposal by the said Act or any future Act will enable it: And whereas, by the thirteenth section of the said Act, it is further provided that all toll-bars <sup>(3)</sup> established on any main road by authority of any Act of the Legislature of the Colony shall be maintained, and such persons as shall be authorized by the Governor so to do shall be entitled to demand and receive thereat the several tolls authorized in such Act, until the said toll-bars or tolls, or any of them, be abolished, removed, or changed, with the consent of Parliament; and no new toll-bar may be established or any new toll demanded upon any main road except with the consent of Parliament: And whereas it is expedient to describe and declare what roads within this Colony shall for the purposes of the Act aforesaid, be main roads, as also what toll-bars shall be established on such main roads, and what tolls shall be demandable at such toll-bars: Be it enacted by the Governor of the Cape of the Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. All and singular the several roads mentioned and set forth in the schedule to this Act, marked A, are hereby declared, for the purposes of the Act aforesaid, entitled "An Act to Provide for the Management of the Public Roads of the Colony," to be for the time being, and until the Legislature, by some Act thereof, shall otherwise provide, the main roads of the Colony.

Certain roads de-  
clared main roads.

2. All and singular the several toll-bars mentioned and set forth in the schedule to this Act, marked B, are hereby established,

Toll-bars described  
in schedule establish-  
ed.

<sup>1</sup> Continued to 31st Dec., 1864, by Act 1 of 1863, and made perpetual in so far as it is not repugnant thereto, by Act 10 of 1864.

<sup>2</sup> Section 2, Act 9 of 1858.

<sup>3</sup> But see §§ 5 *et seq.*, Act 10, 1864.

No. 23—1858.  
Tolls to be collected thereat by persons appointed by Governor.

and such persons respectively as shall be authorized by the Governor aforesaid so to do shall be entitled to demand and receive at every such toll-bar the several tolls which, in and by the said schedule, marked B, are mentioned and set forth as the tolls to be demanded and received at such toll-bar.

### SCHEDULE A.

Repealed and Schedule to Act 22 of 1873 substituted.

### SCHEDULE B. (1)

#### TOLL-BARS AND TOLLS.

Tolls:  
On certain roads.

1. Rates payable at the upper and lower gates—military lines, Muizenberg, 4th mile Maitland Road, Meiring's Poort, Botha's Hill, and the Buffeljagt's River, Wellington and Paarl or Lady Grey's bridges :—

1. Upon every wheel of a vehicle .. .. .	£0 0 2
2. Upon each horse, mule, or ass, employed in drawing a vehicle .. .. .	0 0 1
3. Upon each head of horned cattle employed in drawing a vehicle .. .. .	0 0 0½
4. Upon each horse, mule, or ass, not employed in drawing a vehicle .. .. .	0 0 2
5. Upon each head of horned cattle not employed in drawing a vehicle .. .. .	0 0 0½
6. Upon every sheep, goat, or swine .. .. .	0 0 0½

At certain mountain passes.

2. Rates payable at mountain passes,—Bain's Pass, Michell Pass, Sir Lowry's Pass, Houwhoek, Great Brak River Pass, Montagu Pass, Howison's Poort, Zuurberg Pass, Piquineer's Kloof :—

1. Upon each wheel of every four-wheeled vehicle, not provided with a wooden shoe (remschoen), or an iron shoe, not less than eight inches broad .. .. .	£0 0 3
2. Upon each wheel of any other vehicle .. .. .	0 0 2
3. Upon every animal employed in drawing a vehicle .. .. .	0 0 1
4. Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine .. .. .	0 0 2
5. Upon every sheep, goat, or swine .. .. .	0 0 0½

At certain ferries.

3. Rates payable at ferries on the Zwartkop's, Sunday's, and Breede Rivers, namely,—the rate now payable at such ferries respectively, until the expiration of any existing lease or contract for the maintenance of such ferries, when the following rates shall be substituted :—

(2) For a four-wheeled vehicle, with any animals drawing the same .. .. .	£0 1 6
For a two-wheeled vehicle, not drawn by more than four animals .. .. .	0 1 0
For a two-wheeled vehicle, drawn by more than four animals .. .. .	0 1 6

<sup>1</sup> Additional tolls established by Act 10 of 1863, but see § 7, Act 10, 1864.

<sup>2</sup> Printed as amended by Act 3 of 1859.

For a saddled horse .. .. .	£0 0 4	No. 24—1858.
For loose horses .. .. .	0 0 3	
For loose horses, above 10, each .. .. .	0 0 2	
Sheep or goats, first twenty-five, or any lesser number .. .. .	0 0 6	
Do. for every twenty-five, or any lesser number above the first twenty-five .. .. .	0 0 2	
A person on foot .. .. .	0 0 3	
Persons on foot, more than one, each .. .. .	0 0 2	

[From sunset to sunrise, a further charge of one-half of the above rates.]

No. 24—1858.]

[June 5, 1858.]

## AN ACT

To Regulate the respective Rights of certain Divisions, in regard to certain Road Rates.

WHEREAS, by the Act No. 12, 1857, entitled "An Act for constituting certain Districts of this Colony Divisions," and by a certain other Act made and passed in this present session of Parliament, entitled "An Act for constituting the Districts of Frazerburg, Murraysburg, Humansdorp, and Robertson, Divisions," the several districts in the said Acts mentioned have been constituted divisions: And whereas it is expedient to regulate the respective rights in regard to certain road rates of such last mentioned divisions, and of the older or former divisions, from or out of which such recently-constituted divisions shall have been formed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. In case any road rates shall have been or shall be assessed by the Divisional Council of any division, from or out of which the Divisional Council of any new division of any new division to receive the arrear road rates assessed by the council of the old division out of which it has been formed.

2. In case the Divisional Council of any division from or out of which the whole or any part of any of the divisions constituted by New division to pay to the older division its share of any debt

No. 24—1858.  
 contracted by the  
 latter on credit of  
 road rates.

the Act aforesaid, No. 12, 1857, shall have been formed, shall at any time before the 1st January, 1858, when such divisions came into being, have raised money by way of loan, on the credit of any road rates assessed or to be assessed by such council, or shall have incurred any other pecuniary obligation upon the faith of any such road rates, then the Divisional Council of any of the new divisions constituted by the said Act No. 12, 1857, which new division shall comprise any of the immovable property which, next before such new division came into being, belonged to the division by which the Divisional Council which borrowed the said money, or incurred the said obligation, was elected, shall be bound to raise by road rates or otherwise, and pay over to the Divisional Council for the time being of the older or former division, as such last mentioned division shall be limited and bounded after such newly-constituted division shall have become a division, such a proportion of so much of such loan or debt as was due and owing, or of such pecuniary obligation as was in existence when such new division came into being, as the value of the immovable property which, when such loan or debt was contracted, or such other pecuniary obligation was incurred, belonged to the older or former division, but was afterwards included in such newly-constituted division, bears to the value of the whole of the immovable property which, next before the day when such new division came into being, belonged to the older or former division as then limited and bounded.

Last preceding section to apply to the new divisions of Fraserburg, Murraysburg, &c.

3. If it shall happen that the Divisional Council of any division from or out of which the whole or any part of any of the four newly constituted divisions of Fraserburg, Murraysburg, Humansdorp, and Robertson, shall be formed, shall, at any time before the taking effect of the Act aforesaid constituting such divisions, have raised money, by way of loan, or incurred any other pecuniary obligation on the credit of any road rates assessed, or to be assessed, by such council, then all and singular the provisions of the last preceding section shall apply, *mutatis mutandis*, to such newly-constituted division and such older or former division respectively, precisely as if such newly-constituted division had been a division constituted by the Act aforesaid, No. 12, 1857.

No. 3—1859.]

[July 8, 1859.

#### AN ACT

For Correcting an Error or Misprint in the Act No. 23 1858, entitled "An Act for declaring Main Roads and regulating Tolls."

Preamble.

WHEREAS, in schedule B, section 3, of the Act No. 23, 1858, entitled "An Act for declaring Main Roads and regulating Tolls,"

a mistake or misprint has occurred in respect of rates payable at ferries on the Zwartkop's, Sunday's, and Breede Rivers, being therein set forth as follows :

No. 3 -1859.

	£	s.	d.
For a four-wheeled vehicle, not drawn by more than four animals .. .. .	0	1	6
For a two-wheeled vehicle, with any animals drawing the same .. .. .	0	1	0
For do., do., more than four animals .. .. .	0	1	6

And whereas the words, as adopted by the House of Assembly, were as follows :

For a four-wheeled vehicle, with any animals drawing the same .. .. .	£0	1	6
For a two-wheeled vehicle, not drawn by more than four animals .. .. .	0	1	0
For a two-wheeled vehicle, drawn by more than four animals .. .. .	0	1	6

And whereas it is necessary that the said accidental mistake or misprint be amended : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. That portion of the third section of schedule B, of the said Act No. 23, 1858, is hereby repealed, and instead thereof, the following shall stand as the rates payable at the before-mentioned ferries, namely :

Misprint in ferry tariff of Zwartkop's River, &c., corrected.

For a four-wheeled vehicle, with any animals drawing the same .. .. .	£0	1	6
For a two-wheeled vehicle, not drawn by more than four animals .. .. .	0	1	0
For a two-wheeled vehicle, drawn by more than four animals .. .. .	0	1	6

No. 11—1859.]

*repealed by Act 40 of 1889*

[July 8, 1859.]

To Amend the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of this Colony."

\* \* \* \* \*

[Lapsed or repealed except as to following sections].

And whereas it is expedient to correct two mistakes which have occurred in regard to references made in certain sections of the said Act 9, 1858, to certain other sections thereof ; and also, to remove an inconsistency between the thirty-fourth and thirty-sixth sections of the said Act : Be it enacted as follows :

Mistakes in certain sections of Act 9, 1858.

- No. 11—1859. Those mistakes corrected.
6. The term “twenty-ninth section,” used in the thirty-third (<sup>1</sup>) section of the Act aforesaid, No. 9, 1858, shall be deemed and taken to refer to the “thirty-first section,” for which last mentioned section the former was, by mistake inserted; and the term “thirty-third section,” used in the thirty-ninth section of the aforesaid Act, shall be deemed and taken to refer to the thirty-fourth section.
- Section 36, Act 9, 1858, repealed.
7. The thirty-sixth section of the Act aforesaid, No. 9, 1858, is hereby repealed.

No. 5—1860.]

[July 17, 1860.

## ACT

To Amend the Act No. 9, 1858, entitled “An Act to Provide for the Management of the Public Roads of this Colony.”

Preamble.

WHEREAS, by the twenty-seventh section of the Act No. 9, 1858, entitled “An Act to Provide for the Management of the Public Roads of this Colony,” it is provided that each Divisional Council shall appoint one or more competent valutors for the purpose of valuing the immovable property situate in such division: And whereas it has been found in some divisions of this Colony that the expense of employing such valutors would, when compared with the amount of such road rates as it would in those divisions be reasonable to impose, be so disproportionate, that in such divisions it was found necessary to have the valuations made by the Divisional Councils themselves instead of by paid valutors, which valuations have given very general contentment: And whereas it is expedient that such by-gone valuations should be established: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of Act 9, 1858, repealed.

1. So much of the Act aforesaid, No. 9, 1858, as is repugnant to or inconsistent with any of the provisions of this Act shall be, and the same is hereby, repealed.

Certain valuations conducted by divisional councils confirmed.

2. Every valuation for the purposes of the Act No. 9, 1858, already made, or yet to be completed, for the purpose of the first valuation under the said Act by any Divisional Council without the employment or intervention of any valuator or valutors, paid or unpaid, shall be deemed to have been of the same force and effect in all respects as if it had been made by such a valuator or such valutors as in the twenty-seventh section of the said Act mentioned: Provided that the provisions of the thirty-fourth and thirty-fifth sections of the said Act shall apply to all valutors for the purposes of the said Act, whether made by the Divisional

<sup>1</sup> § 33 is repealed by Act 4 of 1865, § 11.



Council, without special valuers, or by valuers appointed by such councils: And provided that no valuation for the purpose of the Act aforesaid shall hereafter be made except by valuers who shall not be members of the Divisional Council.

No. 5—1860.

3. It shall not be lawful for any member of any Divisional Council to receive, or retain if already received, either by way of allowance for horse-hire or otherwise, any sort of payment, remuneration, or reward for or in respect of any valuation made by him as a valuer employed by the council to which he belongs, or any valuation made by such council collectively and without the employment of any special valuer.

No member of divisional council to receive fee or reward for any valuation made under preceding section.

And whereas, whilst, by the thirty-fifth section of the Act aforesaid, No. 9, 1858, provision is made for reducing, at the instance of the owner of any immovable property too highly valued, the value put upon such property, no provision is made for increasing the valuation of any such property which may happen to have been undervalued: Be it enacted as follows:

Provision for increasing valuations of properties undervalued.

4. It shall be competent for the Court in the thirty-fourth and thirty-fifth sections of the said Act mentioned, acting in manner and in form as by this Act directed, to increase the value put, in and by any valuation which shall be under the review of such Court upon any farm or other immovable property.

When properties have been undervalued, valuations may be increased.

5. Any person, being the owner of any farm or other immovable property included in any valuation, who shall consider that any other farm or immovable property included in such valuation is valued lower than it ought to be, may send in to the secretary of the Divisional Council an objection in writing, signed by such owner, setting forth the farm or other property alleged to have been valued lower than it ought to have been, and the value which the person objecting considers true and just: Provided, that such objection shall be sent so as to be received by the said secretary not later than fourteen days before the day appointed for the holding of the Court in the thirty-fourth and thirty-fifth sections of the Act aforesaid mentioned.

Objection to valuation to be lodged with secretary of divisional council.

6. The secretary of any Divisional Council receiving such objection, shall cause the owner or occupier of the farm or other immovable property of which the value is objected to, to be informed that such an objection has been lodged, and that it will come on for consideration at the Court aforesaid.

Duty of secretary receiving objection.

7. Should the person receiving such notice as aforesaid, that an objection has been lodged, by the person named in such notice, against the value put upon the property owned or occupied by him, consent that the valuation upon such property may be increased to the amount claimed in and by the objection, such person may, in writing, inform the secretary aforesaid that he consents to such increase, and such secretary shall report such consent to the Court aforesaid at its sitting, and thereupon the value of such property shall be increased accordingly.

If proprietor consents to increase of valuation.

No. 5—1860.

Duty of secretary when receiving consent.

8. The secretary receiving any such consent as aforesaid shall, in case there shall be time so to do, inform the person who lodged the objection that such objection has been admitted, and that it will not be necessary for him to attend the Court aforesaid to support his objection.

If proprietor does not consent.

9. In case no such consent as aforesaid shall be given as aforesaid, then the person objecting and the person resisting the objection may, in person or by any agents appointed in writing, appear before the Court aforesaid upon the day appointed for the sitting thereof, and such Court shall, in deciding upon such objection, proceed in manner and form as in the thirty-fifth section of the Act aforesaid provided, in regard to objections founded upon an alleged overvaluation; and the decision of such Court upon such objection shall be final and conclusive.

Costs.

10. If at the sitting of the Court aforesaid the person who lodged the objection shall fail to appear to support his objection, or, appearing, shall fail to show sufficient cause for increasing to any extent the valuation to which he objected, such objection shall be dismissed, and should the Court think fit, dismissed with costs: Provided that no costs shall be given against an objecting party unless the opposite party shall have appeared in person or by agent.

If proprietor fail to appear, &c., valuation may be increased.

11. If the person entitled as aforesaid to receive, and who shall have received, notice of an objection lodged to any valuation shall fail to appear at the sitting of the Court, or, appearing, shall fail to rebut the proof made that the valuation objected to was too low, so that the valuation objected to shall be increased, then the Court may, should it think fit, give costs to the objecting party: Provided that no costs shall be given against any person who shall have received notice of objection, and who shall appear at the sitting of the Court, and then and there declare his consent that the valuation objected to shall be increased to some amount less than the amount claimed in and by such objection, which shall be admitted by the objecting party or found by the Court to be the true and just value. And provided that even where such person appears to consent that the value objected to shall be increased to the full amount claimed in and by the objection, no costs shall be given against him in case he shall prove to the satisfaction of the Court that he received notice of such objection so short a time before the sitting of the Court that he could not send in as aforesaid to the secretary before the sitting of the Court, his consent to such increase in the valuation.

Costs to be the same as in civil cases in magistrate's court

12. As often as the Court aforesaid shall see reason to give costs to any person against any other person, such costs shall be the same as would be payable by a suitor condemned in costs in a civil case in the Court of the Resident Magistrate of the district; and such costs shall be recoverable by action in the Court of such Resident Magistrate: Provided that upon proof made of the

order of the Court aforesaid giving costs, the liability for such costs shall not be brought into question in the Court of the Resident Magistrate, but only the amount thereof.

No. 1—1863.

13. As soon as any valuation for the purposes of the Act, aforesaid, No. 9, 1858, shall be completed, it shall lie in the office of the Civil Commissioner of the division, for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days and at all reasonable hours, inspect the same and take extracts therefrom.

Valuation Roll to lie open for inspection.

14. Although no objection shall have been lodged in manner and form and within the time in the fifth section of this Act mentioned, it shall be lawful for the Court aforesaid at the sitting thereof, should it so think fit, to allow any such person as might under the said fifth section have lodged an objection to make, in writing, such an objection as is in the said section mentioned, and thereupon should the person entitled by the sixth section to receive notice of such objection be present, and consenting, may proceed summarily and at once to inquire into and decide upon such objection: Provided that if such last mentioned person be not present, or, being present, shall demand time to answer the objection, then the Court shall adjourn till some future day to be then and there appointed for deciding upon such objection, at which day, or upon some other day to be fixed by a further adjournment the said Court shall decide finally upon such objection, and make such order as to costs as shall to justice appertain.

Objection summarily made may be inquired into without previous notice.

15. This Act may be cited for any purpose as the "Road Act Amendment Act, 1860."

Short title.

No. 1—1863.]

*Repealed by Act of 1889*  
ACT

[July 28, 1863.]

### To Provide for the Construction and Maintenance of the Public Roads of the Colony.

WHEREAS the Act No. 9 of the year 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," will expire on the thirty-first day of December next ensuing, and it is therefore necessary to make other provision for the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The charge of the construction and maintenance (1) of the main roads of the Colony shall, as heretofore, remain in the hands of the general Government; and the Governor is hereby authorized to appoint such officers as may be found necessary for the purposes of this Act, who shall be paid such salaries as shall be voted by Parliament.

Main roads to be under charge of general Government  
Governor may appoint officers for the purposes of this Act.

<sup>1</sup> Maintenance vested in Divisional Councils, now. See Act 10 of 1864, § 2.

No. 13—1863.

Such officers vested with the powers and liabilities of Chief Commissioner.

Act 9 of 1858, as subsequently altered and amended, to remain in force, and to apply to officers appointed under this Act.

Commencement and duration of Act.

2. All powers, authorities, and liabilities which by the Act No. 9, 1858, are vested in or imposed upon the Chief Commissioner of Roads, and his assistants or subordinates, shall, from the taking effect of this Act, be vested in and imposed upon such officer or officers as the Governor shall by proclamation appoint.

3. The said Act No. 9 (1) of 1858 shall, except in so far as the same may have been altered or amended by this Act, or by the Acts Nos. 23 of 1858, 11 of 1859, 25 of 1859, 5 of 1860, or 10 of 1861, continue in full force until the 31st December, 1864, and no longer; and whenever in any of the aforesaid Acts mention is made of the Chief Commissioner of Roads, or his assistants or subordinates, the same shall be taken and construed to apply to such officer or officers as the Governor shall by proclamation appoint.

4. This Act shall commence and take effect on and from the first day of January, 1864, and continue in force until the thirty-first December, 1864, and no longer.

No. 13—1863.]

[July 28, 1863.

ACT

For Establishing certain Tolls.

Preamble.

WHEREAS it is expedient that certain toll-bars be established and declared, in addition to the toll-bars by the Act No. 23 of 1858, entitled "An Act for declaring Main Roads and regulating Tolls," provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Toll-bars established. Governor empowered to appoint persons to demand tolls

1. All and singular the several toll-bars mentioned and set forth in the schedule to this Act, marked A, are hereby established; and such persons respectively as shall be authorized by the Governor so to do shall be entitled to demand and receive at every such toll-bar the several tolls which in and by the said schedule, marked A, are mentioned and set forth as the tolls to be demanded and received at such toll-bars.

SCHEDULE A.

I. *Toll-bars and Toll-rates payable at "Carlisle Bridge" (Espag's Drift), at Koonap Bridge, and at Berg River Bridge.*

1. Upon each wheel of every four-wheeled vehicle, not provided with a brake..	s.	d.
	0	3
2. Upon each wheel of every such vehicle provided with a brake, and upon each wheel of any two-wheeled vehicle .. .. .	s.	d.
	0	2

<sup>1</sup> This Act and all other Acts relating to Maintenance and Construction of main roads declared perpetual. Act 10 of 1864, § 41.

	s.	d.	No. 10—1864.
3. Upon each horse, mule, or ass employed in drawing a vehicle .. .. .	0	1	
4. Upon each head of horned cattle employed in drawing a vehicle .. .. .	0	0½	
5. Upon each horse, mule, or ass not employed in drawing a vehicle .. .. .	0	2	
6. Upon each head of horned cattle not employed in drawing a vehicle .. .. .	0	0½	
7. Upon every sheep, goat, or swine .. .. .	0	0¼	

II. Rates payable at Daggaboer's Nek.

1. Upon each wheel of every four-wheeled vehicle not provided with a wooden shoe (remschoen) or an iron shoe not less than eight inches broad, or a brake ..	0	3
2. Upon each wheel of any other vehicle .. .. .	0	2
3. Upon every animal employed in drawing a vehicle ..	0	1
4. Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine .. .. .	0	2
5. Upon every sheep, goat, or swine .. .. .	0	0¼

No. 10—1864.]

[July 26, 1864.

ACT

To Provide for the Construction and Maintenance of the Main Roads of the Colony. (1)

WHEREAS it is expedient that the general revenue should bear the expense of constructing, but should be relieved from the expense of keeping in repair the Main Roads of this Colony: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the Act No. 9, 1858, entitled "An Act to Provide for the Management of the Public Roads of the Colony," and so much of any other Act relating to such roads, as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Preamble.  
Repugnant portions of Act No. 9 of 1858, or of any other Act, repealed.

2. From and after the first day of January, 1865, the construction (2) of new main roads in the Colony shall remain with and belong to the general Government, and the maintenance (2) or keeping in repair of the main roads of the Colony shall belong to the Divisional Councils of this Colony.

Construction and maintenance of main roads.

*Repealed by Act 40 of 1889*

3. Every Divisional Council is hereby invested for the purposes of this Act with all and singular the rights, powers, and authorities set forth in the tenth, eleventh, twelfth, and thirteenth sections of

Powers vested in divisional councils.

<sup>1</sup> Continued to 31 Dec., 1867, by Act 2, 1866-67; to 31 Dec., 1868, by Act 16 of 1867; to 31 Dec., 1869, by Act 17 of 1868; to 31 Dec., 1870, by Act 14 of 1869; to 31 Dec., 1871, by Act 15 of 1870; to 31 Dec., 1872, by Act 4 of 1871; to 31 Dec., 1873, by Act 23 of 1872. Amended and made perpetual by Act 22 of 1873.

<sup>2</sup> For meaning of terms "Construction" and "Maintenance or keeping in repair," see Act 22 of 1873, § 5, *infra*.

No. 10—1864.

the Act aforesaid, No. 9, 1858, precisely as if such Divisional Council were the commissioners of roads in the said sections mentioned, or one of such commissioners.

Tolls and ferry charges to belong to divisional council of division in which situate

4. From and after the taking effect of this Act, the tolls taken at toll-bars established or to be established on any main road lying or being within any division, and at all ferries upon the line of any such main road, and within such division, shall belong to the Divisional Council of such division; and if, in any case, it shall so happen that any ferry at which there is a toll shall ply between two divisions, and not be wholly in either of them, then the tolls taken at such ferry shall be divided between the Divisional Councils of both divisions, share and share alike: Provided, in regard to any such ferry, that such Divisional Councils shall, by mutual agreement, arrange between them which council shall have the letting or farming of the toll at such ferry, and that, failing such agreement, the Governor shall decide.

Where situate between two divisions, mutual agreement as to letting to be made.

Provisions of 16th, 17th, and 18th sections of Act No. 9 of 1858, in regard to toll-bars and tolls, apply.

5. All and singular the provisions of the fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth sections of the Act No. 9, 1858, in regard to toll-bars and tolls, shall, so far as any Divisional Council is concerned, apply to such council, and to all toll-bars and tolls within such division, in like manner as if the said sections, *mutatis mutandis*, were herein again set forth and word for word repeated.

Section 22 of Act No. 9 of 1858, regarding establishment of new tolls on divisional roads, to apply.

6. (1) The provisions of the twenty-second section of the Act No. 9, 1858, regarding the establishment of new tolls upon divisional roads, shall extend and apply to the establishment of the new tolls upon main roads, anything in the fourteenth section of the said Act to the contrary notwithstanding.

Power to increase tolls with sanction of Governor.

7. It shall be lawful for every Divisional Council, with the previous sanction of the Governor, to increase the amount of tolls from time to time payable at any toll-bars in such division, whether such toll-bar shall be upon a main road or a divisional road, anything in the fourteenth section of the Act No. 9, 1858, to the contrary notwithstanding: Provided that it shall not be competent for any Divisional Council to increase any toll existing at the time of the taking effect of this Act to rates or amounts exceeding treble the rates or amounts of the tolls payable at the time of the taking effect of this Act: Provided, also that it shall be lawful for any Divisional Council from time to time, with such sanction as aforesaid, at its discretion, to alter particular items in any tariff of tolls, by increasing or diminishing the same, without altering the other items of such tariff, as also to add new items or omit old items.

Amount to which existing rates of tolls may be raised.

Single items may be raised or diminished.

Power of divisional council to assess rates.

8. It shall be lawful for every Divisional Council, at any time after the first day of January, 1865, to assess rates upon the immovable property within such division for the purpose of keeping the main roads within such division in repair, in like manner,

<sup>1</sup> See notes to §§ 14 and 22, Act 9 of 1858, *supra*.

precisely, as such council might now by law assess (<sup>1</sup>) rates upon such property for making, improving, and maintaining the divisional roads of such division; and the valuation for the time being of such property under the Act No. 9, 1858, as amended by the "Road Act Amendment Act, 1860," shall be the valuation for assessment under this Act.

No. 10—1864.

9. It shall be lawful for any Divisional Council, should it so think fit, to include in one and the same rate, moneys required for the purpose of main roads and moneys required for the purpose of divisional roads; but in every case of such joint assessment some fixed and definite proportion of the rate assessed shall be devoted to the purpose of main roads, and the remainder shall be devoted to divisional roads, and the accounts showing the receipts and expenditure for main roads shall be kept separate and distinct from the accounts showing the receipts and expenditure for divisional roads: Provided that so much of the thirty-eighth section of the Act No. 9, 1858, as provides that no rate shall exceed one penny in the pound upon the value of the property liable to be rated shall be and the same is hereby repealed.

Moneys required for main and divisional road purposes may be included in one rate.

Portion of Section 38 of Act No. 9 of 1858, limiting rate leviable to one penny repealed.

10. Every rate assessed under this Act for the maintenance of main roads shall be payable and recoverable as if it were a rate assessed for the purpose of divisional roads, and the provisions of the thirty-ninth, fortieth, and forty-first sections of the Act No. 9, 1858, shall apply, *mutatis mutandis*, to every such rate.

Rate assessed how recoverable.

11. (<sup>2</sup>) All moneys raised or received by any Divisional Council from any source whatever for the purposes of this Act shall be appropriated to the maintenance and keeping in repair of the several main roads within such division and the public dams upon such roads.

Moneys to be appropriated to maintenance of main roads and dams.

12. As often as any line of main road within any division shall pass through any municipality or corporate town, the Divisional Council and the commissioners of such municipality or the corporation of such corporate town (as the case may be) shall contribute, share and share alike, to the cost of maintaining and keeping in repair that piece or portion of such main road lying within the limits of such municipality or corporate town, and the said council and the said commissioners or corporation shall by mutual agreement settle between them by whom or in what manner the work of maintaining and keeping in repair such piece or portion of road shall be performed: Provided that should the said council and the said commissioners, or corporation, be unable to agree in regard to any matter or question relating to their respective rights and duties under this section, the matter or question in controversy may by either party be submitted to the Governor, who, after hearing both parties, shall, with the advice of the Executive Council, decide the same, and whose decision shall be final.

Municipalities to contribute towards maintenance of portion of main line of road running through town.

In case of disagreement, Governor to decide.

<sup>1</sup> See § 38, *et seq.*, Act 9 of 1858, *supra*.

<sup>2</sup> See Act 4 of 1865, § 86, and § 1, Act 4, 1876.

repealed by Act  
40 of 1889

No. 10—1864.

13. [ §§ 13 and 14 repealed by Act 22 of 1873 ].

Any division having no council may be annexed to an adjoining division where there is a council.

15. In case there should not be at any time after the taking effect of this Act, in any division, for the space of three months, any Divisional Council, then it shall be lawful for the Governor, by proclamation, to annex such division to any adjoining division in and for which division a Divisional Council shall exist, and thereupon the Divisional Council of such last-mentioned division shall become the Divisional Council of the other division so annexed, and shall be competent to exercise, and is hereby required to exercise, all and singular the provisions and authorities which might under this Act have been exercised by the Divisional Council of the division so annexed, did such a council exist: Provided, however, that such annexation shall take place only for the purposes of this Act, and not for any other purpose: And provided, also, that notwithstanding any such annexation, the Divisional Council of the division to which any other division shall have been annexed shall frame the accounts in the thirty-fifth section of this Act mentioned in such a way as to keep the receipts and expenditure of the division which shall have been so annexed as aforesaid distinct and separate from the receipts and expenditure of the division to which such division shall have been annexed.

Annexation only for purposes of Act. Separate accounts to be kept.

Instead of such annexation, the Governor may by proclamation appoint divisional council.

16. Notwithstanding anything in the preceding section mentioned, it shall be lawful for the Governor, under the circumstances therein set forth, instead of annexing the division in and for which no Divisional Council shall exist to another division, 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 Divisional Council of such division for the purposes of this Act; and every such nominated Divisional Council shall be competent to exercise, and is hereby required to exercise, all and singular the powers and authorities which might under this Act have been exercised by a Divisional Council duly elected, did such a council exist: Provided that the persons so nominated and appointed may or may not be persons resident within such division, as may be found convenient: And provided that every nominated council shall go out of office at the end of three years, reckoned from the day of the publication of the proclamation appointing such council, and be succeeded by another council to be appointed by proclamation as aforesaid, and so on, as long as no Divisional Council shall be elected for that division.

Who may be so appointed.

Duration of office.

Annexation or nomination by Governor may be annulled and cancelled on division electing its council.

17. Should any division which shall have been annexed as aforesaid to any other division, or for which a Divisional Council shall have been appointed as aforesaid, at any time after such annexation or appointment elect and have a Divisional Council for such division, it shall be lawful for the Governor, by proclamation, to revoke and annul such annexation or appointment from and after such convenient day as the Governor shall fix and announce; and



from and after such day, but not sooner, the Divisional Council so elected shall be deemed and taken to be in office, and shall take over from the Divisional Council previously in office all moneys, contracts, officers, matters, and things belonging to the administration of such council in regard to such division, in the plight and condition in which they shall then be, precisely as if the period of office of such previous council had terminated by effluxion of time.

18. Nothing in this Act contained shall alter or affect any law relative to the divisional or branch roads of any division, or to any roads whatever, except the main roads of the Colony.

Law relating to divisional council not to be affected.

And whereas it is expedient that certain divisions of this Colony should, in consideration of the use made by them of certain main roads and mountain passes lying in other divisions, contribute towards the expense of maintaining such roads and passes: And whereas it is also expedient that, in certain cases, the Divisional Council of one division should be empowered and required to keep in repair some defined extent of main road or mountain pass lying in another division: Be it enacted as follows:

As to contribution by one division towards maintenance of roads in another division.

19. The Divisional Council of Worcester shall be and it is hereby charged with the duty of maintaining and keeping in repair the whole line of main road from the town of Worcester to the top of Bain's Pass, where the said pass enters the division of the Paarl.

Divisional council of Worcester to maintain line of road from Worcester to top of Bain's Pass.

20. In consideration of the benefit derived by the inhabitants of the division of Robertson from the line of main road in the last preceding section mentioned, the Divisional Council of the division of Robertson shall pay to the Divisional Council of Worcester, yearly and every year, the sum of three hundred pounds.

Annual contribution of division of Robertson towards above road fixed at £300.

21. The Divisional Council of Beaufort shall be and it is hereby charged with the duty of maintaining and keeping in repair the whole line of main road from the town of Beaufort to and through Meiring's Pass, as far as the homestead of or on the farm now called and known as Meiring's Farm.

Divisional council of Beaufort to maintain line of road from town of Beaufort through Meiring's Pass.

22. In consideration of the maintenance and repair by the Divisional Council of Beaufort of the said road and pass, the Divisional Councils of Prince Albert and Victoria West shall respectively, yearly and every year, pay to the Divisional Council of Beaufort the respective sums following, that is to say: the Divisional Council of Prince Albert, the sum of two hundred pounds, and the Divisional Council of Victoria West the sum of one hundred pounds.

Annual contribution of divisions of Prince Albert and Victoria West to above road fixed at £200 and £100 respectively.

23. In consideration of the benefit derived by the inhabitants of Fraserburg and Calvinia from the use of the main road running through the division of Tulbagh, from the Breede River, through Mitchell's Pass, over the Hottentot's Kloof, through Karroo Poort, to the boundary of the said division of Tulbagh, the Divisional

Annual contribution of divisions of Fraserburg and Calvinia to division of Tulbagh, for use of main road, fixed at £125 each.

No. 10—1864.

Councils of Fraserburg and Calvinia shall respectively, yearly and every year, pay to the Divisional Council of Tulbagh the sum of one hundred and twenty-five pounds each.

Annual contribution of division of Oudtshoorn to division of George, for use of Montagu Pass, fixed at £500.

24. In consideration of the benefit derived by the inhabitants of Oudtshoorn from the use of Montagu Pass, in the division of George, the Divisional Council of Oudtshoorn shall pay to the Divisional Council of George, yearly and every year, the sum of five hundred pounds.

Annual contribution of Port Elizabeth to divisions of Alexandria, Humansdorp, and Uitenhage, for use of main roads, fixed respectively at £700, £500, and £480.

25. In consideration of the benefit derived by the inhabitants of the division of Port Elizabeth from certain lines of main roads lying in the divisions of Alexandria, Humansdorp, and Uitenhage, the Divisional Council of Port Elizabeth shall, yearly and every year, pay to the Divisional Councils of the said divisions, respectively, the respective sums following, that is to say: to the Divisional Council of Alexandria, the sum of seven hundred pounds, to the Divisional Council of Humansdorp, the sum of five hundred pounds, and to the Divisional Council of Uitenhage, the sum of four hundred and eighty pounds.

Divisional Council Paarl, charged with maintenance of road between Kruispad and Zandhoogte, in the division of Stellenbosch.

26. In consideration of the fact that a certain piece of main road passing through a part of the division of Stellenbosch, namely, a piece of main road lying between Kruispad and Zandhoogte, is chiefly for the use of the inhabitants of the Paarl, and is of little benefit to the inhabitants of Stellenbosch, the Divisional Council of the Paarl shall be and it is hereby charged with the duty of maintaining and keeping in repair the said piece of main road.

Annual contribution of division of Caledon to division of Stellenbosch, for use of road from Sir Lowry's Pass to Kuil's River, fixed at £150.

27. In consideration of the benefit derived by the inhabitants of the division of Caledon from the use of the main road running through the division of Stellenbosch from Sir Lowry's Pass to Kuil's River, the Divisional Council of Caledon shall pay to the Divisional Council of Stellenbosch, yearly and every year, the sum of one hundred and fifty pounds.

Annual contribution of Bredasdorp to division of Caledon, for use of main road, fixed at £120.

28. In consideration of the benefit derived by the inhabitants of the division of Bredasdorp from the use of the main road running through the division of Caledon from Sir Lowry's Pass to the division of Swellendam, the Divisional Council of Bredasdorp shall pay to the Divisional Council of Caledon, yearly and every year, the sum of one hundred and twenty pounds.

Annual contribution of division of Albany to division of Peddie, for use of main road, fixed at £226.

29. In consideration of the benefit derived by the inhabitants of Albany from the main roads in the division of Peddie, the Divisional Council of Albany shall pay to the Divisional Council of Peddie, yearly and every year, the sum of two hundred and twenty-six pounds.

Rate may be assessed for purposes of contribution or for maintenance of main road situate in other division.

30. It shall be lawful for every Divisional Council which is or shall be required to pay or contribute any sum of money to any other Divisional Council, under any of the provisions of this Act, to assess rates upon the immovable property of the contributing division for the purpose of such contribution, precisely as if such

money were required for the maintenance and keeping in repair of a main road lying within such last mentioned division; and in like manner every Divisional Council which is or shall be, by or under any of the provisions of this Act, charged with the duty of maintaining and keeping in repair any line of main road lying in any other division than that to which such council belongs, may assess rates upon the immovable property of the division to which such council belongs, for the purpose of such maintenance and repair.

No. 10—1864.

31. As often as any Divisional Council is or shall be, by or under any of the provisions of this Act, charged with the duty of maintaining and keeping in repair any line of main road lying in any other division than that to which such council belongs, the Divisional Council so charged shall be and it is hereby invested with all and singular the same powers and authorities in regard to the taking of lands and materials, whether of Her Majesty the Queen or of private persons, the erection of toll-houses and toll-bars, the taking of tolls, the renting or farming of tolls, and the protection of tolls by penalties, which would have been possessed by the Divisional Council of the division in which such line of road shall lie, in case such council had been charged with maintaining such line and keeping it in repair; and the Divisional Council first aforesaid shall be charged with the performance of every duty in regard to such line which the Divisional Council of the division in which it lies would have been charged with in case such last mentioned council had been charged with such maintenance and repair.

Powers vested in divisional council charged with maintenance of road not lying within its own division.

32. Every payment or contribution to be made by any one division to any other division shall become due and payable on the first day of July in each year, unless otherwise agreed upon between the Divisional Councils of the said divisions, and in case it shall not be made within one month after the said date, the same may be sued for by the Divisional Council entitled to receive the same; and the provisions of the fourteenth section of this Act shall extend and apply to the recovery thereof: Provided that as often as by any such agreement as aforesaid any different time or times shall be fixed for the payment of any such contribution, the same shall be payable and recoverable at and after the time or times so fixed: Provided that the first annual contribution under this Act shall be made in and for the year 1865.

Annual contributions shall be due on 1st July.

33. It shall be lawful for the House of Assembly at any and every session of Parliament after the present, by any resolution of such House, which resolution shall be concurred in by the Legislative Council and the Governor, to increase or diminish any of the payments or contributions in this Act specified, and to appoint and direct, as cause shall be shown and occasion may require, that Divisional Councils other than those named in this Act shall respectively make and receive contributions to and from each other

Or other date may be fixed by agreement.

First contribution in 1865.

Alterations as to amount of contributions, charge of roads, &c., may be made by Parliament.

No. 10—1864.

for the purposes of this Act, and fix the amount of such contributions for the time being, and to charge Divisional Councils, not by this Act charged with the duty of maintaining and repairing lines of main road lying in divisions other than their own, with the duty of so doing, and all such arrangements, from session to session, to alter and revise as circumstances may for the time being demand, and the provisions of this Act regarding the certain arrangements established by this Act shall extend and apply to all such further or other arrangements as may from time to time be established, in like manner precisely as if the same had been the arrangements embodied in this Act.

Government to maintain in repair the retaining walls of mountain passes for one year.

34. It shall be the duty of the Colonial Government, from and out of the public revenue, to keep in usual and customary repair the retaining walls of all mountain passes in this Colony for the space of twelve months next after the day upon which such passes shall be taken over under this Act by the several Divisional Councils.

Annual accounts to be submitted to Parliament.

35. (1) Every Divisional Council shall cause an exact and particular account to be kept, and to be made up and balanced at the end of each year, of all moneys raised or collected or otherwise received by such council or by any person on its behalf, under the provisions or for the purposes of this Act, and of all rates assessed under this Act due and in arrear, and of all disbursements made and expenses incurred by the said council for the said purposes, distinguishing the amount derived from each source of receipt, and shall furnish a copy of such account, together with all necessary vouchers, to the Governor, in order that the same, after having been audited by the Auditor of the Colony, may be laid before both Houses of Parliament; and every Divisional Council which shall receive or be entitled to any contribution from any other Divisional Council for or in consideration of the maintenance and repair of any line of road, or mountain pass, shall keep its accounts in such manner as to show separately and correctly the expenditure really and *bonâ fide* made by such council upon such road or pass.

Form of oath to be taken by valuator.

36. Every valuator appointed after the taking effect of this Act by any Divisional Council, under the twenty-seventh section of the Act No. 9, 1858, shall, before entering upon the valuation intrusted to him, take, before any Resident Magistrate in the division to which such council belongs, the following oath :

I, A B, do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially appraise and value all such property as I shall be called upon to appraise and value in the division of \_\_\_\_\_, for the purpose of road assessment, and that I shall conscientiously value the same at

<sup>1</sup> See Acts 15 of 1869, § 5, 10 of 1864, § 35, 4 of 1865, § 83.

and for the full and fair price or sum which such property would, in my judgment, be likely to realize if brought at the time of such valuation to voluntary sale, and sold upon the terms and conditions usual in the said division. So help me God!

No. 10 —1864.

(Signed) A.B.

Sworn at — this — day of — 186—

Before me, C D, Resident Magistrate.

37. Every such oath as aforesaid shall be lodged with and preserved by the Divisional Council to which it relates.

Oath to be lodged with divisional council.

38. The presiding member of any such Court as is in the thirty-fourth and thirty-fifth sections of the Act No. 9, 1858, described, shall, before said Court proceeds to hear objections to any valuation, take himself, in open Court, the following oath:

Form of oath to be taken by presiding member of court appointed to hear objections to valuations.

I, A B, do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially adjudge upon all questions that may come before me as a member of this Court. So help me God!

And the presiding member shall then administer the same oath to the members of the Court.

39. The moiety of the forfeiture in the fifty-sixth section of the Act No. 9, 1858, mentioned, and which moiety is therein directed to be paid to the Colonial Treasury, shall, from and after the taking effect of this Act, be paid to the Divisional Council of the division within which the offence entailing such forfeiture shall have been committed, and every Divisional Council shall be entitled to claim the remedy or relief which, by the fifty-sixth and fifty-seventh sections of the said Act is made claimable by any commissioner, as in the said sections mentioned.

Moiety of penalties for injury done to property protected by Act 9 of 1858 to go to divisional council.

40. [Repealed by Act 22 of 1873.]

41. The Act No. 9, 1858, and all other Acts relating to the construction and maintenance of main roads, in so far as there is nothing in the said Acts repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby declared to be perpetual, anything in the third section of the Act No. 1, 1863, to the contrary notwithstanding.

Act No. 9 of 1858, and other Road Acts, declared perpetual.

42. This Act may be cited for all purposes as "The Road Act, 1864."

Short title.

43. [Repealed by Act 22 of 1873.]

No. 7—1869.]

[October 18, 1869.]

## ACT

To Regulate the Conditions upon which it shall be lawful for Divisional Councils to erect Toll-bars and levy Tolls within the limits of Municipalities or other Corporated Towns.

Preamble.

WHEREAS it is not expedient that Divisional Councils should erect toll-bars at any spot or place within the limits of any municipality or of any corporate town without having first obtained the consent of the municipal commissioners of such municipality or the Town Council or other governing body of such corporated town: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portions of Acts repealed.

1. So much of the Act No. 9, <sup>(1)</sup> 1858, entitled “An Act to Provide for the Management of the Public Roads of the Colony,” and so much of the Act No. <sup>(2)</sup> 10, 1864, entitled “An Act to provide for the Construction and Maintenance of the Main Roads of the Colony,” as shall be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same is hereby repealed.

Erection of toll-bars and levy of tolls within municipal limits subject to consent of municipal authorities.

2. From and after the taking effect of this Act it shall not be lawful for any Divisional Council to erect any toll-bar or levy any toll at any spot or place within the limits, for the time being, of any municipality or of any corporated town without having first obtained the consent so to do of the commissioners of such municipality or of the Town Council or other governing body of such corporate town; Provided that it shall be lawful for any Divisional Council to enter into an arrangement or agreement with such commissioners or Town Council or other governing body, as the case may be, for the erection of a toll-bar and the levying of a toll within the limits aforesaid, upon the terms of paying to the said commissioners, Town Council, or other body, such share or proportion of the net proceeds of such toll as shall be by the parties fixed and determined, and from time to time to pay over the same accordingly.

Not to extend to existing toll-bars or tolls.

3. Nothing in this Act contained shall extend to or affect any toll-bar or toll which shall be in existence at the time of the taking effect of this Act.

---

<sup>1</sup> § 14 *et seq.*, *supra*.

<sup>2</sup> § 6, *supra*.

No. 3—1870.]

[May 5, 1870.

## ACT

To Render Lessees of Crown Lands leased under the Provisions of Act No. 19, 1864, liable to the payment of Road Rates, and qualified as Members of Divisional Councils.

WHEREAS it is expedient that the lessees of Crown lands leased under the provisions of Act (1) No. 19, 1864, intituled "An Act to provide for the leasing of Crown lands and for other purposes," should be rendered liable to the payment of road rates, and be qualified to be elected as members of Divisional Councils: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of the twenty-eighth section of the Act No. 9, 1858, intituled "An Act to Provide for the Management of the Public Roads of the Colony," and of any other law, as shall be repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

Repugnant laws repealed.

2. All Crown lands already leased, or which shall hereafter be leased, under the provisions of the Act aforesaid, No. 19, 1864, shall, after the taking effect of this Act, be liable, so long as the same shall be under lease, to be assessed for road rates.

Leased Crown lands liable to road rates.

3. For the purpose of every such assessment of such Crown lands, the value of the lands comprised in any lease already made, or which shall hereafter be made under the provisions of the Act in the last preceding section mentioned, shall be deemed to be sixteen times the amount of the annual rent payable by or under such lease.

Valuation for assessment.

4. All lands under any such lease as aforesaid, in any division, shall be assessed for road rates, together with and at the same time as the other lands in such division liable to assessment for road rates, and shall not be capable of being assessed separately from such other lands, nor at a different rate from such other lands.

When assessment may take place and rate assessed.

5. The lessee of the lands comprised in any such lease as aforesaid shall alone be liable to be sued for the amount of any road rate assessed or imposed upon such lands, and it shall not be competent to proceed against the Colonial Government for the recovery of any such rate.

Rate not recoverable from Colonial Government.

6. Every lessee of any Crown land lying and being within any division, and leased under the provisions of the Act aforesaid, No. 19 of 1864, paying the annual rent of not less than thirty pounds sterling per annum, shall, unless disqualified under the provisions

Lessee qualified to be elected member of divisional council.

<sup>1</sup> Act 19 of 1864 is repealed by Act 14 of 1878.

No. 22—1873.

of the fourteenth section of the "Divisional Councils Act, 1865," be qualified to be elected as a member of the Divisional Council of such division, in like manner as if he were an owner of land, calculating every £6 of rent payable on his lease as equivalent to £100 in value of the land leased for the purpose of the qualification by ownership in the said Divisional Councils Act, 1865, mentioned; anything in the thirteenth section of the last mentioned Act to the contrary notwithstanding: Provided that if any such lessee having become a member of any Divisional Council shall, during the time for which he was elected, cease to hold a qualification, either as lessee or owner, or partly as one and partly as the other, sufficient to qualify him for election as a member of such council, then, on his so ceasing to hold such qualification, he shall vacate his seat as such member.

No. 22—1873.]

[June 26, 1873.

## ACT

To Amend the Laws relating to the Construction and Maintenance of the Main Roads of the Colony.

Preamble.

WHEREAS it is expedient that the Act No. 10 of 1864, intituled "An Act for the Construction and Maintenance of the Public Roads of the Colony," shall, in some respects, be amended, and, as so amended, shall be made perpetual: And whereas it is expedient that the Governor in Council should in certain cases be authorized to supplement the funds of Divisional Councils available for main road purposes by a grant in aid not exceeding in any case the amount which such councils, respectively, shall have assessed, and shall be prepared to expend for such purposes as aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

13th, 14th, 40th,  
and 43rd sections of  
Act No. 10 of 1864  
repealed.

Governor may di-  
rect periodical in-  
spection.

May order council  
to place road or  
bridge in repair, and

1. The thirteenth, fourteenth, fortieth, and forty-third sections of the said Act No. 10 of 1864 are hereby repealed, except as to any proceedings which may have been taken thereunder, which shall remain and continue as if such sections were still in force.

2. It shall be lawful for the Governor to direct periodical inspections and reports to be made of the condition and requirements of all main roads and bridges, and should the report of the inspecting officer be of such a nature as to show that any section of main road or any bridge is not properly maintained, it shall be lawful for the Governor to direct that a full report of the nature of the repairs required be sent to the secretary of the Divisional Council of the division in which the road or bridge is situated, and to direct that such road or bridge shall be placed in proper repair,



and should the council, so addressed through their secretary, fail to place such road or bridge in proper repair, to the satisfaction of such inspecting officer as the Governor may appoint, within such reasonable time as the inspecting officer may report to be necessary for that purpose, being not less than three months, it shall be lawful for the Governor to direct that such road or bridge shall temporarily be removed from the charge of the division in which either may be situate, and the Governor may cause such road or bridge to be put into proper repair, and the sums expended in placing the road or bridge in proper repair, together with all reasonable expenses of the person or persons employed in the inspection aforesaid, shall be a debt due by the said council to the Treasurer-General of this Colony: Provided, also, that a certificate from the Chief Inspector of Public Works, and countersigned by the Auditor of the Colony, shall be transmitted to the secretary of the council, setting forth the particulars of such debt, which shall in all Courts and places be conclusive evidence of the amount thereof.

3. If on the report of such inspecting officer as aforesaid it shall appear that any main road or bridge situate in any division is not in a proper state of repair, and that such main road or bridge cannot be placed in a proper state of repair without such an expenditure as would necessitate a rate exceeding one penny in the pound for main road purposes in such division, then in case the Divisional Council of such division shall impose a rate of not less than one penny in the pound for main road purposes, and shall prove to the satisfaction of the Governor that such rate has been duly assessed, and that an amount equal to the total amount of such rate will be applied to the repair of the main roads and bridges within such division, it shall be lawful for the Governor to supplement the funds of such council available for main road purposes by a grant in aid out of the public revenue, not exceeding in any case the amount to be realized by such rate as aforesaid, and to be expended upon the main roads and bridges aforesaid, in case such grant shall be required for putting, or towards putting, the said main roads and bridges in a proper state of repair: Provided that no second or further grant in aid shall be made within twelve months next after the making of the first or any succeeding grant: Provided, also, that unless an amount equal to the amount contributed from the public revenue in any year shall be expended by the Divisional Council upon the main roads and bridges of its division within twelve months next after the making of such contribution, then the deficiency shall be recoverable from such council under the Public Bodies Debts Act, 1867.

4. The schedule A annexed to the Act No. 23 of 1858, intituled "An Act for declaring Main Roads and regulating Tolls," is hereby repealed, and the schedule hereto annexed shall be deemed and taken in the room and stead thereof, and the said Act and all

No. 22—1873.

on failure so to do, may temporarily remove charge of such road or bridge from the division, and repair it at the expense of the council.

If rate of one penny in the pound is reported insufficient for proper repair of main roads or bridges in any division, Governor may supplement funds of council available for main road purposes.

Schedule A to Act No. 23 of 1858 repealed, and schedule to this Act substituted.

No. 22--1873.

other Acts relating to roads shall be construed with reference to the schedule to this Act as if it were the schedule to the said Act No. 23 of 1858.

Interpretation of terms in this Act and Act No. 10 of 1864.

5. In the interpretation of the Act No. 10 of 1864, and of this Act, the term "construction" shall mean the first making of a main road over ground where there was no main road before, and shall include all work necessary to be done for completing such road down to the opening thereof for traffic; and the terms "maintenance" and "keeping in repair" shall both signify the same thing, and shall include all work necessary to be done to any main road already opened for traffic, in order to put, keep, and have it in good and substantial repair and in condition fit for use and traffic; and the term "bridge" shall extend to and embrace any "pontoon" placed upon any river lying in the course of any main road: Provided, however, that if by reason of floods or other casualty, any bridge shall be carried away or shall sustain damage entailing an extraordinary expenditure for repairs of more than one hundred pounds sterling, or if from natural decay any bridge shall require to be reconstructed or to be repaired at an expenditure exceeding two hundred and fifty pounds sterling, and if in either case it shall have been proved to the satisfaction of the Governor, with the advice of the Executive Council, that notwithstanding the due exercise of reasonable foresight on the part of the Divisional Council to which the maintenance of such bridge belongs, such casualty by floods or otherwise could not have been prevented, and further that such Divisional Council has in all respects satisfactorily performed its duties of "maintenance" and "keeping in repair" in respect of such bridge, then the reconstruction or such extraordinary repairs of such bridge, as the case may be, shall be regarded as coming under the head of "construction:" Provided, further, that if at any time any doubt or question should arise whether any particular work necessary to be done on or about any main road should be regarded as coming under the head of "construction" or the head of "maintenance," such doubt or question shall be decided by the Governor, with the advice of the Executive Council, which decision shall be final, unless Parliament shall otherwise decide.

Main roads not to be handed over to divisional council until construction completed.

6. No main road or any portion of a main road now in course of construction, or that may hereafter be constructed, shall be placed in the hands of any Divisional Council for maintenance before such construction shall have been completed, and as often as any Divisional Council shall be required to take over any main road as having been constructed, it shall be lawful for such council, in case it shall not consider that such road is yet constructed, according to the true intent and meaning of this Act, to require that the question in dispute shall be referred to two arbitrators, one to be appointed by the Governor, and the other by the Divisional

Council, and in case of difference of opinion between such arbitrators, then the question in dispute shall be referred to an umpire, to be appointed by such arbitrators before proceeding to inspect the said road: Provided that nothing in this section contained shall extend to any main road which shall at the time of the taking effect of this Act be already in the charge of any Divisional Council.

No. 22—1873.

This section not to extend to main roads already handed over to divisional council.

7. The said Act No. 10 of 1864, as amended by this Act, is hereby made perpetual.

Act No. 10 of 1864 as now amended made perpetual.

8. Nothing in this Act contained shall be taken to repeal any of the provisions of Act No. 32 of 1868, intituled "Act to provide for the Maintenance of the Main Northern Road."

This Act not to affect Main Northern Road Act of 1868.

9. This Act may be cited for all purposes as "The Road Act, 1873."

Short title.

### SCHEDULE.

#### MAIN ROADS. (1)

##### *Main Road between Cape Town and Simon's Town.*

1. From the Upper Toll at the Military Lines, by Mowbray, Rondebosch, Claremont, Wynberg Hill, Plumstead, Muizenberg, Fishhoek, and Elsjes Bays, to the Toll-gate at Simon's Town.

Main road between Cape Town and Simon's Town.

*Main Trunk Line to Aliwal North, via Port Elizabeth, Graham's Town, Fort Beaufort and Queen's Town.*

From Cape Town to Aliwal North.

2. First Section.—From the Lower Toll at the Military Lines, including the branch running into the upper road, opposite the farm Roodbloem, over Montagu bridge, through Kuils River Village to Eerste River bridge, forming the portion called the Maitland road; from Eerste River bridge to the village of Somerset West, by the Lourens River bridge and Sir Lowry's Pass to Steenbrazens River, over Palmiet River bridge to Houwhoek Pass, to the Bot River by Langehoogte, Boontjes Kraal, &c., to the town of Caledon; thence by Bath, Speel, and Steenbok's Rivers to the farm of the Field-cornet Eksteen, on the River Zonder End.

First section.—To River Zonder End.

##### *Second Section.—From Field-cornet Eksteen's to Duivenhok's River.*

3. From the farm of Mr. Eksteen, by Stormsvley and Leeuwe River, over the Breede River ferry and causeway to the town of Swellendam; thence on by the Buffeljagts River Bridge, Rietkuil, Karnmelk's River, and Slange River, to the village of Heidelberg, on the Duivenhok's River.

Second section.—To Duivenhok's River.

*Third Section.—From Duivenhok's River to Hartenbosch River, through Mossel Bay.*

4. From Duivenhok's River to the town of Riversdale, by Krombeck's River, Melkboom, Kweek Kraal, and Brak River; thence by Vette River, Kafirkuijs River, Zoetmelks River, Zwartwater, Karnmelk's Vley and Drooge Rug, Gouritzriver, Stink River, Kleinberg,

Third section.—To Hartenbosch River.

<sup>1</sup> But see § 3, Act 11, 1877.

No. 22—1873.

to Hartenbosch River, together with the road branching from Kleinberg to the town of Aliwal (Mossel Bay), and thence to the Hartenbosch River.

*Fourth Section.—From Hartenbosch River to Keurboom's River Height.*

Fourth section.—  
To Keurboom's River  
Height.

5. From Hartenbosch River to Great Brak River Height, by the pontoon over the Little Brak River and causeway over to the Great Brak River; thence crossing the height by the farms Uitkyk and Diepkloof, over the bridges across Palmietvley, Norga, to the village of Blanco; thence by the Malagas River (or Aspelings Bridge) to the town of George; from Blanco, by the Montagu Pass, to the Langekloof, by Waterval, Grootfontein, Ezeljagts River, the village of Schoonberg, Ganzekraal, Eenzaamheid, Molen River, Diep River, by the Sanddrift, easterly along the north side of the river, and over the ridge or neck to the northward of the Wolvehuiskop; thence descending by the first hollow to Keurboom's River.

*Fifth Section.—From Keurboom's River Height to the Van Staden's River.*

Fifth section.—To  
Van Staden's River.

6. From Keurboom's River Height by the farms Wolvekraal, Avontuur, Welgelegen, and others, crossing the Groote River, Diep River, Klein River, Appel River, to Louterwater; thence by Wagenbooms River and Twee Rivieren, to the Kromme River Height; thence along the Kromme River by Jagersbosch, Diep River, and Leeuwenbosch, to the village of Humansdorp; thence by the Kabeljaauw's River and Gamtoos River Ferry, to the western height of the Van Staden's River; and thence by the new line of road made recently by the Government across the Van Staden's River, joining the old road near Cadle's Hotel, on the eastern bank.

*Sixth Section.—Van Staden's River to Port Elizabeth.*

Sixth section.—To  
Port Elizabeth.

7. From near Cadle's Hotel by Witteklip and Green Bushes to the town of Port Elizabeth.

*Seventh Section.—From Port Elizabeth to Graham's Town.*

Seventh section.—  
To Graham's Town.

8. From the town of Port Elizabeth, by the Rawson Bridge and Amsterdam Flats to the Coega, on to Junction Post, at the deviation of the main road to the Zuurberg; thence along the Flat to Sunday's River Ferry, through the farms Vetmaakvlakte, Zokama, Baksteen-vley, and Nanaga, Langeberg, Rietfontein, Leeuwenbosch, Stilgenoeg, Woodbury, Komga, Klipfontein, Nazaar, Sevenfontein, Assegaaibosch River, and Kariega Garden, and Palmietfontein, Howison's Poort, and Waai Nek, to the city of Graham's Town.

*Eighth Section.—From Graham's Town to the Kat River near Fort Beaufort.*

Eighth section.—  
To Kat River near  
Fort Beaufort.

9. From the city of Graham's Town past the burying ground to the race-course flats, thence by Glen Craig, new road over Botha's Hill, the Ecce Heights and Valley, Fort Brown Bridge on the Great Fish River, along the left bank of that river to the Koonap Bridge; thence by Koonap Hill and along the heights to and by the farm Windsor, westward of the house, by the farm of Gilbert, eastward of the house, by Dans Hoogte Pass, to the Kat River near the town of Fort Beaufort.

*Ninth Section.—Great Northern Road.—From near Fort Beaufort via Queen's Town, to Aliwal North.*

No. 22—1873.

10. From the main road between Appies Draai and point of deviation of road to the town of Fort Beaufort, near Victoria Bridge, along the western bank of the Kat River, following generally the old road by the lime-kilns on the Fort Beaufort commonage; thence on through the farm Baddaford, through the Blinkwater Poort, to the drift near the Blinkwater Hotel, through the commonage of Blinkwater; thence along the banks of the Kat River, through Ebenezer and Deel Kraal on to Upsher, to the bridge over the Balfour River; thence ascending the Katberg through the commonages of Balfour, Philipton, Maasdorp, and Readsdale, through the Vulcan's Bellows outspan to the summit level, descending through the Fingo locations in the Queen's Town division, and by Hex's Hotel, on past Langeveld's Hotel, to the recently constructed drift over the Oxkraal River, through the farms Bushy Park, Bold's Point, Princedale, and Oxton, on through T'Saalie's Poort to homestead, *via* Causeway and Braak River Drift, to Poplar Grove; and then by Mount Hopley, Braak Kloof, Zwartfontein, and Endwell, crossing the Zwart Kei River by the Wodehouse Bridge, and the Klaas Smits River by the Cathcart Bridge, on through the farms Cathcart Drift, Blaauw Krantz, Latham, Galler Hill, Maidenhead, Weltevreden, to Lesseyton Neck; thence along the Native Location at Lesseyton to the outspan on farm Kleinfontein; on through Sherwood Dell, Vaal Krantz, Naudesfontein, and other farms, to Kloppersfontein, by Rietkuil on to Penhoek, forming the boundary of the Queen's Town division, to the summit of the Stormberg; then through Droogefontein and Klip Kraal, to the outspan place on Buffelsfontein; then entering on the division of Aliwal North through Leeuwe Kraal and Allemans Poort outspan, crossing the Holspruit by Roodehoogte, Uitkyk, Klipfontein, Modderpoort, on to the outspan and hotel on the Nek; then through Morgenzon to outspan on Lemonfontein and outspan on Kalkoenkranz, crossing the Klipspruit to Treurfontein, Elandsberg and Laagte, through Buffelsvlei, to the commonage of Aliwal North on the southern banks of the Orange River, as shown in plans in the office of the Chief Inspector of Public Works.

Ninth section.—To Aliwal North (Great Northern Road).

*From Port Elizabeth, over the Zuurberg, to Cradock.*

11. From the northern entrance of the town by the new gaol at Port Elizabeth to the Rawson Bridge; thence over Amsterdam Flats to Clarke's Hotel, at Bevan Vale; thence past Brak River outspan through Coegakama Kloof to Tunbridge's, at Addo Drift; past Commando Kraal, to the outspan on southern base of the Zuurberg on the farm Wolvekop, descending the Zuurberg Ranges *via* Strobel's and Doornnek, to Riet Valley Farm on the Boontjes River, to the summit of the highest range, thence descending the northern slope of mountain by Webster's Hotel.

Port Elizabeth over the Zuurberg.

*From Northern Base of Zuurberg to junction with Graham's Town and Cradock Road.*

12. From Webster's Hotel and Toll-house, crossing the Bushman's River, on to the farm of Mr. Wm. van der Merwe, on the Little Fish River; thence to the farm of Piet Goosen, on to Cookhuis Bridge,

To junction with Graham's Town and Cradock Road.

No. 22—1873.

along the western bank of the Great Fish River; thence along the east side of the river by the road recently constructed through Esterhuysen's Poort, to junction with main road between Graham's Town and Cradock, near the Drift over the Baviaan's River, Trollip's.

*From Graham's Town to Cradock.*

Graham's Town to  
Cradock.

13. From Graham's Town over the Commonage, through Sypherfontein, of Mr. G. Palmer, to the Government Outspan; thence through Table Farm, Draai Farm, and Brak Kloof of Dr. Atherstone, and Van der Merwe's Kraal of Mr. P. van der Merwe; thence through the Hell Poort, over the farms Bergplaats of Mr. E. H. Dell, and Mackow Kraal of S. Becker, to Carlisle Bridge, on the Great Fish River, the property of J. Lombard, and Government Outspan; thence through Schelm Kloof and Ettrick Hill, Uitkyk of Gert Nel, Klipgat of Gert Goosen, Leeuwfontein of Harding, and Beenleegte of Joachim Blaglio, to Kleinfontein of the Rev. Welsh, and Government Outspan; thence by Simpson's Hotel, across the Goba River, over the farms Rekwest Plaats of Jordan, to Vleyplaats of C. van Aardt; thence across the Baviaan's River, through the farms of that name, the properties of Messrs B. Trollip and Roberts, to Daggaboer's Neck; thence by Maskel's Hotel, passing the farm of Vaderlandsche Wilgeboom of W. Trollip, to Kromme River and Blaauw Heuvel of J. J. Coetzee, thence to Blaauw Krantz to the Tarka Bridge, passing to the west of a hillock; thence along the eastern bank of the Fish River by Potgieter's Krantz, leaving the Kleine Zuurberg to the right, to Cradock Commonage and Outspan.

*From Port Elizabeth to Graaff-Reinet, via Uitenhage.*

Port Elizabeth to  
Graaff-Reinet, via  
Uitenhage.

14. From the town of Port Elizabeth by the Klein School, below Betheldorp leaving Mr. Korsten's Cradock Place and the Salt Pan to the left, to the town of Uitenhage; thence to the Coega River, crossing near the farm-house Prentice Kraal, thence past Sandfontein to Centlivres outspan, crossing the Coega River below the farm-house of Prentice Kraal; thence to Blaauwkrantz, crossing the Bezuidenhout's River to the left of that place; thence by Steenbokvlakte to the Kariega River, passing the outspan Roodewahl, through Grootepoort to Paardepoort; thence to Potgieter's Kraal, leaving homestead to the right, to Jansenville, on the Sunday's River; thence to Milk River by Ratelpoort and Paardefontein, crossing the Milk River above its junction with the Sunday's River; thence by Kruidfontein to the town of Graaff-Reinet, and as recently constructed by the Public Works Department.

*From Graaff-Reinet to Middelburg.*

Graaff-Reinet to  
Middelburg.

15. From the town of Graaff-Reinet to Perry's Hooghte, crossing the Sunday's River near the farm house Roodebloem; thence by Goliathskraal's Hoogte, Goliathskraal, and to the left of Bloemhof, over Naudesberg; thence by the farm Blaauwwater, Lootsberg. Rondehoogte, Lys River, crossing near the house of L. Lesing, to the base of the Rhenosterberg; and thence by Bullfontein to the village of Middelburg.

*From Middelburg to Colesberg.*

No. 22—1873.

16. From Middelburg to Grootfontein; thence to Wolvekop, Tweefontein, and Naauwpoort; thence by Hartebeestehoek and Caroluspoort to Valschefontein; thence by Hartebeestefontein to Rietfontein; and thence over Government Ground to Colesberg.

Middelburg to  
Colesberg.*From Colesberg to Bothasdrift.*

17. From the town of Colesberg, by the Klipkuil on the Colesberg Commonage, to the poort on the adjoining farm Rietfontein; thence through a part of Knoffelfontein, and Blaauwkrantz, and Rietbult, to the Bothasdrift on the Orange River.

Colesberg to  
Bothasdrift.*From Mossel Bay to Beaufort West; from Mossel Bay to Meiring's Poort.*

18. From Doorn River, near Massyn's, on the main trunk line to Graham's Town, through Camphor's Poort; thence over a farm occupied by Mr. Raubenheimer, leaving the homestead to the right; thence to the farm Kamanassie, of Mr. Gert Coetzee; thence to Dysselsdorp; thence over the farm Rietfontein of Messrs. le Roux and Snyman; thence over the farm Oude Muragie, of Messrs. le Roux and de Beer; thence to the farm De Rust, of Mr. P. Meiring, sen., at Meiring's Poort.

Mossel Bay to  
Beaufort.

To Meiring's Poort

*Meiring's Poort.*

19. From the farm De Rust of Mr. P. Meiring, sen., through the Zwartberg range of mountains to Klaarstroom, on the north side.

To Klaarstroom.

*From Meiring's Poort to the Town of Beaufort West.*

20. From the northern entrance of Meiring's Poort over the farm Klaarstroom, through Droogekloof, to the farms Kafirfontein of Mr. B. Visser, Lombardskraal of Mrs. Mocke, and Steenrotsfontein of Mr. Goozen, to the town of Beaufort West.

To Beaufort.

*From Malmesbury to Cape Town.*

21. From the village of Malmesbury to a point in the road below the Valley of Mr. H. du Toit, over the place Olifantsfontein; thence over the farm Amoskuil, leaving the house on the left; thence over the farm Mollenburg, leaving the house and river on the right; thence over the farm Berg and Dalen, leaving the homestead on the right; thence to the Diep River, opposite the farm Draaihoek of Mr. A. van Niekerk; thence over the farms of Mr. J. van Schoor and Mr. van der Spuy, leaving the homestead on the right; thence to the Mosselbanks Bridge; thence to Duikervley; thence by Jan Biesjes Kraal, to the Maitland road, near Montagu Bridge.

Malmesbury to Cape  
Town.*From Malmesbury to Clanwilliam.*

22. From the village of Malmesbury to the Groote Valley outspan-place; thence by road constructed by Public Works Department to the Berg River Bridge; thence following the old road by Zand Valley outspan-place, Draaifontein, and Rondekuil, in a straight line to Baviaan's Kloof; thence over to Piquineer's Kloof (Grey's Pass), in an easterly direction, crossing the Olifants River on the property of Mr. Hanekam, called Middelpost; and thence along the eastern bank of that river by the outspan and bridge at Rondegat, along the east side of Olifants River, to the town of Clanwilliam.

Malmesbury to  
Clanwilliam.

No. 22—1873.

*From Cape Town to Lichtenberg.*

Cape Town to Lichtenberg.

23. From the twelfth mile on the Maitland Road, leaving Elsjes Kraal outspan to the left, to the village of D'Urban and Lichtenberg.

*From Cape Town to Karoo Poort and Beaufort via Paarl and Wellington.*

Cape Town to Karoo Poort and Beaufort.

24. From the fourteenth mile on the Maitland Road, by Stikland, Kruispad, Kraaifontein, and Mullersvlei, to the town of the Paarl; thence over the Berg River, by Lady Grey Bridge, through Dal Josaphat, to the village of Wellington; thence over Bain's Pass to Darling bridge over the Breede River; thence along the southern side of the Breede River to Mitchell's Pass, through the Pass, to the village of Ceres; thence to Karoo Poort by Breda's Bridge, Leeuwenbosch; and Hottentots Kloof; thence through the Great Karroo by Platfontein, Stinkfontein, and Brewelsfontein, the farm Patattas River, Driekop, over the Hoogveld, to Zoutkloof, Grootfontein, crossing the Dwyka River to Wagonmakerskraal; thence to Rietfontein, Kindfontein, and Uitkyk, along the northern bank of the Gamka River by Steinkraal to the town of Beaufort.

*From Worcester to Darling Bridge.*

Worcester to Darling Bridge.

25. From the town of Worcester, over part of the place lately belonging to Mr. Pieter Jacobs; thence in a straight line to Slangeheuvel, passing through the lands of Messrs. Jacob de Vos and Gabriel Hugo; from Slangeheuvel in a straight line to the eastern entrance of Bain's Kloof, where it crosses the Breede River at Darling Bridge.

*From Knysna Harbour to Langekloof, as far as Yzernek.*

Knysna Harbour to Langekloof, as far as Yzernek.

26. From Belvidere Village, crossing the Knysna River at the "Point" by pöntoon; thence through the property of Mr. E. Sutherland, called Eastford; thence through the commonage and Admiralty Lands, to the Village of Melville; thence through the property of Mr. John Sutherland, called Melkhout Kraal; thence through Government Ground, following outskirts of Messrs. Kep and Veldman's land, occupied by Stroebel; thence over Glebe Lands (Forests) granted to the Lord Bishop of the Diocese; thence through Forest Land of Mrs. the Widow John Rex; thence through Government Forest to Yzernek by the line constructed by the Public Works Department.

*From Yzernek to Avontuur, in Langekloof, Prince Alfred's Pass.*

To Avontuur.

27. From Yzernek, past a place called Buffelsnek; thence through the farm of Mr. Scholtz, Klein River; thence through a small strip of Government Ground near the Diep River; thence through the properties Kafirskraal of Mr. G. W. B. Wehmeyer, and Cloeteskraal of Mr. S. van Huystein, Capp, and others; thence through the farm called Vlught; thence through a place called Voightskraal to its junction with the main road between Cape Town and Graham's Town, close to the farm-house of Mr. Zondag, senior, at Avontuur.

*From Hondeklip Bay to Springbok.*

Hondeklip Bay to Springbok.

28. From Hondeklip Bay to Blyfstaanhocgte; thence on to De Riet past Riethuis; thence over the Oubees Flats to the foot of the Kekokies Mountains; thence up to the farm Kekokies; thence on to



the Buffels River and through the drift on to Aagenbag's Draie; thence on to Koornhuis; thence on to Dancekraal, and after joining the Messklip Road on to Springbok and O'okiep.

No. 22—1873.

*From Ecça Heights to King William's Town.*

29. From the point of deviation from main road between Graham's Town to Fort Beaufort, on the Ecça Heights, past the Police Station, through Pluto's Vale, on to the Fish River Drift at Committee's; from thence by a road as now made to Breakfast Vlei; from thence *viâ* Montgomery Williams to Old Post, to Naude's Drift on the Keiskamma; from thence through Outspanning, Kama's Locations in the division of King William's Town, to Simpson's farms near Debe Nek; from thence along the present line of road, allowing deviation of a mile on each side, to near Liefeldt's mission station; from thence to proposed bridge over the Buffalo River at King William's Town, opposite to the Botanical Gardens, and on line recently traced out by the Public Works Department.

Ecça Heights to King William's Town.

*From King William's Town to East London.*

30. From King William's Town by way of Breidbach, Berlin, Fort Jackson, and Amalinda Kop, as described more particularly in the report and plan of Messrs. C. A. Smith and A. G. de Smidt, deposited in the office of the Chief Inspector of Public Works.

King William's Town to East London.

*From Cradock to Burghersdorp.*

31. From the town of Cradock in a northerly direction along the east bank of the Great Fish River, crossing Jakin's Sluit, and passing westward of Kaptein's Kop over flats, by Brak Valley, to Qwaa River; thence bending to the westward past Qwaa Plaats, over flats by Adam's Fontein Nek to Grass Ridge; thence along the eastern bank of the Brak River; past Klipheuvél, Luisfontein, and Zoetfontein, to the Thebus River, close to its junction with the Brak River at De Keur; thence, after crossing, following the course of the Thebus River in a north-easterly direction, passing over Kneehalter's Nek, and through the farms Grootevalley and Mossfontein; thence over Little Kneehalter's Nek and the farm Wagenmaker's Valley eastward, to Burghersdorp.

Cradock to Burghersdorp.

*From De Keur to Colesberg.*

32. From the Thebus River close to its junction with the Brak River at De Keur, on the line of main road from Cradock to Burghersdorp, to Luisfontein (Schoonbie's) passing by Schoongezicht, Henningsfontein, Macassarfontein Toll, Plaatberg, (Jooste's), Rietkuil (Theunissen's), Groenfontein (Pienaar's), to Colesberg.

De Keur to Colesberg.

*From Beaufort to Graaff-Reinet.*

33. From Beaufort West *viâ* Nelspoort, in the division of Beaufort, and over the following places in the Murraysburg division, viz., by Kruidfontein, Karreebosch, Kraaifontein, Tooverfontein, to Murraysburg; thence by Valleyplaats, Voetpad, Rhenosterfontein, Poortje, and Zuurpoort (all in the Murraysburg division), to Zuurplaats, Matjesfontein, Oudeberg, to Graaff-Reinet.

Beaufort to Graaff-Reinet.

No. 11- 1877.

*From Murraysburg to Hanover.*

Murraysburg to 34. From Murraysburg *via* Oude Snyderskraal, Rietpoort, Roode-  
Hanover. zandheuvel, Lapfontein, Liebekfontein, to Richmond, Kantfontein,  
Scheurfontein, Bonteboks Nek, to Hanover.

*Debe Nek to Graaff-Reinet.*

Debe Nek to 35. From Debe Nek to Alice; thence to Fort Beaufort; thence to  
Graaff-Reinet. Adelaide; thence to Bedford; thence to Kookhuis Drift; thence to  
Somerset East; thence over the Bruintjes Hoogte, through Pearston,  
to Graaff-Reinet, adopting the roads at present in use.

No. 11—1877.]

[August 8, 1877.]

## ACT

## (1) To Amend the Law relating to Roads.

Preamble.

WHEREAS it is expedient that the law relating to roads should be amended as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Act No. 9 of 1858, intituled “An Act to Provide for the Management of the Public Roads of the Colony,” and of any other law in force in this Colony, as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

Governor may proclaim certain roads main roads.

2. The Governor may, with the advice of the Executive Council, at the request of the Divisional Council of any division, by proclamation to be published in the *Government Gazette*, declare any road or portion of a road situate in such division to be a main road; and such road shall thereupon be deemed for all purposes to be a main road as if it had been declared to be so by Act of Parliament; and any such proclamation may, with the like advice and request as aforesaid, be from time to time altered or revoked as may be thought expedient.

May revoke or alter such proclamation.

Governor may proclaim certain roads shall cease to be main roads.

3. It shall also be lawful for the Governor, with the advice of the Executive Council, at the request of any Divisional Council as aforesaid, and by proclamation as aforesaid, from time to time to declare that any main road or part of main road in the division of such Divisional Council now in existence, or which may hereafter be in existence, shall cease to be a main road; and such road, or part of a road, as the case may be, shall thereupon cease to be a main road accordingly.

Governor may by proclamation close or divert any road.

4. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time, at the request of the Divisional Council of any division, by proclamation as aforesaid,

<sup>1</sup> See Acts 37 of 1879, and 31 of 1885, *infra*.

*Repealed by  
Act 40 of 1889*

to declare that any divisional or other public road, path, or track in such division shall be closed or diverted at such time as shall be specified in that behalf in any such proclamation; and such road, path, or track shall thereupon be closed or diverted as the case may be accordingly; provided that no such request as aforesaid shall be made to the Governor until notice in writing of the intention to make the same shall have been posted for general information at some conspicuous place outside of the building wherein the office of such Divisional Council is situated, and at the residence of each Field-cornet of the division, and until notice of such intention shall have been published in the *Government Gazette* and in some newspaper published within the division, or, if none such, in some newspaper circulating within the division, for a period of not less than three months <sup>(1)</sup> which notice shall in some part thereof clearly describe the road, path, or track sought to be closed or diverted, and the situation thereof, and shall require any person objecting to the closing or diversion of such road, path, or track to lodge with the said Divisional Council, within three months after the date of the posting or first publication of such notice, his objections thereto in writing; and any objections which may be so lodged shall be transmitted to the Governor, together with any such request as aforesaid: Provided that the words path or track shall not be taken to mean trekipaths lawfully used in certain districts of the Colony.

5. Whenever the owner or occupier of any land over which a public road, path, or track shall pass shall be desirous of fencing such land, he shall be at liberty to do so if he provides swing-gates in such fencing so as to allow persons entitled to use such road, path, or track, free access thereto; and such gates shall at all times be kept in proper repair by the owner or occupier of such land. <sup>(2)</sup>

6. The provisions of the third, fourth, and fifth sections of the Ordinance No. 9 of 1846, intituled "Ordinance for the better preservation of the Public Roads and the prevention of accidents and injuries thereon," shall apply to all public roads; provided that the provisions as to negligent, careless, or furious driving shall not apply to any public road in any town or village for which municipal regulations for the prevention of negligent, careless, or furious driving shall be provided.

7. This Act may be cited for all purposes as the "Roads Act, 1877."

<sup>1</sup> But see Act 31 of 1885.

<sup>2</sup> See Act 37, 1879, *infra*.

No. 37—1879.]

[September 11, 1879.

## ACT

To Add to the Efficiency of Act No. 11 of 1877.

Preamble.

WHEREAS it is expedient to afford additional protection to the owners of enclosed lands over which public roads, paths, or tracks may pass: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and House of Assembly thereof, as follows:—

Penalties for opening gates authorized to be erected by Act 11 of 1877, except for purpose of passing through.

1. Any person not being the owner or occupier, or not being thereto duly authorized by the owner or occupier, mentioned in the fifth section of Act No. 11 of 1877, who shall open or unfasten any gate erected or provided in pursuance of the provisions of the said section, except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, shall, upon conviction before any Resident Magistrate or Special Justice of the Peace, be liable to a penalty of not exceeding twenty shillings, or in default of payment thereof, to imprisonment, with or without hard labour, for any term not exceeding fourteen days, unless such fine be sooner paid.

Penalties for no closing such gates.

2. Any person not being such owner or occupier or duly authorized agent as aforesaid, who shall pass through any such gate as in the preceding section mentioned, and who shall not immediately after so passing through the same, with or without any vehicle or animals in his care, close and fasten such gate, or cause the same to be closed and fastened, shall be liable on conviction before any Resident Magistrate or Special Justice of the Peace, to a penalty of not exceeding twenty shillings, or in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid.

Short title.

3. This Act may be cited "The Roads Act, 1877, Amendment Act, 1879."

No. 27—1884.]

[Promulgated July 25, 1884.

## ACT

To Provide for the Definition of the proper Width of Main and other Roads.

Preamble.

WHEREAS it is desirable that the proper width of main and divisional roads, and roads over which a right of way exists in favour of individuals other than the proprietors of the land over which such roads pass, should be by law defined: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. This Act shall apply to such Divisions of the Colony as shall be proclaimed in manner hereinafter mentioned, and no other.

No. 27—1884.  
Application of Act to proclaimed divisions.  
Divisional Councils to fix width of roads.

2. It shall be the duty of every Divisional Council to fix and determine what shall be the width of every public road within their jurisdiction to be constructed for the use of wheeled vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purposes of this Act every road over which a right of way shall exist in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road: Provided that no alteration shall be made in the width of any road passing through or between any garden, cultivated lands, orchards, vineyards, or between buildings on homesteads.

3. In determining the width of the several roads the Divisional Council shall take into consideration the circumstance of any such road being

Width of different kinds of roads, &c.

- (1) A main road;
- (2) A divisional road,
- (3) A road with the right of way mentioned in the first section of this Act,
- (4) A mountain pass, or
- (5) An approach to a drift;

and also the nature of the soil over which such road passes, and whether the same is used for pastoral or agricultural purposes: Provided that it shall be lawful for every Divisional Council to select and appoint upon enclosed public roads resting places (each of which shall not exceed half an acre in extent or be distant less than two miles from each other), for cattle passing along such roads, and such resting places shall be selected and agreed upon by the Divisional Council, and the owner of the land upon which the same are to be reserved; and in case of disagreement the selection of such resting places, and the amount of compensation (if any) to be paid for injury to property or other loss, shall be settled or determined by arbitration, and for the purpose of any such arbitration the provisions of the "Lands and Arbitration Clauses Act, 1882," are hereby incorporated.

4. Having defined the width of the several roads within their jurisdiction, the Divisional Council shall give notice of the same to the several field-cornets of the division: and shall also publish such notice in the *Government Gazette* and in some one or more newspapers, if any, published at the seat of magistracy in such division.

Notice to be given to Field-cornets and in *Gazette*.

5. Within a reasonable time after such notice has been given the Divisional Council shall, if necessary, remove all fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for; but the owners of the fences so removed shall be entitled to

Fences, &c., obstructing roads to be removed.

- No. 30—1885. receive compensation for such removal, the amount thereof to be agreed upon between such owners and the said council, and in case of any dispute as to such amount, the question shall be referred to arbitration in manner as provided in the second section of this Act.
- Penalties for obstruction. 6. Any person who shall erect any fence or raise any obstruction which shall encroach upon the width of any road as defined under the provisions of this Act, shall be called upon immediately to remove the same, and in case of his neglect to do so, such fence or other obstruction shall be removed by the Divisional Council at the expense of such person, which shall be recoverable at the suit of the council in the Court of the Resident Magistrate of the district in which such fence or other obstruction shall be situate: Provided that nothing in this Act contained shall interfere with the provisions of Act No. 37 of 1879.
- Expenses out of rates. 7. All payments which may be necessarily made by any Divisional Council for carrying out the provisions of this Act may be made out of the proceeds of the rates from time to time levied by such council.
- Governor may proclaim Act when requested by Divisional Council. 8. It shall be lawful for the Governor, at the request of the Divisional Council of any division, from time to time, to put the Act in force in such division, by proclamation published in the *Government Gazette*, and upon the like request and in like manner to suspend the operation of this Act for such time as the Governor may deem necessary.
- Short title. 9. This Act may be cited as the "Public Roads Width Act, 1884."

---

No. 30—1885.]

[August 11, 1885.]

### ACT

#### To Authorize the Proclamation of a certain Main Road.

Preamble.

WHEREAS it is expedient to authorize the proclamation of a certain road in part already constructed and in part to be constructed as a main road: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor empowered to proclaim a certain main road.

1. Notwithstanding anything to the contrary contained in the second section of the "Roads Act, 1877," or in that or any other law of this Colony, the Governor may, at any time after the passing of this Act, by proclamation in the *Gazette* declare the road described and set forth in the second section of this Act to be a main road, within the meaning of the "Public Roads Act, 1858," and of every other law of the Colony, and thereupon the said road throughout the entire length thereof shall be deemed and taken to be a main road declared by Act of the Legislature.

2. The said road shall run from Port Alfred in the division of Bathurst, to a point near the Round Hill, thence in the direction of the Great Fish River at Kafir Drift, thence in the direction of Peddie and East London, and thence to a point on the Great Kei River near its mouth in the division of Komgha.

No. 31—1885.  
Road described.

No. 31—1885.]

[August 11, 1885.

*Repealed by  
Act 40 of 1889*

ACT

To Amend the Fourth Section of the "Roads Act, 1877."

WHEREAS it is expedient to amend the fourth section of the Act No. 11 of 1877, commonly called the "Roads Act, 1877," in relation to the publication in the said section required of the notice therein referred to: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything to the contrary contained in the fourth section of the "Roads Act, 1877," notice of the intention of any Divisional Council in any division, to make request to the Governor in manner provided in the said section, shall be deemed and taken to be sufficiently published if such notice shall be published once a month during a period of three months in the *Gazette*, and also once a week during six weeks in some newspaper published in the division, or, if there be none such, in some newspaper circulating in the division.

What publication  
of notice sufficient  
under section 4 of  
Act No. 11 of 1877.

2. This Act shall be read as one with the "Roads Act, 1877," and may be cited as the "Roads Act Amendment Act, 1885."

Short title.

No. 6—1873.]

[June 26, 1873.

ACT

For Regulating the use of Locomotives on Turnpike and other Roads, and the Tolls to be levied on such Locomotives and on the Wagons and Carriages drawn or propelled by the same.

WHEREAS it is desirable that the use of locomotives on the public roads of the Colony should be regulated by uniform general provisions, and that tolls should be levied upon such locomotives and the wagons or carriages drawn by such locomotives upon the said roads: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the taking effect of this Act all Divisional Councils and other public bodies or authorities, acting lawfully in

Tolls may be de-  
manded.

No. 6—1873.

the management, custody, and maintenance of any public road in this Colony, and entitled to demand tolls thereon in respect of vehicles drawn by animal power, may demand and take tolls at any toll-bar or place at which they may respectively be entitled to demand tolls, not exceeding the following, that is to say—

Rate for locomotives.

For every locomotive containing within itself the machinery for its own propulsion, a toll equal to four times the amount of toll which would be legally payable in respect of such locomotive at such toll-bar or other such place as aforesaid if the said locomotive were an ordinary vehicle running on wheels and drawn by horses, mules, or other cattle.

Rate for wagons, &c., drawn by same.

For every wagon, cart, or other vehicle drawn or propelled by such locomotive, as aforesaid, a toll of the like amount as would be payable in respect of such wagon, cart, or other vehicle if the same were drawn by horses, mules, or other cattle.

Locomotives not to be driven over certain bridges without consent.

2. It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge, nor over any bridge on which a conspicuous notice has been placed by the authority of the persons or public body liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of such persons or public body, and in case such owner of the locomotive and such persons or public body as aforesaid shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed on the application of either party by the Governor, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge.

Officer to be appointed by Governor in case of dispute.

Damage to any bridge to be repaired by owner of locomotive.

3. Where any public roads upon which locomotives are or hereafter may be used, pass, or are, or shall be carried over or across any stream or watercourse, river, canal, or railway, by means of any bridge or arch, whether stationary or movable, and such bridge or arch, or any of the walls, buttresses, or supports thereof shall be damaged by reason of any locomotive or any wagon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, every such damage shall be forthwith repaired to the satisfaction of the persons or public body liable to the repair of such bridge or arch by and at the expense of the owner or owners of, or the person or persons having the charge of such locomotive at the time of the happening of such damage: Provided, always, that if the repair be not done forthwith it shall be in the power of the body having the management of the road and bridge to have the repair done at the expense of the owner of the locomotive having done the damage.



4. Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive. But any locomotive not being such a nuisance as aforesaid may, except as hereinafter is excepted, lawfully be used on any public road.

No. 32—1868.  
 Locomotive not to be so constructed or used as to be a nuisance.  
 Damages may be recovered for injury.

5. Upon receipt of a report from the Divisional Council of any division to the effect that the use of such locomotive as aforesaid upon any mountain pass within such division would be dangerous to the public safety, it shall be lawful for the Governor, with the advice of the Executive Council, if upon inquiry such report should be found to be correct, to order, by a notice to be published in the *Government Gazette*, that no such locomotive shall be used upon such mountain pass, and any person who shall after the date of such notice use any locomotive on such pass, shall for or in respect of each occasion on which he shall use the same be liable to a penalty of ten pounds sterling.

Governor in Council on report of divisional council may order that locomotives are not to be used on any mountain pass.

6. This Act may be cited as "The Locomotives Act, 1873."

Short title.

No. 32—1868.]

[September 2, 1868.

ACT

(1) To Provide for the Maintenance of the Main Northern Road.

WHEREAS it appears that the Main Northern Road over the Katberg Pass will shortly be completed and open for traffic, from the limits of the division of Fort Beaufort to Poplar Grove, in the division of Queen's Town, and it is necessary to make provision for the due maintenance and repair of the said road: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, on receiving a certificate from the Chief Inspector of Public Works that the road from the limits of the division of Fort Beaufort, at Blinkwater, to Poplar Grove, in the division of Queen's Town, has been completed and rendered fit for traffic, to declare, by proclamation to be published in the *Government Gazette*, that such road is a main road; and thereupon the Divisional Councils of Stockenstrom and Queen's Town shall, in respect to the said road, be respectively invested with all the powers, and shall become subject to all the liabilities,

Governor may proclaim road from Blinkwater to Poplar Grove a main road.

Divisional councils of Stockenstrom and Queen's Town invested with all powers conferred by any existing Road Act.

<sup>1</sup> Continued to 31 Dec., 1870, by Act 22 of 1869, to 31 Dec., 1871, by Act 16 of 1870. Provisions extended and continued until the Legislature shall otherwise determine by Act 5 of 1871. See also § 8, Act 22 of 1873. But see Act 26 of 1884.

- No. 5—1871. created by any Act now in force relating to main roads, for so much of the said road as passes through their respective divisions.
- Councils named may arrange for maintenance of road 2. It shall be lawful for the Divisional Councils of Stockenstrom and Queen's Town, if to them it shall appear expedient, to make arrangements for entrusting the maintenance of the whole of the said road to one or other of the said councils; and thereupon the proceeds of all tolls which may be established on any part of the said road shall become payable to the Divisional Council so entrusted with the maintenance of the road; and it shall be lawful for such last mentioned Divisional Council, with the consent of the Governor, to exercise, in respect to the whole of such road, all the powers relating to the imposition and collection of tolls which are by the Act 10 of the year 1864 conferred upon Divisional Councils.
- Council maintain- ing road to receive toll revenues.
3. [Repealed by Act 26 of 1884].
- Duration of Act. 4. This Act shall be and continue in force to the 31st December, 1869, and no longer.

No. 5—1871.]

[August 11, 1871.

ACT

To <sup>(1)</sup> Provide for the Maintenance of the Great Northern Road, extending from Blinkwater, in the Division of Stockenstrom, to Summit of Penhoek, in the Division of Queen's Town.

Preamble.

WHEREAS it is expedient that the provisions of an Act passed in the Session of Parliament holden in the year 1868, numbered 32, and entitled "An Act to provide for the Maintenance of the Main Northern Road," and continued by Acts No. 22 of the year 1869, and No. 16 of the year 1870, should be further continued, and that its provisions should extend to the section of the Main Northern Road between Poplar Grove and Penhoek, in the Division of Queen's Town: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act No. 32 of 1868 continued.

1. The provisions of the Act No. 32 of the year 1868 shall be continued until the Legislature shall otherwise determine.

Act to apply to portion of road between Poplar Grove and Penhoek.

2. The provisions of the said Act shall extend and apply to that portion of the Main Northern Road between Poplar Grove and Penhoek, in all respects, as if that section of the road had been specified in the said Act; and the Divisional Council of Queen's Town shall, in respect to the said road, be invested with all the powers, and shall become subject to all the liabilities created by any Act now in force relating to main roads, for so much of the said road as passes through that division.

3. [Repealed by Act 26 of 1884.]

<sup>1</sup> Portion of this road has now ceased to be main road. Act 26 of 1884, *infra*.

No 26—1884.]

[July 25, 1884.]

## ACT

To Relieve the Government from the Charge of a certain Road in the Division of Stockenstrom and Queen's Town.

WHEREAS, by Acts No. 32 of 1868, and No. 5 of 1871, the Governor may be called upon by the Divisional Councils of Stockenstrom and Queen's Town, to take charge of a certain road running from Blinkwater, in the division of Stockenstrom, to Poplar Grove, in the division of Queen's Town, and thence to Penhoek, also in the division of Queen's Town, and to maintain the said road; and whereas the Governor having been so called upon under the provisions of the said Acts, the said road is now in charge of the Chief Inspector of Public Works; and it is desirable that the Governor should be relieved from the liability to be called on as aforesaid: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The third section of the Act No. 32 of 1868, and the third section of Act No. 5 of 1871, are hereby repealed; and the said road in the preamble of this Act mentioned shall from and after the date of the passing of this Act cease to be a main road.

Preamble.  
Repeal of 3rd Section of Act 32 of 1868, and 3rd Section of Act 5 of 1871.

No. 25—1864.]

[July 26, 1864.]

## AN ACT

To Authorize the Governor, Divisional Councils, and Municipal Boards to enter into Contracts for the Construction of Bridges in this Colony by Parties willing to construct the same in consideration of receiving, for a limited Term of Years, the Tolls to be levied at such Bridges.

WHEREAS there are divers rivers in this Colony across which important lines of main roads pass, which rivers are, owing to the absence of bridges, a source, especially at certain seasons, of great delay, difficulty, and danger to all persons having occasion to use the said roads: And whereas it is believed that joint-stock companies or other co-partnerships, or private persons will be prepared to contract for the construction of bridges over certain of such rivers, upon condition that the parties constructing the same shall be entitled to demand and receive reasonable tolls to be levied at such bridges for such a limited term of years as may be agreed

aaaa

2590 ROADS AND BRIDGES (BRIDGES' CONSTRUCTION).

No. 25—1864.

upon: And whereas it is expedient to authorize the Governor of this Colony to conclude such contracts, should he deem it desirable for the public interest so to do: Be it enacted by the Governor of the Colony or the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Tenders for bridging rivers may be called for.

1. It shall be lawful for the Governor, from time to time, by any Government notice in the *Government Gazette*, to call for tenders from any joint-stock company, or other co-partnership or private person, who may be prepared to enter into a contract for the construction, under this Act, of one or more bridges over rivers which are crossed by any line of main road in this Colony.

Specifications.

2. Every such tender shall specify the river or rivers over which the party tendering proposes to construct a bridge or bridges, and shall state the spot or site or spots or sites where it is proposed to construct the same, and shall describe in detail the nature or character of the bridge or bridges proposed to be constructed, and the materials of which the same shall be made, and shall contain or annex a tariff showing the maximum or highest rate of all tolls proposed to be levied at every such bridge, and shall set forth the number of years, reckoned from the day of the execution of the contract for the building of any such bridge, during which term tolls not exceeding the rates specified in such tariff, shall be payable to the party tendering, and shall also contain all such other information as the Government notice calling for tenders shall describe or require.

Governor may treat with parties tendering.

3. Should it appear to the Governor that any tender sent in, in pursuance of any such Government notice is of such a nature as to give promise that a contract may be founded upon it which it would be for the public interest to enter into, then the Governor shall, if necessary, cause the party tendering to be communicated with, for the purpose of coming to a clear and full understanding upon all points necessary to be understood before concluding such contract, and of agreeing upon any modifications which may appear desirable.

Proposals to be submitted to divisional council.

4. As soon as a clear and full understanding shall have been come to between the Government and the party tendering, the Governor shall cause the proposals of the party tendering to be transmitted or communicated to the Divisional Council of the division in which any such bridge is proposed to be constructed, to the end that such council may advise the Governor whether, in the opinion of such council, it will be expedient to conclude a contract upon the terms proposed, and if not, what modification of any of those terms the said council would suggest. Provided that if in any case any such bridge should be a bridge connecting two divisions, and not entirely in either of them, then the full particulars aforesaid shall be transmitted to the Divisional Councils of both divisions.

Where proposed bridge would connect two divisions.

ROADS AND BRIDGES (BRIDGES' CONSTRUCTION). 2591

5. Every Divisional Council to which any such proposals as aforesaid shall have been transmitted or communicated, shall, when advising the Governor upon the subject thereof, inform him respecting the distance from either end of the proposed bridge within which distance it should not be competent during the term for which the party tendering is to be entitled to the tolls taken at such bridge, to put up or have any other toll-bar or toll-gate upon the road passing over such bridge, to the end that such restriction as to distance may be embodied in the contract, should a contract be made.

No. 25--1864.  
Council to advise Governor as to toll-bars.

6. In case the party tendering shall agree with the Divisional Council as to the distance from the proposed bridge within which no toll shall be established, other than the toll at such bridge, or shall agree to any modification of such distance which the Divisional Council shall consent to make, and in case the Governor, after receiving and considering the advice of the Divisional Council upon the subject of such proposals, shall, with the advice of the Executive Council, decide that it will be for the public interest to enter into a contract with the party tendering, it shall be lawful for the Governor, and he is hereby authorized, to enter into such contract, and such contract shall be of the same force and effect as if embodied in this Act.

When Governor may enter into contract.

7. Every such contract shall, amongst other things, specify a time within which the bridge or bridges, the subject matter of such contract, shall be completed and opened for traffic, and shall contain a covenant by the party contracting that such party shall keep and have the said bridge or bridges in reasonably good repair and condition during and throughout the term of years for which such party is to be entitled to receive tolls at the rates agreed upon, and shall specify some sum of money to be paid to the Government by the party contracting for and on account of any breach of any such engagement or covenant, by way of ascertained and liquidated damages for such breach. Provided that the Governor, if satisfied that any such breach arose from causes over which the parties contracting had no control, may remit the payment of such damages.

Contract to specify time within which bridge shall be completed, &c.

Governor may remit penalty.

8. Every party contracting for and constructing any such bridge shall be, and such party is hereby declared to be, bound and obliged, at the expiration of the term of years during which such party is to be entitled to receive the tolls aforesaid, to deliver over the said bridge to the Colonial Government in reasonably good repair and condition, and such bridge shall, from and after such delivery, become and be public property, precisely as if it had been originally constructed by the said Government: Provided that if any dispute or controversy shall arise or exist regarding the state and condition of the said bridge at the time of such delivery or proposed delivery, such controversy or dispute shall be settled by the arbitrament and award of three arbitrators, of whom one shall

Contracting parties to deliver over bridge in good repair.

Disputes to be settled by arbitration

2592 ROADS AND BRIDGES (BRIDGES' CONSTRUCTION).

No. 25—1864.

be chosen by the Colonial Government, and one by the party contracting, and the third shall be named by the other two before proceeding with the arbitration: Provided that such three arbitrators shall all act together, and that their award, or the award of any two of them, shall be final, and that the costs of the reference and of the award, and of making the award a rule of court, shall be in the discretion of the arbitrators.

Existing law as regards protection of main roads and levying of tolls to apply.

9. Every such bridge shall, as regards its protection against injuries, whether malicious or through carelessness, be deemed to be in law a main road, or part or portion thereof, and the tariff of tolls authorized by any such contract as aforesaid to be taken at any such bridge shall be, and the same is hereby declared to be as legal, valid, and effectual, as if the same had been established by this Act, and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall extend and apply to the toll-bar and tolls at or connected with any such bridge.

Security for proper execution of contract to be given.

10. Every party contracting for the construction of any such bridge under this Act shall give security to the satisfaction of the Governor for the due fulfilment by him of all the covenants, undertakings, and obligations by him to be fulfilled and kept under the contract and under this Act.

And whereas it is expedient to declare that Divisional Councils shall be entitled to contract for the construction of bridges over rivers crossing divisional roads, in like manner as is by this Act provided in regard to bridges over rivers crossing main roads, and also to enact that municipal boards may establish tolls at bridges constructed by parties with whom such boards shall have contracted for constructing the same. Be it enacted as follows:

Divisional councils may contract for bridging rivers on divisional roads.

11. It shall be lawful for any Divisional Council to enter into a contract with any joint-stock company, or other co-partnership or private individual, for the construction of any bridge over any river crossing any line of divisional road in the division to which such council belongs, in like manner, as by this Act provided in regard to bridges over rivers crossing lines of main road: Provided that no such contract shall be concluded by any Divisional Council without the previous sanction of the Governor.

Governor's sanction.

Application for sanction.

12. Every application to the Governor from any Divisional Council requesting such sanction as aforesaid, shall contain or be accompanied by the several particulars hereinbefore by the second section of this Act required in regard to all tenders in the said section mentioned.

Application to be published in Gazette.

13. The Governor upon receiving any such application and particulars shall, by Government notice in the *Government Gazette* publish the said application and particulars, or an abstract of them, for general information, and shall, in such notice, state that any parties objecting to the construction of the bridge or bridges mentioned in such application, upon the proposed terms, may send

to the Colonial Secretary, on or before some day to be fixed in such notice, not being earlier than thirty-one days from the date of the first publication of such notice, their objections to such construction.

No. 25--1864.

14. In case the Governor, after considering any such application as aforesaid, and all objections, if any, urged against it, shall, with the advice of the Executive Council, decide that it will be for the public interest that the Divisional Council shall be authorized to conclude the contract mentioned in such application, or any modification of the contract which the Governor shall suggest, and the Divisional Council, and the party proposing to contract with them shall agree to, the Governor shall, through the Colonial Secretary, give his sanction to the Divisional Council to enter into such contract, and any contract so sanctioned shall be of the same force and effect as if embodied in this Act.

Governor to decide on application and objections.

15. The provisions of the seventh, eighth, and ninth sections of this Act shall extend and apply to every such contract as is in the last preceding section mentioned, precisely as if wherever the terms "Colonial Government," "Government," and "Governor" are used in any of the said sections, the term "Divisional Council" had been used in their place and stead.

Sections 7, 8, and 9 to apply with regard to contracts entered into by divisional council.

16. Every municipal board of any municipality shall, in regard to any bridge to be constructed within the limits of any municipality, be invested with all and singular the powers and duties hereinbefore set forth in regard to the construction of bridges over rivers crossing divisional roads, and all and singular the provisions of the eleventh, twelfth, thirteenth, fourteenth, and fifteenth sections shall, *mutatis mutandis*, apply to all contracts for the construction of bridges proposed to be entered into by any municipal board: Provided that in the interpretation of this Act the term "municipal board" shall mean any board of commissioners or Town Council elected by any municipality established under Ordinance No. 9, 1836, or under any special Act or Ordinance.

Where proposed bridge is within municipal limits.

Meaning of term "Municipal Board."

17. As often as any bridge proposed to be constructed under this Act upon any line of main road shall be a bridge connecting any municipality with any extra-municipal ground, then the Governor shall, besides transmitting the proposal in the fourth section mentioned to the Divisional Councils concerned, shall transmit the same to the municipal board of such municipality, to the end that such board may advise the Governor in like manner as in the fourth and fifth sections provided with respect to Divisional Councils.

When municipality to be consulted.

18. As often as any bridge proposed to be constructed under this Act upon any line of divisional road shall be a bridge connecting any municipality with any extra-municipal ground, then it shall be lawful for the municipal board of such municipality and the Divisional Council concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract.

When municipality and council may join in application to Governor.

2594 ROADS AND BRIDGES (BRIDGES' CONSTRUCTION).

No. 25—1864.

Revenue of toll to whom payable.

Bridge to be maintained by body receiving toll revenue.

Governor's sanction to be withheld until divisional council and municipality have agreed as to appropriation of tolls.

Municipality to levy tolls where bridge is within municipal limits.

Governor's sanction

Certain Bridges to be considered portion of municipal, main, or divisional road.

Not to affect 19th section regarding appropriation of tolls and maintenance of bridge.

Two divisions may join in application for Governor's sanc-

19. All tolls which may be taken at any such bridge as is in the seventeenth and the eighteenth sections, or either of them, mentioned, at any time after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, shall belong to the Divisional Council or to the municipal board, or be divided between them in some certain proportion as the said council and the said board shall determine by mutual agreement. Provided that the cost of keeping such bridge in repair after it shall have become public property shall be borne by that one of the two bodies which shall be in receipt of the said tolls; or should such tolls be divided between the two bodies in a certain proportion, then the said cost shall be borne by such bodies in the same proportion. Provided, also, that the Governor shall not give his sanction to any contract for the construction of any such bridge as is in the seventeenth and eighteenth sections aforesaid mentioned, until the Divisional Council and the municipal board concerned shall have agreed together regarding the division or other appropriation of the tolls, if any, to be taken at such bridge, after the expiration of the term during which the tolls are to be taken by the party who constructed such bridge.

20. In regard to any bridge which shall be constructed under this Act within the limits of any municipality, as in the sixteenth section of this Act mentioned, it shall be lawful for the municipal board of such municipality upon and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, to levy and take reasonable tolls at such bridge, for the use and benefit of the funds of such municipality, and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall, *mutatis mutandis*, apply to the toll-bar and tolls at or connected with such bridge. Provided that no such tolls as are in this section mentioned shall be levied or taken without the previous sanction of the Governor.

21. Every such bridge as is in the seventeenth section of this Act mentioned shall, at all times from and after the construction thereof, be deemed to be a portion of the main road leading over it to or through the municipality, and every such bridge as is in the eighteenth section mentioned be deemed to be a portion of the divisional road leading over it to or through the municipality, and every such bridge as is in the sixteenth section mentioned shall be deemed to be a portion of the municipal road or street along which it is constructed. Provided that nothing herein contained shall extend to, alter, or affect any of the provisions of the nineteenth section of this Act regarding the appropriation of tolls or the duty of making repairs.

22. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting



two divisions, and not entirely in either of them, then it shall be lawful for the Divisional Councils of both the divisions concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract, and the provisions of the seventh, eighth, and ninth sections of this Act shall extend and apply to every such contract as is in this section mentioned, as well as to every contract mentioned in the sixteenth and eighteenth sections of this Act.

No. 25—1864.  
tion to construction  
of bridge.

23. If any bridge constructed under this Act (being a bridge over which a line of main road or a line of divisional road passes) shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the Governor, upon and from and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, and with the advice of the Divisional Councils of both such divisions, and of the Executive Council, to establish, by proclamation, tolls to be payable at such bridge, and the tolls levied at such bridge shall be divided between the said two divisions in equal shares and proportions, unless the Governor, with the advice of the Executive Council, shall otherwise determine. Provided that the Governor shall, in equally dividing or otherwise appropriating the said tolls, make due provision, as circumstances shall demand and convenience dictate, for the keeping in repair of the said bridge by one or both of the Divisional Councils of such divisions: Provided, also, that the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9, 1858, shall extend and apply to the tolls in this section mentioned.

Tolls to be levied  
on bridge connecting  
two divisions after  
right of party con-  
structing it shall  
have ceased.

24. This Act may be cited for all purposes as "The Bridge Building Act, 1864."

Due regard being  
had to maintenance  
of bridge.

Sections 14, 15, 16,  
and 18 of No. 9,  
1858, regarding tolls,  
to apply.

Short title.

No. 6—1867.]

[August 16, 1867·

### ACT

For Enabling the Divisional Council of Cradock to take over from the Commissioners of the Municipality of Cradock an Iron Bridge, and to borrow Moneys upon the security of Road Rates and Tolls for the erection of the same across the Fish River at Cradock (¹).

WHEREAS the commissioners of the municipality of Cradock have purchased an iron bridge for erection across the Fish River at that place, towards the cost of which certain sums of money have been contributed by grants from the general revenue, from

Preamble.

¹ See also Act 12, 1875 (Loans).

No. 6—1867.

the funds of the Divisional Council and municipality aforesaid, and by voluntary subscriptions of private individuals, but which they are unable to complete for the want of the necessary means: And whereas it is highly necessary and expedient that measures should be devised for having the said bridge completed, to which end the said Divisional Council have proposed to take it over from the municipality, and erect the same with money to be borrowed upon the security of the road rates of the said division to be levied under the Act No. 9, 1858, and the tolls intended to be levied at the said bridge: And whereas such objects cannot be attained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Divisional Council of Cradock empowered to take over the bridge lying at the Fish River.

1. The Divisional Council of Cradock is hereby empowered to take over from the commissioners of the Municipality of Cradock the iron bridge now lying on the banks of the Fish River at that place ready for erection, and to pay to the said commissioners such sum or sums of money as the said bridge may have cost, delivered in Cradock, over and above the amount received by them by grants from the Colonial Revenue, by votes from the funds of the said Divisional Council and municipality, and the contributions of private individuals.

Council may contract for erection and completion.

2. It shall be lawful for the said council to cause the said bridge to be erected and completed according to the plans and specifications thereof, furnished by the engineer employed by the commissioners of the said municipality, and for that purpose the said council may enter into one or more contract or contracts with any joint-stock company, other partnership, or private individual: Provided that the amount to be expended, inclusive of the debt on the bridge to be paid to the said municipality, shall not exceed the sum of six thousand pounds sterling.

Cost not to exceed £6,000.

Removal of material from municipal commonage.

3. It shall be lawful for the said council to take, or direct to be taken by the contractor or contractors from the common pasture lands of the said municipality, such stone, lime and other material as may be required for the erection of the said bridge, free of charge.

Council empowered to establish toll.

4. It shall be lawful for the said council to erect and establish a toll at the said bridge, subject to and in accordance with the provisions of the twenty-second, twenty-third, and twenty-fourth sections of the Act No. 9, 1858, in that behalf; and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the said Act shall extend and apply to the toll bar and toll at or connected with the said bridge.

Protection of bridge against injuries.

5. The provisions of the fifty-sixth and fifty-seventh sections of the aforesaid Act No. 9, 1858, shall extend and apply to the said bridge in regard to its protection against injuries, whether malicious or through carelessness.

6. After the completion of the said bridge it shall be the duty of the said council to cause the same to be kept in a fit and proper state of repair.

No. 6—1867.  
Council to keep bridge in repair.

7. When and as soon as the said bridge shall be completed and declared open for traffic, it shall be lawful for the said council to close, and thereafter to keep closed, all fords upon the Fish River within two miles on either side of the said bridge; and it shall not be permitted to the commissioners of the said municipality to cause any new ford to be made on the said river within the limits of the municipality, without the consent of the said council first had and obtained: Provided, always, that no drift on any existing public road shall be closed until notice shall have been given thereof and published in one or more of the local papers one month previous to such closure, nor until the sanction of His Excellency the Governor shall have been obtained thereto and duly certified to the Divisional Council aforesaid.

On completion of bridge, council may close fords within two miles of it.

No drifts on public roads to be closed without previous notice or Governor's sanction.

And for the purpose of enabling the said council to carry the provisions of this Act into effect: Be it enacted as follows:

8. The said council is hereby empowered from time to time to borrow and take up at interest, upon the security of the road rates of the said division, to be levied and raised under the provisions of the Act No. 9, 1858, and of the tolls to be levied at the said bridge, any sum of money not exceeding in the whole the sum of six thousand pounds, and to mortgage the said rates and tolls for securing the repayment of such moneys: Provided, however, that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of the said sum of six thousand pounds.

Council empowered to raise loan not exceeding £6,000.

To include amount required to pay off existing mortgages.

9. It shall be lawful for the chairman of the said council, being duly authorized thereto by a resolution of the said council, to execute a bond or bonds for the repayment of the capital sum of all moneys raised as aforesaid, together with the accruing interest thereof, and specially to hypothecate the road rates and tolls aforesaid as a security for the repayment of the said loan or loans and the interest thereof; and which bond or bonds shall be countersigned by the secretary of the said council.

Bonds for moneys raised, how to be executed.

10. All moneys raised as aforesaid shall, on receipt thereof, be deposited in a bank to be chosen for that purpose by the said council, to the credit of a separate account; and all sums required shall be drawn out by cheques, to be signed by the chairman and countersigned by the secretary.

Moneys raised to be deposited in bank and drawn out by cheques.

11. The said council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary, half-yearly, showing all moneys received and expended up to the 30th June and 31st December, then preceding, and all liabilities and assets on the same days.

Separate account to be kept of receipts and expenditure.

12. The accounts in the last preceding section mentioned shall

Accounts to be audited.

No. 6-1867.

be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Councils Act, 1865;" and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said bridge.

Fund to be provided for repayment of loan.

13. It shall be incumbent on the said council, and they are hereby required, after the payment of the interest on any loan or loans raised as aforesaid, and providing for the necessary repairs of the said bridge, to set apart the remainder, if any, of the tolls levied at the said bridge, and the further sum of two hundred pounds sterling annually, from their general revenues, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.

Council may be sued for debt arising out of operation of this Act.

14. It shall be lawful for any person who shall be a creditor of the said council in respect of any claim or demand arising out of the operation of this Act to sue the said council for the amount of the said debt, and all and singular the several sections of "The Cape Town Municipal Act," No. 1, 1861, from the eighty-fourth to the ninety-second (both inclusive) shall, *mutatis mutandis*, apply to any judgment recovered by such creditor, and to any writ of execution issued in pursuance of such judgment, precisely as if the said Divisional Council were the municipal board of Cape Town, and the judgment recovered against the said council had been a judgment recovered against such municipal board: Provided, however, that the Court of the Eastern Districts shall have jurisdiction, concurrent with the Supreme Court, in regard to the several proceedings in the said sections mentioned.

Mode of recovery.

Eastern Districts Court to have concurrent jurisdiction with Supreme Court

Expenses attending procuring of this Act chargeable to moneys received under its provisions.

15. All the necessary costs, charges, and expenses attending the procuring of this Act, and carrying the provisions thereof into effect, shall be paid out of the money authorized to be received under the provisions of this Act.

Interpretation of terms.

16. In the interpretation of this Act the expression "Divisional Council" and the word "council" shall mean the Divisional Council of Cradock; the word "commissioners" shall mean the commissioners of the Municipality of Cradock; the term "municipality" shall mean the Municipality of Cradock; and the word "bridge" shall mean the bridge to be erected and completed under the provisions of this Act, unless there be something in the context repugnant to such construction.

No. 6—1877.]

[August 8, 1877.

## ACT

To Provide the means for paying for the Construction of a Bridge across the Great Kei River, and for the Construction and Equipment of a Line of Telegraph from Komgha to Natal, and for the Levying of Tolls on such Bridge.

WHEREAS it is expedient that a sum of money not exceeding fifty thousand pounds should be raised for the purpose of paying for the construction of the bridge now in course of construction across the Great Kei River, on the main line of road from King William's Town to Clarkebury, and that a sum not exceeding forty thousand pounds should be provided for the purpose of paying for the construction and equipment of a line of telegraph from Komgha to Natal, and that provision should be made for the levying of tolls on such bridge: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, from time to time as he may deem expedient, to raise—either by debentures or stock, or partly by debentures and partly by stock—a sum of money not exceeding ninety thousand pounds, to be applied as follows, that is to say:—A sum not exceeding fifty thousand pounds, for the purpose of paying for the construction of the said bridge in the preamble of this Act mentioned, and a sum not exceeding forty thousand pounds, for the purpose of constructing and equipping the line of telegraph in the said preamble also mentioned.

Governor may raise £90,000 by debentures and stock.

2. In so far as the said borrowing shall be upon debentures, the following provisions shall be observed:—Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each, upon the best and most favourable terms that can be obtained, and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Provisions for borrowing on debentures.

3. In so far as the said borrowing shall be upon stock, the following provisions shall be observed:

Provisions for borrowing on stock.

1. Such stock shall be issued by crediting the purchaser thereof for such sum thereof as he shall purchase, in books to be kept for that purpose by the Treasurer of the Colony, such credit to be given in the first instance upon production and delivery to the said Treasurer, by such purchaser, or by his order, of a scrip certificate of the amount of stock for which such credit shall be claimed, such certificate being signed by the Colonial Secretary,

No. 6—1877.

- and countersigned by the said Treasurer and by the Controller and Auditor-General, and which scrip certificate shall be kept in the office of the said Treasurer.
2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum of the nominal amount of such stock, from the 15th day of April or the 15th day of October next preceding the issue of the said scrip certificate which shall last happen, and such interest shall be payable thereafter half-yearly on the 15th day of April and the 15th day of October in each year, the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter as demand shall be made therefor, by the lawful holder for the time being of such stock, to such lawful holder or his duly authorized attorney, at the office of the Treasurer in Cape Town.
  3. Such stock, together with the interest from time to time to accrue thereon, shall be and is hereby charged upon and made payable out of the general revenue of this Colony ; and the Governor shall from time to time pay such interest, and may also out of such revenue or any moneys to be appropriated for that purpose from time to time buy up and cancel such stock or any part thereof.
  4. Such stock shall be transferable by transfer in the books of the said Treasurer, and every person to whom any such credit as aforesaid shall have been given in the said books in the first instance, or to whom any such transfer shall thereafter have been made in the said books, shall be entitled to require and demand of the said Treasurer a receipt or certificate stating the amount of such stock standing to his credit in such books.
  5. There shall be paid into the Treasury upon every transfer in the said books of any sum of such stock a sum of two shillings and sixpence upon every hundred pounds to be transferred in such books, and on every other sum so transferred in the like proportion : Provided that instead of any fractional part of a penny which would under this provision be payable, a full sum of one penny shall be payable ; and no transfer shall be actually made in such books as aforesaid unless and until such sum as shall be payable as aforesaid shall be paid.
  6. All such stock shall be put up for public tender in such amounts as may from time to time seem fit, and may be disposed of for the best terms which can be thus obtained. If more tenders than one offering the same terms shall be received for a greater amount of such stock than the

amount for the time being about to be issued, it shall be lawful to accept any one or more of such tenders, or any part of any such tenders, as circumstances may make expedient.

7. The moneys realized by the issue and sale of such stock shall be carried to a separate account, and shall be expended, so far as shall be necessary, for the purposes mentioned in the preamble of this Act.

4. As a fund for the payment of the interest upon, and for the gradual extinction of the debt to be raised upon debentures under authority of this Act, there shall be charged and chargeable upon, and set apart out of, the annual revenues of this Colony, an annual sum equal to the interest on the whole amount of such debentures as shall from time to time be issued under authority of this Act, and a further sum equal to one pound sterling per centum on the total amount of the principal or capital sum which shall from time to time be raised upon debentures under the authority of this Act; and such sum shall be annually charged on and payable out of the revenues of the Colony so long as any portion of the debt to be raised under authority of this Act upon debentures, or any interest thereon, shall remain unpaid and unextinguished; and such annual charge shall, so soon as such debt and interest shall have been all paid and extinguished, cease and determine.

Creation of fund for the payment of interest on debentures.

5. Such portion of the fund which shall under the last foregoing section be charged, and chargeable annually, on the revenues of the Colony as shall not be required for the payment of the interest for the time being due upon the debentures to be issued under authority of this Act, shall be applied in redeeming and cancelling such debentures in such manner and form as shall be provided by the terms and conditions whereon and whereunder such debentures shall be issued.

Balance of fund to be applied in redeeming and cancelling debentures.

6. All debentures which shall be redeemed under the authority of this Act shall, immediately on the receipt thereof, be cancelled by or on behalf of the said Treasurer, and shall be duly advertised as so cancelled.

Redeemed debentures to be cancelled by treasurer and advertised.

7. Notwithstanding anything herein contained, it shall be lawful for the Governor to dispose of to the Master of the Supreme Court, in his capacity of administrator of the Guardian's Fund, and the said Master is hereby authorized to invest, any unemployed moneys belonging to such fund in so much of any such stock, and so many of any such debentures, as he may apply for, on such terms as may be mutually agreed upon: Provided that every such investment shall be made with the same advice, or upon the same authority, as if such investment were a loan upon mortgage.

Master may invest in such stock or debentures.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the

Accounts to be rendered to Parliament.

No. 6—1877.

time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be bought in and cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.

Tolls may be demanded at bridge.

9. From and after the opening of the said bridge for public traffic, such person or persons as shall be authorized in that behalf by the Governor shall be entitled to demand and receive thereat such tolls as may from time to time be fixed by the Governor and notified in the *Government Gazette*.

Penalty for evading toll.

10. Any person entitled to demand and receive any toll payable as aforesaid, may prevent the passing over the said bridge of any person, animal, or vehicle, for or in respect of whom or which such toll shall be payable until the same be paid; and if any person liable to any toll, from whom it has been duly demanded, or who, by any act of his own, intended to prevent a due demand from being made, may have succeeded in preventing such demand from being made, and who without paying the said toll, and without the consent of the person entitled to demand the same, or without some other lawful authority, may have proceeded through or beyond the place where the same is of right demandable, shall incur a fine of not exceeding ten pounds, to be recovered by any person who will sue for the same by summary process in the nearest Court of the Resident Magistrate, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Short title.

11. This Act may be cited as the "Kei Bridge and Natal Telegraph Act, 1877."

No. 15—1871.]

[August 11, 1871.]

## ACT

To Promote the Construction of a Bridge or Bridges over the Orange River.

Preamble.

WHEREAS it is expedient that a bridge or bridges should be erected across the Orange River at some convenient place between this Colony on the one side, and the territory of the Orange Free State on the other side, by some person or persons or joint-stock company or companies willing to erect the same, and that powers should be given to the Governor to enter into a valid treaty or convention with the Government of the Orange Free State, binding on this Colony, as to the terms on which such person or persons or joint-stock company or companies as aforesaid shall be authorized



to erect such bridge or bridges; and, further, in concert with such Government of the Orange Free State to conclude an agreement binding on this Colony and on the Orange Free State with such person or persons or joint-stock company or companies as to the terms on which such bridge or bridges shall be erected and maintained: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. <sup>(1)</sup> It shall be lawful for the Governor to enter into a convention or treaty with the Government of the Orange Free State, which shall be binding on this Colony, for the purpose hereinafter stated, that is to say:

Governor may enter into convention with Orange Free State.

1. Subject to the conditions hereinafter contained to determine with the consent and concurrence of such person or persons or company or companies as shall be willing, on

Purposes of convention.

the terms to be agreed on, to erect such bridge or bridges as aforesaid, the place or places at which such bridge or bridges shall be erected, such place or places being between this Colony on the one side, and the territory of the Orange Free State on the other side; and

To determine on site of bridge or bridges.

2. Subject to the conditions hereinafter contained, to permit and authorize such person or persons or company or companies as aforesaid, lawfully to levy tolls upon such bridge or bridges at either end thereof, or on the approaches thereto, such tolls not to exceed the rates set forth in the schedule hereto annexed, estimated in current coin of Great Britain and Ireland, and all such tolls as shall be so authorized shall become and be payable by all persons crossing such bridge or bridges, save that all persons actually travelling across such bridge or bridges on the immediate service of the Government of this Colony or of the Orange Free State, and all vehicles actually the property of Her Majesty, or of either of such Governments, and employed on the service thereof, and all mails passing across such bridge or bridges to or from or in route to any place beyond this Colony or the Orange Free State forwarded by either of the said Governments, and the vehicles carrying the same, and the drivers or carriers respectively thereof shall, when carrying such mails or driving such vehicles as aforesaid be toll free, as well as the beasts drawing or carrying the same respectively.

To authorize levy of tolls.

3. To determine in what manner and at what rates the currency of the Orange Free State shall be received in payment of such tolls as aforesaid from time to time from persons travelling from the Orange Free State towards this Colony.

To determine as to rates of currency in payment of tolls.

<sup>1</sup> See Act 26 of 1874, § 2, *infra*.

No. 15—1871.

To determine by what courts disputes shall be settled.

To authorize levy of tolls within five miles of bridge or bridges.

To prevent boat or pontoon plying for hire within five miles of bridge or bridges.

Power to contract for erection of bridge or bridges.

4. To determine by what Courts disputes between travellers passing over the said bridge or bridges or over or across the said river as hereinafter mentioned, of the one part, and such person or persons or company or companies, and his or their servants, of the other part, shall be determined, and in what Courts and in what manner the payment of the tolls to be levied shall be enforced, and also by what Courts questions between such person or persons or company or companies as aforesaid, and other persons, shall be litigated where needful, and by what Courts sequestration, or receipt of the tolls aforesaid or possession of the bridge or bridges may be decreed in case of lawful necessity; and any jurisdiction which shall by such treaty or convention be conferred on any Court, or Judge, or Magistrate in this Colony shall be deemed the lawful jurisdiction of such Court or Judge, or Magistrate, respectively.
5. Subject to the conditions herein contained, to permit and authorize such person or persons or company or companies as aforesaid, from and after the opening of such bridge or bridges for public traffic, lawfully to levy upon persons, beasts, and vehicles crossing or going through the said Orange River, at any place within five miles on either side of the said bridge or bridges, the like tolls as would be leviable upon the same persons, beasts, and vehicles crossing the said bridge or bridges, saving the like exemptions as are in the second section hereof provided, and all tolls which shall be so authorized shall be payable in like manner as the tolls authorized under the said second section hereof.
6. To provide that from and after the opening of such bridge or bridges for public traffic no boat or pontoon shall ply for hire or reward of any kind across such river within a distance of five miles on either side of such bridge or bridges, under a penalty that every such boat or pontoon may be seized and sold by such person or persons or company as aforesaid, or his or their or its servants, for his or their or its behoof respectively, and on such provision being made the same shall when notified in the *Government Gazette* become law.
2. It shall be lawful for the Governor, in concert with the Government of the Orange Free State, to contract with any person or persons or joint-stock company or companies who shall be willing to erect such bridge or bridges as aforesaid, in manner to be approved by the said Governor and the Government of the Orange Free State, that such person or persons or company or companies shall be at liberty so to do, and to have the privileges so to be provided by such convention as aforesaid and hereinbefore

mentioned, upon erecting the said bridge or bridges in a workmanlike and substantial manner, to the satisfaction of an inspector to be appointed by the Governor of this Colony, also of an inspector to be appointed by the Government of the Orange Free State, unless they shall appoint one and the same person as inspector on behalf of both, considering the nature of the traffic; and, further, upon giving proper security to maintain such bridge or bridges in a good and substantial state of repair, and subject to such penalties as may be agreed on, and to be enforced as may be agreed on in case the same be not kept in a good and substantial state of repair; any question of good and substantial repair of the said bridge or bridges shall be determined by the judgment of two inspectors, one to be appointed by the Governor and the other by the President for the time being of the Orange Free State.

3. The Governor and the Government of the Orange Free State respectively, may agree that such lands, the property of the Crown and of the said Government of the Orange Free State respectively, as may be reasonably required by such person or persons or company or companies as aforesaid, for the necessary building and maintenance of the said bridge or bridges, and of the toll-houses and other buildings, if any required, may be occupied and enjoyed by such person or persons, or company or his or their or its servants and agents, free of any charge to be made by either the Government of this Colony or of the said Orange Free State: Provided, nevertheless, that in case any property not that of the Crown nor that of the Orange Free State, respectively, shall be required for the aforesaid purposes, the person or persons or company or companies aforesaid shall be entitled to purchase, and the owner of the said land shall be bound to sell the same; and in case of any difference of opinion between the said parties as to the value of the land so required, such value shall be determined by the arbitration of three persons one to be appointed by the person or persons or company or companies aforesaid, another by the owner of the land aforesaid, and the third to be chosen by the persons so appointed before proceeding in the reference; and the award of such arbitrators, or any two of them, shall be binding upon all parties concerned.

4. It shall be lawful for the Governor of the Colony to agree with the Government of the Orange Free State, that, either alone or in concert with the Government for the time being of the Orange Free State, he shall be entitled to buy the entire property in the said bridge or bridges, and the tolls and rights thereon of the person or persons or company or companies who may for the time being be entitled to the property therein respectively, at any time after the period of twenty-one years shall have expired, from the day on which the said bridge or bridges shall have been first opened for traffic, upon a notice being published in the *Government Gazette* not less than six months before the time to be fixed

Free occupation of public lands may be granted.

Where required land is private property, sale compulsory.

Disputes as to value, how to be settled.

Right of purchase of property in bridge or bridges reserved.

bbbb

No. 15—1871.

for such purchase, notifying the intention of the Governor to purchase the same for any sum not exceeding the capital sum which at the rate of five pounds per centum would produce a yearly income equal to the average of the net receipts arising from the tolls of the said bridge or bridges, after deducting therefrom the costs of repairs and maintenance of the said bridge or bridges, its approaches, toll-houses, and bars, and of the collection of the said tolls and all other necessary expenses incidental to the earning of such receipts calculated for the three years next before the day of the publication of the notice to purchase aforesaid, and that upon the payment of the purchase money, to be agreed on between the Governor and the person or persons or company or companies aforesaid, or, in default of such agreement on the payment of such sum as hereinbefore fixed, as the maximum price to the directors of the said company or companies, if any, or to the person or persons entitled to such property, if no company or companies be entitled thereto, or of the shares of them as are *sui juris* to them respectively, and of the shares of such of them as shall not be *sui juris*, to the Guardian's Fund, on behalf of such persons respectively, the said bridge or bridges and the tolls and rights belonging thereto by virtue of this Act, and any undertaking or agreement to be made thereunder, theretofore the property of such company or companies, person or persons, shall vest in the Governor of this Colony, to be held by him either altogether for the benefit of Her Majesty in her Colonial Government, or in such shares for the benefit of her said Majesty as aforesaid and for the benefit of the Orange Free State as may be fixed by convention between her said Majesty on the one hand and the Government for the time being of the said Orange Free State on the other hand.

Act when to take effect.

5. This Act shall not take effect unless and until it shall be notified to the Governor by the Government of the Orange Free State that an Act or Ordinance to the same effect has passed the Legislature of the Orange Free State, and become law in that State, giving the like powers to the President, or some officer of the Government of the said State, to conclude such convention as is hereinbefore mentioned, and proclamation shall have been made in the *Government Gazette*, that such Act or Ordinance has been so passed and become law as aforesaid.

#### SCHEDULE.

*Toll Rates payable at any Bridge over the Orange River, constructed under the regulations of this Act.*

	£	s.	d.
Upon each loaded buck-wagon drawn by any sort of animals, not exceeding sixteen in number .. .. .	0	17	6
Upon each buck-wagon carrying not more than 500lb. drawn as above .. .. .	0	7	6

	£	s.	d.	No. 12 1872.
And upon each animal, over and above sixteen, drawing such vehicle .. .. .	0	1	0	
Upon each loaded tent or other wagon, not being a buck-wagon, drawn by any sort of animals, not exceeding twelve in number .. . . .	0	12	6	
Upon each wagon carrying not more than 500lb. not being a buck-wagon, drawn as above .. . . .	0	5	0	
And upon each animal, over and above twelve, drawing such wagon .. . . .	0	1	0	
Upon each travelling cart, spider, wagon, or other conveyance, drawn by not more than two animals .. . . .	0	5	0	
And upon each animal over and above two, drawing such vehicle .. . . .	0	1	0	
Upon each saddle-horse .. . . .	0	1	6	
Upon each loose or led horse, mule or ass, and upon each head of cattle .. . . .	0	0	6	
Upon sheep or goats, or other animals, for every head up to 250, one half-penny, and one farthing per head on excess.				
Upon each person of 12 years of age and upwards on foot, not engaged in driving or leading any wagon or animals upon which tolls are payable .. . . .	0	0	3	

No. 12—1872.]

[July 31, 1872.

## ACT

## To Further Promote the Construction of a Bridge or Bridges over the Orange River.

WHEREAS difficulties have arisen with respect to entering into a treaty or convention with the Government of the Orange Free State, as provided by the Act No. 15 of 1871, intituled "Act to promote the Construction of a Bridge or Bridges over the Orange River;" but the said Government is willing on its part to grant to any person or company erecting such bridge or bridges certain rights and privileges; and it is expedient that any person or persons, company or companies, willing to erect such bridge or bridges, shall, as far as possible, be enabled so to do upon the same terms and conditions, and with the same rights and privileges as in the said Act mentioned, without the necessity of any such treaty or convention as aforesaid, and without any agreement between the Government of the Orange Free State and the Government of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, acting with the advice of the Executive Council, and without any treaty or convention or agreement with the Government of the Orange Free State, to enter

Power of Governor to enter into agreement for erection of bridge without treaty

bbb 2

No. 11—1881.  
or convention with  
Orange Free State.

into an agreement or agreements with any person or persons, or company or companies, who shall be willing to erect a bridge or bridges over the Orange River, authorizing the erection of such bridge or bridges upon the like terms and conditions, and giving the same rights and privileges as in and by the said Act are authorized to be made or given by him, either by virtue or in pursuance of a treaty or convention with the Government of the Orange Free State, or in conjunction with the said Government, or otherwise so far as it is competent for the Governor by law so to do without such treaty, convention, or agreement.

But power of enter-  
ing into such treaty  
or convention not  
affected.

2. Nothing herein contained shall prevent any treaty or convention from being entered into as provided by the said Act, but so much of the said Act as is repugnant to or inconsistent with this Act is hereby repealed.

No. 26—1874.]

[July 31, 1874.

ACT

To Provide for the Construction of certain Bridges over the Orange River.—[Printed under “Loans.”]

No. 11—1881.]

[June 25, 1881.

ACT

To Provide for the Construction and Maintenance of a Bridge across the Vaal River in this Colony at or near the Township of Barkly, Griqualand West.

Preamble.

WHEREAS it is expedient that a bridge should be erected across the Vaal River within this Colony, at or near the township of Barkly, Griqualand West: and whereas one Moritz Unger, of Kimberley, is prepared to construct such bridge, upon condition that he the said Moritz Unger, his heirs or assigns, shall be entitled to demand and receive reasonable tolls to be levied at such bridge for a term of twenty-one years: and whereas it is expedient and desirable for the public interest to authorize and empower the said Moritz Unger to construct the said bridge upon the terms and conditions hereinafter set forth: Be it enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to Moritz  
Unger to construct a  
bridge over the Vaal  
River.

1. Subject to the conditions hereinafter contained, it shall be lawful for the said Moritz Unger to construct a bridge across the Vaal River, within the Colony of the Cape of Good Hope, at a point near where the main road from Kimberley to Barkly crosses the said river, the said bridge to rest on the south side upon a

portion of the farm Pniel, belonging to the Berlin Missionary Society, and on the north side upon a portion of the commonage of the township of Barkly aforesaid.

No. 11—1851.

2. It shall be lawful for the said Moritz Unger, his heirs, or assigns, and he and they are hereby permitted and authorized, to levy tolls upon such bridge at either end thereof, or on the approaches thereto, such tolls not to exceed the rates set forth in the schedule hereto annexed, estimated in current coin of Great Britain and Ireland, and all such tolls as shall be so authorized shall become and be payable by all persons crossing such bridge, save that all persons actually travelling across the said bridge on the immediate service of the Government of this Colony, and all vehicles actually the property of Her Majesty or of such Government, and employed on the service thereof, and all mails passing across such bridge, to or from, or in route to any place within or beyond this Colony, forwarded by the said Government, and the vehicles carrying the same, and the drivers or carriers respectively thereof shall, when carrying such mails or driving such vehicles as aforesaid, be toll-free, as well as the beasts drawing or carrying the same respectively.

Authority to levy tolls.

Exemptions from liability to toll.

3. It shall be lawful for the said Moritz Unger, his heirs or assigns, and he or they are hereby permitted and authorized, from and after the opening of such bridge for public traffic, to levy upon persons, beasts, and vehicles crossing or going through the said Vaal River at any place within a radius of twelve miles from the said bridge, the like tolls as would be leviable upon the same persons, beasts, and vehicles crossing the said bridge, saving the like exemptions as are in the second section hereof provided, and all tolls which shall be so authorized shall be payable in like manner as the tolls authorized under the said second section hereof: Provided, however, that the provisions of this section shall not be held to apply to any persons residing upon any farm or commonage which in the original extent thereof is immediately abutting upon the said Vaal River, within the said radius of twelve miles from the said bridge nor at any railway bridge constructed by the Colonial Government or company authorized on their behalf.

Tolls may be levied on persons crossing the Vaal within twelve miles of bridge.

4. From and after the opening of the said bridge for public traffic no boat or pontoon shall ply for hire or reward of any kind across the said Vaal River, within a radius of twelve miles from the said bridge, and it shall not be lawful for the Governor of the Colony of the Cape of Good Hope or for any Divisional Council to enter into any contract with any private person or persons, joint-stock company, or other co-partnership, under and by virtue of the provisions of the Act No. 25 of 1864, for the construction of any bridge or bridges across the said Vaal River within the said radius of twelve miles from the site of the bridge authorized to be constructed under this Act, during the said twenty-one years, except as in the last preceding section provided.

No boat or pontoon to ply for hire within twelve miles of bridge.

No. 11—1881.

Powers and privileges given to Moritz Unger.

5. The powers and privileges hereinbefore granted unto the said Moritz Unger, his heirs or assigns, shall be subject to the terms and conditions following :

1. That the said Moritz Unger, his heirs or assigns, shall commence the construction of the said bridge within a period of twelve months after the promulgation of this Act, and shall complete and open the same for public traffic within a further period of three years after the expiration of the said twelve months; and shall construct the same in a workmanlike and substantial manner, to the satisfaction of an inspector, to be appointed by the Governor of the Colony of the Cape of Good Hope, and all working drawings and specifications necessary for the erection of the said bridge shall be submitted to and approved of by the Chief Inspector of Public Works in this Colony or by a consulting engineer in England to be named by the Crown Agents before the construction of such bridge be commenced.
2. That the said Moritz Unger, his heirs, or assigns, shall give proper security to the satisfaction of the Governor of the said Colony, to maintain the said bridge in a good and substantial state of repair, and subject to such penalties as may be required by the said Governor; and any question of good and substantial repairs of the said bridge shall be determined by the judgment of two inspectors, one to be appointed by the Governor of the said Colony and the other by the said Moritz Unger, his heirs or assigns, and they shall have the power of nominating an umpire in case of disagreement between them, whose judgment shall be final.
3. That the said Moritz Unger shall within three months after the taking effect of this Act deposit with the Colonial Government a sum of two thousand pounds sterling (£2,000), or provide approved security for the payment of the said sum, and that if the said bridge be not begun before twelve months from the taking effect of this Act, the said security shall be forfeited and remain the property of the Colonial Government and this Act shall thenceforth be void and of no effect.

Conditions under which he may take lands public or private.

6. In case any land belonging to the Crown or any private person or persons, company, or society, shall be required for the necessary building and maintenance of the said bridge, and of the toll-houses and other buildings (if any), or for the construction of roads or approaches from the said main road to the said bridge, the said Moritz Unger, his heirs or assigns, shall be entitled to purchase, and the owner or owners of the said land shall be bound to sell the same; and in case of any difference of opinion between the said parties as to the value of the



land so required, such value shall be determined by the arbitration of three persons, one to be appointed by the said Moritz Unger, his heirs or assigns, another by the owner of the land aforesaid; and the third to be chosen by the persons so appointed before proceeding in the reference; and if the two first mentioned arbitrators shall not agree to the selection of such third arbitrator within thirty days after their being nominated as aforesaid, then it shall be competent for the Supreme Court or the High Court of Griqualand West, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators, or any two of them, shall be binding upon all parties concerned.

7. The said bridge shall as regards its protection against injuries, whether malicious or through carelessness, be deemed to be in law a main road or part or portion thereof: and the tariff of tolls authorized by this Act to be taken at the said bridge, as contained in the schedule hereto annexed, is hereby declared to be legal and valid; and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9 of 1858, shall extend and apply to the toll-bar and tolls at or connected with the said bridge.

Bridge to have some protection against injury as a public road.

Tariff of tolls authorized.

8. It shall be lawful for the Governor of the Colony of the Cape of Good Hope, and he shall be entitled to buy the entire property in the said bridge, and the tolls and rights therein of the said Moritz Unger, his heirs or assigns, at any time after the period of twenty-one years shall have expired, from the day on which the said bridge shall have been first opened for public traffic, upon a notice being published in the *Government Gazette* not less than six months before the time to be fixed for such purchase, notifying the intention of the Governor to purchase the same for any sum not exceeding the capital sum, which at the rate of five pounds per centum would produce a yearly income equal to the average for the three years next before the day of publication of this notice to purchase aforesaid, of the net receipts arising from the tolls of the said bridge, after deducting therefrom the costs of repairs and maintenance of the said bridge, its approaches, toll-houses and bars, and of the collection of the said tolls, and all other necessary expenses incidental to the earning of such receipts; and upon the payment of the purchase money to be agreed upon between the Governor and the said Moritz Unger, his heirs or assigns, or, in default of such agreement, on payment of such sum as hereinbefore fixed as the maximum price, to the said Moritz Unger, his heirs or assigns, the said bridge and the tolls and rights belonging thereto by virtue of this Act, and any undertaking or agreement to be made thereunder, theretofore the property of the said Moritz Unger, his heirs or assigns, shall vest in the Governor of the said Colony, to be held by him for the benefit of Her Majesty in her Colonial Government: Provided, however, that if at the expiration

Power of Governor to purchase bridge at the expiration of 21 years.

No. 11—1881.

of such twenty-one years no such purchase shall be made by the Governor it shall not be lawful for the said Moritz Unger, his heirs or assigns, to levy or charge any higher toll-rates at the said bridge than are by this Act authorized to be levied or charged.

Short title.

9. This Act may be cited for all purposes as "The Vaal River Bridge (Barkly) Act, 1881."

---

SCHEDULE.

*Toll Rates payable at the Bridge over the Vaal River, constructed under the Regulations of this Act.*

	£	s.	d.
Upon each loaded buck-wagon drawn by any sort of animals, not exceeding sixteen in number .. .. .	0	17	6
Upon each buck-wagon carrying not more than 500lb., drawn as above .. .. .	0	7	6
And upon each animal, over and above sixteen, drawing such vehicle .. .. .	0	1	0
Upon each loaded tent or other wagon, not being a buck-wagon, drawn by any sort of animals, not exceeding twelve in number .. .. .	0	12	6
Upon each wagon, carrying not more than 500lb., not being a buck-wagon, drawn as above .. .. .	0	5	0
And upon each animal, over and above twelve, drawing such wagon .. .. .	0	1	0
Upon each travelling cart, spider, wagon, or other conveyance, drawn by not more than two animals .. .. .	0	5	0
And upon each animal, over and above two, drawing such vehicle .. .. .	0	1	0
Upon each saddle-horse .. .. .	0	1	0
Upon each loose or led horse, mule or ass, and upon each head of cattle .. .. .	0	0	6
Upon sheep or goats or other animals, for every head up to 250, one half-penny, and one farthing per head on excess .. .. .			
Upon each person of twelve years of age and upward, on foot, not engaged in driving or leading any wagon or animals upon which tolls are payable .. .. .	0	0	3

---

No. 12—1884.]

[July 25, 1884.]

## ACT

To Authorize the Establishment of a Toll on the Bridge crossing the Orange River at Hope Town.

WHEREAS under and by virtue of a certain Government notice number 245 of 1882, tolls have been levied on persons, vehicles and animals passing over the bridge over the Orange River at Hope Town; and it is doubtful whether such notice could be lawfully issued without the sanction and authority of the Legislature of this Colony: And whereas it is desirable to remove such doubt and to authorize the collection of tolls at the said bridge: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. Anything in Act No. 10 of 1864 and in any other Act or Ordinance inconsistent with or repugnant to the provisions of this Act is hereby repealed, so far as inconsistency or repugnancy exists, but not further or otherwise.

Repeal of repugnant portions of Act 10 of 1864 and other Acts.

2. It shall be lawful for the Governor by proclamation in the *Government Gazette* to establish a toll at the bridge crossing the Orange River at Hope Town, and to fix the rates which shall be payable on or in respect of all persons, animals or vehicles passing over the said bridge, excepting such persons, animals or vehicles as are by law exempt from the payment of tolls.

Governor by Proclamation has power to establish toll and fix rates.

3. Until such rates shall be fixed or altered by such proclamation as in the last preceding section mentioned, the rates in the tariff to the said Government notice No. 245 of 1882 shall be the rates to be levied at the said bridge.

Until rates fixed, what rates shall be charged.

4. The rates which have hitherto been levied under the said Government notice shall be deemed and taken to have been lawfully taken and levied as if the same had been taken and levied under the authority of this Act.

Legalizing rates hitherto levied.

5. This Act may be cited as the "Hope Town Bridge Toll Act, 1883."

Short title.

No. 2—1870.]

[May 5, 1870.]

## ACT

To Amend the Law relating to the Protection of Seamen's Clothing and Property.

WHEREAS the clothing and property of soldiers are protected by the restraint of the sale thereof, and it is expedient to make the like provisions with respect to seamen's clothing and property: Be

Preamble.

- No. 2--1870. it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—
- Short title. 1. This Act may be cited as “The Seamen’s Clothing Act, 1870.”
- Places to which Act shall apply. 2. The places to which this Act extends are the places specified in the schedule to this Act, and for the purposes of this Act the limits of those places shall be the limits specified in the second column of the said schedule.
- Interpretation of terms. 3. In this Act the term “the Admiralty” means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral. The term “seaman” means every person not being a commissioned, warrant, or subordinate officer who is in or belongs to Her Majesty’s Navy, and is borne on the books of any one of Her Majesty’s ships in commission, and every person, not being an officer as aforesaid, who, being borne on the books of any hired vessels in Her Majesty’s service in time of war, is by virtue of any Act for the time being in force for the discipline of the Navy, subject to the provisions of such Act. The term “seaman’s property” means any clothes, slops, medals, and necessaries, or articles usually deemed to be necessaries for sailors on board ship which belong to any seaman.
- Person knowingly detaining, buying, &c., seamen’s property liable to penalty. 4. If any person in any place to which this Act extends detains, buys, exchanges, takes on pawn, or receives from any seaman, or any person acting for a seaman, any seaman’s property, or solicits or entices any seaman, or is employed by any seaman, to sell, exchange, or pawn, any seaman’s property, he shall, unless he proves that he acted in ignorance of the same being seaman’s property, or of the person with whom he dealt being or acting for a seaman, or that the same was sold by order of the senior naval officer on the Cape of Good Hope station, be liable, on conviction before the Resident Magistrate of the district in which such place shall be situate, to a penalty not exceeding twenty pounds sterling, and if convicted of a second offence, to a similar penalty, or, in the discretion of the Court, to be imprisoned for a term not exceeding six months, with or without hard labour, subject always to the provisions of the eighth section of this Act.
- Person found in possession of seamen’s property, and not giving satisfactory account, liable to penalty. 5. If in any place to which this Act extends any seaman’s property is found in the possession or keeping of any person, and he is taken or summoned before the Resident Magistrate of the district (which taking and summoning are hereby authorized), and such Magistrate sees reasonable grounds for believing the property so found to have been stolen, or to have been detained, bought, exchanged, pawned, or otherwise received contrary to the provisions of this Act, then if such person does not satisfy the Magistrate that he came by the seaman’s property so found lawfully and without any contravention of this Act, he shall be liable, on conviction before such Magistrate, to a penalty not exceeding five pounds sterling; and for the purposes of this section seaman’s

property shall be deemed to be in the possession or keeping of any person if he knowingly has any such property in the actual possession or keeping of any other person, or in any house, building, lodging apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit, or for the use or benefit of another.

6. Every person who shall be convicted as an accessory in any offence under or in contravention of this Act, shall be liable to be punished in like manner as if he were a principal offender, and on every second or subsequent conviction shall be liable to be punished in like manner as if on a second or subsequent conviction for the principal offence; and every conviction of the principal offence, after the conviction of the same offender as an accessory shall be deemed a second or subsequent conviction for the principal offence, and every conviction as an accessory of any person who shall have been convicted of the principal offence shall be deemed a second or subsequent conviction.

Accessory liable to same punishment as principal offender.

7. Seaman's property detained, bought, exchanged, pawned, or received, in contravention of this Act, shall, for the purposes of search warrant, be stolen property, within the provisions of section forty-two of Ordinance No. 40, and reasonable suspicion that any such property is concealed in any place shall, under the restrictions in such last mentioned section contained, justify the issue of a search warrant as in such section is provided.

Search warrant may be issued.

8. In default of the payment of any fine imposed on any offender under this Act such offender may be sentenced to imprisonment with or without hard labour, or with or without spare diet, subject to the Governor's regulations in respect thereof, for any period not exceeding three months.

In default of payment of fine, offender may be sentenced to imprisonment, &c.

9. Nothing in this Act shall prevent any person from being indicted, or being liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act; provided, however, that no person be punished twice for the same offence.

Proceedings under other Acts not barred

SCHEDULE.

Names of Places.	Limits of Places.
Cape Town . .	The limits of the municipality of Cape Town, together with the municipality of Green Point and the district of the Resident Magistrate of Wynberg.
Simon's Town	The limits of the district of the Resident Magistrate of Simon's Town.

No. 37.—Sd. Richard Bourke.] [January 5, 1828.

Ordinance for declaring and regulating the duty of the Sheriff of this Colony. <sup>(1)</sup>

Preamble.

WHEREAS by His Majesty's Royal Charter, or Letters Patent, for the more effectual Administration of Justice in this Colony and in the several Territories and Settlements dependent thereon, bearing date at Westminster, the 24th day of August, 1827, it is, amongst other things, ordained and declared that the Governor or Lieutenant-Governor, for the time being, of the said Colony, shall, by warrant under his hand and seal, nominate and appoint some fit and proper person, to act as and to be the Sheriff of the said Colony and its dependencies for the year ensuing; which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute the duties thereof, and the oath of allegiance, before the said Governor, who is by the said charter authorized to administer the same: And whereas it is by the said charter ordered, directed and appointed that the said Sheriff shall, by himself or his sufficient deputies to be by him appointed, and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the Supreme Court, or of the Circuit Courts, of the said Colony, as therein is mentioned, and shall make a return of the same, together with the manner of the execution thereof, to the Supreme Court of the Cape of Good Hope, or to the said Circuit Courts, as the case may be; and shall receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the said Supreme Court and Circuit Courts, or by the Chief Justice, or any other Judge of the said Courts: And whereas it is further granted, ordained, directed, and appointed, by the said charter or letters patent, that it shall and may be lawful for the said Supreme Court, by any rules or orders of Court, to be by them from time to time, and for that purpose, made and published, to frame, constitute, and establish such rules, orders, and regulations as to them shall seem meet, touching and concerning (amongst other things) the proceedings of the Sheriff and other ministerial officers of the said Court, the process of the said Courts, and the mode of executing the same; provided (amongst other things therein provided) that the same shall be promulgated in the most public and authentic manner in the said Colony, for three months at least before the same shall operate and take effect: And whereas it is necessary and expedient, in the meantime, and until

<sup>1</sup>See also Alphabetical Index for various other duties imposed on the Sheriff by particular Statutes.

the said Supreme Court shall further or otherwise order, to make provisions for the performance of the duties of the said Sheriff in certain cases: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that the said Sheriff shall, immediately after his appointment, and after having taken the oaths aforesaid, appoint and depute sufficient persons and deputies, to act for him in the execution of the duties of his said office, and shall, immediately after such appointment, cause to be enrolled in the office of the Registrar of the Supreme Court the names and places of abode of such his lawful deputies, and which enrolment shall specify the district within which they are respectively to act for the said Sheriff; and also shall, immediately after any removal of any such deputy, cause such removal to be notified to the Registrar, and shall cause the name of the person succeeding him in the execution of his duty, to be in like manner enrolled in the said office, and shall cause the like notification to be published in the next ensuing *Government Gazette* of the said Colony. <sup>(1)</sup>

Ord. 37—1828.

Sheriff to appoint deputies,

whose names, places of abode, and districts are to be enrolled with the registrar of the supreme court.

2. And be it further enacted that a convenient office in Cape Town shall be appointed for the said Sheriff, wherein shall be placed, in some conspicuous part thereof, the names and places of abode of such his deputies, and the districts in which they are appointed respectively to act; and also this Ordinance and all such general rules and orders as shall at any time be made by the Supreme Court, for regulating the duty of the said Sheriff and his deputies, and a table of all the fees and charges which may, by law, be taken by him or them respectively.

Names, places of abode, and districts of deputies to be placed conspicuously in the sheriff's office with this ordinance, and rules of court relating to sheriff, and table of fees.

3. And be it further enacted that the said Sheriff, or his deputy, shall give his personal attendance in the Supreme Court daily, during term time, or any sitting or session of the said Court, or of any Circuit Court; and the said Sheriff shall, by himself or his deputy, immediately, and without delay, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court or Circuit Courts respectively, to him directed, where no time is specified therein for the execution thereof, or otherwise, according to the exigency of the same; and shall make a return thereof, together with the manner of the execution thereof, to the office of the Registrar of the said Supreme Court, or Registrar of the Circuit Courts respectively, as the case may be; and the said Sheriff shall receive and detain in custody all persons arrested upon any sentence, decree, judgment, writ, summons, rule, order, warrant, command, or process of the said Supreme Court or Circuit Courts respectively, and shall receive and detain in prison all such persons as shall be committed to his custody by the said Supreme Court or Circuit Courts, or by the Chief Justice or any of the Judges of the Supreme Court.

Sheriff and deputies to be personally present in court.

Sentences, processes, &amp;c., to be executed without delay.

Returns thereof to be made to the registrar.

Sheriff to detain in custody all persons arrested by order of supreme or circuit court, or committed by supreme or circuit court, or by a judge.

<sup>1</sup> See § 27, Charter of Justice.

Ord. 37 -1828.

Sheriff not responsible for rescue or escape, without his default.

In case of rescue or escape, he may use all lawful means of apprehension without further warrant.

Mode of service of summons in civil actions.

Service on defendant personally or on member of his household.

Service by leaving writ at the dwelling house.

Service of writ of arrest.

Security to appear and abide the judgment.

Payment of amount claimed in the writ.

4. Provided always, and be it further enacted, that the said Sheriff shall not be answerable or responsible for the rescue or escape of any such person out of the custody of the said Sheriff, or his deputy, on his way to any public gaol or prison in this Colony; or after being lodged therein, where such rescue or escape shall happen without the default or connivance of the said Sheriff or his deputy: Provided, however, that in case of any such rescue or escape, the said Sheriff, or his deputy, shall use all lawful means for the pursuit, apprehension, and security of any such person, without any further warrant or authority whatever.

5. And be it further enacted that where any summons or other process of the Supreme Court shall be issued to compel the appearance in the said Court, or in any Circuit Court of this Colony, of any person to answer any claim or demand, in any case where by law the said person may not be arrested or holden to bail, and the said original summons, or other process, shall be delivered to the Sheriff at his said office, the said Sheriff, or his deputy, shall execute the same according to the exigency thereof; and at the time of summoning any person in pursuance of such summons or process, he shall deliver to him personally, or leave with some one of his household for him at his dwelling-house, when the said defendant cannot be found, a copy of the said summons or process; at the same time informing the said defendant, or other person, of the nature and exigency thereof.

6. Provided always, and be it further enacted, that where neither the said defendant nor any one of his household, after diligent search, can be found at his usual place of abode, a copy of the said summons or process may in all cases be left at the dwelling-house of the said defendant.

7. And be it further enacted that, in all cases where any process of the said Supreme Court shall be delivered to the said Sheriff at his said office, for the arrest or attachment of any defendant, in order to compel his appearance in the said Court, or in any Circuit Court, to answer any complaint or demand, at any day therein specified, then the said Sheriff shall, by himself or his deputy, immediately and without delay, execute the said process, and shall give to the defendant, at his request and at his charge, a true copy of the said process; and if, upon any such arrest, the said defendant, or any one on his behalf, shall give to the said Sheriff reasonable security, by bond or obligation of the said defendant and another person, having sufficient property within the said Colony, that the said defendant shall appear according to the exigency of the said process, and also shall stand to, abide, and perform the judgment of the Court thereon, or render himself to the prison of the Supreme Court of our Sovereign Lord the King, in execution thereof; or if the said defendant shall pay or deliver to the Sheriff, or his deputy, the sum of money or other thing mentioned in the said process, together with the costs and charges



indorsed thereon, and his legal fee for making the said arrest; then the said Sheriff, or his deputy, shall permit the said defendant to go at large and free of the said arrest, as to the said action; and the said bond or obligation shall be as nearly as is material in the form following, that is to say:

Ord. 37—1828.

Know all men by these presents that we, A. B. and C. D., are held and firmly bound to \_\_\_\_\_, esquire, Sheriff of the Colony of the Cape of Good Hope, in the sum of £ \_\_\_\_\_ (the sum or value of the thing mentioned in the process) of lawful money of Great Britain, to be paid to the said Sheriff or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves, and each of us for himself in the whole, our, and every of our, heirs, executors, and administrators, firmly by these presents.

Form of security bond in case of arrest.

Signed with our hands, and dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_

Now, the condition of this obligation is such, that if the above bounden, A. B., do appear by his attorney before the Supreme Court of the Colony of the Cape of Good Hope on the \_\_\_\_\_ day of \_\_\_\_\_ to answer E. F. wherefore (following the statement in the process), and also shall stand to, abide, and perform the judgment of the said Court thereon, or render himself to the said Court in execution thereof; then this obligation to be void, otherwise to remain in full force.

Signed and delivered, being first \_\_\_\_\_ (L. S.)  
duly stamped in the presence of \_\_\_\_\_ (L. S.)

And if the said Sheriff shall have taken from any person arrested, any money or thing for the said plaintiff, or any bond or obligation, by virtue of any process, then the said Sheriff shall, after the expiration of four days from the day of the return thereof, and being thereunto required by the plaintiff or his attorney, deliver over to the said plaintiff or his attorney the said money or thing; or assign to the said plaintiff such bond or obligation, by an endorsement to be thereon made by the said Sheriff under his hand; which endorsement shall be as nearly as may be in the form following, that is to say:

Money or property taken for the plaintiff to be delivered over by sheriff.

I, \_\_\_\_\_ the within named Sheriff, at the request of E. F., the plaintiff within named, hereby assign to him, the said E. F., the within bail bond, and all the benefit and advantage arising therefrom.

In witness whereof I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_

Signed and delivered by the within \_\_\_\_\_ (L. S.)  
named Sheriff, in the presence of \_\_\_\_\_

Bail bound to be assigned to the plaintiff by endorsement.

8. (1) And be it further enacted that whenever, by any process of the Supreme Court, the Sheriff shall be commanded to levy and \_\_\_\_\_ Demand of movable property in satisfaction of process of supreme court in

<sup>1</sup> See Ord. 3, 1844, *infra*, as to ranking of writs.

Ord. 37—1823.

Cape Town to be made within 24 hours after delivery of writ; within 25 miles of Cape Town in 48 hours; and at greater distances in proportion.

Movables pointed out to be inventoried and taken into sheriff's custody.

Seizure of sufficient movable property, if not pointed out.

Indemnity by plaintiff whose property about to be seized is claimed by others.

Tools, implements of trade, wearing apparel, &c., not to be seized in the first instance.

Sum mentioned in process to be levied with the percentage chargeable by law and reasonable expenses.

Surplus to be paid to the defendant.

Account of charge to be delivered by the sheriff to the defendant, subject to taxation by the master of the supreme court.

raise any sum of money upon the goods and chattels of any person residing in Cape Town, or the district thereof, the said Sheriff shall, by himself or his deputy, within twenty-four hours after delivery of the same at his office; or if residing in the country, within twenty-five miles of Cape Town, then within forty-eight hours after delivery of the same; or if residing at any greater distance from Cape Town within so many days' distance, in addition to twenty-four hours, as such person resides from Cape Town,—repair to his dwelling-house, and there demand, that so much movable property may be pointed out as the said Sheriff, or his deputy, may deem sufficient to satisfy the exigency of the said process; which property shall be immediately inventoried and taken into the custody of the said Sheriff, or his deputy; and if upon the demand of the said Sheriff, or his deputy, no such property be pointed out, or such as is sufficient to satisfy the exigency of the said process, then he shall immediately seize and take into his charge so much of the movable property of the said defendant as will be sufficient to satisfy the exigency of the said process: Provided that if there shall be any claim made by any other person to any such property about to be seized by the said Sheriff, or his deputy, then, if the said plaintiff, or his attorney, will indemnify <sup>(1)</sup> the said Sheriff by an undertaking in writing, signed by the said plaintiff, to save him harmless from any loss or damage by reason of the seizure thereof, then the said Sheriff, or his deputy, shall take and seize the same, and the same shall forthwith be inventoried and taken into the custody of the said Sheriff, or his deputy.

9. Provided always, and be it further enacted, that the said Sheriff or his deputy shall not take or seize, in execution of any such process, any of the necessary tools, utensils, implements, or cattle, used in trade or husbandry, or wearing apparel, of any person; unless there shall not be sufficient other movable property of the defendant to satisfy the same.

10. [Repealed by § 7 Act 17, 1886.]

11. And be it further enacted that, together with the sum mentioned in or endorsed upon any process of the Supreme Court, the said Sheriff shall levy and raise on the goods of the said defendant, sufficient to satisfy such percentage as is or shall be by law chargeable thereon, and the reasonable expenses, costs, and charges of making the said levy and sale; and if, after satisfying the exigency of the said process, together with the said percentage, costs, and charges, there should remain any overplus, he shall pay over the same to the defendant; and the said Sheriff, or his deputy, shall make out and deliver to the said defendant an exact account, in writing, of the costs and charges of the said execution and sale; and the same shall be liable to taxation by the Master of the Supreme Court, upon application for that purpose by the said defendant; and if upon taxation, any sum shall be deducted by

<sup>1</sup> See § 6, Act 17, 1886, *infra*

the Master, as having been improperly charged, the Sheriff shall refund the same to the defendant, with such costs as the Court shall think fit.

Ord. 37--1828.

12. [Abrogated by Rules framed under authority of § 1. See Rules of Court Nos. 105 *et seq.*]

### Charter of Justice.]

\* \* \* \* \*

25. (1) And we ordain and declare, that the Governor for the time being of the said Colony of the Cape of Good Hope shall, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person, to act as and be the Sheriff for our said Colony of the Cape of Good Hope and its dependencies, for the year ensuing, which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute the duties thereof, and the oath of allegiance, before the said Governor, who is hereby authorized to administer the same.

Annual appointment of Sheriff.

26. And we do direct, that the said Sheriff shall continue in such his office during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such Sheriff shall die in, or resign, his said office, or depart from our said Colony of the Cape of Good Hope, during the period of his office, then another person shall, as soon as conveniently may be, after the death, resignation, or departure of such Sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office.

Duration of Sheriff's office.

27. And we do further order, direct, and appoint that the said Sheriff for the time being shall, by himself or his sufficient deputies, to be by him appointed and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute, and the said Sheriff, by himself and his said deputies, are hereby authorized to execute, all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of the Cape of Good Hope, or of the Circuit Courts of the said Colony hereafter mentioned, and shall make a return of the same, together with the manner of the execution thereof, to the Supreme Court of the Cape of Good Hope, or to the said Circuit Courts, as the case may be, and shall receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the Supreme Court of the Cape of Good Hope, or by the said Circuit Courts, or by the Chief Justice, or by any other Judge of the said Courts.

Execution of all sentences, decrees, orders, commands, processes, &c., of the court, by Sheriff or his deputies.

<sup>1</sup> Printed in full under "Administration of Justice."

cccc

Ord. 3—1844.  
 Authority to the  
 Governor to re-ap-  
 point the same  
 Sheriff.

28. And we do further authorize our Governor for the time being of the said Colony of the Cape of Good Hope, in each succeeding year, to reappoint the same person to fill the office of Sheriff, if it shall appear to our said Governor expedient so to do: Provided nevertheless, and we do hereby require our said Governor, in the selection of any person to fill the said office of Sheriff of the Cape of Good Hope, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs and successors, through one of our or their principal Secretaries of State.

Execution of pro-  
 cess by a person spe-  
 cially appointed,  
 when the Sheriff  
 cannot by law exe-  
 cute.

29. And we do further direct, ordain, and appoint that whenever the said Supreme Court of the Cape of Good Hope, or the Circuit Courts hereinafter mentioned, shall direct or award any process against the said Sheriff, or award any process in any cause, matter, or thing, wherein the said Sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any Sheriff in England, cannot or ought not by law to execute the same, in every such case the said Supreme Court of the Colony of the Cape of Good Hope, or the said Circuit Courts, as the case may be, shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said Courts respectively.

\* \* \* \* \*

No. 3.—Sd. George Napier.]

[January 30, 1844.

Ordinance for amending the Law relating to the Rights of  
 Execution Creditors.

WHEREAS by the law of this Colony all creditors whose writs of execution against the property of their debtor, are lodged with the Sheriff or other proper officer for executing such writs at any time before the proceeds realized in respect of the earliest or other of such writs shall have been paid over by the said Sheriff or other officer to the party or parties entitled thereto, are entitled to rank *pari passu* upon such proceeds and to claim that the same may be distributed amongst them *pro rata*, as if the same had been levied under all the said writs collectively and without any distinction. And whereas this rule of law above mentioned is productive in practice of delay and inconvenience and it is expedient to modify the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance all other laws and customs heretofore in force within

Laws repealed.

this Colony in so far as the same are repugnant to or inconsistent with the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

No. 17—1886.

2. And be it enacted that from and after the promulgation of this Ordinance no creditor lodging any writ of execution with the Sheriff or any other officer of the law proper for the execution of writs shall be entitled to share in or receive any part of the proceeds levied under any writ or writs of execution previously lodged, unless such creditor shall have lodged his said writ within ten days from the day on which was or were lodged the writ or writs under and in virtue of which the levy in the proceeds of which such creditor or creditors claim to share was made.

What creditors entitled to benefit of executions already levied.

No. 17—1886.]

[June 29, 1886.]

## ACT

To Amend the Law relating to Appeals and the Duties of the Sheriff, and to make more convenient provision regarding Legal Process in certain cases. <sup>(1)</sup>

\* \* \* \* \*

6. The Sheriff of the Colony or his deputy shall not be bound to accept the indemnity offered to him by any plaintiff under and by virtue of the last proviso of the eighth section of Ordinance No. 37 of 1828, unless he shall be reasonably satisfied as to the sufficiency of such indemnity, failing which he shall be entitled, before seizing the property in the said proviso mentioned, to require sufficient security from the plaintiff or his attorney.

What security Sheriff may demand before seizing disputed property.

7. The tenth section of Ordinance No. 37 of 1828 is hereby repealed, and in lieu thereof it is enacted that where any movable property shall be taken by the said Sheriff or his deputy, in execution of any process of the Supreme Court, Eastern Districts Court, High Court of Griqualand or any Circuit Court, such property shall be sold by public auction by or in the presence of the Sheriff or his deputy, after the advertisement thereof shall have been twice made in some local newspaper or in the *Government Gazette*, and after the expiration of fourteen days from the time of seizure thereof.

How movables seized by Sheriff are to be sold.

8. No action shall be brought against the Sheriff or any Deputy Sheriff for anything done or omitted to be done in the execution of his office unless commenced within six calendar months after the act committed or omitted to be done.

Action against Sheriff to be brought within six months.

9. The Sheriff of the Colony, the Deputy Sheriff for Albany, or the Deputy Sheriff for Kimberley, shall, forthwith, upon receiving any moneys as and for the proceeds of any immovable property

Sheriff and Deputy Sheriffs of Albany and Kimberley to lodge moneys received with Civil Commissioner.

<sup>1</sup> For full text of this Act see "Administration of Justice."

No. 17—1886.

How moneys to be distributed.

sold in execution of the judgment of any competent Court, lodge such moneys with the Civil Commissioner of the Cape, Albany, or Kimberley, as the case may be. Whenever such moneys lodged as aforesaid shall be required for distribution, the Sheriff or his deputy aforesaid shall pay the same to those entitled thereto by a written order addressed to such Civil Commissioner, requesting him to pay the sum therein mentioned to the person or persons thus entitled, or his or their order, and such Civil Commissioner shall thereupon make such payment accordingly.

\* \* \* \* \*

## STAMPS AND LICENCES.

- |   |  |
|---|--|
| 1. Act 3—1864, (Stamps and Licences).             | 7. Act 20—1884, (Stamp Duties and Fees of office).         |
| 2. „ 1—1868, (Restricting use of Postage Stamps). | 8. Ord. 10—1846, (Baking Trade).                           |
| 3. „ 13—1870, (Amending Act 3, 1864).             | 9. „ 2—1838, (Sale of Bread).                              |
| 4. „ 17—1873, (Restamping of Deeds, &c.)          | 10. „ 11—1846, (Retail Shops).                             |
| 5. „ 16—1876, (Cancellation of Adhesive Stamps).  | 11. Act 10—1869, (Hawkers).                                |
| 6. „ 15—1877, (Amending Stamp Acts).              | 12. „ 11—1871, do.   |
|   | 13. „ 16—1877, (Office Fees Collected by means of Stamps). |

No. 3—1864.]

[July 26, 1864.

## ACT

For Regulating the Duties upon Stamps and Licences.

Preamble.

WHEREAS it is necessary to raise a larger revenue from Duties upon Stamps and Licences, and from other Duties of a like nature, than has heretofore been raised therefrom: And whereas the Stamp Duties and other Duties imposed by the Proclamation of the Right Honourable Lord Charles Henry Somerset, the then Governor of this Colony, bearing date the thirtieth of April, one thousand eight hundred and twenty-four, besides being imposed in the old and now disused currency of this Colony, have become in many respects defective and unsuitable, and stand in need of revision and amendment: And whereas public convenience will be promoted by abrogating the schedule or tariff of Stamp Duties belonging to the said Proclamation and enacting others in their room and stead, and by repealing the Act No. 12 of 1863, for the purpose of incorporating its schedule, with amendments, into the schedule to this Act, so that the whole Stamp Law of the Colony shall as much as may be comprehended in one enactment: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Proclamation of 30th April, 1824, and Act No. 12 of 1863, repealed.

1. The Proclamations aforesaid and the Act aforesaid, No. 12, 1863, entitled “An Act to amend in certain respects the Law regulating Stamp Duties and Licences,” are hereby repealed, together with so much of any other law or usage heretofore in

force in this Colony as shall be repugnant to or inconsistent with any of the provisions of this Act, or shall be such as would, if in force, operate concurrently with any of the said provisions.

No. 3—1864.

2. Stamps according to and in conformity with the provisions contained in the schedule hereunto annexed shall be used and employed for and in respect of all and singular the several instruments in the said schedules mentioned and enumerated, and such stamps shall be respectively of the value or amount set down in figures in the said schedules opposite or against such instruments.

Obligation to use stamps described in annexed schedule.

3. All and singular the several explanations, conditions, directions, and provisions inserted in words in the said schedule shall be of the same force and effect as if the same had been contained in some one or more of the enacting clauses of this Act.

Schedule to be taken as part of Act.

4. It shall and may be lawful for the Governor of the Colony from time to time to nominate and appoint such person or so many persons as he shall deem necessary and shall select, to discharge, in obedience to such rules and orders as he or they may from time to time receive from the said Governor, the duty of providing proper and sufficient stamps or dies for impressing and denoting the several and respective amounts or values of the stamps by the said schedule required, and of stamping or causing to be stamped every instrument hereby required to be stamped which shall be tendered to him or them for the purpose of being so stamped, and of furnishing and supplying, or causing to be furnished and supplied, to the inhabitants of this Colony, at as many convenient places as it may from time to time be found practicable to authorize and establish throughout the Colony, such necessary stamps as shall be required and demanded, and generally to undertake and have the care and management of the proper making and distributing of stamps in and for the Colony.

Governor to appoint persons to be charged with providing dies—stamping and issue of stamps.

5. All such stamps and dies as aforesaid shall be kept in some iron safe, or other secure place, to which there shall be affixed three locks, of which no two shall be capable of being opened by the same key, and the three keys of the said three locks shall be deposited one with the Colonial Secretary, one with the Treasurer-General, and one with the Auditor-General.

Custody of stamps and dies.

6. As often as any of the said stamps or dies shall be taken out for use they shall be delivered by some one or more of the three officers aforesaid, in person, to such public officers, not less than two, as shall be appointed by the Governor to superintend the stamping of all stamps then necessary to be stamped.

Issue of stamps and dies.

7. The public officers so appointed to superintend the stamping of such stamps as aforesaid shall, in person, superintend such stamping, and shall take an accurate account of all the stamps then stamped, and shall enter in a book to be kept for the purpose the numbers and denominations, together with any other particulars which they shall think fit, of all stamps then stamped, and shall sign such entry in attestation of its correctness, and shall, in

Rules to be observed in stamping.

Stamps and dies to be returned to officers charged with their custody.

No. 3—1864.

person, re-deliver the stamps or dies to some one or more of the three officers in the fifth section of this Act mentioned, in person, who shall deposit the same in the safe or other place from which they were taken to be used; which safe or other place shall be thereupon locked with the three locks aforesaid affixed thereto, and the keys kept by the respective officers aforesaid, who shall be responsible for their safe custody.

Distributor's signature to be affixed to receipt book.

8. Every entry made in the book aforesaid shall, besides being signed by the public officers appointed to superintend the stamping, be signed also by the Distributor of Stamps or other officer appointed by the Governor to take charge of stamps, as an acknowledgment of the receipt by him of the stamps enumerated in such entry; and such book shall then be delivered to the Auditor-General, to be preserved in his office until again required.

Examination of stock of stamps in distributor's hands.

9. The Governor shall from time to time, and at uncertain times, cause the stock of stamps in the custody of the person or persons nominated and appointed by the Governor as in the fourth section mentioned, and of all other Distributors of Stamps throughout the Colony, to be examined by competent persons appointed by the said Governor for the purpose, and such persons, acting upon such instructions calculated to secure the accuracy of such examination as they may receive from the said Governor, shall examine the stamps in the hands of such distributors, and report the result of such examination to the Colonial Secretary, who shall preserve in his office all such reports.

Value of any stamp may be made up by using two or more stamps of lesser values.

10. It shall and may be lawful, when and as often as occasion shall render it necessary so to do, to use two or more stamps or dies for denoting or expressing the amount or value of any one stamp by the schedule hereunto annexed required, and all instruments stamped with any two or more such stamps or dies, which shall together denote or express an amount or value not less than the amount or value of any single stamp so required, shall be held and taken to be as good, valid, and effectual as if the said single stamp had been alone impressed.

Stamps of higher value than required may be used.

11. Every instrument which shall be stamped with a stamp or with stamps denoting or expressing a greater value or amount than that of the stamp appointed for such instrument in and by the said schedule, shall be deemed and taken to be as good, valid, and effectual as if the particular stamp so appointed had been used. <sup>(1)</sup>

Instruments requiring stamps not to be admitted in court of law without such stamps.

12. No instrument which is hereby or by the said schedule directed or required to be stamped shall (except as hereinafter excepted) be given in evidence in any of the Courts of this Colony (except in the course of any criminal proceeding touching the theft or forgery of any such instrument, <sup>(2)</sup> or any proceeding for the recovery of penalties alleged to have been incurred by reason that such instrument is unstamped), nor shall any such instrument

<sup>1</sup> Printed as amended by Act 1, 1868.

<sup>2</sup> Amended by Act 17, 1874, § 8.



be received or admitted in any such Court as useful or available in law unless the same shall be duly stamped: Provided that any such instrument not duly stamped shall be admitted and received in evidence in case the party tendering the same shall pay to such officer as the Court shall direct, for and on behalf of the public revenue, such sum as the said Court shall fix by way of penalty, not exceeding twenty pounds sterling.

No. 3—1864.  
But may be admitted on payment of penalty.

13. No person holding any office or employment under Government, whose duty it shall be, as the holder of such office or employment, to issue, or receive, or register, or authenticate, by signature or otherwise, any of the instruments in the said schedule mentioned, and thereby required to be stamped with some certain stamp, shall issue, or receive, or register, or in any way authenticate, any such instrument, unless the same shall first be duly stamped; and all persons by law required to lodge with or deliver to the Master of the Supreme Court, or any other officer, any instrument requiring a certain stamp, who shall deliver or tender the said instrument not duly stamped, shall be deemed and taken to be in the like plight and condition as if such instrument never had been delivered or tendered at all.

Government officers not to issue or authenticate any instrument requiring stamps unless duly stamped.

Tender of unstamped documents of no value.

14. In case any instrument by the said schedule required to be written upon stamped paper <sup>(1)</sup> shall be written, or engrossed, or executed upon unstamped paper, and shall be tendered at the proper office in Cape Town, or at the office of any Civil Commissioner elsewhere, within twenty-one days next after the date of its execution, with an adhesive stamp denoting the stamp duty chargeable upon such instrument affixed thereon, and in case any such instrument shall be tendered, as aforesaid, after the expiration of twenty-one days, but before the expiration of forty-two days next after the date of its execution, with an adhesive stamp denoting double the stamp duty chargeable upon such instrument affixed thereon, and in case any such instrument shall be tendered as aforesaid after the expiration of forty-two days, but before the expiration of sixty-two days next after the date of its execution, with an adhesive stamp denoting treble the stamp duty chargeable upon such instrument affixed thereon, then the Distributor of Stamps in Cape Town or the Civil Commissioner elsewhere (as the case may be) shall cancel <sup>(2)</sup> such adhesive stamp by writing his name upon or across such stamp, together with the date upon which he shall write the same, and such instrument shall from and after such cancellation of such adhesive stamp be deemed and taken to be and to have been duly stamped, and to be of the same force and effect in all respects as if it had, when originally executed, been written or engrossed upon paper duly stamped: Provided, always, that every such instrument, if only prepared for execution

Adhesive stamp of the value of the duty payable may be affixed to unstamped documents within twenty-one days after execution.

After twenty-one and within forty-two days adhesive stamp to denote double duty.

After forty-two and within sixty-two days adhesive stamp to denote treble duty.

Such adhesive stamps to be cancelled.

Before execution of instrument, ordinary rate only chargeable.

<sup>1</sup> See Act 13, 1870, Tariff 5, § 1 and 4; and Tariff 8 § 3, also Act 15, 1877, § 6.

<sup>2</sup> As to cancellation of Stamps see §§ 4 and 5 of Act 13, 1870, and Acts 20 of 1884, § 3, and Act 16, 1876.

No. 3—1864.

When instrument shall be deemed to be executed.

and not yet executed, shall, if tendered as aforesaid with an adhesive stamp denoting the ordinary or single stamp duty, be deemed to be duly stamped, and such stamp shall be cancelled as aforesaid: And provided, also, that every instrument shall be deemed and taken to be executed within the meaning of this section when it shall have received the signature of any one person, being a party proper to execute the same, although there may be other persons named as parties thereto who shall not have signed the same. <sup>(1)</sup>

Governor's sanction necessary to cancellation of adhesive stamps affixed sixty-two days after execution.

15. The officer or officers charged by the last preceding section with the duty of cancelling the adhesive stamps in the said section mentioned shall not in any case cancel any adhesive stamp upon any instrument, which instrument shall not be tendered as aforesaid within the space aforesaid of sixty-two days next after the date of its execution, without the special direction of the Governor in that behalf first had and obtained.

Penalty on unstamped documents.

16. For and in respect of every instrument requiring a stamp, prepared or attested by or executed in the presence of any notary public practising in this Colony, which shall be found at any time after the expiration of sixty-two days from the date of execution (in manner and form as such execution is in the last preceding section mentioned and described) without bearing or having the stamp by the schedule aforesaid appointed and required, the notary public preparing or attesting the execution of such instrument shall forfeit any sum not exceeding ten pounds, unless he shall prove to the satisfaction of the Court in which any such penalty shall be sought to be recovered that such instrument was really and *bonâ fide* never perfected or operative, or in any manner, as such instrument, attempted to be put to use. <sup>(1)</sup>

Proof of date of execution of instrument may be called for.

17. The officer or officers charged by the fourteenth section of this Act with the duty of cancelling adhesive stamps upon the several instruments in the said schedule mentioned shall and may require sufficient proof for the date at which any instrument which shall, after being written or engrossed and executed, be tendered in order to have such adhesive stamp cancelled was really executed, and any notary public or other person who shall knowingly insert in or affix to any such instrument a false date shall forfeit the sum of fifty pounds.

Penalty for inserting false date.

Governor may at any time authorize adhesive stamps to be affixed to unstamped instruments

18. It shall and may be lawful for the Governor aforesaid, at any time and at all times when he shall see cause so to do, to direct that any instrument which shall have been executed without being duly stamped shall be so stamped by means of adhesive stamps so cancelled as aforesaid by the Distributor of Stamps in Cape Town, or some Civil Commissioner elsewhere, of such value as the Governor shall be pleased to name, not being less than five times the value of the particular stamp originally required. <sup>(2)</sup>

<sup>1</sup> See Act 15, 1877, § 7.

<sup>2</sup> See Act 15, 1877, § 6.

19. When and as often as any stamps shall have been spoiled or rendered unserviceable for the instruments for which they were respectively designed, and shall be tendered at the proper office in Cape Town, or to any Civil Commissioner elsewhere, in exchange for other stamps, and the officer in Cape Town or the district Stamp Distributor elsewhere (the said last mentioned distributor being thereto authorized by the Civil Commissioner) shall receive such spoiled or unserviceable stamps in exchange, provided sufficient proof shall appear or be given (and, when required, by solemn declaration) that no such stamp so tendered for exchange is or has been any instrument requiring a stamp, which has at any time been put to use or attempted so to be.

No. 3—1864.  
Spoiled stamps may be exchanged.

20. From and after the first of January, so much of the Ordinance No. 51, entitled "Ordinance for removing the Restrictions upon the exercise of the trade and calling of a Butcher in this Colony, and upon the sale of Cattle in Cape Town and the district thereof, and for establishing a Cattle Market within the said Town and District," as renders it lawful to exercise the trade and calling of a butcher without any licence for that purpose, excepting such licence as is by law required for keeping a retail shop, shall be repealed; and from and after the said date no person shall exercise the said trade without having taken out a butcher's licence: Provided, also, that every person keeping a shop and exposing flesh meat for sale shall, whether he shall or shall not have himself slaughtered the same, be deemed to be a butcher for the purpose of requiring to have a butcher's licence.

Butcher's licence. Portion of Ordinance No. 51 repealed.

Butcher's trade requires a licence.

Vendor of meat to be deemed a butcher.

21. So much of the Ordinance No. 11, 1846, entitled "Ordinance for amending the Law relative to the licensing of Retail Shops," as limits to certain towns, villages, and places the necessity of taking out a licence to keep a retail shop, is hereby repealed; and all and singular the clauses and provisions of the said Ordinance not hereby repealed shall extend and apply to the entire Colony and to all persons keeping retail shops therein.

Portion of Ordinance No. 11 of 1846 repealed.

Unrepealed provisions to extend to entire Colony.

22. For the purpose of the stamp tariff contained in the schedules hereunto annexed, the term "wholesale dealer" <sup>(1)</sup> shall extend to and embrace every person who sells or exposes for sale goods, wares, merchandize in the original package as when imported or brought coastwise.

Definition of term "wholesale dealer."

23. [Repealed by Act 13, 1870, § 1 and § 6, of that Act substituted.]

24. Every bill of exchange and promissory note, whether made within this Colony or elsewhere or whether payable in this Colony or elsewhere, shall be deemed and taken to be duly stamped, not only when it shall have been written upon paper stamped with a stamp of the amount or value appointed in and by the schedule annexed to this Act for such bill or note, but also when it shall

Use of stamped paper or adhesive stamps optional in making bills of exchange or promissory notes.

<sup>1</sup> See Acts 15, 1877, § 5 and 20, 1884, Tariff 15.

No. 3—1864.

Penalty for negotiating unstamped bill of exchange or promissory note.

have affixed thereon an adhesive stamp denoting the stamp duty by the said schedule charged on such bill or note.

25. No person shall present for payment, or shall pay, or shall endorse, transfer, or in any manner negotiate within this Colony, any bill of exchange or promissory note not written upon stamped paper, or whereon there shall not be such an adhesive stamp affixed as in the last preceding section mentioned, on pain of being liable to pay the sum of twenty shillings to any person who will sue him for the same.

Adhesive stamp on bill of exchange or promissory note to be cancelled.

26. It shall be the duty of every person to whom any bill of exchange or promissory note not written upon paper duly stamped shall be endorsed, transferred, or negotiated, to see that such bill or note has affixed thereon an adhesive stamp of the proper value, cancelled or effaced in the manner hereinafter mentioned, to the end that it may not be used again for any other purpose, and in case such adhesive stamp shall not have been already so cancelled or effaced, to cancel and efface the same then and there, or at latest before again endorsing away, transferring, or negotiating such bill

Penalty for not cancelling.

Mode of cancelling.

or note, or receiving payment of the same. Any person contravening this section shall be liable to pay the sum of twenty shillings <sup>(1)</sup> to any person who will sue him for the same: Provided that every such adhesive stamp shall be cancelled by placing in figures in ink upon such stamp the amount of such bill or note, or by writing the name or the initials of the name of the person cancelling such instrument, together with the date of such cancellation.

Bills of exchange and promissory notes negotiated prior to taking effect of Act exempted.

27. Nothing in this Act contained shall be construed so as to require that any bill of exchange or promissory note which shall have been endorsed or negotiated by the payee or person in whose favour it was originally made, at any time before the taking effect of this Act, should be stamped, and every such bill or note, if then already endorsed, transferred, or negotiated, may be again endorsed, transferred, or negotiated, and may be paid by any person liable thereon without being stamped.

Decision of questions regarding the nature and validity of instruments coming under the operation of this Act.

28. If any question shall arise in this Colony regarding what instruments shall, for the purpose of this Act and of the schedule annexed thereto, be deemed to be respectively bills of exchange and promissory notes, or regarding the nature of such alterations made therein, after the same shall have been once perfected, as shall under this Act invalidate the same, or regarding what instruments shall be deemed to be policies of insurance, or regarding the alterations which may be made in any policy of insurance without requiring a new stamp, or regarding the circumstances under which any stamp shall be deemed to be a spoiled stamp, and as such proper to be exchanged, then such question shall, unless there be something in this Act repugnant thereto, be decided in like manner and by the same rules as if such question had arisen

<sup>1</sup> Amended by Act 13, 1870, Tariff 4, § 4.

in England upon or in regard to the stamp laws for the time being in force in that country.

No. 3—1864.

29. [Repealed by Act 13, 1870, § 1, and § 10 of that Act substituted.]

30. [Lapsed].

31. Every adhesive stamp which shall under or by virtue of the schedule of this Act be required, or made use of, shall be cancelled by the person who is by the said schedule directed to cancel the same, to the end that it may not be used for any other purpose, on pain, in case of failure so to do, that such person shall be liable to pay the sum of twenty shillings to any person who will sue for the same. <sup>(1)</sup>

Cancellation of adhesive stamps.

Penalty for non-cancellation.

32. If any person shall, after the taking effect of this Act, be convicted of any of the offences hereinafter in this section specified, he shall be liable to be imprisoned and kept at hard labour for any period not exceeding seven years; that is to say:

Penalties for offences under this Act.

1. If he shall, with intent to defraud the public revenue of this Colony, forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die which, in pursuance of this Act or of any other law in force for the time being, shall have been provided by the person or persons charged by the Governor with the duty of providing stamps or dies for impressing and denoting any stamp duty imposed or required by this Act or by any other law in force for the time being.
2. If he shall, with such intent as aforesaid, forge or counterfeit, or cause or procure to be forged or counterfeited upon paper, the impression, or any resemblance of the impression, or of any part of the impression, of any such stamp or die as aforesaid.
3. If he shall with such intent as aforesaid, utter, or sell, or offer for sale, any paper having thereon the impression of any such forged or counterfeited stamp or die, or part of any stamp or die, knowing the same to be forged or counterfeited.
4. If he shall, with such intent as aforesaid privately or secretly, and for his own gain or purposes, make use of any such stamp or die as aforesaid, provided as aforesaid by the person or persons charged as aforesaid by the Governor with the duty of providing stamps or dies for impressing and denoting any stamp duty imposed or required by this Act or by any other law in force for the time being.

33. If any person shall, with intent to defraud the public revenue of this Colony, put to use or attempt to put to use, as a stamp, or shall sell or offer for sale, or otherwise utter or attempt to utter as a stamp, any stamp, whether an adhesive stamp or not, and

Persons making fraudulent use of stamp previously used liable to penalty.

<sup>1</sup> See Act 20, 1884, § 3.

No 3—1864.	whether a postage stamp, of a stamp imposed or required by this Act, or any other law in force for the time being, which stamp he shall know to have been already used as a stamp, he shall, for every such offence, be liable upon conviction, to a fine not exceeding ten pounds, or to imprisonment, with or without hard labour, for any period not exceeding three months, or to both such fine and such imprisonment: Provided that nothing in this section contained
Or to prosecution for falsity.	shall be construed so as to prevent such person from being prosecuted for the crime of falsity, or any other crime of the like nature, instead of being prosecuted for the offence mentioned in this section of this Act: Provided also, that no person prosecuted for the offence mentioned in this section shall be again prosecuted for or in respect of the same act, for any other crime as aforesaid, and that no person prosecuted for any other crime as aforesaid shall be again prosecuted for or in respect of the same act, for the offence mentioned in this section.
But not to both.	
Definition of term "paper."	34. In the interpretation of this Act the term "paper" shall be taken to comprehend parchment and vellum as well as paper.
Commencement of Act.	35. This Act shall commence and take effect from and after such date, not earlier than the fifteenth day of October, 1864, as the Governor shall by proclamation fix or determine.
Short title.	36. This Act may be cited as "The Stamp Act, 1864."

## SCHEDULE.

## 1.

## ADMIRALTY COURT.

	£	s.	d.
Affidavits .. .. .	0	1	6
Claims .. .. .	0	1	6
Examinations in preparatory, on the first sheet .. .. .	0	1	6
Every subsequent sheet .. .. .	0	0	6
Each witness .. .. .	0	0	6
Decree of unlivery .. .. .	0	1	6
Do. of appraisement and sale .. .. .	0	1	6
Do. of removal .. .. .	0	0	9
Do. of inspection .. .. .	0	0	9
Do. of restitution .. .. .	0	3	0
Do. of delivery .. .. .	0	1	6
Do. of condemnation .. .. .	0	3	0
Do. for answers .. .. .	0	1	6
Allegation, first sheet .. .. .	0	0	9
Every subsequent sheet .. .. .	0	0	9
Answers .. .. .	0	0	9
Minutes of court .. .. .	0	0	9
Papers extracted, per extract .. .. .	0	0	9
Copies, per sheet .. .. .	0	0	9

1. A sheet shall, for the purpose of the foregoing tariff, consist of one hundred words.

2. The documents mentioned in this tariff may be either on stamped paper or covered with stamped paper.

3. The stamps upon all documents issued by the Registrar or any other officer of the Vice-Admiralty Court aforesaid, or upon the paper covering such documents, shall before being issued be cancelled by the officer using the same, by writing his name upon such stamp, together with the date.

## 2.

## AGREEMENTS.

[Repealed by Act 13, 1870, § 1; Tariff 2, Act 20, 1884, substituted.]

## 3.

## ARBITRATIONS AND AWARDS.

Every deed of submission to arbitrators .. .. .	£0	5	0
Awards, where any sum of money is awarded to be paid by one person to another, to be stamped as follows:			
Where the sum awarded is under £100 .. .. .	0	2	0
For every additional £100 or fraction thereof .. .. .	0	1	0
Every award made in regard to anything else than the payment of money .. .. .	0	5	0

1. Every deed of submission and every award must, as to some part of it, be written upon, and not merely covered by stamped paper, or otherwise it must have an adhesive stamp affixed and cancelled, as in the 14th section in this Act mentioned.

2. Where the sum or matter in dispute shall be under ten pounds in value, the submission and the award shall both be exempt from stamp duty.

## 4.

## BILLS, NOTES, CHEQUES, &amp;c.

[Repealed by Act 13, 1870, § 1, and Tariff 4 of that Act substituted.]

## 5.

## SHIPS, &amp;c.

[Repealed by Act 13, 1870, § 1, and Tariff 5 in that Act substituted.]

6. <sup>(1)</sup>.

## BROKERS' NOTES.

Every bought note and every sold note .. .. .	£0	0	6
---	----	---	---

## 7.

## DONATIONS.

Where the subject of the donation is money, and the amount exceeds £25, but does not exceed £100 .. .. .	£0	5	0
For every additional £100 or fraction thereof .. .. .	0	5	0
Where the subject of the donation is not money .. .. .	0	5	0

1. Deeds of or acts of donation must be written upon, and not merely covered by stamped paper, or otherwise they must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

2. Where the donation is of money, and the amount under twenty-five pounds, the deed or act need not be stamped.

<sup>1</sup> Printed as amended by Act 20, 1884, § 6.

No. 3-1864.

3. Deeds of donations for religious or charitable purposes shall be exempt from stamp duty. Questions regarding the deeds so entitled to exemption to be decided by the Governor, whose decision shall be final.

8.

## TRANSFERS AND MORTGAGES.

[Repealed by Act 13, 1870, § 1, and Tariff 8 in that Act substituted.]

9.

## LIQUIDATION ACCOUNTS.

When net assets for distribution	under	Insolvent			
Estates do not exceed £100	..	..	..	..	£0 1 6
Exceeding £100 but not 150	..	..	..	..	0 2 6
„ 150 „ 200	..	..	..	..	0 5 0
„ 200 „ 300	..	..	..	..	0 7 6
„ 300 „ 400	..	..	..	..	0 10 0
„ 400 „ 500	..	..	..	..	0 12 6
„ 500 „ 600	..	..	..	..	0 15 0
„ 600 „ 800	..	..	..	..	1 0 0
„ 800 „ 1000	..	..	..	..	1 10 0
„ 1000 „ 1250	..	..	..	..	2 0 0
„ 1250 „ 1500	..	..	..	..	2 10 0
„ 1500 „ 2000	..	..	..	..	3 15 0
„ 2000 „ 2500	..	..	..	..	4 10 0
„ 2500 „ 3000	..	..	..	..	6 0 0
„ 3000 „ 3500	..	..	..	..	7 10 0
„ 3500 „ 4000	..	..	..	..	9 0 0
„ 4000 „ 4500	..	..	..	..	10 10 0
„ 4500 „ 5000	..	..	..	..	12 0 0
„ 5000 „ 5500	..	..	..	..	13 10 0
„ 5500 „ 6000	..	..	..	..	15 0 0
„ 6000 „ 7000	..	..	..	..	16 10 0
„ 7000 „ 8000	..	..	..	..	18 0 0
„ 8000 „ 10000	..	..	..	..	20 0 0
Every additional £100 or fraction thereof	..	..	..	..	0 5 0
Every deed assigning property in trust	..	..	..	..	1 0 0

1. Under and by virtue of assignments in trust for creditors, the net assets shall be liable to a duty amounting to one-half the duty chargeable upon assets under insolvent estates.

2. Every deed assigning property in trust for creditors must as to some part of it, be written upon, and not merely covered, by stamped paper, or otherwise it must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

3. The assignee shall, at all times after any such assignment, be bound to produce, upon demand, to the Distributor of Stamps, or to any person appointed by him in writing, all accounts and papers belonging to the assigned estate, and necessary or calculated to show the amount of the fund for distribution.

4. Should the assignee decline or refuse to produce such accounts and papers, the Distributor of Stamps may, by motion, apply to the



Supreme Court, or any Judge thereof, for an order upon such assignee to produce the same, and should such Court or Judge grant such motion, it shall be granted with costs.

5. The receipt to be granted by the Distributor of Stamps for the duty payable upon or in respect of the fund for distribution shall be written upon paper stamped with a stamp of the value of the duty paid.

10.

CUSTOMS DEPARTMENT.

For every bond, import or export, relating to bonded goods, when the amount for which such bond is made does not exceed £500 .. .. .	£0 2 6
For every additional £100 or fraction thereof .. .. .	0 0 6
For each form of entry, inwards and outwards .. .. .	0 0 6

1. These bonds must be written upon, and not merely covered by stamped paper.

11.

POLICIES OF INSURANCE. (1)

Marine Policies :

For every £100 insured, and every fraction of £100 .. .. .	£0 0 6
For every additional £100 or fraction thereof .. .. .	0 0 6
For every £100 and fraction thereof, insured on a Time Policy :	

Where the time does not exceed six months .. .. .	0 1 6
Where the time exceeds six months .. .. .	0 2 6

Fire Policies :

For every £100 insured, and every fraction thereof .. .. .	0 0 6
--	-------

Life Policies :

Where the sum insured does not exceed £100 .. .. .	0 0 6
For every additional £100 or fraction thereof .. .. .	0 0 6

Where the premiums on any policy of insurance on life or against fire shall be payable or be paid annually, the receipts for such annual payments shall be stamped as follows :

On life policies for every £1 of such premium or fraction of £1 .. .. .	£0 0 0½
On fire policies for every £100 or fraction thereof of the sum insured .. .. .	0 0 6

1. In marine assurances, as often as a slip or memorandum shall be delivered before or instead of a policy, then the slip or memorandum shall bear a stamp of the value appointed for the policy. This slip or memorandum, if not written or printed on stamped paper, shall have an adhesive stamp of the proper value affixed to it before delivery thereof by the party insuring to the party insured.

2. If any insurance company shall deliver to any person insuring with such company any slip or memorandum, or any policy, not stamped with the proper stamp, the secretary of such company shall be liable to pay the sum of two pounds to any person who will sue him for the same by civil action in any competent Court.

<sup>1</sup> See Acts 13, 1870, § 5 and 20, 1884, Tariff 11, as to Cessions of Policies.

No. 3—1864.

3. As often as a policy shall be executed for or in reference to any insurance in regard to which a stamped slip or memorandum shall have been previously delivered, no stamp shall be necessary upon such policy, in case the stamped slip or memorandum relating to such insurance shall be attached to or preserved with such policy for the purpose of proving that the proper stamp has been used in regard to such insurance.

4. In regard to marine time policies, and to fire policies, and to life policies, as often as an annual or other periodical payment of premiums shall take place, the receipts for all such periodical payments shall be written upon paper stamped with the appointed stamps or otherwise, or have an adhesive stamp affixed. If any such periodical payment of premiums shall be received from or credited to the person who insured, and no duly stamped receipt shall be given for such payment to the person insured, then the secretary of the insurance company receiving such payment shall be liable to pay the sum of two pounds to any person who will sue him for the same by civil action in any competent Court.

5. As often as the party granting any insurance in this Colony shall be a company whose chief seat of business is not in this Colony, then the agent in this Colony of such company shall be liable to the penalties aforesaid, in like manner as if he were the secretary of a company which had its chief seat of business in this Colony.

6. Should any receipt separate from the policy be granted for the first payment of premium upon any policy upon life or against fire such separate receipt need not be stamped.

7. In case the premium upon any policy of insurance on life or against fire shall be payable or be paid quarterly, or otherwise than annually, every receipt for such premium shall be stamped with a stamp of a value bearing the same proportion to the stamp hereinbefore appointed for an annual payment which the period fixed upon in the particular case shall bear to one whole year.

8. Every adhesive stamp mentioned in this tariff shall be cancelled by the secretary or some other officer of the insurance company writing thereon his name, and the date on which he shall write the same.

9. Nothing in this tariff contained shall be construed so as to require that any policy, slip, memorandum, or receipt for premiums, executed or granted before the taking effect of this Act, should be stamped. But receipts for premiums paid after the taking effect of this Act, upon policies granted before the taking effect of this Act shall be stamped.

12.

## WILLS AND INSTRUMENTS CONNECTED WITH WILLS.

[Repealed by Act 20—1884.]

13.

## RECEIPTS FOR INHERITANCES.

Discharges or receipts for inheritances or legacies, not subject to the payment of succession duty under the "Succession Duty Act, 1864," by reason that such inheritances or legacies accrued due

from deaths which happened before the taking effect of the said Act :  
 Exceeding £10, and not exceeding £50 .. .. £0 1 6  
 „ 50, „ 100 .. .. 0 3 6  
 On every additional £100, or fraction thereof .. .. 0 2 6

1. All such discharges or receipts shall be written upon or covered by stamped paper, or otherwise they must have an adhesive stamp affixed and cancelled, as in the 14th section of this Act mentioned.

2. The executor, testamentary or dative, to whom letters of administration shall have been issued, shall be liable to Government for the stamp duty chargeable upon discharges or receipts for all inheritances or legacies paid by him to heirs or legatees, but such duty shall be paid by such heirs or legatees.

3. As often as any inheritance or legacy shall be paid by any such executor as aforesaid into the Guardian's Fund, no stamp shall be necessary upon the receipt or acknowledgment, if any, granted to such executor by the Master of the Supreme Court. But the receipts taken by the Master for moneys paid out of the Guardian's Fund to heirs or legatees shall be upon paper stamped according to this tariff.

4. Discharges or receipts for inheritances or legacies not exceeding £10 shall be exempt from stamp duty.

## 14.

## LAND GRANTS AND LAND RENTS.

## Grants on Quitrents :

When the land granted does not exceed 10 morgen ..	£0 10 0
Exceeding 10 but not 30 .. .. .	1 0 0
„ 30 „ 50 .. .. .	1 10 0
„ 50 „ 60 .. .. .	2 0 0
„ 60 „ 80 .. .. .	2 10 0
„ 80 „ 100 .. .. .	3 0 0
„ 100 and upwards .. .. .	4 0 0

## Receipt for Quitrents :

When the land does not exceed 5 morgen .. .. .	0 0 3
Exceeding 5 but not 10 .. .. .	0 0 6
„ 10 „ 50 .. .. .	0 1 0
„ 50 „ 100 .. .. .	0 2 0
„ 100 „ 500 .. .. .	0 4 0
„ 500 morgen .. .. .	0 7 6

1. Receipts for quitrent may be written upon stamped paper, or an adhesive stamp of the appointed value may be affixed to such receipt. If an adhesive stamp be used, it must, before being issued, be cancelled by writing on it the name of the officer issuing it, and the date.

2. In case the quitrent for a greater number of years than one shall be paid at one time, a single receipt, specifying the years for which the rent is received, shall be sufficient, but such receipt must bear a stamp of a value not less than the aggregate amount of the stamps which would have been used had such rent been paid regularly year by year.

3. All stamps necessary in regard to fresh grants issued under "The Land Beacons Act, 1859," shall be supplied by Government free of charge.

*dddd*

No 3—1864.

15.

## LICENCES.

[Repealed by Act 15, 1877, § 1; and § 3 of that Act substituted.]

16.

## MISCELLANEOUS ACTS.

[Repealed by Act 13, 1870, § 1. See Tariff 16, Act 20, 1884.]

17.

## JOINT-STOCK COMPANIES.

Every joint-stock company carrying on business in this Colony shall annually take out a licence, for which there shall be payable for every £100 of the subscribed capital of such company .. .. £0 1 0

1. The term joint-stock company shall, for the purpose of the above licence, embrace :

a. Every company having a capital stock divided into shares, of which company the chief seat or principal place where its business is managed shall be within this Colony.

b. Every such company of which the chief seat or principal place where its business is managed shall not be within this Colony, but of which any of the dealings shall, by the deed or other instrument regulating such company, be described as to be carried on in this Colony. (<sup>1</sup>)

2. The licence issued to any such company at any seat or place of business thereof in this Colony shall cover the business of such company at all its places of business in this Colony.

3. The directors for the time being within this Colony of any such company as aforesaid shall be personally liable *singuli in solidum* for the amount payable for the licence. If there be no directors within this Colony, but only a manager, then the manager shall be liable.

4. The directors of any such company, or the manager should there be no directors, shall, upon request of the Distributor of Stamps, certify the amount of the subscribed capital of such company for the time being. Should any such director or manager refuse or neglect to certify such amount, the Distributor of Stamps shall be entitled to estimate the subscribed capital of such company at whatever amount he shall, from the information within his reach, judge to be sufficient, and calculate the sum payable for a licence according to such amount, and such amount shall be recovered as aforesaid.

5. When any joint-stock company, not being such a company as has been above described, but one doing business in this Colony through the instrumentality of some agency in this Colony, then such last mentioned company shall annually take out a licence of the value of fifty pounds. No licence shall be required for any steam navigation company trading between this Colony and any place beyond seas.

6. When any one agent for a company shall have taken out a licence, such licence shall cover the business done for the same company by any other agent in this Colony.

7. The Governor, if satisfied by any such agent that the aforesaid sum of fifty pounds would, with reference to the amount of business

<sup>1</sup> Printed as amended by Act 20, 1884, Schedule 1.

done by such company in this Colony, be disproportionately high as compared with the payments made by colonial companies generally, shall have power to reduce such sum, and shall lay before both Houses of Parliament, at their first meeting, a list of all such reductions made by him.

8. Every director and every agent of any such company resident in this Colony shall be liable *singuli in solidum* for the amount payable for the licence.

9. If any person shall, as a local director, agent, or mandatory of any joint-stock company which ought to take out such a fifty-pound licence as aforesaid, transact any business in this Colony for such company, or advertise in any newspaper that he is a director of or agent for such company, then, if such company shall not have taken out the licence as above required, such person shall be liable to pay any sum not exceeding one hundred pounds, to be recovered by the Distributor of Stamps, by civil action, in any competent Court.

10. Every mutual assurance company, not having a capital stock divided into shares, and every building society, whether one having a capital stock divided into shares or not, shall annually take out a licence for which there shall be payable the sum of one shilling for every £100, or fraction of £100, of the accumulated fund of such company, as such fund shall have been ascertained by the latest statement of accounts laid before its members at any general meeting thereof: Provided that no such company or society as is in this clause mentioned, of which the accumulated fund for the time being shall be less than £10,000 shall require to take out a licence under this Act.

11. The first annual licence of any such joint-stock company shall be taken out upon the first of January, 1865, and not sooner, or within one month after the said day, and so on from year to year; and direction No. 2 in tariff No. 15 shall apply to the licences of joint-stock companies.

12. Nothing in this Act contained shall require any savings bank society or benefit society to take out any licence.

18.

SUPREME COURT, COURT OF THE EASTERN DISTRICTS, AND CIRCUIT COURTS.

[Repealed by Act 20, 1884.]

19.

MAGISTRATES' COURTS.

[Repealed by Act 15, 1877, § 1; and Tariff 19 of that Act substituted.]

No. 1—1868.]

[June 24, 1868.]

## ACT

To Confine the use of Postage Stamps to the purposes of Postage. <sup>(1)</sup>

Preamble.

WHEREAS it is desirable that postage stamps should be made use of for the purposes of postage only: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Postage stamps to be used for postage only.

Notwithstanding the provisions of the eleventh section of the Stamp Act, 1864, no postage stamp which shall, from and after the 30th day of September next, be affixed to any instrument or document required by the said Stamp Act, 1864, or any other Act, to be stamped, shall be deemed available by way of a stamp on such instrument or document, save only for the purposes of postage; but every instrument or document, so far as the same shall be stamped with postage stamps, shall, save for the purposes of postage, be deemed to be unstamped or insufficiently stamped, as the case may be, in like manner as if no such postage stamps had been affixed thereto, and shall be liable to all the disabilities and penalties which would attend such instrument or document if so unstamped or insufficiently stamped as aforesaid; and every person who shall affix by way of stamp, for any purpose other than for postage purposes, a postage stamp to any instrument or document required by the said Act or any other Act, to be stamped, and every person who shall receive such instrument stamped with any postage stamp shall be liable to the same penalties and disabilities as if such postage stamp were not affixed, and no stamp were affixed in stead thereof.

No. 13—1870.]

[May 5, 1870.]

## ACT

To Amend the Act No. 3, 1864, intituled “An Act for regulating the Duties upon Stamps and Licences.”

Preamble.

WHEREAS it is expedient to increase certain of the Stamp Duties imposed by the “Stamp Act, 1864,” and to amend the said Act in other respects: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

<sup>1</sup> But see § 7, Act 20, 1884.

1. The following portions of the Stamp Act, 1864, and of the schedule annexed to the said Act are hereby repealed, that is to say :

No. 13—1870.

Portions of Stamp Act, 1864, and of schedule annexed thereto, repealed.

The twenty-third and the twenty-ninth sections of the said Act.

The tariff numbered 2 in the schedule to the said Act, headed "Agreements."

The tariff numbered 4 in the said schedule, headed "Bills, Notes, Cheques, &c."

The tariff numbered 5 in the said schedule, headed "Ships, &c."

The tariff numbered 8 in the said schedule, headed "Transfers and Mortgages."

The tariff numbered 16 in the said schedule, headed "Miscellaneous Acts."

2. So much of the Act aforesaid No. 3, 1864, not hereinbefore repealed, as shall be repugnant to or inconsistent with any of the provisions of this Act, or of the schedule annexed to this Act, shall be, and the same is hereby repealed.

Repugnant portions of Act No. 3, 1864, repealed.

3. The several tariffs in the schedule to this Act contained, and numbered, respectively, with the same numbers as the tariffs repealed by this Act shall, number for number, and whether the heading of such tariff be the same or varied, take the place and be instead of the tariffs so repealed, and shall have the force of law accordingly. And all and singular the several explanations, conditions, directions, and provisions contained in the schedule to the Act shall have the same force and effect as if the same were contained in the body of this Act.

Tariffs contained in schedule to take place of repealed tariffs.

4. Every stamp provided by this Act, or by the said Act 3 of 1864, or by any schedule thereof, respectively, to be imposed on any notarial act, shall be upon the minute of such act. Every adhesive stamp on any such notarial deed as is not by this Act or by the said Act No. 3 of 1864 required to be written on stamped paper, or to be cancelled as in the fourteenth section of the said Act No. 3 of 1864 is provided, shall be cancelled (<sup>1</sup>) by the notary writing thereon his name, and the date on which he shall write the same.

Notarial acts to be stamped on minute.

Cancellation of adhesive stamps.

5. Every cession, whether notarial or underhand, of any policy of insurance against fire or life, and whether such cession be absolute or by way of pledge, shall bear a stamp of one-half the amount of the stamp to which such original policy was liable. All such cessions must be written either upon stamped paper or upon paper having an adhesive stamp affixed and cancelled as in the fourteenth section of the Act No. 3, 1864, mentioned, or upon the policy ceded. When written upon the policy ceded, an adhesive stamp of the required value must be affixed to or upon such session, before delivery of the policy ceded to the cessionary.

Cessions of policies of insurance to be stamped.

How to be stamped.

<sup>1</sup> See Act 20, 1884, § 3.

No. 13—1870.

And the person ceding shall cancel such adhesive stamp by writing thereon his name and the date on which he shall write his name. <sup>(1)</sup>

Penalty on practice of any profession or on trading, &c., without required licence.

6. If any person who should, in obedience to or in conformity with the Act aforesaid, No. 3 of 1864, and the schedule thereunto annexed, take out and possess any licence authorizing him to practise any profession or exercise any trade, business, occupation, or calling, or possess, or perform any particular matter or thing, shall be proved to have done or performed, without having previously taken out the particular licence in that behalf required, any act amounting to or in the way of the practice of any such profession, or the exercise of any such trade, business, occupation, or calling, or be proved to have possessed or performed any particular matter or thing for the possession or performance of which a licence shall be required, such person shall, in the absence of any special and greater penalty provided by any law now in force or hereafter to be passed in that behalf, for every such act forfeit any sum not exceeding five times the amount of the charge or duty payable for or in respect of the taking out of the particular licence which such person ought to have taken out and possessed. <sup>(2)</sup>

Licence may be cancelled on removal of business.

7. In case any person having taken out any licence in the schedule to the said Act 3 of 1864 mentioned, which may authorize the carrying on of any trade or business in any particular place, shall, during the continuance of such licence, wish to change the place at which such trade or business shall in future be carried on, it shall be lawful for such person to obtain from the officer whose duty it may be to issue licences of the same nature as that held by such person, on proof to such officer that such trade or business has been, in fact, discontinued at the place for which such licence was granted, and on bringing to such officer and leaving with him such licence for cancellation, a certificate that such licence has been cancelled; and it shall be the duty of such officer then and there to cancel such licence, and retain the same so cancelled as a voucher.

No business to be carried on under cancelled licence.

8. After such cancellation as aforesaid, it shall not be lawful for such person as aforesaid to carry on such trade or business at the place for which such cancelled licence shall have been granted, and from and after such cancellation, he shall, as to all future dealings in such place, be deemed and taken for all purposes to be dealing without having taken any licence, and shall be liable accordingly.

New licence may be issued on removal.

9. It shall be lawful for such person, upon obtaining such certificate of cancellation as aforesaid, to present the same to the officer whose duty it shall be to issue licences for the carrying on of the like trade or business at the place to which such person as aforesaid shall desire to remove his trade or business, and to deliver up such certificate to such officer who shall retain the same as a

<sup>1</sup> See Act 20, 1884, § 4.

<sup>2</sup> *Ibid.*, § 4.



voucher; and such officer shall thereupon issue to such person a licence to carry on such trade or business in the place which such person shall name as the place in which he desires to carry on the same, on payment of a new licence duty of one shilling.

No. 13—1870.

10. All fines and penalties imposed under or by virtue of this Act, or imposed and incurred under or by virtue of the said Act No. 3, 1864, and not yet recovered, may be recovered by criminal process in the Court of any Resident Magistrate having local jurisdiction in the matter in case the amount of such fine shall exceed fifty pounds sterling, and in the Supreme or Eastern Districts or Circuit Courts, respectively, in case such fine shall exceed fifty pounds sterling; but in any case in which the local jurisdiction of any Resident Magistrate shall be, or shall appear to the public prosecutor to be, uncertain, then such fines or penalties, though less than fifty pounds sterling in amount, may be recovered in the said Supreme or Eastern Districts Court, or in any Circuit Court, as the case may be; and in every case where any such fine or penalty shall be recovered in any Court of Resident Magistrate, the person condemned may, if he feels himself aggrieved, appeal to the Supreme or Eastern Districts Court, as the case may be, first paying the penalty and giving security to the satisfaction of the Resident Magistrate for the costs of appeal.

Penalties, how recoverable.

Appeal.

11. This Act shall commence and take effect from the first day of July, 1870, and may be cited as "The Stamp Act, 1870."

Short title.

SCHEDULE.

2. AGREEMENTS.

[Repealed by Act 20, 1884, and Tariff 2 of that Act substituted.]

4. BILLS, NOTES, CHEQUES, &c.

Every bill of exchange, promissory note, bank post bill, or other negotiable instrument for any lawful amount			
not exceeding £50 . . . . .	..	..	.. £0 0 6
Exceeding £50 and not exceeding £100 . . . . .	..	..	.. 0 1 0
And for every additional £100 or fraction thereof . . . . .	..	..	.. 0 1 0
Every bill of exchange drawn in the Colony, but payable out of the Colony, if drawn in sets of three or more, on each bill of the set, one third of the above rates.			
Every cheque upon a bank . . . . .	..	..	.. £0 0 1

1. Bank notes need not be stamped.
2. By cheques upon a bank are meant all drafts or orders upon any bank payable on demand or at sight either to bearer or to order.
3. If any bank shall pay or otherwise honour any cheque, bill, draft or note, not being a bank note, which shall not be written upon stamped paper, or have an adhesive stamp affixed and cancelled, the cashier of such bank, whether the person who paid or otherwise honoured such cheque, bill, draft, or note, or not, shall be liable to a penalty of two pounds sterling, to be recovered as is in this Act provided.
4. If any person shall contravene section 26 of the Act 3 of 1864, he shall be liable to a penalty not exceeding two pounds sterling, to

No. 13—1870.

be recovered as in this Act is provided, in lieu of any penalty by the said section of the said Act 3 of 1864 provided.

5. No "good-for," "I O U," or other acknowledgment of debt, not being a promissory note, and not being negotiable, shall require to be stamped so long as it shall be retained by the creditor to whom it was first delivered, and it may be paid by the debtor to such creditor without being stamped. But if such creditor shall cede or transfer the same, he shall before doing so, affix thereto an adhesive stamp of the value which would be necessary in case the same were a promissory note; and the cessionary, or transferee, shall cancel the said stamp in case the same be not already cancelled; and any person ceding or transferring any such instrument without first stamping the same, if it be not already stamped, shall be liable to a penalty not exceeding two pounds sterling; and every person receiving such instrument without cancelling such stamp shall be liable to a like penalty of two pounds sterling; such penalties to be recovered as in this Act is provided.

6. No person who shall have granted any such instrument as is described in paragraph 5 shall pay or satisfy the same to any person other than the person to whom it was first given, unless it shall be duly stamped, under a penalty of two pounds sterling, to be recovered as in this Act is provided.

7. Every adhesive stamp mentioned in this tariff shall be cancelled by placing in figures in ink, upon such stamp, the amount mentioned in any cheque, good-for, I O U, or other instrument, and by writing the name or the initials of the name of the person cancelling such instrument, together with the date of such cancellation, anything in the proviso in the 26th section of the Act No. 3 of 1864 to the contrary notwithstanding.

8. Every promise in writing by one person to pay money to another person named in such writing, whether at some time specified in such writing or on demand, and whether payable to the order of the payee or not, shall be deemed to be a promissory note for the purpose of this Act, so as to require to be stamped as such.

## 5. SHIPS, &amp;c.

Bills of sale of any ship, where the consideration given shall not exceed £100 .. .. .	£0	5	0
For every additional £100 or fraction thereof .. .. .	0	5	0
Bottomry bonds and mortgages of ships, where the sum secured shall not exceed £50 .. .. .	0	4	0
Exceeding £50 and not exceeding £100 .. .. .	0	7	0
„ £100 and not exceeding £200 .. .. .	0	10	0
For every additional £100 or fraction thereof .. .. .	0	5	0
Bills of lading, each copy .. .. .	0	0	6
Charter-parties of any ship of the burden of 25 tons of tonnage or upwards .. .. .	0	5	0
For every 100 tons of tonnage or every fraction of 100 tons	0	5	0
For every certificate of survey of a ship, whether for the purpose of insurance or repairs or otherwise .. .. .	0	1	0
Every act of abandonment of a ship .. .. .	0	2	6
Every sea protest .. .. .	0	10	0

1. Every bill of lading shall be written on stamp paper, and shall in no case be stamped after the same shall be executed, anything in the fourteenth section of the Act 3 of 1864 to the contrary notwithstanding.

2. Every master of any ship who shall sign, and every shipper of goods who shall tender for signature, or shall cede, endorse, deliver, or negotiate any bill of lading executed within this Colony not written on stamped paper, shall be liable to a penalty not exceeding two pounds sterling, to be recovered as in this Act is provided.

3. Every person who shall cede, endorse, deliver, or negotiate any bill of lading not executed within this Colony which shall not be already stamped in this Colony and have the stamp duly cancelled, shall be bound, before ceding, endorsing, delivering, or negotiating the same, to place thereon an adhesive stamp of the value which would be required on the same bill if it were executed in this Colony, and to cancel such stamp in the manner required by the seventh paragraph of tariff No. 4. Every person who shall contravene this enactment shall be liable to a penalty of two pounds sterling, to be recovered as in this Act is provided.

4. The instruments mentioned in this tariff, other than bills of lading, must, as to some part thereof, be written upon, and not merely covered by, stamped paper, or otherwise they must have an adhesive stamp affixed and cancelled as in the fourteenth section of Act 3 of 1864 is mentioned.

#### 8. TRANSFERS, BONDS, &C.

On all transfers passed before the Registrar of Deeds, value

not exceeding £10 .. .. .	£0	2	0
Exceeding £10 and not exceeding £20 .. .. .	0	3	0
"  20 .. .. .	0	4	0
"  35 .. .. .	0	6	0
"  50 .. .. .	0	8	0
"  100 .. .. .	0	12	0
"  150 .. .. .	0	15	0
"  200 .. .. .	1	0	0
"  300 .. .. .	1	5	0
"  400 .. .. .	1	10	0
"  500 .. .. .	2	0	0
"  700 .. .. .	3	0	0
"  1000 .. .. .	3	0	0
And for every additional £100 or fraction thereof .. .. .	0	5	0

Cessions of mortgage bonds, notarial or otherwise, one-fourth of the stamp of the original bonds.

On mortgage bonds passed before the Registrar of Deeds and general mortgages, commonly called "notarial bonds:"

Amount secured not exceeding £10 .. .. .	£0	2	0
Exceeding £10 and not exceeding £20 .. .. .	0	3	0
"  20 .. .. .	0	5	0
"  30 .. .. .	0	7	6
"  50 .. .. .	0	10	0
"  100 .. .. .	0	15	0
"  150 .. .. .	1	0	0
"  200 .. .. .	1	5	0
"  300 .. .. .	1	10	0

No. 17—1873.	Exceeding £400 and not exceeding £500	..	..	..	£2	0	0
	"      500      "      "	600	..	..	2	10	0
	"      600      "      "	700	..	..	3	0	0
	"      700      "      "	800	..	..	3	10	0
	"      800      "      "	900	..	..	4	0	0
	"      900      "      "	1000	..	..	5	0	0

And for every additional £100 or fraction thereof .. .. 0 6 0

On Deeds of Kinderbewys passed before notaries, for securing the portions of minors, half of the amount of stamps required on mortgage bonds passed before the Registrar of Deeds.

1. [Repealed by Act 17, 1873, § 1 and § 3 of that Act substituted.]

2. All notarial bonds shall be either written upon or covered by stamped paper.

3. Underhand cessions of mortgage bonds must be written either upon stamped paper or upon paper having an adhesive stamp affixed and cancelled as in the fourteenth section of the Act 3 of 1864 mentioned or upon the bond ceded. When written upon the bond ceded, an adhesive stamp of the required value must be affixed to or upon such cession before delivery of the ceded bond to the cessionary, and the person ceding shall cancel such adhesive stamp by placing thereon in figures, in ink, the amount of the debt ceded, and by writing thereon his name, or the initials of his name, and the date on which he shall write the same.

#### 16. MISCELLANEOUS ACTS.

[Repealed by Act 20, 1884, and Tariff 16 of that Act substituted.]

No. 17—1873.]

[June 26, 1873.

#### ACT

To Remove Doubts as to the necessity of Restamping certain Deeds and to Amend the Stamp Act, 1870, in so far as relates to the mode of Stamping Deeds executed before the Registrar of Deeds.

Preamble.

WHEREAS it has heretofore been customary in this Colony to cover deeds of transfer, mortgage bonds, and other deeds executed before the Registrar of Deeds with stamped paper of the value required for such deeds respectively: And whereas such stamps have in many cases become detached from the deeds to which they belong, and have been either lost or destroyed: And whereas doubts have arisen as to the necessity of such deeds being restamped when produced in the course of legal proceedings, or at the office of the Registrar of Deeds, without the covering stamp: And whereas it is expedient to remove such doubts, and also to amend the law relating to the mode of stamping such deeds in future: Be it therefore enacted by the Governor of the Cape of Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. The first clause of the explanations or provisions contained in tariff No. 8 in the schedule in the "Stamp Act, 1870," relating

to "transfers, bonds, &c.," and so much of any other law or custom in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

No. 16—1876.

2. Every deed of transfer, mortgage bond, or other deed heretofore executed before the Registrar of Deeds of this Colony shall be deemed to have been duly stamped at the time of the execution of the same, and shall not in any place or for any purpose require to be stamped afresh.

Deeds already executed before Registrar of Deeds to be deemed to have been duly stamped.

3. Every such deed as aforesaid executed after the passing of this Act shall, if not written upon paper impressed with a stamp of the required value, have affixed thereto an adhesive stamp or adhesive stamps, and such adhesive stamps shall be defaced and cancelled by such person and in such manner as the Governor shall from time to time direct.

Adhesive stamps on deeds to be cancelled by officer duly appointed.

4. This Act may be cited for all purposes as the "Deeds Stamp Act, 1873."

Short title.

No. 16—1876.]

[July 4, 1876.]

## ACT

To empower Resident Magistrates and others to cancel certain Adhesive Stamps.

WHEREAS by the fourteenth section of "The Stamp Act, 1864," the Distributor of Stamps in Cape Town, or the Civil Commissioner elsewhere, is empowered to cancel certain adhesive stamps, and it is advisable that such power should be extended as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The power and duty of cancelling adhesive stamps by the said fourteenth section of the said Act, given to and imposed upon the Distributor of Stamps in Cape Town, and the Civil Commissioners elsewhere, is hereby extended to all Resident Magistrates and senior clerks to Civil Commissioners, upon the tender to them at their offices, within such time as in the said section mentioned, of any such instrument with an adhesive stamp affixed thereon, as in the said section also mentioned, and Resident Magistrates and such clerks as aforesaid shall be considered as referred to in the fifteenth section of the said Act, as well as the said Distributor of Stamps and Civil Commissioners.

Adhesive stamps under section 14 of Act 3, 1864, may be cancelled by resident magistrates and senior clerks to civil commissioners.

No. 15—1877.]

[August 8, 1877.]

## ACT

To Amend the Law relating to Stamp Duties.

WHEREAS, by the "Resident Magistrates' Court Act, 1876," the jurisdiction of Resident Magistrates was in certain cases

Preamble.

- No. 15-1877.
- extended, and it is therefore necessary to provide for the stamp duties to be paid on documents falling within such extended jurisdiction: and whereas it is expedient in other respects to amend the law relating to stamp duties: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Repugnant laws repealed. 1. The tariff numbered nineteen, headed “Magistrates’ Courts,” annexed to the schedule to “The Stamp Act, 1864,” paragraph 4 of the tariff numbered fifteen in the same schedule headed “licences,” and so much of the said Act, of “The Stamp Act, 1870,” and of the schedules to the said Acts, as are repugnant to or inconsistent with any of the provisions of this Act or of the schedule hereto, shall be and are hereby repealed.
- Substituting tariff in schedule for repealed tariff. 2. The tariff in the schedule to this Act contained and numbered nineteen shall take the place and be in stead of the tariff numbered nineteen hereby repealed, and shall have the force of law accordingly; and all and singular the several explanations, conditions, directions and provisions contained in the said schedule to this Act shall be of the same force and effect as if the same had been contained in the body of this Act.
- Apothecary’s licence to be issued to qualified practitioners only. 3. From and after the first day of January next no licence under “The Stamp Act, 1864,” as or for an apothecary, chemist or druggist, shall be issued to any person who has not obtained the licence enabling him to practise as such mentioned in the third section of the Ordinance No. 82, intituled “Ordinance for altering and amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony;” and if any such licence under the said Stamp Act shall be issued to any such unlicensed person the same shall be void and of no effect.
- Apothecary’s licence to cover certain dealings. 4. A licence as an apothecary, chemist or druggist issued under the said Stamp Act, 1864, shall cover all dealings as an apothecary, chemist and druggist, as well as all dealings covered by a retail shop licence, and must be taken out by every surgeon, doctor of medicine, or other person selling or supplying any medicines other than patent and homœopathic medicines and medicines commonly known as “Dutch medicines.”
- Must be taken out by surgeons, &c. 5. Every wholesale and every retail licence shall authorize the sale of patent and homœopathic medicines, of the medicines commonly known as “Dutch medicines,” and of any article or thing which although used as a medicine is not solely used as such and is not mixed or prepared for use as a medicine; and no licence as an apothecary, chemist or druggist shall be necessary for the sale of any such things as in this section mentioned.
- Medicines which may be sold under wholesale or retail licence. 6. If any instrument required to be stamped with a stamp or stamps of a particular amount or value shall be stamped with a stamp or stamps of less than the required amount or value, such instrument may afterwards be stamped with an adhesive stamp or stamps to make up the required amount or value affixed and
- Instruments insufficiently stamped may be rectified.

cancelled as mentioned in the fourteenth section of the said "Stamp Act, 1864;" and the double and treble duty mentioned in the said fourteenth section, and the stamps of not less than five times the value of the stamp in the eighteenth section of the said Act mentioned shall be calculated upon the value of the deficiency of value or amount of duty instead of on the value or amount of duty originally required.

No. 15—1877.

7. Besides the penalty mentioned in the sixteenth section of the said "Stamp Act, 1864," the notary public who has prepared or attested an instrument not stamped at all, or insufficiently stamped, so as to render him liable to the said penalty, shall be obliged, upon notice in writing given to him to that effect by any commissioner for the examination of notaries' protocols, to cause such instrument to be forthwith properly stamped at his own expense; and in case of his not doing so it shall be competent for the Supreme Court, upon the application of the Attorney-General, to order him to do so, and in default of compliance with such order to suspend him for such period and upon such terms as to such Court shall seem to be proper under the circumstances.

Procedure to compel notary to stamp any instrument.

8. [Repealed by Act 20, 1884, schedule 1.]

9. This Act may be cited as the "Stamp Act, 1877," and shall be read as one with the Stamp Act, 1864, and the Stamp Act, 1870, and the said Acts may be cited together as the "Stamp Acts, 1864, 1870, and 1877."

Short title.

---

SCHEDULE.

Schedule.

19. *Magistrates' Courts.*

On every liquid document upon which judgment is prayed for an amount not exceeding £10 ..	£	s.	d.
For an amount exceeding £10 and not exceeding £20 .. .. .	0	0	6
And for each additional £10 or fractional part thereof .. .. .	0	1	0
On every document of which a copy must, by the 10th rule of the Resident Magistrates' Courts, be served upon the opposite party .. .. .	0	0	6
On every authority to sue or defend .. .. .	0	0	6
On every summons for an amount not exceeding £10 .. .. .	0	0	6
For an amount exceeding £10 and not exceeding £20 .. .. .	0	1	0
And for each additional £10 or fractional part thereof .. .. .	0	0	6
On every warrant of execution not exceeding £50	0	0	6
Exceeding that amount .. .. .	0	1	0

1. Summonses must either be written upon stamped paper or have an adhesive stamp of the proper denomination affixed thereon, and cancelled by writing on such stamp the name of the cause in which it

No. 15—1877.

is issued. The other documents mentioned in this tariff may be covered with stamped paper.

2. The stamps upon all documents issued by any officer of a Resident Magistrate's Court, or upon the paper covering such documents, shall, before being issued, be cancelled by the officer issuing the same by writing his name or initials upon such stamp together with the date.

3. As often as provisional sentence shall be prayed upon or in regard to any liquid document which shall, before being produced in Court, have been duly stamped under the Stamp Act, 1864, or the Stamp Act, 1870, no other or covering stamp shall be necessary.

4. As often as any covering stamp shall be used upon any document delivered into the hands of any officer of the Court, such stamp shall before being received be cancelled by writing upon such stamp the name of the cause in which it is used, or in some similar way.

No. 20—1884.]

[July 25, 1884.

## ACT

To Amend the Law relating to Stamp Duties and Fees of Office, and to provide for a Rebate of Customs Duty.

Preamble.

WHEREAS it is expedient that the Revenues of the Colony should be increased by the imposition of certain new and increased Stamp Duties and by levying certain new and increased Fees of Office, and to provide for a certain Rebate of Customs duty: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. The several laws mentioned in the first schedule to this Act and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except as to things done, offences committed, penalties incurred, or proceedings instituted, previously to the commencement of this Act.

Stamp Duties and Fees in Schedule 2 established.

2. All and singular the stamp duties and fees of office set forth in the second schedule hereto, shall from and after the taking effect of this Act become due and payable for and in respect of the several instruments, acts, matters and things mentioned and enumerated in the said schedule: and all and singular the several explanations, directions and provisions contained in the said schedule shall be of the same force and effect as if the same had been contained herein.

Governor may appoint person to perform duties of distributor or civil commissioner.

3. It shall be lawful for the Governor, by notice in the *Government Gazette*, to direct that any of the duties required by the "Stamp Acts, 1864, 1870 and 1877," to be performed by the Distributor of Stamps in Cape Town or by any Civil Commissioner elsewhere, shall be performed by some other person or persons,



anything to the contrary in the said Acts notwithstanding; and from time to time to prescribe the manner in which adhesive stamps tendered for cancellation under the provisions of Act No. 3 of 1864, shall be cancelled by the officers empowered by law to cancel the same.

No. 20—1884.

And may prescribe how stamps shall be cancelled.

4. It shall be lawful for any commissioner, inspector, sub-inspector, or sergeant of police, or for any chief constable, or other officer of police thereto specially appointed, or for any excise officer, at any reasonable time to enter upon the premises of any person carrying on any trade or business, by Tariff 15 of the Schedule to this Act required to be licensed, and to demand the production of the necessary licence, and unless such person shall on such demand produce a proper licence duly stamped and still in force, he shall be considered as a person carrying on an unlicensed trade or business, and be liable to the penalty provided by section 6 of the "Stamp Act, 1870:" Provided that in the event of the necessary licence being produced at the trial of any such case, a penalty not exceeding £1 for the non-production of such licence to the officer by whom the same may have been demanded shall be imposed.

Police officers may demand licence.

Penalty for non-production.

5. Every person who shall grant, issue, or deliver,

- (1) Any proxy to vote at any meeting of shareholders or members of any joint-stock company, association, or society,
- (2) Any receipt for the payment of money,
- (3) Any letter of allotment or letter of renunciation, or any letter having the effect of a letter of allotment,
- (4) Any scrip certificate or share or any transfer thereof,
- (5) Any debenture issued by any company or corporation, or any transfer or cession of any debenture payable to order,
- (6) Any bank deposit receipt or renewal, or continuation thereof,

without affixing thereto the stamp by law required, shall be liable on conviction to a penalty not exceeding two pounds.

6. Every broker's note, whether bought or sold, shall be on stamped paper, and all and singular the provisions in Tariff 6 of the Schedule of the Stamp Act, 1864, relative to the use of adhesive stamps are hereby repealed.

Broker's notes to be on stamped paper.

7. It shall be lawful for any person, granting a receipt for the payment of money, to use for the purpose of the stamp duty thereon required by Tariff 16 of Schedule 2 of this Act, either a revenue or a postage stamp, anything in Act No. 1, 1868, to the contrary notwithstanding.

Postage stamps may be used to cover receipts.

8. This Act shall take effect from the 1st day of August, 1884, and may be cited as "The Stamp and Office Fees Act, 1884," and shall be read as one with the Stamp Act, 1864, the Stamp Act, 1870, and the Stamp Act, 1877, and the said Acts may be cited together as the "Stamp Acts, 1864, 1870, 1877, and 1884."

Commencement of Act and short title.

No. 20—1884.

Schedule 1.

## SCHEDULE 1.

## ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance No. 104, 1833.	Ordinance for regulating the Registration of Wills and the Administration of the Estates and Property of persons dying either testate or intestate in so far as the same are situated within the Colony.	Schedule A.
Ordinance No. 105, 1833.	“ Ordinance for providing for the due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the Persons of Minors and Lunatics.”	Schedule D.
Ordinance No. 14 of 1844.	Ordinance for the better Regulation of the Office of the Registrar of Deeds.	Schedule of Fees.
Act No. 3 of 1864.	An Act for Regulating the Duties upon Stamps and Licences.	Tariffs Nos. 12 and 18 of the Schedule ; so much of Tariff No. 15 of the Schedule as has not already been repealed ; the words “ but the licence of every such last-mentioned Company shall bereckoned upon one-half, instead of upon the whole of its subscribed Capital” in subsection <i>b</i> of section 1 of Tariff No. 17 of the Schedule.
Act No. 13 of 1870.	“ The Stamp Act, 1870.”	Tariffs Nos. 2 and 16 of the Schedule.
Act No. 15 of 1877.	“ The Stamp Act, 1877.”	Section 8.

Number and Year.	Title.	Extent of Repeal.
Tariffs of Fees, dated 17th June, 1830, fixed by Order of the Supreme Court.	1. Tariff of Fees to be taken in Civil Cases by the Registrar of the Supreme Court of the Cape of Good Hope. 2. Tariff of Fees to be taken by the Master of the Supreme Court.	} The whole.
Tariff of Fees, dated 24th January, 1832, fixed by Order of the Supreme Court.	Tariff of Fees to be taken for Proceedings in Civil Cases in the Circuit Courts of this Colony.	
Table of Fees and Charges fixed by Rule No. 341 of the Supreme Court, dated 26th March, 1881.	Table of Fees and Charges to be allowed by the High Sheriff of the Colony in respect of executing the process of the Supreme Court, Eastern Districts Court, and Circuit Courts of the Cape of Good Hope.	The item "Registering Summons or other process, £0 1s. 0d."
	GRIQUALAND WEST.	
Ordinance No. 20 of 1874.	Ordinance to substitute in the Province of Griqualand West, certain Tariffs of Fees and Charges for certain other Tariffs in force in the Colony of the Cape of Good Hope.	Tariffs Nos. 1, 2, 4 and 5 of Schedule 2; the item "Reissuing Summons or other process, £0 1s. 0d.," in Tariff No. 3 of Schedule 2.

SCHEDULE 2.

Schedule 2.

TARIFF 11. POLICIES OF INSURANCE.—ACCIDENT POLICIES.

£ s. d.

For any payment agreed to be made upon the death of any person only from accident or violence, or a composition for personal injury, or by way of indemnity against loss or damage of or to any property for which Stamp Duty is not otherwise provided; for every £100 or fraction thereof .. .. .	0 0 3
2. Where the Premiums on Accident Policies shall be payable or be paid annually, the receipts for such annual payments shall be stamped as follows:—For over £1 of such premium or fraction of £1 .. .. .	0 0 1
	<i>eeee</i>

No. 20—1884.

3. For Single or Return Journey Tickets issued at Railway Stations, covering risks of accidents on Single or Return Journeys, five per cent. on the annual receipts from such Tickets, shall be paid by the Insurance Company into the Treasury. Every Insurance Company issuing such Tickets shall be bound to render accounts to the Treasury in support of the payment of the Stamp Duty.

1. The foregoing Tariff shall be taken to form part of Tariff No. 11 of the Schedule to the Stamp Act, 1864, and shall be considered as if the same had been inserted therein after the words and figures following namely:

“On Fire Policies for every £100 or fraction thereof  
of the sum insured.. .. . 0 0 6”

TARIFF 15—LICENCES. <sup>(1)</sup>

## ANNUAL.

	£	s.	d.
For exercising the trade of a Baker .. .. .	5	0	0
For exercising the trade of a Butcher .. .. .	5	0	0
For keeping a Public Billiard Table .. .. .	10	0	0
For keeping a Public Bagatelle Table .. .. .	3	0	0
For Hawkers—			
To trade in one Division with or without one vehicle ..	3	0	0
For each additional vehicle .. .. .	1	0	0
To trade generally with or without one vehicle ..	10	0	0
For each additional vehicle .. .. .	3	0	0
For dealing by Wholesale .. .. .	15	0	0
For dealing by Retail .. .. .	3	0	0
For carrying on the business of an Auctioneer .. .. .	10	0	0
For keeping a Bonded or Bonding Warehouse .. .. .	20	0	0
For dealing in Gunpowder .. .. .	5	0	0
For every Apothecary, Chemist and Druggist .. .. .	5	0	0
For carrying on the business of a Broker .. .. .	5	0	0
For carrying on the business of a Pawnbroker .. .. .	25	0	0
For manufacturing Jams, Preserves, and Confectionery, for purposes of Trade or Sale .. .. .	5	0	0
For selling Revenue Stamps .. .. .	0	5	0
Every Wharf Dingy plying for hire .. .. .	0	10	0
Every other Boat, used in the Transport of Goods or Materials, or plying for Passengers:			
Of Ten Tons and under .. .. .	1	0	0
Above Ten Tons .. .. .	1	10	0
Every Steam Launch plying for Passengers .. .. .	2	0	0
Every Steam Tug, including Passenger Licence .. .. .	10	0	0

<sup>1</sup> For other Licences see “Liquor Licensing Act,” “Excise,” &c.

Every Steam Tug fitted and used only for supplying Water	£	s.	d.	No. 20—1884.
to Shipping .. .. .	10	0	0	
Every Hulk used for Storing Coal .. .. .	20	0	0	

## OTHER.

For (1) killing game (for one whole season) .. .. .	0	10	0
For a special licence for the Solemnization of Marriage .. .. .	5	0	0
For admission to practise as an Advocate .. .. .	20	0	0
For admission to practise as an Attorney .. .. .	20	0	0
For admission to practise as a Notary .. .. .	12	10	0
For admission to practise as a Conveyancer .. .. .	12	10	0
For admission to practise as a Translator .. .. .	2	10	0
For admission to practise as a Medical Practitioner .. .. .	5	0	0
For admission to practise as a Land Surveyor .. .. .	5	0	0
For admission to practise as an Apothecary, Chemist and Druggist .. .. .	2	10	0
For admission to practise as a Dentist .. .. .	2	10	0

## SPECIAL.

Every Hulk or Condemned Vessel in any Port or Harbour,  
not used for Storing Coal, until completely broken up  
and removed :

For the first six months .. .. .	25	0	0
For the second six months .. .. .	30	0	0
For every additional six months .. .. .	35	0	0

1. The above-mentioned licences shall either be written upon paper duly stamped, or shall have adhesive stamps of the proper value affixed to them before being issued. If adhesive stamps be used, they must be cancelled by writing thereon the initials of the officer issuing the licence, and the date on which he shall write the same, or in such other way as the Governor may from time to time direct.

2. All such of the above licences as are annual shall, no matter at what period of the year they may be taken out, expire on the thirty-first of December then next. When any such annual licence shall be issued upon or after the first of July, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of July, there shall be no deduction.

3. It shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, assistant field-cornet, excise officer, or chief constable, to demand from any person travelling in this Colony as a hawker or trader, the production of his licence; and unless such person shall, on such demand, produce a licence duly stamped, and still in force, it shall be lawful for the person demanding the same to carry and convey the hawker or trader, with his goods, to the nearest Resident Magistrate, and such Magistrate shall have jurisdiction to try the offender, although no act of trading may be proved to have been done within the district of such Magistrate.

4. No hawker or pedlar shall obtain a licence until he shall produce to the officer authorized to issue such licence a certificate signed by some officer of police or by the chief constable, or by a Justice of the

<sup>1</sup> See §§ 5 and 6, Act 36 of 1886 (Game).

No. 20—1884.

Peace for the division or district in which the said licence is applied for, that the applicant has resided within the said division or district for one month, and that he is, to the best of his knowledge and belief, a person of good character, and intends in good faith to carry on the trade of a hawker.

5. So much of this tariff as relates to annual licences shall commence on the first day of January, 1885, and not sooner, anything contained in the concluding section of this Act to the contrary notwithstanding.

6. No licences shall be necessary for selling postage stamps.

7. Every wholesale licence shall authorize all dealings authorized by the retail shop licence as well as all dealings by wholesale.

Rebate of duty on  
sugar.

8. Under such regulations as may be prescribed by the Governor in that behalf a rebate of Customs duty may be allowed to the wholesale consumers of sugar for the manufacture of jams, preserves, and confectionery: Provided that no premises on which the brewing of beer or distillation of spirits is carried on shall be licensed for the manufacturing of jams, preserves and confectionery.

9. The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 15 of the Schedule to the Stamp Act, 1864.

## TARIFF 16—MISCELLANEOUS.

	£	s.	d.
Every Affidavit in any Civil Case, Motion, or Proceeding in Insolvency .. .. .	0	3	0
Every Ante-nuptial Contract .. .. .	1	0	0
Articles of Partnership .. .. .	2	0	0
Every Act of Suretyship .. .. .	0	2	0
Notarial Protest of a Bill or Note exceeding £10, but not exceeding £40 .. .. .	0	2	6
Notarial Protest of a Bill or Note exceeding £40 .. .. .	0	5	0
Notarial Certificate of the presentation of a Bill, Note or Cheque not exceeding £40 .. .. .	0	1	0
Notarial Certificate of the presentation of a Bill, Note, or Cheque exceeding £40 .. .. .	0	2	6
Every Notarial Attestation of any instrument not otherwise stamped, and any Notarial Attestation of the truth of any Copy of any Instrument, each .. .. .	0	1	0
Every Notarial Special Power of Attorney to do any particular act .. .. .	0	1	0
Every Notarial Act not required to be otherwise stamped, and every Grosse .. .. .	0	1	0
Every Certificate of Authentication by a Minister of the Crown or Head of a Department .. .. .	0	15	0
Every proxy to vote at any Meeting of Shareholders or Members of any Joint Stock Company, Association, or Society .. .. .	0	0	1
Every General Power of Attorney which includes among the acts to be performed, Sales or Transfers of Ships or Lands, or the passing of Deeds of Hypothecation or Mortgage .. .. .	1	0	0
Every General Substitution to exercise all the powers conferred by a Power of Attorney as aforesaid .. .. .	0	10	0

	£	s.	d.	No. 20—1884.
Every General Power of Attorney which does not include Sales or Transfers of Ships or Lands, or the passing of Deeds of Hypothecation or Mortgage, but includes the continuous performance of more than one act or transaction, or of various matters of business ..	0	10	0	
Every General Substitution to exercise all the powers conferred by such last mentioned General Power of Attorney .. .. .	0	5	0	
Every Power of Substitution under any General Power of Attorney :				
(a). If for the performance of a single transaction ..	0	1	0	
(b). If for the performance or continuous performance of more than one transaction .. .. .	0	5	0	
Every Special Power of Attorney not otherwise provided for	0	1	0	
Every Substitution under such last mentioned Power of Attorney .. .. .	0	0	6	
Every Receipt for the Payment of Money (other than a receipt for, or in respect of, Money deposited in any Bank) when the sum exceeds £1 .. .. . <sup>(1)</sup>	0	0	1	
Every Letter of Allotment or Letter of Renunciation, or every Letter having the effect of a Letter of Allotment of any Share in any Company or proposed Company	0	0	3	
Every Scrip Certificate, Scrip, or Share (new Scrip Certificates without change of proprietorship excepted)—				
(a). Entitling any person to become the proprietor of any Share in any Company or proposed Company				
(b). Issued or delivered in the Colony and entitling any person to become the proprietor of any Share in any Colonial or Foreign Company or proposed Company				
For every £10 of subscribed capital or fraction thereof	0	0	3	
Every Transfer of any such Share—				
For every £10 of subscribed capital or fraction thereof	0	0	1	
Every Debenture issued by any Company or Corporation—				
For every £100 or fraction thereof .. .. .	0	5	0	
Every Transfer or Cession of any Debenture not payable to bearer—				
For every £100 or fraction thereof .. .. .	0	2	0	
Every Fixed Deposit Receipt of any Bank or Joint Stock Company—				
For each £100 or fraction of £100 and for each year or fraction of a year .. .. .	0	1	0	
Every Renewal or Continuation of any Fixed Deposit Receipt of any Bank or Joint Stock Company—				
For each £100 or fraction of £100 and for each year or fraction of a year .. .. .	0	1	0	
Every Fixed Deposit Receipt of any Bank or Joint Stock Company terminable at the expiration of a notice to be given from either side—				
For each £100 or fraction of £100 and for each year or fraction of a year during its continuance ..	0	1	0	

<sup>1</sup> See § 7, *supra*.

No. 20—1884.

1. Every instrument mentioned in this tariff must be as to some part of it written upon stamped paper, or otherwise have an adhesive stamp affixed and cancelled in such manner as the Governor may from time to time direct.

2. Protests and certificates of presentation of bills, notes, and cheques under £10 shall not be required to be stamped.

3. The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 16 of the Schedule to the Stamp Act, 1870.

## TARIFF 2.—AGREEMENTS.

On every Lease or Agreement for Lease of Movable or Immovable Property, where the term of hiring shall not be less than six months,

	£	s.	d.
For every £100 given by way of fine or foregift, and in like proportion for any greater or less sum	..	1	0 0
For £10 of rent and not exceeding £20	..	0	2 0
Exceeding £20 „ „ „ 30	..	0	3 0
„ 30 „ „ „ 40	..	0	4 0
„ 40 „ „ „ 50	..	0	5 0
Exceeding £50 and not exceeding £100	..	0	10 0
And for every additional £100 rent, or fraction thereof	..	0	10 0

On every lease for any period exceeding one year, the amount of the above stamp shall be multiplied by the number of the years of the duration of the lease; and for this purpose, every broken portion of a year shall be deemed to be an entire year.

When any lease or agreement for a lease shall be made, not for any definite period, but for and during the natural life of a person named therein, whether lessor or lessee, the value of such lease or agreement for a lease shall be calculated according to the tables for calculating the value of annuities contained in the schedule annexed to the Act of the Imperial Parliament, called the "Succession Duty Act, 1853," and the stamp to be affixed to such lease or agreement for a lease shall be upon the value thereof as so ascertained, and according to the aforesaid scale of ten shillings for every hundred pounds or fraction of a hundred pounds of said value.

When any lease or agreement for a lease shall not be made for any definite period, but terminable on any notice stipulated in the said lease to be given, the stamp to be affixed to such lease shall be calculated as if the lease were for a period of three years.

When any lease or agreement for a lease shall be for a term or period which is partly definite and partly indefinite, the value of the stamp to be affixed to such lease shall, as regards the definite period stated therein, be calculated according to the above tariff, and as regards the indefinite period by an additional stamp of *twice* the value of the first-named stamp.

In case of the assignment of a lease by a lessee before the expiration thereof, such assignment shall bear a stamp of one-half of the amount payable according to the above scale upon a lease for the unexpired term assigned.



On all articles of apprenticeship to any of the following professions, that is to say :

Attorney,  
Notary Public,  
Conveyancer,  
Surgeon,

In case no premium be paid on such articles, or a premium which, reckoning at the rate of ten pounds sterling per centum, would not exceed ten pounds sterling .. .. . £10

In case a premium be paid on such articles which, reckoning at the rate of ten pounds sterling per centum, would exceed ten pounds sterling, then the premium shall be reckoned as one gross sum, whether payable in one sum or by instalments, or as an annual or other periodical payment to be made during the apprenticeship, or to be paid partly or wholly, or at the end of the apprenticeship, and shall pay per centum, £10.

On all articles of apprenticeship to any of the following trades, that is to say :—

Apothecary,  
Chemist or  
Druggist,

Half the above rates.

In case any one shall combine in his own person any two or more of the above professions or trades, the one stamp shall cover articles of apprenticeship to such person in respect of all such professions or trades as aforesaid as shall be so jointly practised by such person.

Every agreement and assignment mentioned in the foregoing tariff must, as to some part thereof, be written upon stamped paper, or otherwise have an adhesive stamp affixed and cancelled, as in the fourteenth section of the “Stamp Act, 1864,” is mentioned.

The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 2 of the schedule to the Stamp Act, 1870, as amended by section 8 of the Stamp Act, 1877.

FEEES OF OFFICE.

I. In the Deeds Registry Offices at Cape Town, Kimberley, and King William’s Town.

	£	s.	d.	Fees of Office.
For the preparation of any Deed of Transfer or Hypothecation of Immovable Property, prepared in the Deeds Registry Office .. .. .	2	0	0	
For the registration of any such last mentioned Deed prepared elsewhere .. .. .	1	0	0	
For the registration of a Notarial Bond or Obligation in the name of each debtor and each surety—				
For each debtor and surety respectively .. .. .	0	6	0	
For the registration of every Ante-nuptial Contract, and every Notarial Contract of Servitude—				
At the office where such instrument shall be first registered .. .. .	1	0	0	
At any office where the same shall subsequently be registered .. .. .	0	6	0	

No. 20—1894.

	£	s.	d.
On each application to search the Index of the Register of Transfers and Hypothecations—			
For each letter searched .. .. .	0	1	0
For an inspection of the entries under each name in the Debt Register or in the Land Register, or of every Bond, Deed of Transfer or Hypothecation, Ante-nuptial Contract, or Contract of Servitude .. .. .	0	2	0
NOTE.—No fee is to be charged to any Conveyancer in respect of any search or inspection connected with any Deed about to be passed or registered by him or to any surveyor engaged in surveys of Crown Land, or land for transfer.			
For Office Copies of Deeds or other documents not exceeding four folios of 100 words .. .. .	0	5	0
Every additional folio of 100 words .. .. .	0	0	6
For every registration, cancellation, entry, certificate or other act to be made or done in the Deeds Registry Office, not being any of the matters or things aforesaid	0	3	0
For every deduction from a Diagram.. .. .	0	10	0

II. In the Offices of the Master of the Supreme Court and of the Master of the High Court of Griqualand.

a. ORPHAN CHAMBER BRANCH.

	£	s.	d.
For filing and registering any Will, Codicil, or Testamentary Writing .. .. .	0	10	0
On every application to search the Index of Names of Deceased Persons; for every name searched for ..	0	1	0
On every application to search the Index of Names of Executors, Tutors, Curators, or Sureties; for each name searched for .. .. .	0	3	0
For every inspection of any Will (including Codicils, if any).. .. .	0	2	0
Of Liquidation Accounts:			
One Account, or the first of a series .. .. .	0	2	0
Each subsequent Account .. .. .	0	1	0
Of any other document .. .. .	0	1	0
For Office Copies of Wills or other documents, not exceeding one folio of 100 words .. .. .	0	3	0
Every additional folio of 100 words .. .. .	0	1	0
For Letters of Administration as Executor Testamentary, Assumed or Dative, or Certificates of Appointment as Curator Bonis, each:			
Where the value of the Estate does not exceed £40	0	10	0
Where value exceeds £40 .. .. .	1	0	0
For Letters of Confirmation of the Appointment of Tutors Testamentary, Assumed or Dative, or of Curators, Nominate, Assumed, or Dative, each .. .. .	0	10	0
For every Edict, including cost of publication in the <i>Government Gazette</i> .. .. .	1	0	0
For attending any Meeting of Next-of-Kin, Legatees, or Creditors of Deceased Persons, Minors, or Absentees, whether by the Master or Resident Magistrate ..	0	10	0

For approving Security given by Executors, Tutors, or Curators .. .. .	£	s.	d.
	0	5	0
For filing Deeds of Assumption, each .. .. .	0	10	0
For filing every Act repudiating an Inheritance .. .. .	0	5	0
On every Inventory of an Estate or any part thereof—			
Without a valuation :			
First sheet, not exceeding one folio of 100 words	0	3	0
Every additional folio of 100 words .. .. .	0	2	0
With a valuation :			
If such valuation do not exceed £40 .. .. .	0	1	0
Do. do. £100 .. .. .	0	3	0
And for every additional £100 or part thereof ..	0	1	0
For registering Accounts of Executors, Tutors, or Curators, each .. .. .	0	3	0
For every Report, in the discretion of the Master, subject to a taxation before the Court, or a Judge thereof; or not less than .. .. .	0	10	0
For filing and registering any Order of Court .. .. .	0	10	0
For every Certificate in respect of which no other fee is payable .. .. .	0	3	0
For taxing the Remuneration of Executors, Tutors, Curators, or Appraisers, on every £ or fraction of a £ of the taxed amount .. .. .	0	1	0

## b. INSOLVENT AND LAW BRANCH.

For every Order of Sequestration filed .. .. .	0	10	0
For every other Order of Court filed .. .. .	0	3	0
For every Advertisement of Meeting of Creditors .. .. .	0	5	0
For every Attendance at a Meeting of Creditors .. .. .	0	12	0
On every Report of the filing of an Account or of Election of a Trustee .. .. .	0	10	0
On every Certificate of Appointment of a Trustee, or of the confirmation of an Account .. .. .	0	5	0
For each attendance in matters referred by the Court ..	1	5	0
For every Report in the same, not exceeding five folios of 100 words, each .. .. .	0	10	0
Each additional folio .. .. .	0	1	0
For every search or inspection of any Account or Document	0	1	0
For certified Copies of Documents when not exceeding four folios of 100 words, each .. .. .	0	5	0
Each additional folio .. .. .	0	1	0
For Office Copies not certified one-half of the preceding charges.			
On all moneys received, paid, or distributed by the Master, in pursuance of any Order or Court .. .. .			One per cent.

## III. In Civil Cases in the Court of Appeal, the Supreme Court, the Court of the Eastern Districts, the High Court of Griqualand, and the Circuit Courts.

For every Summons for a Defendant or Witness .. .. .	0	12	0
For every Warrant of Attorney to Sue or Defend .. .. .	0	6	0
For every Declaration or Special Case .. .. .	1	0	0

No. 20—1884.

	£	s.	d.
For every Plea, Answer or Subsequent Pleading .. ..	0	10	0
Upon every Notice, entering or setting down any Illiquid Default, or Provisional Case .. ..	0	5	0
Upon every Notice, setting down for Trial, Argument or Judgment, any Contested Case .. ..	0	10	0
For every Certified Copy of any Document not exceeding four folios of 100 words each .. ..	0	5	0
Every additional folio of 100 words .. ..	0	1	0
For every Writ or Process of Execution .. ..	0	10	0
For every Writ of Arrest, or for the Attachment of the Person or of Property to found Jurisdiction .. ..	1	0	0
For every Petition to Appeal to the Queen in Council ..	2	0	0
For every Recognizance in such Appeal Cases, for each person .. ..	0	10	0
For every other Recognizance or Bond of Security for restitution .. ..	0	10	0
For affixing the Seal of the Court to Commissions for examination of Witnesses, or to any other Document ..	0	15	0
Upon every Liquid Document upon which provisional sentence is prayed, not being a document for which a stamp is by law provided .. ..	0	5	0
For every Order of Rehabilitation or Release from Sequestration of an Insolvent .. ..	1	0	0
For every other Rule or Order of Court .. ..	0	10	0
Searching for any Entry, Record, or Document:			
Through one year .. ..	0	2	0
For every additional year .. ..	0	1	0
Upon every Petition, Memorial, Notice of Motion, or other Application to the Court filed .. ..	0	5	0
On every Certificate of Completion of Security on Application for Rehabilitation .. ..	0	5	0
On every Balance Sheet on application for Rehabilitation ..	0	5	0
Taxation of Costs, for each £ or fraction of a £ taxed ..	0	1	0

No. 10.—Sd. P. Maitland.]

[March 10, 1846.

## Ordinance for amending the Law relating to the Baking Trade.

Preamble.

Repeal of former laws.

WHEREAS doubts exist whether or not all bakers within the Colony are by law required to take out licences to trade as such: And whereas it is expedient to remove such doubts and to regulate in certain other respects the baking trade: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the proclamation of Lord Charles Henry Somerset, the then Governor of this

Colony, bearing date the 6th of December, 1822, and of any other law or usage heretofore in force in this Colony as shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed and the same is hereby repealed accordingly.

Ord. 10--1846.

2. And be it enacted that from and after the first of May next no person shall within this Colony exercise the trade or calling of a baker without having previously taken out a baker's licence. And any person exercising the trade or calling of a baker as aforesaid without having previously taken out such licence as aforesaid shall for every offence forfeit five pounds. <sup>(1)</sup> Provided, however, that every person within this Colony lawfully keeping a retail shop may without taking out a baker's licence sell bread purchased or obtained from any person who shall have taken out a baker's licence aforesaid. Provided, also, that nothing herein contained shall extend to prevent any person from selling bread to travellers without any licence whatever.

Penalty on carrying on trade of a baker without licence

Sale of bread at retail shops.

3. [Repealed in part by Act 20, 1884, and lapsed as to remainder.]

4. And be it enacted that no person who shall have taken out a baker's licence shall be entitled by virtue thereof to bake or make bread at more than one place or premises or to sell the same elsewhere than at the place or premises where it is baked or made. Provided, however, that any one person may take out as many baker's licences as he may require, and that the holder of a baker's licence who shall also keep a lawful retail shop may sell in such retail shop bread baked and made at the place or premises licensed as a bakery without taking out any additional baker's licence. And provided, also, that the servant of any licensed baker in charge of any delivering cart of such baker may sell bread for and on account of such baker from and out of such cart while on its daily or usual delivering rounds.

Licence applicable to one baking place only.

Sale by delivery from carts.

5. And be it enacted that nothing in this Ordinance contained shall extend to alter or affect any municipal regulation of the municipality of Cape Town touching and concerning the registration at the office of the municipality of any licence to exercise the trade of a baker or to vend bread; but every such regulation shall be deemed, taken, and judged of in regard to bakers and vendors of bread precisely as if this Ordinance had never been passed.

Municipal regulation as to registration of bakers.

6. And be it enacted that every person selling bread without having previously taken out a baker's licence shall be deemed and taken to have himself baked and made the same unless he shall prove that the same was baked and made by some licensed baker.

Presumption on sale of bread without licence.

7. And be it enacted that the tenth clause or section of the proclamation aforesaid of the 6th of December, 1822, shall be repealed, and the same is hereby repealed accordingly.

Repeal of clause of proclamation of 1822

8. And be it enacted that in the interpretation of this Ordinance the term bread shall not extend to sweetened or spiced bread or

Meaning of term "bread."

<sup>1</sup> But see Acts 13, 1870, § 6 and 20, 1884, Tariff 15.

- Ord. 2—1838. cakes or any species of confectionery, and that the singular number shall include several persons as well as one person and that the masculine gender shall include females as well as males.
- Exclusion of Natal. 9. And be enacted that nothing in this Ordinance contained shall extend to the district of Natal.
- Time of taking effect. 10. And be it enacted that this Ordinance shall commence and take effect from and after the first day of May next ensuing.

No. 2.—Sd. George Napier.] [September 26, 1838.

Ordinance for Regulating the Sale of Bread.

- Bread to be sold by weight. WHEREAS it is expedient that bread should be sold by weight within this Colony : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the fifteenth day of October next it shall not be lawful for any baker or vendor of bread to sell any bread other than French or fancy bread and rolls except by weight ; any law or usage to the contrary notwithstanding.
- Weight to be stamped on bread. 2. And be it enacted that all bread except French or fancy bread and rolls shall be stamped with figures denoting one or other of the following weights, to wit,— $\frac{1}{4}$  lb.,  $\frac{1}{2}$  lb., 1 lb., 2 lbs., and 4 lbs., and which said weights shall respectively be of the standard Dutch (<sup>1</sup>) weight of this Colony. And if any baker or vendor of bread shall sell any bread except as aforesaid which shall not weigh so much as the figures stamped thereon indicate he shall forfeit a sum not exceeding two pounds sterling for each offence.
- Means of weighing to be provided. 3. And be it enacted that every baker or vendor of bread shall cause to be fixed in some conspicuous part of his shop on or near the counter a beam and scales with standard Dutch (<sup>1</sup>) weights or other sufficient balance, in order that all bread except as aforesaid there sold may from time to time be weighed in the presence of the purchasers thereof if they shall so require ; and if any baker or vendor of bread shall neglect to fix such beam and scales or other sufficient balance in manner aforesaid, or to provide and keep for use a proper beam and scales and proper weights or balance, or shall use any false weight, or shall not weigh bread sold in his shop when required so to do by a purchaser, he shall forfeit a sum not exceeding five pounds sterling for each offence.
- Ordinance not to apply to navy or army. 4. And be it enacted that nothing herein contained shall extend or be construed to extend to the sale of bread supplied for the use of Her Majesty's naval or military service.

<sup>1</sup> Dutch weights abolished by Act 11 of 1858.

No. 11.—Sd. P. Maitland.]

[March 10, 1846.]

Ordinance for amending the Law relative to the Licensing  
of Retail Shops.[Repealed except as to section 8. See Act 3 of 1864 § 21, and  
Act 20 of 1884.]

8. And be it enacted that from and after the 1st day of January, 1847, it shall be lawful to sell in Cape Town, and that from and after the taking effect <sup>(1)</sup> of this Ordinance it shall be lawful to sell in all other places within this Colony, fruit, vegetables, milk, eggs, firewood, cakes, or confectionery without taking out any licence for the privilege of so doing.

Sale of articles  
without licence.

No. 10—1869.]

[October 18, 1869.]

## ACT

To Define, in certain cases, the meaning of the term  
“Hawkers or Travelling Traders” for the purpose of  
“The Stamp Act, 1864.”

WHEREAS it is customary for unlicensed persons to carry about for sale divers articles of small value, suitable for household use, whereby the public convenience is promoted and many poor persons earn a livelihood: and whereas it is expedient that persons carrying about such articles for sale shall not be deemed to be hawkers or travelling traders for the purpose of “The Stamp Act, 1864:” Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. No person carrying about for sale any of the following articles, namely: Fish, fruit, vegetables, milk, eggs, butter, poultry, wild fowl, not being game, cakes, confectionery, honey, flowers, brooms, charcoal, horse-bedding, lime, mats, baskets, straw hats of colonial make, or firewood shall, by so doing, be deemed to be a hawker or travelling trader, nor shall any such person be required to take out or possess for so doing the licence by the “Stamp Act, 1864,” required to be taken out and possessed by hawkers or travelling traders. <sup>(2)</sup>

Who shall not be  
deemed a hawker or  
travelling trader.<sup>1</sup> 1st May, 1846.<sup>2</sup> See also Ord. 11, 1846, § 8, *supra*, and Act 11, 1871, *infra*.

No. 11—1871.]

[August 11, 1871.

## ACT

To Amend in certain respects the provisions of Act No. 3 of 1864, by exempting Persons carrying about or hawking Colonial Produce from the Provisions of the aforesaid Act. <sup>(1)</sup>

Preamble.

WHEREAS it is expedient to amend in certain respects the provisions of Act No. 3, 1864, by exempting persons carrying about or hawking Colonial Produce from the provisions of the aforesaid Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Persons hawking colonial produce exempted from provisions of Stamp Act, 1864.

Laws regulating sale of wines, spirits, &c., not affected.

1. (\*) No person hawking or carrying about for sale any article being the produce or manufacture of this Colony, shall, by so doing, be deemed to be a hawker or travelling trader; nor shall any such person be required to take out or to possess, for so doing, the licence by the Stamp Act of 1864 required to be taken out and possessed by hawkers or travelling traders: Provided that nothing in this Act contained shall be held to interfere with the operation of any laws regulating the sale of wines, spirits, or fermented liquors.

No. 16—1877.]

[August 8, 1877.

## ACT

To Provide for the Collection by means of Stamps of Fees payable in the Supreme Court and other Courts of this Colony, and in the Public Departments and Offices thereof.

Preamble.

WHEREAS it is expedient to provide for the collection by means of stamps of fees payable in the Supreme Court and other Courts of Law in this Colony, and in the offices belonging thereto, and in the other public departments and offices of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor to give notice of day after which fees will be payable by stamps and not in money in any office.

1. It shall be lawful for the Governor, by notice published in the *Government Gazette*, to declare and direct that from and after the time specified in such notice all or any of the fees for the time being payable in money in any Court of Law or in any public

<sup>1</sup> See Act 20, 1884, Tariff 15.

<sup>2</sup> See Act 36, 1886, as to hawking of game.



department or office in this Colony connected with the public service or to any officer thereof, in so far as such fees are payable into or accountable for to the public revenue of the Colony, shall be collected by means of stamps; and every such notice shall be in accordance with the form given in the schedule to this Act with such variations as circumstances may require, and, from and after the time specified in any such notice, the fees therein mentioned shall be received by stamps denoting the amount of fees payable and not in money.

2. All stamps to be used under this Act shall be adhesive.

3. When any fee comprised in any such notice is payable in respect of a document, the stamp denoting the amount of fee shall be affixed to such document; and when any such fee is payable otherwise than in respect of a document, the stamp denoting the amount of fee shall be affixed to such document as the Governor may require to be used.

4. Every officer whose duty it may be to receive any fee or sum of money for any matter or thing to be done or performed, and for which payment is to be made by stamps, shall, before doing or performing such matter or thing, see that there is affixed to the document, instrument, matter, or thing in respect whereof the fee or sum of money is payable, a stamp of value not less than the fee or sum of money payable for the performance of such matter or thing, and shall immediately cancel such stamp by writing, or stamping, or impressing in ink on the same, his name or initials, and the date of such cancellation, so as effectually to obliterate and cancel such stamp, and so as not to admit of the same being used again.

5. It shall be lawful when, and as often as occasion shall render it necessary so to do, to use two or more stamps for denoting or expressing the amount or value of any one stamp by this Act required; and all instruments stamped with any two or more stamps which shall together denote or express an amount or value not less than the amount or value of any single stamp so required shall be held and taken to be as good, valid, and effectual as if the said single stamp had been alone affixed.

6. Every instrument which shall be stamped with a stamp or with stamps denoting or expressing a greater value or amount than that of the stamp appointed for such instrument under or by virtue of this Act, shall be deemed and taken to be as good, valid, and effectual as if the particular stamps appointed had been used.

7. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped, but if any such document is through mistake or inadvertence received, lodged, filed, or used without being properly stamped, or if it shall appear upon any such document being tendered in evidence or for any other purpose that the same through mistake or inadvertence has not been properly stamped, it shall be compe-

Stamps used to be adhesive.  
Documents to which the stamps are to be affixed.

Duty of officer in respect to fees payable by stamps.

Two or more stamps may be used instead of a single stamp.

Instruments over-stamped to be good and valid.

Documents to be properly stamped.

- No. 16—1877. tent for any Court, Judge, or Resident Magistrate, to order that the same be stamped with stamps of such amount beyond the fee due thereupon as may be thought reasonable, not exceeding five times the amount of the stamp which should have been affixed thereon as in such order may be directed; and on such document being stamped accordingly the same, and every proceeding relative thereto, shall be as valid as if such document had been properly stamped in the first instance.
- Penalty.
- Governor may make regulations. 8. The Governor may, from time to time, make such regulations as may appear to be necessary for carrying out this Act, and for regulating the use of stamps under it, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purpose of such stamps, and for ensuring the proper cancellation of stamps and keeping accounts thereof, and for issuing stamps in exchange for spoilt stamps; and all such regulations when published in the *Government Gazette* shall have the force of law, and shall be laid before both Houses of Parliament forthwith if Parliament be sitting, and, if not, then within twenty-one days after the commencement of the next session of Parliament.
- Act not to interfere with power of altering, &c., fees. 9. Nothing in this Act shall interfere with the exercise by any authority of any power of altering, or otherwise regulating the amount of any fees for the time being, payable in any Court of Law in this Colony, or in any office connected therewith, or in any public department or office, or to the officers thereof.
- Applying certain provisions of Stamp Act, 1864. 10. All and singular the provisions of the 4th, 5th, 6th, 7th, 8th, and 9th sections of the Stamp Act, 1864, shall apply, *mutatis mutandis*, to the stamps required under this Act, as if they were stamps required by the said Stamp Act, 1864, or the schedule thereto.
- Short title. 11. This Act may be cited for all purposes as "The Public Office Fees Act, 1877."

---

SCHEDULE.

Office of the Registrar of the Supreme Court.  
 [Or as the case may be].

Notice under the "Public Offices Fees Act, 1877."

Notice is hereby given, in pursuance of the provisions of the said Act, that from and after the \_\_\_\_\_ day of \_\_\_\_\_, the fees for the time being payable in the office of the Registrar of the Supreme Court (or as the case may be), or to the officers thereof, shall be collected by means of stamps.

---

No. 1—Sd. G. Napier.]

[March 22, 1838.

Ordinance for repealing the Ordinance entitled “An Ordinance for the better observance of the Lord’s Day in this Colony,” and dated the 23rd day of August, 1837, and for making other provisions instead thereof.

WHEREAS it is expedient to repeal the Ordinance No. 4 of 1837, entitled “An Ordinance for the better observance of the Lord’s Day in this Colony,” and dated the 23rd day of August, 1837, and to make other provisions for the better observance of the Lord’s Day in this Colony instead thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council, that from and after the passing of this Ordinance the said Ordinance No. 4 of 1837, shall be and the same is hereby repealed. Preamble.

2. And be it enacted that from and after the passing of this Ordinance it shall not be lawful for any person to sell or offer for sale any goods, merchandize, cattle, or other live-stock, or to trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing; or to cut or carry any fuel or to engage in field labour, except for the preservation of the fruits of the earth in cases of urgent necessity, or (except upon some lawful occasion) to discharge any gun or other fire-arm on the Lord’s Day. And any person who shall sell or offer for sale any goods, merchandize, cattle, or other live-stock, or shall trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing, or shall cut or carry any fuel, or shall engage in any field labour except as aforesaid, or shall discharge any gun or other fire-arm, except as aforesaid, on the Lord’s Day, shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days. And it shall be lawful for any constable or police officer to seize any such goods, merchandize, cattle, or live-stock, or any fuel or fire-arm as aforesaid; and the same shall on the conviction of the offender be and become forfeited to Her Majesty. Dealings forbidden on the Lord’s day.

3. Provided always and be it enacted that it shall be lawful for any apothecary, chemist, or druggist to vend any medicines or drugs, and to keep open his shop, store, or other place for the purpose of vending the same on any part of the Lord’s Day. And provided, also, that it shall be lawful for any licensed inn-keeper or eating-house-keeper to keep open any inn or eating-house and to supply any person who is a traveller or lodger at such inn or eating-house with the necessary provisions on any part of the Lord’s Day. And provided, also, that it shall be lawful for any butcher or baker respectively to vend meat and bread and Dealings permitted on the Lord’s day.

*ffff*

- Ord. 1--1838. to keep open any shop, store, or other place for the purpose of vending the same on the Lord's Day at any time before nine o'clock in the morning; and for any dairyman or fishmonger respectively to vend milk and fish and to keep open any shop, store, or other place for the purpose of vending the same on the Lord's Day at any time before nine o'clock in the morning and after four o'clock in the afternoon.
- Naval and military supplies. 4. And be it enacted that nothing herein contained shall extend to prevent any contractor from supplying on the Lord's Day Her Majesty's naval or military forces with any article specified in his contract; nor to prevent any ship-chandler from supplying any ship with anchors, cables, or anything which they may stand in need of in cases of necessity.
- Ship supplies.
- Markets on Lord's day prohibited. 5. And be it enacted that no market shall be held nor shall any goods, merchandize, cattle, or other live-stock be allowed to be sold or offered therein for sale on the Lord's Day. And any market master or other person in charge of any market who shall knowingly permit any market to be held or shall wilfully suffer any goods, merchandize, cattle, or other live-stock to be sold or offered for sale in any such market upon the Lord's Day shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days.
- Amusements prohibited on Lord's day. 6. And be it enacted that the owner or occupier of any public billiard-room, skittle-ground, or other public place of amusement who shall permit or suffer any one to play in his house or premises at any game on the Lord's Day shall incur and be liable to a fine not exceeding ten pounds nor less than five shillings, or to imprisonment for any period not exceeding one month. And it shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, or police officer to disperse all persons gathering together on the Lord's Day in any public or open place for the purpose of gambling, fighting dogs or cocks, or playing at any game; and to take and seize any implements, instruments, or animals used therein, and to destroy or carry away the same. And all persons actually gambling, fighting dogs or cocks, or playing as aforesaid he shall arrest or cause to be arrested; and the said persons shall on conviction thereof be sentenced to a fine not exceeding three pounds nor less than five shillings, or to imprisonment with or without hard labour for any period not exceeding fourteen days.
- Offences before whom to be tried. 7. And be it enacted that all offences against this Ordinance shall be cognizable by the Court of the Resident Magistrate of the district or place in which such offences shall be committed; and by the resident Justice of the Peace of Simon's Town if committed within his jurisdiction; and that it shall and may be lawful for the said Governor in each particular case to determine, award, and direct what share if any of the amount of any fine or forfeiture
- Fines, application of.

recovered in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

No. 5—1861.

8. And be it enacted that the fourteenth, fifteenth, and sixteenth sections of the Ordinance No. 48, entitled "Ordinance of His Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto," and dated the third day of July, 1828, shall be and the same are hereby repealed.

Sections of police ordinance repealed.

No. 5—1861.]

[August 14, 1861.

## ACT

For Amending in certain respects the Law relating to Tacit Hypothecations.

WHEREAS it is expedient to amend the law relating to tacit hypothecations: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. All former laws and usages in so far as they may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Repugnant laws and usages repealed.

2. The tacit hypothecation possessed by the local Executive Government of this Colony upon the estates of persons indebted to the said Government for the arrears of any rent or other periodical payment issuing out of land, or for the arrears of any tax or other periodical payment of a like nature, shall in no case be claimable for any sum exceeding a sum equal to three whole years of such rent, tax, or other payment.

Tacit hypothecation of Government for arrear rents or taxes limited. *To three years rent*

3. The tacit hypothecation possessed by minors upon the estates of their guardians, and by insane persons, persons adjudged prodigals and interdicted persons, upon the estates of their curators, in security of the debts due and owing by such guardians or curators in their said capacities, shall only subsist for and during a period of three years, reckoned, in the case of minors, from the day on which they attained their majority, and in the case of the other persons aforesaid, from the day on which they ceased to be under curatorship: Provided that should the person entitled to any such hypothecation be absent from this Colony at the time when he became of age or ceased to be under curatorship (as the case may be) he shall be entitled to such hypothecation for and during a period of three years from the day of his return to this Colony: Provided, however, that in no case shall any such hypothecation

Hypothecation of minors and insane persons on the estates of guardians and curators. *Amended to 3 years from date of majority or sanity*

ffff 2

No. 5—1861.

sub sist for a longer period than five years, whether the person who was absent at the time aforesaid shall return to this Colony or not.

Of legatees on estates of testators.

*limited to one year*

4. The tacit hypothecation possessed by legatees in security of their legacies upon the estates of the testators by whom the legacies were bequeathed shall subsist only for a period of twelve months, reckoned from the day on which such legacies became due or demandable: Provided that if upon such last mentioned day any legatee shall be a minor, or under coverture, or absent from the Colony, such legatee shall be entitled to such hypothecation for a period of twelve months, reckoned from the period when such disability shall cease: Provided, however, that in no case shall any such hypothecation subsist for a longer period than five years, whether such disability shall have ceased during that period or not; unless in the case of a person who shall be a minor when such period of five years shall expire, in which case such person shall have a further term of three years, after attaining his majority, in which to claim the benefit of the tacit hypothecation.

In no case to subsist longer than five years.

Tacit hypothecation of landlords to hire of premises limited.

5. The tacit hypothecation possessed by landlords or letters to hire of fixed property shall not be claimable for any sum greater than one whole year's rent or hire of the premises in regard to which such hypothecation shall be claimed.

Hypothecation to survive in favour of heir.

6. If any person entitled to any such tacit hypothecation as aforesaid shall die at any time before such hypothecation shall under the provisions of this Act have expired, the heirs or executors of such person shall possess such hypothecation for the same time that the person so dying would, if living, have possessed it: Provided, always, that every such heir and executor shall have a term of not less than twelve months next after the death of such person so dying within which to claim the benefit of such tacit hypothecation.

This Act not to give rights of hypothecation not possessed by law.

7. Nothing in this Act contained shall be construed so as to give to any person whomsoever any greater or other tacit hypothecation than he would by law have possessed in case this Act had not been passed, nor to impair or affect the validity of any debt considered as a concurrent debt which may be due to any person who shall by virtue of this Act have ceased to possess a tacit hypothecation in security for such debt.

Certain tacit hypothecations abolished

8. All and singular the tacit hypothecations following, or such of them as now by law exist, shall be and the same are hereby abolished, that is to say:

Hypothecation of Government on estate of auctioneers and postmasters.

1. The tacit hypothecation of the local Executive Government of this Colony upon the estates of auctioneers and deputy postmasters considered as collectors or receivers of the public revenue, in security of any debts or demands due by them in their said capacities to the said Government.

On estates of contractors.

2. The tacit hypothecation of the said Government upon the estates of persons who shall have entered into contracts

- with the said Government in security for the performance of such contracts or for any damages sustained by the non-performance thereof: Provided that no person liable for any rent or other periodical payment issuing out of land as in the second section of this Act mentioned shall be deemed to be a contractor within the meaning of this clause.
3. The tacit hypothecation of minors upon the estates of their protutors, and upon the estates of agents or others (not being their guardians) intermeddling with the property or affairs of such minors, and upon the estates of tutors who have been substituted, assumed, or surrogated, or who have been appointed by order of Court, in security for the debts due and owing by such persons in such capacities to such minors: Provided that nothing in this clause contained shall be construed so as to deprive any child of any tacit hypothecation which he may now by law possess upon the estate of either of his parents after the death of the other of them, or upon the estate of any stepfather of such minor, in security of any property of such minor in the hands of and not duly accounted for by his surviving parent. Of minors on estates of protutors and agents.
  4. The tacit hypothecation possessed by municipalities, churches, and generally any public body or institution whatsoever upon the estates of persons intrusted with the collection, custody, or administration of their revenues, in security for the revenues not accounted for by such persons. Of public bodies on estates of collectors.
  5. The tacit hypothecation of persons by whom ships and houses have been built or repaired, for the costs and charges thereby incurred: Provided that nothing herein contained shall be construed so as to deprive any person of any right which he may now by law possess to retain any property whatsoever which shall be in his actual possession, until his costs and charges incurred thereon shall have been paid. Hypothecations for costs of building ships and houses.
  6. The tacit hypothecation possessed by persons who have lent money for the purpose of being expended in the repair of houses and other property, in security for the money so lent. For money lent in repairs of houses.
  7. The tacit hypothecation which certain classes of servants have upon the estates of their masters, in security of their wages in arrear. Of servants on estates of masters for arrear wages.
  8. The tacit hypothecation possessed by persons supplying ships with tackle, apparel, furniture, or stores, in so far as such hypothecation might be claimed by persons supplying such articles in this Colony to ships owned by persons resident in this Colony. For supplying ships with certain articles.

No. 5—1861. Tacit hypothecation on fixed property extinguished by sale.

9. No house, farm, or other fixed property shall, after transfer thereof to a purchaser who purchased the same by a true and *bond fide* bargain for valuable consideration, be subject to any tacit hypothecation to which it might have been subject in the hands of some former owner of the said property: Provided that no bargain shall for the purpose of this section be deemed to be true and *bond fide* in regard to which it shall be made to appear by the person claiming such tacit hypothecation that the purchaser, when he so purchased, acted in collusion with the person selling the same and for the purpose of defeating wholly or in part the claim of the person entitled to such tacit hypothecation, or purchased with notice that a certain or probable consequence of his so purchasing would be that the said claim would be so defeated: Provided that no mortgagee shall for the purpose of this section be deemed to be a purchaser.

This Act not to affect securities for existing debts.

10. Nothing in this Act contained shall extend to or affect any right of tacit hypothecation in security of any debt or claim already at the time of the taking effect of this Act due by any person or estate, and which shall be demanded within twelve months next after the taking effect of this Act, which right shall be judged of in all respects as if this Act had not been passed.

Short title of Act. 11. This Act may be cited for all purposes as "The Tacit Hypothec Amendment Act, 1861," and shall commence and take effect at the expiration of twelve months from and after the promulgation of the same.

---

## TELEGRAPHS.

---

- |   |  |
|---|--|
| 1. Act 20—1861, (Regulation of Electric Telegraphs).      | 4. Act 2—1879, (Colony and England).           |
| 2. ,, 5—1862, (Precedence of Public Telegrams).           | 5. ,, 8—1880, (Newspaper Messages, Copyright.) |
| 3. ,, 4—1877, (Better Regulation of Electric Telegraphs). | 6. ,, 41—1882, (Service of Process, &c.)       |
- For Loan Acts see "Loans."

No. 20—1861.]

[August 14, 1861.

### ACT

#### For the Regulation of Electric Telegraphs. (1)

Preamble.

WHEREAS it is expedient to provide for the construction, regulation, and protection of lines of electric telegraphs in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

---

<sup>1</sup> See Act 4—1877, *infra*.



1. From and after the passing of this Act no line of electric telegraph shall be constructed in this Colony until the Governor, with the advice of the Executive Council, shall have sanctioned the construction of such line, and every line of electric telegraph constructed or to be constructed within this Colony shall be subject to the several provisions of this Act.

No. 20—1861.  
Construction of telegraph to be sanctioned by Governor.

2. It shall be lawful for the Governor, with the advice of the Executive Council, to authorize the establishment and construction either by individuals or co-partnerships of such line or lines of electric telegraph as he may think fit; and for the purpose of facilitating the construction and maintenance of such line or lines of electric telegraph, such person or persons and others acting under his or their authority may enter into and upon such lands as may be required for the construction of any line of communication by electric telegraph, and any other works incident or relative thereto, and may erect, set up, and maintain all necessary masts or poles for the supporting of any cord or wire of any such line, or bury or lay such cord or wire in the ground, and all and singular the tenth, eleventh, twelfth, and thirteenth sections of the Act No. 9, 1858, entitled "Act to Provide for the Management of the Public Roads of the Colony," shall *mutatis mutandis* apply to the entering upon, taking, and using of lands required for any of the purposes aforesaid, precisely as if such line of communication had been a public road.

Individuals or co-partnerships may be authorized to construct lines and may enter upon and use lands for the purpose

3. It shall be lawful for the person or persons as aforesaid, and any person authorized by him or them to carry any line of communication by electric telegraph upon, along, or across any public or private road in this Colony or any shore of the sea: Provided that every cord or wire of any such line which shall be carried along any such road, or within eighty feet of the centre of any such road, shall be placed at least ten feet from the ground, and that every such cord or wire which shall cross any such road above ground shall, where it crosses, be at least fourteen feet from the ground: Provided, also, that the free use and enjoyment of any road over, along, or across which any such line of communication shall be carried be not hindered or obstructed, and that no masts, posts, or other erections shall be placed upon any road or within eighty feet of the centre thereof without the consent, if a main road, of the Chief Commissioner of Roads, and if any other public road, of the Divisional Council of the division: Provided, further, that if any cord or wire shall pass over private lands, the said cord or wire shall not be placed lower than ten feet from the ground, and shall at any particular spot or spots necessary for the convenient use of such lands by the occupier thereof be placed at least fourteen feet from the ground; such particular spot or spots to be fixed by the Civil Commissioner of the division in case the proprietors of the line of telegraph and the occupier of the lands shall not agree upon the same.

Provision against obstruction of roads by lines passing over or along them.

Conditions to be observed in passing over private property

No. 20—1861.

Regulations in regard to fees and to the transmission of messages subject to approval of Governor.

4. It shall be lawful for the proprietors or superintendent of any line of electric telegraph to make rules and regulations appointing the amount of fees, rates, or dues to be demanded or received for the transmission or conveyance of any despatch, message, or communication, and also for the transmission and conveyance of all despatches, messages, or communications by means of any such line, and for the payment of such fees, rates, and dues, and generally for the conduct, management, working, and maintenance of any such line of communication; and any such rules or regulations to repeal, alter, or vary, and make such others as may be deemed expedient; and such rules and regulations shall from time to time, if approved of by the Governor by writing under his hand, come into effect, and be advertised in the *Government Gazette* at least once in each year; and all such fees, rates, or dues as aforesaid shall be at all times charged equally to all persons, and no reduction or advance in any such fees, rates, or dues shall be made in favour of or against any particular company or person for whom any despatch, message, or communication may be transmitted or conveyed by means of any such line; and all despatches, messages, and communications shall be sent for all persons alike in regular succession, without delay, favour, or preference: <sup>(1)</sup> Provided that any despatch, message, or communication in relation to the preservation of the tranquillity of the Colony or of the adjacent territories, to the arrest of criminals, the discovery or prevention of crime, or any other matter connected with the administration of justice shall take precedence of any other despatch, message, or communication: Provided, also, that no person shall be permitted to occupy the telegraph by sending messages, despatches, or communications of unreasonable length, so as to impede the speedy transmission of other messages, despatches, or communications.

Certain messages to have precedence.

General communication not to be impeded by messages of unreasonable length.

Punishment for injuring or obstructing construction or free use of telegraph.

5. Any person who shall wilfully in any way injure, disturb, obstruct, or interrupt the free use or working of any line of electric telegraph or any works incidental thereto or connected therewith, or shall wilfully attach any string, wire, or any conductor or other thing to any line of communication or any part thereof, without the authority of the superintendent of the said line, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining any such line of communication or any part thereof, shall upon conviction forfeit a sum not less than five pounds nor more than one hundred pounds, or be imprisoned with hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that the Court of the Resident Magistrate of the district in which such offence shall have been committed shall have jurisdiction to try such offence, but shall not be competent to punish in any higher or more severe manner than by a fine not exceeding ten pounds sterling, or by

Court of resident magistrate to have jurisdiction.

<sup>1</sup> See Act 5, 1862, *infra*.

imprisonment, with or without hard labour, for any period not exceeding three months, or by both fine and imprisonment: Provided, also, that nothing herein contained shall alter or affect any law in force in this Colony for the punishment of the crime of malicious injury to property.

No. 20—1861.

Limit of punishment.

6. It shall be lawful for any person or persons who may witness the commission of any such offence as in the last preceding section mentioned to apprehend the offender, and by the authority of this Act and without any warrant to deliver him to any field-cornet, constable, or peace officer, to be kept in safe custody in order to be dealt with according to law.

Offenders may be apprehended by any person witnessing the offence.

7. If any person should through carelessness do damage to any such line of communication as aforesaid, the Resident Magistrate of the district in which such damage shall have been done shall upon the application or complaint of the superintendent of such line summon the party complained of, and after hearing the parties on both sides, or on the non-appearance of the party complained of, examine the matter of complaint, and may award such sum of money not exceeding twenty pounds, by way of compensation for such damage as to such Resident Magistrate shall appear reasonable, and in case of refusal or neglect forthwith to pay such money or to give security to the satisfaction of such Magistrate for the payment thereof, such Resident Magistrate may sentence the party so neglecting or refusing to imprisonment, with or without hard labour for any period not exceeding one month: Provided, however, that nothing herein contained shall prevent the said superintendent from suing for damages by civil action in the Supreme or any competent Circuit Court should he consider the amount of such damage to exceed twenty pounds.

Compensation for damage caused by carelessness.

8. Any person who shall without permission enter any telegraph office and refuse to quit the same when requested by the person in charge of such office, or shall wilfully obstruct or impede any officer or servant employed upon any telegraph line in the discharge of his or her duty, shall be liable to a fine not exceeding ten pounds, or to imprisonment, either with or without hard labour, for any term not exceeding three calendar months, or to both such fine and such imprisonment.

Penalty for refusal to quit telegraph office when required, or for obstructing telegraph officers.

9. Any clerk or messenger who shall be employed in the working of any line of electric telegraph who shall fraudulently or maliciously secrete, make away with, alter, or omit to transmit any message which he may have received for transmission or delivery, or not being a witness in a Court of Justice shall divulge the contents of any message or despatch transmitted or conveyed or to be transmitted or conveyed without the consent of the person sending or receiving such message or despatch, shall upon conviction be liable to a fine not exceeding one hundred pounds, or to be imprisoned, with or without hard labour, for a period not exceeding six calendar months, or to both such fine and such imprisonment.

Punishment for fraudulent or improper conduct on the part of telegraph officers in regard to the transmission of messages.

- No. 20—1861. Defrauding proprietors of telegraph of their rightful charges or transmitting false messages. 10. Any person who shall transmit by electric telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the proprietor or proprietors of such telegraph, or shall fraudulently or maliciously transmit or cause to be transmitted any message or intelligence which he knows to be false, shall, upon conviction, be liable to a fine not exceeding one hundred pounds, or be imprisoned, with or without hard labour, for any period not exceeding six calendar months, or to both such fine and such imprisonment.
- Superintendent of line may prosecute offenders. 11. The superintendent of any line of communication by electric telegraph, or any person authorized by him and acting on his behalf, shall be competent to prosecute any such offender as aforesaid in the Court of the Resident Magistrate for any offence committed against or in respect of such line of communication without previously applying to or being authorized by the Public Prosecutor, and all fines and penalties recovered under this Act shall be paid one half into the said Public Treasury and the other half to the informer: Provided that it shall be competent for the Governor of this Colony to mitigate or wholly remit any such fine or penalty.
- Penalties may be reduced or remitted. 12. By electric telegraph is intended any means of conveying signs or signals by the agency of electricity, magnetism, electro-magnetism, or other like agency.
- Meaning of "electric telegraph." 13. This Act may be cited for any purpose as "The Electric Telegraph Act, 1861."
- Short title.

No. 5—1862.]

[August 7, 1862.

## ACT

## For Securing Precedence to Public Telegrams.

- Preamble. WHEREAS the public interests demand that messages and communications on Her Majesty's service shall be entitled on all and every line of electric telegraph to precedence of any other message and communication: Be it enacted by the Governor of this Colony, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Repugnant laws repealed. 1. So much of the Act No. 20, 1861, entitled "An Act for the Regulation of Electric Telegraphs," and of any other Act or Ordinance in force in this Colony as is repugnant to or inconsistent with the provisions of this Act is hereby repealed.
- Messages on Her Majesty's service sent by certain officers to have precedence. List of officers to be published in Gazette. 2. All and every message and communication on Her Majesty's service sent by any officer in Her Majesty's employment of the rank, degree, or station to be from time to time specified in a list which shall be published in the *Government Gazette* and furnished to the various electric telegraph offices in the Colony by the

Colonial Secretary shall be entitled to take precedence of any other message or communication on every line of electric telegraph within this Colony.

No. 5—1862.

3. Any person or persons refusing to grant such precedence as aforesaid to any message or communication on Her Majesty's service when called upon by any such officer to do so, shall for every such act of refusal be liable to the payment of a fine not exceeding one hundred pounds sterling, and in default of payment thereof to imprisonment for a period not exceeding six calendar months.

Penalty for refusing precedence.

4. It shall be the duty of Her Majesty's Attorney-General, upon such refusal being notified to him, to prosecute any such person or persons so refusing, in any competent Court within this Colony.

Attorney-General to prosecute.

5. All fines recovered under the provisions of this Act shall be paid into the Colonial Treasury.

Application of fines

6. This Act may be cited for all purposes as "An Act to secure Precedence to Public Telegrams."

Short title.

No. 4—1877.]

[August 8, 1877.

### ACT

#### For the Better Regulation of Electric Telegraphs.

WHEREAS by the eleventh section of "The Telegraph Act, 1872," it is enacted that the Chief Inspector of Public Works shall be considered as substituted in the Electric Telegraphs Act, 1861, for the superintendent of any line of telegraph in the said last mentioned Act mentioned: And whereas it is expedient that the General Manager of Electric Telegraphs, or the person for the time being in charge of the Telegraph Department in this Colony, should be substituted for the said Chief Inspector, and that the Act relating to electric telegraphs should be declared applicable to all lines of electric telegraph now or to be hereafter constructed in this Colony by or on behalf of the Government thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act all and singular the provisions of "The Electric Telegraph Act, 1861," and of the Act No. 5 of 1862, intituled "An Act for Securing Precedence to Public Telegrams," shall, *mutatis mutandis*, extend and apply to all lines of electric telegraph which now belong to, or which may hereafter be acquired, constructed, worked, or maintained by the Government of this Colony, the General Manager of Electric Telegraphs in this Colony, or the person for the time being in

General manager or person in charge of telegraphs substituted in Telegraph Act, 1861, for superintendent.

No. 4—1877.

charge of the Telegraph Department in this Colony, being considered as substituted in the said Telegraph Act, 1861, for the superintendent of any line therein mentioned, and all powers and authorities therein given to or bestowed upon private individuals or co-partnerships being vested in the Governor and persons duly authorized by him to exercise the same.

Short title.

2. This Act may be cited for all purposes as "The Electric Telegraph Act, 1877."

No. 2—1879.]

[September 8, 1879.

## ACT

To Provide for Telegraphic Communication between the Cape Colony and England.

Preamble.

WHEREAS it is desirable that telegraphic communication should be established between this Colony and England: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Act 19 of 1878 repealed.  
Telegraph to England to be contracted for.

1. The Act No. 19 of 1878 is hereby repealed.

2. The Governor is hereby authorized and empowered to pay from and out of the public revenue of this Colony, for a term not exceeding twenty years, or to any joint-stock company or companies, co-partnership or co-partnerships, individual or individuals, who shall enter into a contract with the Colonial Government to construct and maintain, and who shall construct and maintain, a line of telegraph which shall secure for this Colony telegraphic communication with England, an annual sum not exceeding £15,000.

Conditions of contract.

3. The contract under or by virtue of which the said sum not exceeding £15,000 shall be payable as aforesaid for a term not exceeding twenty years, shall provide for the fulfilment of the following conditions, stipulations, and provisions, together with any others which the said Government shall deem desirable and shall agree upon with the other contracting party, that is to say:

1. The terminus of the line shall be fixed by the contract, and shall be such a spot in this Colony or in the Colony of Natal as the Government shall approve of as convenient.
2. The party contracting for the construction of the said line shall be bound to maintain it in good working order, and to work the same efficiently for such number of years as may be agreed upon in such contract, not being less than the number of years during which the annual sum in the second section mentioned shall be payable.

3. The contract shall provide for a cessation of the annual payments authorized by the second section of this Act if the said line shall not be in working order for any space of time exceeding six months, and the said annual payments shall recommence when the said line shall again be in working order. No. 2—1879.
4. The contract shall fix a time within which the line shall be completed, and shall (if such shall appear desirable to the Government) specify some sum to be deducted from the annual payment as aforesaid for or in respect of every month beyond the time stipulated during which the line shall remain incomplete.
5. No payment shall be made to the party contracting with the Government until the line, or any portion thereof, agreed upon in the said contract, shall have been completed and be in operation, from which time shall be reckoned the term during which the said annual sum authorized by the second section of this Act shall be payable.
6. The contract shall provide for the maximum rate to be paid for messages which shall be sent by the said telegraph line to or from London: Provided, however, that the cost of a message to or from London shall not in any case exceed the sum of ten shillings per word.
4. This Act may be cited as "The Anglo-African Telegraph Act, 1879." Short title.

No. 8—1880.]

[July 26, 1880.]

### ACT

## To Secure in certain Cases the Right of Property in Telegraphic Messages.

WHEREAS it is expedient to secure in certain cases the right of property in telegraphic messages: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Whenever there shall be received at any office of the Telegraph Department any message transmitted by telegraph from any place outside the Colony of the Cape of Good Hope for the purpose of publication in any newspaper, or other printed paper within the said Colony, no person shall, without the consent, in writing, of the person to whom such message shall be addressed, or his agent thereto lawfully authorized, print or publish, or cause to be printed or published, such telegraphic message or the

Newspaper telegrams protected for 120 hours from time of publication.

No. 8—1880.

Period of protection not to exceed 180 hours from receipt of telegram.  
 Publication of part or substance to be deemed publication of telegram.

Penalties.

Protected telegrams to be headed "by telegraph."

Penalty for transmitting telegrams during period of protection.

Evidence of protected telegrams.

Imprisonment in case penalties not paid.

Short title.

substance thereof, or any extract therefrom until after a period of one hundred and twenty hours from the time of the first publication of such message by some person entitled to publish the same: Provided that such period shall not extend beyond one hundred and thirty hours from the time of the receipt as aforesaid at such office of such message (Sundays excepted): Provided further that the publication of the whole or any part of such telegraphic message, or of the substance thereof, or (excepting the publication of any similar message in like manner, sent and lawfully received by the person publishing the same), of the intelligence therein contained, shall be deemed to be a publication thereof.

2. If any person print and publish, or cause to be printed and published, any matter contrary to the provisions of this Act, he shall, upon conviction, be liable to a penalty of not exceeding twenty pounds sterling, and every person who shall be convicted of any subsequent offence against this Act shall be liable to a penalty of not exceeding forty pounds sterling.

3. Every telegraphic message published under the protection of this Act shall be printed with the heading "by telegraph," and shall state the day and hour of its said receipt and publication respectively, and such statement shall be *prima facie* evidence of the time of the receipt and publication respectively of such message.

4. During the period of one hundred and thirty hours hereinbefore mentioned no intelligence protected by this Act shall be transmitted by telegraph to any person by or on behalf of any person other than the person who, under the provisions of this Act, shall be entitled to the exclusive use of such intelligence, and any person contravening the provisions of this section shall, upon conviction as in the second section mentioned, be liable to a penalty of not exceeding twenty pounds sterling for the first offence, and not exceeding forty pounds sterling for any subsequent offence.

5. In any prosecution under this Act the production of any document which purports to be such a telegraphic message as is by this Act protected, and which purports to have been delivered to some person lawfully entitled to receive the same by the Telegraph Department shall be *prima facie* evidence that such message is a message within the meaning of this Act.

6. Any person convicted under the provisions of this Act may, in default of payment of the penalty imposed upon him, be imprisoned for any period not exceeding three months, unless such penalty be sooner paid.

7. This Act may be cited as "The Telegraphic Messages Copyright Act, 1880."



No. 41—1882.]

[June 29, 1882.

## ACT

## To extend the Advantages of the Electric Telegraph.

WHEREAS it is expedient to extend the advantages of the Electric Telegraph: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Any summons, writ, warrant, rule, order, notice, or other process document or communication which by any law, rule of Court, agreement of parties, or by any regulation made under the authority of this Act, is required or directed to be served upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served upon such person, or left at his house or place of abode or business shall be of the same force and effect as if the original had been shown to, or a copy thereof served upon, such person, or left as aforesaid, as the case may be.

Transmission of summonses, writs, &amp;c., by telegraph.

2. A telegram from any diplomatic, judicial, or police officer, or the Sheriff or any Deputy Sheriff, stating that a warrant or writ has been issued for the apprehension or arrest of any person accused of any crime or offence, or to appear in or answer to any civil suit, action, or proceeding, shall be a sufficient authority to any officer by law authorized to execute any such warrant or writ for the arrest and detention of such person in this Colony until a sufficient time, not exceeding thirty days, has elapsed to allow of the transmission of the warrant or writ to the place where such person has been arrested or detained, unless the discharge of such person is previously ordered by a Judge of the Supreme Court: Provided that any such Judge may upon cause shown order the further detention of any such person for a period to be stated in such order, but not exceeding sixty days from the date of the arrest of such person.

Telegram stating issue of warrant or writ of arrest, authority for execution of the same.

3. A member of the Legislative Council or House of Assembly respectively, desiring to resign his seat as such member, may transmit his resignation by telegraph, and a telegraphic message from such member received, in the case of a member of the Legislative Council, by the President thereof, and in the case of a member of the House of Assembly by the Speaker, or in the case provided for by the ninth section of the "Constitution Ordinance Amendment Act, 1874," by the Colonial Secretary, shall be deemed to be a writing under the hand of the member so resigning for the purposes, respectively, of the sixty-ninth and seventieth sections of the "Constitution Ordinance" and the said ninth section of the "Constitution Ordinance Amendment Act, 1874."

Members of Parliament may resign by telegraph.

No. 41—1882.

Supreme Court  
may make rules under  
this Act for service  
of legal process.

4. The Judges of the Supreme Court acting in pursuance of any Act for the time being regulating the making of general rules of Court may from time to time make and alter rules for more effectually carrying out the object of this Act in regard to the use of the telegraph for the service of any notice, process, or proceeding in any of the Courts of this Colony, or the execution of the process of any such Court.

Governor may make  
rules for service of  
documents other  
than legal process.

5. The Governor may from time to time make and alter rules and regulations for the service of notices or documents other than such as relate to legal process and procedure, by the delivery of telegraphic copies of such notices or documents, and for prescribing the manner in which the service of such copies shall be made, and for certifying by telegraphic officers that such service has been effected, and may by such regulations declare that any notice, document, or instrument in such regulations described, which is by any law required or directed to be in writing, and delivered or transmitted by or to any officer or person in the public service, may be transmitted by telegraph: and all such rules and regulations shall be of the same force as if in this Act set forth, and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be then sitting, and if Parliament be not then sitting during the next session thereof.

Penalty for deliv-  
ering messages to  
others than person  
addressed.

6. Any person charged with the delivery of any telegraphic message who shall wilfully deliver such message to any person other than the person to whom the same shall be addressed, or other than the agent or representative of such last mentioned person, shall upon conviction be liable to a penalty not exceeding twenty pounds, or to imprisonment with or without hard labour for any period not exceeding six months.

Penalty for affix-  
ing person's name to  
telegram without  
authority.

7. Any person who shall without lawful authority or excuse (the proof whereof shall be upon the person accused), sign the name of any other person to any telegraphic message with intent to procure such message to be sent as a message from such other person, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding six months.

Short title.

8. This Act may be cited as "The Telegraphic Messages Act, 1882."

No. 22—1877.]

[August 8, 1877.]

## ACT

## To Establish a Register of Trade Marks in this Colony.

Preamble.

WHEREAS it is expedient to establish in this Colony a register of trade-marks: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. A register of trade-marks as defined by this Act and of the proprietors thereof shall be established and kept by the Registrar of Deeds in the office of the said Registrar of Deeds; and from and after the first day of July, one thousand eight hundred and seventy-eight, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade-mark as defined by this Act until and unless such trade-mark is registered in pursuance of this Act.

No. 22—1877.  
Register to be kept  
by Registrar of  
Deeds.

2. A trade-mark must be registered as belonging to particular goods or classes of goods, and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill, but subject as aforesaid, registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

How to be regis-  
tered.

3. The registration of a person as first proprietor of a trade-mark shall be *prima facie* evidence of his right to the exclusive use of such trade-mark, and shall after the expiration of five years from the date of such registration be conclusive evidence of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connection with the goodwill of a business.

Effect of registra-  
tion as first pro-  
prietor.

4. Every proprietor registered in respect to a trade-mark subsequently to the first registered proprietor shall as respects his title to that trade-mark stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Effect of registra-  
tion as subsequent  
proprietor.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade-mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade-marks as a proprietor of such trade-mark, or if the Registrar refuses to enter on the register as proprietor of a trade-mark the name of any person who is for the time being entitled to the exclusive use of such trade-mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade-mark which is not authorized to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the Court that the register may be rectified, and the Court may either refuse such application, or it may, if satisfied with the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved. Where each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any such persons until their rights have been determined by the Court, and the Registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the Court. The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade-mark as is authorized to be registered under this Act; also any question relating to the right of any

Court may be ap-  
plied to in certain  
cases to rectify re-  
gister.

9999

No. 22—1877.

person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; also any other question that it may be necessary or expedient to decide for the rectification of the register. Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Certain trade-marks not to be registered without special leave of court.

6. The Registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade-mark identical with one which is already registered with respect to such goods or classes of goods, and the Registrar shall not register with respect to the same goods or classes of goods a trade-mark so nearly resembling a trade-mark already on the register with respect to such goods or classes of goods as to be calculated to deceive. It shall not be lawful to register as part of or in combination with a trade-mark any words the exclusive use of which would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court of Equity in England, or any scandalous designs.

Registrar may make general rules.

7. The Registrar of Deeds may from time to time, with the consent of the Governor, as to fees, make, and when made, alter, annul, or vary such general rules as to the registry of trade-marks and as to notices to be given by advertisement before the registration of trade-marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade-marks, and as to the fees to be charged for registration, and also for the continuance of a trade-mark on the register or otherwise, and as to the removal from the register of any trade-mark, as to notices and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient. Any rules made in pursuance of this section shall be forthwith laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting then within ten days after the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament: Provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

Effect of registrar's certificate.

8. The certificate of the Registrar as to any entry, matter, or

thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

No. 22-1877.

9. For the purposes of this Act :

Definition of terms.

A trade-mark consists of one or more of the following essential particulars, that is to say,

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or

A written signature or copy of a written signature of an individual or firm ; or

A distinctive device, mark, heading, label or ticket ;

And there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures ; also

Any special and distinctive word or words, or combination of figures or letters, used as a trade-mark before the passing of this Act may be registered as such under this Act.

“ Prescribed ” means prescribed by general rules made in pursuance of this Act, and

“ Court ” means the Supreme Court, or as to matters within the districts over which the Court of the Eastern Districts has jurisdiction, the Court of the Eastern Districts, or any Court which may be declared to be a Court for the purposes of this Act, by such general rules as aforesaid.

10. This Act may be cited for all purposes as the “ Trade Marks Registration Act, 1877.”

Short title.

## TRAMWAYS.

- |  |  |
|--|--|
| 1. Act 33—1861, (Cape Town and Green Point).             | 5. Act 24—1873, (Namaqualand, Cape Copper Mining Company). |
| 2. „ 19—1879, do.  | 6. „ 4—1869, ( Do. Port Nolloth).                          |
| 3. „ 24—1881, (City Tramways, Cape Town).                | 7. „ 3—1870, Do. do.                                       |
| 4. „ 15—1865, (Namaqualand, Cape Copper Mining Company). | 8. „ 30—1879, (Port Elizabeth).                            |

No. 33—1861.]

[August 14, 1861.

### ACT

To Incorporate the Cape Town and Green Point Tramway Company.

WHEREAS it is desirable and expedient that a company should be formed and incorporated for the purpose of constructing, maintaining, and working a line of tramway from Sea Point to Somerset-road, Waterkant, Bree-street, Strand-street, Long-street,

Preamble.

gggg 2

2688 TRAMWAYS (CAPE TOWN AND GREEN POINT).

No. 33—1861.

Wale-street, and Burg-steet, to Market-square, Cape Town : And whereas certain steps have already been taken by the appointment of a provisional committee and the subscription of a fund considered sufficient to defray preliminary expenses toward the promotion of this object : And whereas it has been made to appear by plans, sections, and estimates lodged in the Deeds Registry Office that the cost of constructing such tramway will not exceed the capital of the company : And whereas it is deemed desirable that the liability of shareholders in the said company should be limited to the amount of their respective shares : Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Incorporation and  
style.

1. The several persons who are or shall become shareholders in the said company, their respective executors, administrators, successors and assigns, shall be and are hereby united into one body corporate, under the name and title of the "Cape Town and Green Point Point Tramway Company," for the purpose of constructing a tramway, with all necessary sidings and appurtenances from Sea Point, at or near the point marked on the plan aforesaid, to Somerset-road, Waterkant, Bree-street, Strand-street, Long-street, Wale-street, and Burg-street, to Market-square, Cape Town ; and the company hereby incorporated by the name aforesaid shall have perpetual succession and a common seal, and by such name shall and may, from time to time, sue and be sued, implead and be impleaded, answer and be answered unto in any competent Court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever ; and such lands or other property, subject to any engagements affecting the same, shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants or conveyances thereof.

Capital of company.

2. The capital of the company shall be ten thousand pounds, in two thousand shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

Subscription lists  
for shares to be  
opened.

3. Subscription lists for shares in the said company shall be opened and headed as follows : " We whose names are hereunder written, hereby agree with each other to become shareholders in the Cape Town and Green Point Tramway Company, incorporated by Act of Parliament, and to take each of us the number of shares set opposite our respective names ;" and every such list shall be signed by the shareholder himself, or by his lawfully authorized attorney, and all such lists shall be preserved by the directors of the said company ; and the shareholders signing such lists shall from that time be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the

Subscribers bound  
by terms thereof.

shareholders in the said company as fully and amply as if every shareholder had executed a trust deed containing all and singular the provisions and stipulations of this Act.

No. 33—1861.

4. No more than five pounds in all shall be due or payable in respect of any share in the said company, and the liability of any shareholder shall be and is hereby limited to the payment of that amount in instalments as hereinafter mentioned.

Liability of shareholders limited.

5. The amount of the shares in the said company shall be paid in manner following, namely,—two shillings per share in cash on subscribing, and the remaining four pounds eighteen shillings per share by instalments not exceeding ten shillings per share each, which instalments it shall be lawful for the directors to call up upon giving a notice to that effect of not less than one month in the *Government Gazette* and one or more of the local newspapers.

Shares to be paid up by instalments.

6. If at the time appointed for the payment of any call as aforesaid any shareholder shall fail to pay such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any Court having competent jurisdiction, and to recover the same with interest at the rate of six per cent. per annum from the day on which such call shall have become due and payable.

How if shareholder fails to pay call.

7. If any shareholder fail to pay any call payable as aforesaid within one month from the time appointed for the payment of such call, the directors may at a meeting duly convened by a resolution in writing, signed by not less than three of their number, declare such share or shares forfeited whether the company shall have sued for the amount of such call or not; and the said directors may forthwith dispose of them to any other person or persons, and if needful issue fresh certificates of shares to the person or persons purchasing such forfeited shares.

Shares may be declared forfeited.

8. The general management of the affairs of the company shall be vested in seven directors who shall be elected by ballot at a general meeting of the shareholders duly convened for that purpose: Provided, always, that no person shall be competent to be a director who shall not possess in his own right ten shares in the stock of the company.

Seven directors to be elected.

9. That Petrus Emmanuel de Roubaix, Hercules Crosse Jarvis, Thomas Watson, James Murison, Jan Leibbrandt, Ralph Henry Arderne, and Marthinus Melck van Reenen shall be the first directors of the said company, and shall so continue until other directors are appointed in their place, or they or any of them die, resign, or be removed, or become incapacitated as hereafter mentioned.

First directors of the company.

10. At the meetings held for the election of directors or any other purpose connected with the affairs of the company the shareholders present, either personally or by proxy, shall vote according to the following scale, namely:

Proportion of votes to shares.

The holder of any number of shares less than ten, one vote.

„ of not less than ten shares and upwards, two votes,  
and no more.

2690 TRAMWAYS (CAPE TOWN AND GREEN POINT).

- No. 33--1861.  
Director when disqualified. 11. Any director becoming insolvent, or being absent from the Colony for six months, or who shall cease to be the holder of ten shares as aforesaid shall become disqualified and his seat be declared vacant.
- Director may be removed from office. 12. In case the conduct of any director who shall be so elected shall at any time be such that his continuance in office would, in the opinion of at least thirty shareholders holding not less than one hundred and fifty shares, be prejudicial to the interests of the company, and notice thereof shall have been given to the directors in writing, the directors shall thereupon call a general meeting of proprietors for the purpose of determining whether such director shall continue in office: Provided, always, that not less than twenty-one days' notice of such meeting, and the purpose for which it is held, shall be given in the *Government Gazette*, and one or more local papers, in which case it shall be lawful for a majority of the proprietors at such meeting to remove such director from his office.
- Notice of meeting for removal of director. 13. The whole of the directors shall go out of office annually, but shall be eligible for re-election: Provided, however, that if from any cause whatever no election should take place, the said directors shall remain in office until such time as other directors shall be appointed and consent to act.
- Directors to be elected annually. 14. The directors at their first meeting shall appoint a chairman amongst themselves, who shall preside at all meetings of the directors; and in case of his absence the directors present shall by a majority of votes elect a chairman for the meeting, such chairman to have a vote as a director, also to have a casting vote, if there be an equality of votes; and at all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside and have a vote as a shareholder, and also a casting vote, if there be an equality of votes. Three directors shall form a quorum and be competent to perform all acts which the directors are empowered to do and perform.
- Directors to choose permanent chairman and in his absence temporary chairman. 15. The annual general meeting of shareholders shall be held in Cape Town on some day in the third week in July in each year, and a report shall be submitted to such meeting, setting forth the position and prospects of the company, together with an account of receipts and expenditure during the year ending 30th June preceding.
- Quorum. 16. In addition to the annual general meetings, general meetings of the company may be held for special purposes, upon a requisition in writing setting forth such purpose, signed by not less than thirty shareholders holding collectively not less than one hundred and fifty shares, and sent in to the chairman of the directors: Provided, however, that notice of such meetings, together with the purpose thereof, shall be published in the *Government Gazette* and one or more of the local papers, at least twenty-one days previous; and provided also, that no business except that described and set
- Annual meeting of shareholders. Special meetings.



forth in the published notice shall be brought before any such meetings.

No. 33-1861.

17. The accounts of the company shall be audited annually by two auditors not being directors, such auditors to be appointed by the shareholders at each annual general meeting: Provided, however, that no person shall be eligible to act as an auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

Auditors to be appointed.

18. It shall and may be lawful for the said directors of the said company, and they are hereby authorized to enter upon all lands, and there to dig for, excavate, and carry away all such materials as may be required for the construction and maintaining of the said tramway, and that the extent of land, streets, and roads taken for the said tramway shall not exceed the width of five feet for the said line: And provided, further, that the proprietors of the said lands or materials so used and carried away shall be paid by the directors a full and sufficient sum by way of recompense for the value of such land or materials or for any damage which may be done by reason thereof: And provided, also, that in the event of the directors of the said company and any such proprietor not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor, then the said directors shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state in writing to the said directors or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he or they are willing to accept the sum therein mentioned or not; and further stating that, in case he or they shall refuse to accept the sum offered or shall neglect to reply to the said notice, then the said directors shall call upon such proprietor, within such time as aforesaid, to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said directors or the person so appointed by them the name of some person whom he or they shall select to be an arbitrator upon such arbitration, and the said directors or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors shall cause a deed of submission to be prepared, which shall be signed by a quorum of the said directors, or the person so appointed and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the said arbitrators or any two of them shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall consider fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule of the Supreme Court, and shall be

Directors may enter upon lands and remove materials.

Owners to be compensated.

Arbitration.

2692 TRAMWAYS (CAPE TOWN AND GREEN POINT).

No. 33—1861.

How if party claim-  
ing compensation re-  
fuses to proceed to  
arbitration or rejects  
the award.

binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter ; and in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said directors and they are hereby authorized to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid, for or on account and at the risk of such person or persons as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property ; and the said directors, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by the arbitrators, and as if all acts by law required for vesting in the said company a sufficient title to the use of and property in the land or materials aforesaid had been duly done and performed.

Direction of tram-  
way.

19. That the said tramway shall commence at Sea Point as aforesaid, and shall be laid along the main road in the municipality of Green Point to Somerset-road, thence to Waterkant, thence to Bree-street, thence to Strand-street, thence to Long-street, thence to Wale-street, thence to Burg-street, to Market-square, Cape Town : Provided, always, that it shall be lawful to the said company to extend, deviate from, and vary the said line and to carry the said tramway along any other lands, streets, or roads than those mentioned, upon the consent of the owners of such lands and of the municipality of Cape Town or Green Point within whose limits said proposed variation shall be being first properly had and obtained.

City engineer to  
supervise construction  
of portion of  
tramway within  
Cape Town.

20. Provided, always, that so much of the said tramway as shall be laid down within the limits of the municipality of Cape Town and the works connected thereunto shall be laid down and executed under the supervision of the City Engineer and subject to his approval ; and provided, also, that the roadway between the rails of the said tramway within the limits of the municipalities of Cape Town and Green Point respectively shall be maintained in good and efficient repair at the costs and charges of the said company ; and that all damage done to the main road aforesaid, or to the streets, bridges, sewerage, and property of either of the said municipalities by reason of any work or works performed and executed by the said company shall in like manner immediately or as soon as practicable be made good at the proper costs and charges of the said company : and provided, also, that the commissioners of the respective municipalities of Cape Town and Green Point shall have the right at all times to take up, and shall and may from time to time, at their own proper costs and charges, take up any part of the said tramway which it shall be found

Damage to roads,  
streets, &c., to be  
made good by com-  
pany.

Municipality may  
take up part of tram-  
way when necessary.

necessary to take up for the purpose of constructing or cleaning drains or sewers, or laying down or replacing water-pipes, or for any other municipal or public purpose ; and all such part or parts of the said tramway so taken up as aforesaid shall be again properly relaid as speedily as may be, at the cost and expense of the said commissioners: Provided, further, that if at any time the said line of tramway or any part thereof should be found to be injurious to either of the aforesaid municipalities, the company shall, upon twelve months' notice given by the commissioners of the municipality making complaint, take up the line of tramway, or such portion thereof as may be objected to.

No. 33—1861.

Company may be compelled to take up tramway at twelve months' notice.

21. Nothing in this Act contained shall authorize the said company in any manner to obstruct or hinder the safe passage of the ordinary traffic on the now existing roads and streets, but in all cases a sufficient space shall be left at least on one of the sides of the said roads or streets to allow all carriages, cattle, and passengers to pass the carriages on the said tramway in a safe and convenient manner.

Not to obstruct traffic.

22. At any general or special meeting of the shareholders, no shareholder shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof, for a period of at least three months previous to such meeting.

Shareholder to be registered three months before he can vote.

23. No shareholder residing within twenty miles of Cape Town, where the meetings of the company shall be held (except females holding shares in their own right and persons unable from illness to attend), shall be allowed to vote by proxy, and the proxy of such females or shareholders suffering from illness or being resident beyond twenty miles of the place of meeting shall be to the effect as follows :

Who may vote by proxy.

I, A. B., of \_\_\_\_\_, one of the shareholders of the Cape Town and Green Point Tramway Company, do hereby authorize and appoint C.D., of \_\_\_\_\_, to be my proxy at all meetings of the shareholders of the said company, and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Form of proxy.

Witness my hand, at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

A. B.

24. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholder feeling dissatisfied with such decision may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing and reckoned according to the rule in that behalf hereinbefore provided ; and in the event of votes being equally divided, the chairman of the meeting shall decide the question by his casting vote.

Votes how to be taken.

25. A full and complete register of the shareholders in the

Register of shareholders to be open for inspection.

No. 33—1861.

company shall be open for the inspection of the public at all reasonable times, on the payment of a fee of one shilling for each inspection; and, further, any shareholder may require from the secretary of the company for the time being a certificate of the shares held by such shareholder in the company, which certificate shall at all times be deemed sufficient evidence of the interest held in the company by the respective parties to whom the same shall be granted; and the certificate so to be granted shall be of the following form, to wit:

Certificate of share. Certificate of Share in the Cape Town and Green Point Tramway Company.

This is to certify that A. B., of \_\_\_\_\_, is proprietor of \_\_\_\_\_ shares in the Cape Town and Green Point Tramway Company, incorporated by Act of the Colonial Legislature, subject to the provisions and regulations of the said company.

Given under the common seal of the company, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Transfer of shares. 26. Any shareholder may transfer his share or shares by endorsement upon each certificate, specifying the person to whom such share is transferred, but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been duly made in the books of the company, three directors shall have certified their consent, in writing, to such transfer, and the assignee or transferee shall either in person or by attorney acknowledge his proprietorship in substance as follows:

Acknowledgment of transfer.

I, C. D., do hereby acknowledge to have received by transfer from E. F. \_\_\_\_\_ shares, No. \_\_\_\_\_ in the Cape Town and Green Point Tramway Company, subject to the conditions, regulations, and provisions of the Act of incorporation of the said company.

Liability transferred with share.

27. Any shareholder transferring his share or shares as aforesaid shall be wholly released and discharged from all liability in respect thereof from date of registration, and the person to whom the same is transferred shall be subject to all and singular the same liabilities in respect of such share or shares as if such person had been the original shareholder.

Directors may enter into contracts, appoint officers and remove them.

28. The board of directors of the company is hereby empowered to enter into contracts for the supply of work or materials necessary for the construction, maintaining, and working of the said tramway, and may also appoint and employ engineers, overseers, masons, carpenters, navvies, or such other workmen as it may deem necessary for carrying out the provisions of this Act, and also to remove or dismiss any such persons and employ others in their stead; and to fix the duties and salaries of all such persons, and generally all matters and things necessary for the due and effective management of the affairs of the company.

29. So soon as the whole of the capital of the company shall have been subscribed, and not less than one-half thereof shall have been paid up and expended, it shall be lawful for the directors from time to time, when duly authorized thereto by the shareholders at a special meeting convened for the purpose, to borrow money on security of the undertaking and the future calls on the shareholders, and of the expected earnings of the line, the interest on such loan to be a first claim upon the net profits of the working of the tramway.

No. 33—1861.  
When directors may borrow money.

30. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, however, that no dividend shall be paid whereby the capital stock shall be in any way reduced.

Dividends how to be determined.

31. So soon as it shall be made to appear that the line of tramway is in a fit condition for traffic, the directors for the time being shall frame a tariff of charges for the conveyance of passengers and goods and such tariff shall be published in the *Government Gazette*, for general information: Provided, always, that the rates so chargeable may from time to time be altered by the directors, and further, that the directors shall be entitled to recover, by legal process, all such charges as shall be in force for the time being from the owners of goods, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, merchandize, articles, or things until the charges appertaining to the same shall have been duly paid.

Directors to frame tariff of charges.

32. The right to and property in all and singular the earthworks, bridges, culverts, materials, rolling-stock, and everything appertaining to the said tramway constructed under this Act shall be vested in the board of directors for the time being.

Property of company vested in directors.

33. In any action or suit which may be brought by or against the said directors in their capacity as such it shall and may be lawful for such directors to sue or be sued by the style or description of "The directors of the Cape Town and Green Point Tramway Company:" Provided, always, that no director or shareholder shall be deemed to be an incompetent witness in any suit or proceeding as aforesaid, by reason of his holding the office of director or of holding shares in the said company; and provided, also, that the said directors shall be repaid out of the funds of the company under the provisions of this Act all costs and expenses which they shall incur by reason of bringing or defending any suit or action, unless such suit or action shall have arisen from their own gross negligence or wilful default.

Directors how to sue and be sued.

Competent as witnesses, and entitled to expenses of suit.

34. The chairman and directors for the time being may receive out of the clear profits of the company such sum or sums of money by way of remuneration for their trouble as the majority of the shareholders shall determine at the annual general meeting.

Remuneration to chairman and directors.

2696 TRAMWAYS (CAPE TOWN AND GREEN POINT).

No. 33—1861.

Capital may be increased to extend the tramway.

35. It shall be lawful for the said company, at any time hereafter, by a resolution duly passed by a majority of two-thirds of the shareholders present at a general or special meeting properly convened after notice given, as in manner hereinbefore provided, of the purpose of such meeting, to increase the capital of said company by a sum not exceeding ten thousand pounds for the purpose of extending the said tramway in such manner as the said meeting shall decide.

How additional capital may be raised.

36. Such additional capital sum of ten thousand pounds shall be raised, either by creating and issuing additional shares of five pounds each or by increasing the value of the original shares, as the shareholders present at such meeting as last aforesaid shall decide.

Liability of additional shareholders limited.

37. No more than five pounds in all shall be due in respect of any additional share or any increase in the value of the said original shares, and the further future liability of any shareholder arising out of any extension of the said tramway shall be and hereby is limited, in case of such extension, to the payment of a sum not exceeding five pounds per additional share, or the amount of the increased value of the original share, as the case may be.

Additional shares or increased value how to be paid.

38. The amount of the additional shares, or of the increased value of the original shares, shall be paid as in manner provided in the fifth section of this Act, and may be recovered or forfeited as in manner provided in the sixth and seventh sections of this Act.

Duration and title of Act.

39. This Act shall continue in force until the 1st day of July 1882, <sup>(1)</sup> and may be cited for all purposes as the "Cape Town and Green Point Tramway Company Act, 1861."

No. 19—1879.]

[September 11, 1879.

ACT

To Extend the Term of Incorporation of the Cape Town and Green Point Tramway Company, and to confer Additional Powers on such Corporation.

Preamble.

WHEREAS by the 39th clause of Act No. 33 of 1861, the term of incorporation of the Cape Town and Green Point Tramway Company is limited to the 1st day of July, 1882, and it is desirable to extend the said term for a further period of twenty-one years: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and House of Assembly thereof, as follows:—

Extension of duration of Green Point Tramway Company.

1. Notwithstanding anything in the 39th section of Act No. 33 of 1861 contained, such Act shall continue and be in force until

<sup>1</sup> Continued to 1903 by Act 19, 1879, § 1, *infra*.

the first day of July, 1903, and the several provisions of the said Act shall apply to the Cape Town and Green Point Tramway Company, thereby incorporated, until such last mentioned date, as if the same had been hereby re-enacted.

No. 19—1879.

And whereas the said company has hitherto used horse-power alone for the traction of its carriages, and it is desirable to empower the said company to make use, if it should so think fit, of steam, or other mechanical power, for such traction: Be it therefore further enacted as follows:

2. It shall be lawful for the Cape Town and Green Point Tramway Company to make use (if it think fit to do so) of steam, or other mechanical power, for the traction of the carriages on the said company's tramway: Provided that the use of any steam motor for the purposes of such traction shall be subject to the approval of the Colonial Railway Engineer, or of such Engineer as the Government may appoint for the purposes of such inspection; And, provided further, that no steam motor shall be used on such tramway until the Engineer aforesaid shall first have certified that the permanent way is fit and sufficient for such steam motor thereon to be used.

Steam may be used under approval of Colonial Railway or other engineer.

3. In the event of the said tramway or any part thereof being worked by steam-power, it shall not be lawful for the carriage thereon to proceed at a greater rate of speed than eight miles an hour.

Speed not to exceed eight miles an hour.

4. This Act may be cited as the "Cape Town and Green Point Tramway Company's Extension Act, 1879."

Short title.

No. 24—1881.]

[June 25, 1881.

ACT

To Incorporate the City Tramways Company, Limited.

WHEREAS by a deed, bearing date at Cape Town the 26th day of June, 1878, whereof a copy has been deposited in the office of the Clerk of the House of Assembly, certain persons did become co-partners together in a certain joint-stock company, called the "City Tramways Company, Limited," for the purpose of constructing and working certain street tramways in Cape Town and district, and from Cape Town to Green Point and Sea Point: and whereas the said company, which has been duly registered in this Colony under the provisions of the Act No. 23 of 1861, intituled an "Act to limit the Liability of Members of certain Joint-Stock Companies," is willing to undertake the construction and working of the said tramways: And whereas it is desirable to facilitate the construction, working, and maintenance of the said tramways: and whereas it is expedient to incorporate the said company as constituted under the said deed, in order to carry into effect the

Preamble.

- No. 24--1881. objects of the said company: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Corporate name provided for. 1. The several persons who are, or shall become, shareholders in the said company, under the provisions of the said deed of settlement, their respective executors, administrators, successors and assigns, shall be and are hereby united into one body corporate, under the name and title of "The City Tramways Company, Limited," for the purpose of constructing, maintaining, and working by steam, or other mechanical power, or horse-power, or either of them, certain tramways by this Act authorized, with all necessary sidings, termini, buildings and appurtenances.
- Powers and rights of Corporation, thus created. 2. The company hereby incorporated by the said name of "The City Tramways Company, Limited," shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued in any competent Court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever, and such lands or other property subject to any engagements affecting the same, shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.
- What line of tramway to be maintained and constructed. 3. The said company is hereby authorized to work and maintain, and in so far as not already constructed, to construct, the lines of tramway mentioned in a certain agreement, copy whereof is contained in the schedule hereto, executed on the 23rd day of December, 1879, before the Notary, Henry Mathew Arderne, on behalf of the Town Council of the city of Cape Town of the one part, and the City Tramways Company, Limited, of the other part, save and except the single line of tramway set out in paragraph two of the schedule referred to in this Act which shall not come under the operation of the same, and subject to all the terms and conditions in the said agreement expressed and declared.
- Further construction authorized. 4. The said company is also authorized to construct, work, and maintain the following continuations of the said lines of tramway beyond the limits of the municipality of Cape Town,—that is to say:
- a. From Three Anchor Bay along the sea beach, over land vested in the municipality of Green Point and Sea Point, to a spot near the boundary wall of the property formerly belonging to C. Lind, Esq., at Sea Point, according to the route laid down in the plan of the proposed tramways, deposited in the office of the Clerk of the Legislative Council: Provided that it shall be lawful for the said company, with the consent of the commissioners of the municipality of Green Point and Sea Point first obtained, to extend, deviate from, and vary the said line.



b. From the terminal point of the line already completed near the dock gates, within the docks, and to and along the east quay.

No. 24—1881.

5. The roadway between the rails of the said tramway within the limits of the municipality of Green Point and Sea Point shall be maintained in good and efficient repair at the costs and charges of the said company; and all damage done to the main road aforesaid, or to the streets, bridges, sewerage and property of the said municipality by reason of any work or works performed and executed by the said company, shall in like manner, as soon as practicable, be made good at the costs and charges of the said company.

Roadway between rails to be kept in repair by the company.

6. The terms and conditions contained in sub-sections 5°, 6°, 7°, 8°, and 11°, of the third section of the schedule to this Act attached, shall, in as far as they are applicable, apply, *mutatis mutandis*, to such portions of the line as may pass over the property under the management and control of the Table Bay Breakwater and Dock Management Commission, as if an agreement to that effect had been entered into and had been attached to this Act, and as if the commissioners appointed under Act 6 of 1860 had been therein named, instead of the Town Council. And if at any time it shall be found that the said tramways, or any part thereof, passing over the property mentioned in this clause shall interfere with, or be prejudicial to the proper working and management of the docks, or interfere with the carrying out of any alterations that may be made in the construction of the said docks, the aforesaid commissioners may give notice to the Tramway Company to take up the line or such portion of the line as aforesaid, and upon the expiry of three months after such notice shall have been given, the Tramway Company shall take up the line or portion of the line in question, or in case the company shall not do so, the said commissioners shall be entitled to perform the work and charge the expense thereof to the company.

Terms and conditions which are to apply to the part of the line passing over land under management of the Harbour Commission.

7. If any person or persons shall drive or lead any wagon, cart, carriage, or other vehicle, or any horse or other animal upon the line of the said tramway in such manner as to improperly obstruct and hinder any car or conveyance belonging to the said company, or shall refuse to remove such obstruction, it shall be lawful for any officer of the said company, or any person whom he may call to his assistance, to remove such obstruction; and any person who shall be guilty of such hindrance or obstruction shall for every such offence be liable to a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

Penalty for obstructing the line.

8. Nothing in this Act contained shall authorize the said company in any manner to obstruct or hinder the safe passage or crossing of the ordinary traffic on any roads and streets in which

Ordinary traffic of roads and streets not to be interrupted.

No. 24-1881.

such tramway shall have been made, but in all cases a sufficient space shall be left at least on one of the sides of the said roads or streets, to allow all carriages, cattle, and passengers to pass the carriages on the said tramway in a safe and convenient manner; Provided, always, that all reasonable rights and facilities shall at all times be enjoyed by the company for their carriages to pass, without obstruction or hindrance, along the several lines of the company; and upon due and sufficient notice being given, by whistle, by the driver or conductor or other person in charge of the said carriages, of the approach thereof, all persons and vehicles upon or near the lines of rails shall as soon as practicable remove, so as to allow the carriages of the company to pass along the said line freely and without obstruction.

Penalty for obstruction of Company's officers in execution of their duty.

9. Any person who shall wilfully obstruct the officers or servants of the company, or any contractors with the company, in the lawful exercise of their powers in setting out, or making, laying down, repairing or working the tramways authorized by this Act, or who shall be guilty of the obstruction or hindrance in the eighth section of this Act mentioned, shall for every such offence be liable to a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

Penalty for certain offences.

10. Any person who, without lawful excuse, shall wilfully do any of the following things, namely:

Interfere with, remove or alter, any part of the tramway, or of the works connected therewith;

Place or throw any stones, wood, or other material on any part of the rails;

Do or cause to be done anything in such a manner as to obstruct any carriage using the tramway or the horses drawing the same, or to endanger the safety of persons therein or thereon;

Or knowingly aid or assist in the doing of any such thing;

shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which such person may be subject) to pay a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

Tolls as in Schedule B.

11. The tolls and rates of charge to be taken and made for passengers and goods conveyed on the tramway, shall not exceed the tolls and rates of charge specified in schedule (B) to this Act.

Tolls to be charged equally to all persons.

12. All such tolls, fares, or rates for passengers or goods shall be at all times charged, equally to all persons and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods of the same description, and no reduc-

tion or advance in any such tolls, fares, or rates of charge shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the said tramway.

No. 24—1881.

13. The tariff of rates of charge agreed to by the company shall be exhibited in a conspicuous place in each car used for carrying passengers or goods, and shall not be increased except after public notice given in the *Government Gazette* and two or more of the newspapers published in Cape Town.

Tariff of fares to be exhibited in cars and published.

14. If any person travelling in any carriage on the tramway shall avoid or attempt to avoid payment of the fare, or if any person having paid the fare for a certain distance, shall knowingly and wilfully proceed in any such carriage beyond such distance, and refuse to pay the additional fare for the additional distance, or attempt to avoid payment thereof, or if any person shall knowingly and wilfully refuse or neglect, on arriving at the point to which such person has paid the fare, to quit such carriage, such person shall for every such offence be liable to a penalty not exceeding ten shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding three days unless such fine be sooner paid.

Penalties for attempting to evade proper fare.

15. All such penalties shall be recoverable in the Court of the Resident Magistrate of Cape Town, at the suit and for the benefit of the said company.

How recoverable.

16. In the event of the said tramways or any part thereof being worked by steam or any other power it shall not be lawful for the carriages thereon to proceed at a greater rate of speed than eight miles an hour.

In case steam used on line no greater speed than 8 miles an hour.

17. A list of all the tolls authorized by this Act to be taken, and which shall be exacted by the Company, shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations of the company, and the company shall have the right to recover, by legal process, in the Court of the Resident Magistrate aforesaid, all such charges from passengers and from the owners of goods, articles, or things conveyed by the company, and shall, moreover, have the right of retaining such goods, articles, or things until the charges appertaining to the same have been duly paid: Provided, always, that such tariff of charges may from time to time be altered by the company.

List of authorized tolls to be published.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, without being specially pleaded.

Act to be a public Act.

19. This Act may be cited for all purposes as the "City Tramways Company (Limited) Incorporation Act."

Short title.

hhhh

## THE SCHEDULE REFERRED TO.

Know all men whom it may concern,—That on this the twenty-third day of December, in the year one thousand eight hundred and seventy-nine: Before me, Henry Mathew Arderne, notary public, by lawful authority, duly admitted and sworn, residing and practising at Cape Town, in the Colony of the Cape of Good Hope, and in the presence of the subscribed witnesses, personally came and appeared John Anthony Roos as acting for and on behalf of the Town Council of the city of Cape Town, specially nominated, appointed, and authorized to appear and declare as after set forth by minute of meeting of said Town Council, held on the tenth day of December, one thousand eight hundred and seventy-nine (a copy whereof is hereunto appended) of the first part, and John Philip and David Mudie, trustees of and as acting for and on behalf of the City Tramways Company (Limited), and specially authorized and appointed to appear and declare as after set forth by a minute of meeting of the directors of the said company, held at Cape Town on the fifteenth day of September, one thousand eight hundred and seventy-nine (a copy whereof is hereunto annexed) of the second part.

And these appearers, acting on behalf of their respective constituents, did jointly and severally declare,—

That whereas the said City Tramways Company (Limited) has been constituted for the purpose of laying down certain lines of tramways in certain streets and roads, in and about Cape Town, and of carrying passengers to and fro thereon: And whereas, in order thereto, the said company on the twelfth day of April, one thousand eight hundred and seventy-eight, applied to the Town Council for liberty to lay down, make, and work by horse or steam power certain lines of tramway within the municipal limits of the city of Cape Town:

And whereas the said Town Council acceded to that application on certain terms and conditions, which were signified to the said company by letter dated the fifth June, one thousand eight hundred and seventy-eight: And whereas, relying on the said concession and with the permission of the said Town Council, the said company have commenced to lay down, and have made and are now working certain portions of the said line of tramway:

Now, therefore this agreement witnesseth that it hath been contracted and agreed as the said appearers acting for and on behalf of their respective constituents, declared jointly and severally to contract and agree, that in consideration of the payment of the yearly sums, and the performance of the stipulations hereinafter mentioned, the said City Tramways Company Limited should be permitted and allowed to maintain and work so far as made, and to continue to make and lay down the following lines of tramway, viz.:

1. A single line of tramway with the necessary sidings and stations from Alfred-street by way of the dock road, Adderley-street, Darling-street, and Sir Lowry road to the toll-bar on Sir Lowry road, as shewn upon the plan hereunto annexed marked A.

2. A single line of tramway from the corner of Adderley-street and Darling-street, by way of Adderley-street, Wale-street Long-street, Orange-street, Annandale-street, Mill-street, and Buitenkant-street, back to Darling-street, the sides of the streets where the rails are to be

laid down and the sites of the sidings and stations to be hereafter determined upon by the Town Council.

3. A single line of tramway with the necessary sidings and stations from the bottom of Bree-street by way of the new street reserved in the sub-division of the town and recently sold, and thence across the commonage to the sea side of the beach road, and thence to Three Anchor Bay.

And that the said company shall be permitted to maintain, uphold, and work the said several lines of tramway sidings and stations for the profit of the said company, upon the following terms and conditions, viz. :

1°. That the said tramways shall be constructed and maintained by the said company in a good and sufficient manner on a level with the streets, and shall be ballasted between the rails with good iron stone or other approved gravel, and at such crossings as may be considered necessary by the Town Council, paved with stone; and that a stone pavement eighteen inches wide shall be formed on the outside of each rail, and that the whole work shall be executed and maintained in good order and repair to the satisfaction of the Town Council or any competent person whom it may appoint to inspect the same.

2°. That the Tramway Company shall be guided by the Town Council in laying down said tramways as regards whether the same shall be laid down in the centre or on either side of the streets and roads traversed: Provided, however, that no route shall be selected which shall necessitate a curve of less than forty feet radius.

3°. That in carrying the said tramway across the Castle Moat, the company shall construct a trestle or other sufficient bridge on ground belonging to the War Department, so as not in any way to interfere with the present Castle Bridge.

4°. That the Tramway Company shall pay or cause to be paid to the Town Treasurer for the time being, for the benefit of the city funds as the consideration for being allowed to use the said streets for their tramways, the following sums, viz. :

1. The annual sum of fifty pounds sterling as and for the yearly rent of the lines of tramway Nos. I and II above specified, said rent to be reckoned from the first day of October last (1879), and paid in equal half-yearly instalments on the first day of October and the first day of April in each and every succeeding year, during the time for which this agreement shall endure.

2. The annual sum of twenty-five pounds sterling as and for the yearly rent of the line of tramway No. III above specified, said rent to be reckoned from the day on which this line shall be opened for passenger traffic, and to be payable thereafter half-yearly throughout the term of this agreement.

5°. That all expenses which may be incurred in the removal and replacement of the rails after the same shall have been laid down, either for constructing or repairing sewers, laying down water-pipes, and generally all additional expenses which may have to be incurred by the council or municipal works, caused by the concession to the company, shall be borne by the company.

6°. That all damage that may be done to the streets, roads, sewers,  
*hhhh* 2

No. 24—1881.

water-pipes, or any other town property, by the construction, maintenance, or working of the tramways shall be made good by and at the expense of the company, and should the company fail to do so within a reasonable time to be named by the council in giving notice of what damage is to be made good, the work shall be done by the council forthwith at the expense of the company.

7°. That in case the tramways be so constructed, or any part of the same shall be unused for the purpose of traffic by the Tramway Company for a period of six consecutive months, the company shall be bound at its expense to remove the rails and restore the streets or roads to the condition in which they were before the tramways were made: or otherwise the said Town Council shall, after giving the company six months' notice of their intention to do so, be entitled to remove the rails and restore the streets or roads as aforesaid, and charge the expense of so doing to the said Tramway Company.

8°. Unless the whole lines of tramway shall be completed and in working order within three years from the date of these presents, this concession shall be null and void in respect of whatever portion may then remain unmade.

9°. With regard to the line of tramway from the bottom of Bree-street to Three Anchor Bay, where the same passes the Gallows Hill, it shall be kept outside the land applied for by the Harbour Board, and as close as possible to the Ordnance beacon on the north-east side of the said hill.

10°. The said Town Council for the time being shall have the right to run wagons or trucks over the line from the bottom of Bree-street to Three Anchor Bay, for the purpose of removing town refuse on such terms and at such times as may be arranged between it and the Tramway Company, and failing the council and company agreeing thereon, the same shall be fixed by three arbitrators, one of whom shall be appointed by the Town Council, one by the City Tramways Company, and a third by the two arbitrators first appointed, and on the award of the said arbitrators or a majority of them, shall be binding and conclusive on the parties hereto.

11°. That no deviation of the route of any of the lines mutually agreed upon between the council and the company shall vitiate this agreement or any portion of it.

12°. Further, with regard to the said line of tramway from the bottom of Bree-street to Three Anchor Bay, the said Tramway Company shall at its own cost and expense form a roadway twenty feet wide on the land side of the tramway from Alfred-street to where it reaches the Beach Road.

13. That if at any time it shall be found that the said tramways or any portion thereof interfere with and prejudice the rights and safety of the public, the Town Council may give notice to the Tramway Company to take up the line or a portion thereof so objected to, and on the expiry of twelve months after such notice shall have been given, the Tramway Company shall take up the line or portion of line in question, or in case the company shall not do so, the Town Council shall be entitled to perform the work and charge the expense thereof to the company.

Thus done and passed at Cape Town aforesaid, the day, month, and year first above written, in presence of the subscribed witnesses.

No. 24—1881.

JNO. A. ROOS,  
JOHN PHILIP,  
DAVID MUDIE.

As witnesses :

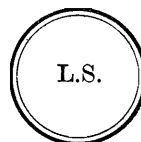
GEO. B. WRIGHT,

W. ANDERSON.

Quod Attestor,

H. M. ARDERNE,

Notary Public.



SCHEDULE B.

Maximum Tolls and Rates of Charge.

PASSENGERS.

1. The maximum rates of charge to be made by the owners of the City Tramway Company for the conveyance of passengers thereon, shall be not exceeding the following, viz. :

Between the toll-bar on Sir Lowry Road and corner of Adderley-street and Darling-street, or over any portion of the said distance, sixpence.

Between the corner of Adderley-street and Darling-street, and the terminus within the Docks, or over any portion of the said distance, sixpence.

Between the corner of Adderley-street and Darling-street, and the terminus of Green Point, or over any portion of the said distance, eightpence.

2. The foregoing restriction shall not extend to any special carriage or car that may be required to run on the tramway, but shall apply only to express and ordinary carriages or cars appointed from time to time by the owners for the conveyance of passengers and goods on the tramway.

3. Every passenger travelling on the tramway may take with him his ordinary luggage, not exceeding twenty pounds in weight, without any charge being made for carriage thereof. Any excess over the above, if allowed, may be charged for at the usual parcel rates.

Goods.

4. The tolls to be taken by the owners of the tramway in respect of small parcels for carriage thereof on the whole or any part of the line shall not exceed :

For any parcel not exceeding twenty pounds in weight, threepence.

For any parcel not exceeding thirty-five pounds in weight, fourpence.

For any parcel not exceeding fifty pounds in weight, sixpence.

For any parcel not exceeding seventy-five pounds in weight, ninepence.

For any parcel not exceeding one hundred pounds in weight, one shilling.

No. 15—1865.

Parcels exceeding one hundred pounds in weight, such reasonable sum as the owners of the tramway may think fit to charge after notice given.

5. It shall be lawful for the owners of the tramway to demand and take, in addition to the tolls and rates of charge hereinbefore authorized, a reasonable sum for delivery and collection of goods and other services incidental to the business of a carrier, where such services respectively shall be performed by the owners of the tramway otherwise than on the premises of the tramway.

Nothing herein contained shall be held to bind the owners of the said tramway to carry goods in carriages on the tramway, until they have given public notice in one or more newspapers in Cape Town of their intention so to do.

No. 15—1865.]

[October 10, 1865.]

## ACT

To Authorize the Cape Copper Mining Company (Limited)  
to construct a Tramway or Railway between Hondeklip Bay and Riethuis.

Preamble.

WHEREAS it is desirable and expedient that greater facilities should be afforded for the transport of minerals from the mines in Namaqualand to the Port of Hondeklip Bay, and also for the transport of passengers, goods, merchandize, and other articles to and from the said Bay: And whereas such facilities would be greatly promoted and the resources of the country developed by the construction of a tramway or railway between the said Bay and Riethuis: And whereas the Cape Copper Mining Company (Limited), duly registered and having a subscribed capital of one hundred and fifty thousand pounds sterling, is willing to undertake the construction and working of the said tramway or railway, upon being empowered for that purpose in manner hereinafter mentioned and provided: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Cape Copper Mining Company empowered to construct tramway or railway according to certain plan.

1. The Cape Copper Mining Company (Limited), whereof William Bevan, Esquire, Pieter Gerhard van der Byl, Esquire, Osgood Hanbury, Esquire, junior, Edward Jenner Jerram, Esquire, William Keats, Esquire, John King, Esquire, Edmund Alfred Pontifex, Esquire, John Taylor, Esquire, and Richard Taylor, Esquire, are directors, shall be and they are hereby authorized and empowered to construct and work a tramway or railway between Hondeklip Bay and Riethuis aforesaid, as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except so far as the said plans may be inconsistent with any of the provisions of this Act.



2. It shall and may be lawful for the directors of the said company or their representatives, and they are hereby authorized, to enter upon and take possession of all such lands within the limits of deviation, and also to dig for, excavate, and carry away, all such materials within or near to the said limits as may be required for the construction and maintaining of the said tramway or railway: Provided that the extent of land taken for the said tramway or railway shall not exceed the width of fifty feet, with sufficient additional width for slopes, drainage, stations, stopping-places, approach-roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: Provided that the proprietor or proprietors of, or person or persons holding by lease from the Crown, the lands so taken possession of and of the materials so carried away and used shall be paid by the said directors the just value, by way of recompense or compensation for such land or materials, or for any damage which may be done by reason thereof: Provided, also, that in the event of the directors of the said company and any such proprietor or proprietors or the person or persons claiming compensation not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor or proprietors or person or persons claiming compensation, then the said directors shall cause to be served upon such proprietor or proprietors or person or persons claiming compensation a written notice offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor or proprietors or person or persons claiming compensation to state in writing to the said directors or their representative, or to some person by them appointed in this Colony, within a certain limited time to be specified in the said notice, whether he or they is or are willing to accept the sum therein mentioned or not; and in case he or they shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said directors or their representatives shall by another notice in writing, call upon such proprietor or proprietors or person or persons, claiming compensation to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said directors, and for that purpose to transmit to their representative in Cape Town, within a certain reasonable time to be specified in the said last mentioned notice, the name of some person whom he or they shall select to be an arbitrator upon such arbitration; and the said directors or their said representative, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors or their representative shall cause a deed of submission to be prepared, which shall be signed by the agent, general manager, or representative of the said company in this Colony, and by the said proprietor or proprietors or person or persons claiming such recom-

No. 15—1865.

Powers granted to company to enter upon adjoining lands for purposes of excavation, &c.

Extent to which such excavation, &c., may be carried on.

Compensation to proprietors or lessees

Disputes regarding compensation, how to be settled.

Mode of proceeding in case of arbitration.

No. 15—1865.

Award to be made  
a rule of court.

How where proprie-  
tor refuses or neg-  
lects to proceed to  
arbitration, &c.

Lands regarding  
which the compensa-  
tion shall be settled  
by arbitration, or  
otherwise, to become  
absolute property of  
company.

Costs of arbitra-  
tion.

Exception as re-  
gards land contain-  
ing water.

Crown lands not  
otherwise appropri-  
ated may be used for  
purposes of tram or  
railway.

pense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators. And the said arbitrators, or any two of them, shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall conceive fair and reasonable; and the award of the said arbitrators, or any two of them, shall be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter; and in case such proprietor or proprietors or person or persons as aforesaid claiming compensation or recompense shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said directors or their agent or representative, and they or either of them are hereby authorized, to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid for or on account and at the risk of such proprietor or proprietors or person or persons as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property. And the said directors or their agent or representative, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators. And thereupon, or upon payment of any sum which may be awarded, or which may be agreed to be accepted as and for recompense or compensation as aforesaid, the said land shall be held and taken to be vested in the said company as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors thereof or parties interested therein, in favour of the said company, according to the law and custom of this Colony, or as if all acts by law required for vesting in the said company a sufficient title thereto had been duly done and performed; and the said materials shall be held and taken to be, and shall be, the free and absolute property of the said company: Provided that the cost of the arbitration as aforesaid shall be in the discretion of the arbitrators.

3. Nothing in the last preceding section mentioned shall extend so as to entitle the said company to claim any land upon which there shall be any fountain or piece of water, being private property, or to use any water, being private property, without permission of the owner.

4. It shall and may be lawful for the said directors of the said company to enter upon and to take possession of so much of any Crown lands not already appropriated or used as a public road or street as shall be required for the construction and maintaining of the said tramway or railway, or for any other purposes relating to the execution of this Act, and also to enter upon all Crown lands

not previously leased by the Government to any lessee, and not previously appropriated or used as a public road or street lying convenient to the said tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway: Provided that nothing in this Act contained shall establish any servitude in favour of the said directors or company for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

No. 15—1865.

But not to establish servitude.

5. The said tramway or railway shall commence one hundred yards to the northward of the present existing jetty at Hondeklip Bay, and leave the said bay on the north side, crossing erf No. 7, of the village there; thence traversing waste Crown lands for a distance of about seven miles; thence crossing the north-west corner of Roode Laagte; thence taking the course of the Zwaartlintjes River, across De Riet, and continuing on the same line to a terminal point at Riethuis: Provided, always, that it shall be lawful for the said company to deviate from and vary the said line, as shown by the said plans, to the extent of three hundred yards on each side.

Limits of line of tram or railway, its route and extent.

Variation allowed.

6. At all places where the line of the said tramway or railway or any deviation thereof within the limits of deviation hereinbefore provided, shall intersect or cross the line of any public street or road, it shall be lawful for the said directors to make and carry the said tramway or railway across such street or road, either by means of a level crossing or by a convenient and sufficient bridge or viaduct over or under the said street or road. And the said directors shall be bound and obliged to make all such cuttings, embankments, and approaches, with all such culverts and drains, as may be, requisite to make good the said street or road across, or over, or under the said tramway or railway, at gradients not exceeding one foot in twenty feet. And the said directors shall be bound and obliged to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts, and drains, as aforesaid.

Line may cross streets or roads.

Company to make and keep in repair crossings.

7. Nothing in this Act contained shall hinder or prevent any public roads hereafter to be constructed under Act of Parliament or proclamation lawfully issued under Act of Parliament from being made and carried across the said tramway or railway at all requisite and convenient points: Provided that as little damage as possible shall be caused to the said tramway or railway by such crossings.

Right to construct roads across line reserved.

8. All damage which may be caused by the construction of the said tramway or railway to any roads or streets shall be repaired and made good by the said company, so soon as practicable, at the cost and charge of the said company.

Damage to roads, &amp;c., to be made good at cost of company.

No. 15—1965.

Stipulations in regard to the preservation of governmental and public rights as to landing places, roads, &c.

9. Nothing in this Act contained shall be construed as an admission of the right of the said directors or company to maintain as against the Colonial Government the jetty already erected by them at Hondeklip Bay, or to debar the Colonial Government from erecting a jetty or other works at such place or places in the said bay as shall be deemed expedient nor as an admission of the right of the said directors or company, or of any other persons, to any land lying between the sea and lots four, five, six, and seven of the village at Hondeklip Bay, nor shall authorize the said company in any manner to obstruct or hinder the landing and shipping of goods at the beach at Hondeklip Bay, or the safe passage of the ordinary traffic on the roads now in use, but in all cases a sufficient space shall be left to allow carriages, wagons, and passengers to pass the carriages, trucks, or other vehicles on the said tramway or railway in a safe and convenient manner.

Line to be completed in three years

10. The directors of the said company shall be bound, and are hereby required, to finish and complete the said tramway or railway within three years, reckoned from the date of the first commencement of the works thereof, so that the said tramway or railway may be opened for the public conveyance of goods: Provided that the said company shall be bound to commence the said tramway or railway not later than two years from and after the taking effect of this Act; failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Date of commencement fixed.

Terms, conditions, and tariff of charges to be framed, submitted for approval, and published in Gazette.

11. So soon as the line of tramway or railway is in a fit condition for traffic, the directors for the time being shall frame terms and conditions and a tariff of charges for the conveyance of goods, and such terms, conditions, and tariff shall be submitted to the Governor for approval, and, if approved, be published in the *Government Gazette*, for general information: Provided, always, that the said terms and conditions and the rates so chargeable may from time to time be altered by the directors, with consent of the Governor; and the directors or their representative shall be entitled to recover by legal process all such charges as shall be in force for the time being from the owners of goods, merchandize, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, merchandize, articles, or things until the rates or charges due or payable for or in respect of the carriage or conveyance thereof shall have been duly paid.

And may be altered.

Charges, how recoverable.

Governor to regulate number of stopping places, goods stations, &c.

12. The directors of the said company shall be bound and obliged to establish and permit to be used so many stations or stopping-places upon the said line of tramway or railway for receiving and delivering goods, merchandize, minerals, or other articles to be conveyed upon the said tramway or railway, or any portion thereof as the Governor shall from time to time direct to be established for public use, or for the use of any proprietors or lessees of mines or minerals requiring to use the said tramway or

railway. And the said company shall at all times thereafter allow to the public and to proprietors and lessees aforesaid, free and convenient way-leave and access to all such stations or stopping-places over all lands belonging to or in the possession or occupation of the said company, with all cattle and vehicles to be used for conveying passengers, goods, merchandize, minerals, or other articles, to and from such stations.

13. The said company shall afford all reasonable facilities for the receiving, storing, forwarding, and delivering of traffic upon and from the said tramway, and no undue or unreasonable preference or advantage to or in favour of any particular person or persons, or any particular description of traffic, in any respect whatsoever, shall be given; nor shall the said company subject any particular person or persons, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Facilities for receiving, forwarding, &c., of goods, without undue preference to be provided.

14. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods of the same description and conveyed or propelled in a like carriage and by a like power passing only over the same portion of the line of tramway or railway, under the same circumstances; and no reduction or advance in any such tolls, fares, or rates shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the tramway or railway.

Tolls, fares, &c., to be charged equally to all persons, without distinction.

15. No steam power shall be used for the conveyance of passengers upon the said tramway or railway until the certificate of the Colonial Engineer or other officer appointed by the Governor shall have been obtained, at the expense of the directors, that the said tramway or railway is in a fit and proper condition for the safe conveyance of passengers by means of such steam power: Provided that before any passengers shall be conveyed on the said tramway or railway, the said directors shall frame terms and conditions and a tariff of charges for the conveyance of such passengers, and the provisions of the eleventh section hereinbefore contained shall, *mutatis mutandis*, apply to such terms, conditions and tariff.

Steam power not to be used for passenger traffic before obtaining certificate of proper officer.

16. From and after the adoption of steam power, subject to such certificate as aforesaid, as the means of conveying or propelling trucks or carriages of any description with passengers, such and so many of the provisions of the "Regulation of Railways Act, 1861," as the Governor, with the advice of the Executive Council, shall by any proclamation to be published in the *Government Gazette* specify and determine shall come into force, and apply to the said tramway or railway hereby authorized to be constructed and made, as if the said provisions were herein separately set forth and made applicable to the same.

Previous to conveyance of passengers, table of charges &c., to be framed.

On adoption of steam power, provisions of "Regulation of Railways Act, 1861," to apply.

- No. 15—1865. 17. The Colonial Government shall have the right of sanctioning any junction of branch lines communicating with the said line of tramway or railway, from or for the use of any mines which may be opened in Namaqualand, upon such terms and conditions as may be agreed upon between the person or persons desiring to have and maintain such branch line and junction and the directors of the said company; and in case of any question or controversy as to such terms and conditions, such question shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the directors of the said company, and the other to be nominated by the person or persons seeking to establish such junction; and the decision of any two or more of such three persons shall be final. The costs of every such arbitration to be in the discretion of the arbitrators.
- Disputes respecting terms or conditions to be settled by arbitration.
- Decision final.
- Costs of arbitration.
- Right of Government to purchase line at cost price.
18. At any time after the expiration of ten years from the date of opening for traffic of the entire line from Hondeklip Bay to Riethuis, the Colonial Government shall, if so disposed, have the right of purchasing from the Cape Copper Mining Company (Limited) the said tramway or railway; and the said company shall, if required thereto, be bound to sell it to the Colonial Government on being paid an amount not exceeding the cost of construction and equipment of the said line, to be agreed between the Colonial Government and the said company.
- How company may sue and be sued.
19. The said directors shall and may sue and be sued within this Colony by the name or style of the "Cape Copper Mining Company (Limited)" and service of process upon the said company, at any office or place of business thereof in this Colony, shall be good service of such process.
- Short title.
20. This Act may be cited for all purposes as "The Namaqualand Tramway or Railway Act."

---

No. 24—1873.]

[June 26, 1873.

ACT

To Authorize the Cape Copper Mining Company (Limited) to construct and work a Tramway or Railway from Kookfontein to O'okiep.

Preamble.

WHEREAS it is desirable and expedient that the Cape Copper Mining Company (Limited) should be authorized to construct the tramway or railway hereinafter described: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

- Company empowered to construct thirty-eight miles of tramway or railway.
1. The Cape Copper Mining Company (Limited) is hereby empowered to construct, maintain, and work for the purposes of the said company in relation to its mines a tramway or

railway for a distance of thirty-eight miles or thereabouts, commencing from the terminal point near Kookfontein Mission Station, and proceeding from such point in a south-westerly direction near Paardewaterbank, Ballatrap, and Staalkraal, to the said company's lands at Nababiep, and thence to a terminal point at O'okiep, in accordance with plans and sections deposited in the office of the Clerk of the House of Assembly.

No. 24—1873.

2. The said company is hereby authorized to enter upon, and to take possession of and retain all such land within the limits of deviation as shown by the said plans, and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway: Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for slopes, drainage, stations, stopping places, approach roads, and all other matters and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: Provided, also, that the proprietors, lessees, or other persons, holding from and under the Crown any lands so taken possession of, or of the materials so carried away and used, shall be paid by the said company the just value by way of recompense or compensation for the interests of the said proprietors, lessees, or others holding from and under the Crown as aforesaid, for such land or materials, or for any damage which may be done by reason thereof; such recompense or compensation to be settled in manner provided in and by the third section of Act No. 4 of 1869, which for this purpose shall be taken to be embodied herein.

Company authorized to enter upon and take possession of lands, &c.

Compensation to proprietors, &c., to be settled under provisions of 3rd section of Act No. 4 of 1869.

3. The said company is hereby authorized to enter upon and take possession of, and to hold and retain for all the purposes of this Act, free of any charge, so much of any Crown lands as shall be required for the construction and maintaining of the said tramway or railway, or for any other purpose relating to the execution of this Act, and also to enter upon all Crown lands not previously leased by the Government to any lessee lying convenient to the said tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway; and further to allow the horses, mules, or cattle required for the purpose of working the said tramway or railway to graze upon any Crown land adjoining the same; and also to obtain water from any part of such land where it can be found by digging, well-sinking, constructing dams or tanks, and conveying such water therefrom by pipes or conduits to any part of the said tramway or railway, free of any charge or interference: Provided that nothing in this Act contained shall establish any servitude in favour of the said company for such privilege, or for

Company authorized to enter upon and take possession of Crown lands, &c.

- No. 24—1873. procuring materials for the said tramway or railway, upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.
- Line to be completed within five years. 4. The said company shall be bound to complete the said tramway or railway within five years from the taking effect of this Act, failing which the powers and authorities hereby conferred shall cease and determine.
- Right of Government to purchase line. 5. At any time after the expiration of seven years from the date of opening for traffic of the said tramway or railway from Kookfontein to O'okiep, the Colonial Government shall have the right, if so disposed, to purchase from the said company, and the said company shall, if required thereto, be bound to sell to the Colonial Government, the said tramway or railway, together with all fixed property of the said company lying within the limits of deviation aforesaid, at the cost price of the construction and equipment of the said tramway or railway, and of the purchase and erection of land and buildings, or at any less sum that may be agreed upon between the said company and the Colonial Government.
- Failing to sell, company may remove plant, &c. 6. If at any time after the said right of pre-emption in the last section contained shall have accrued to the Government, the Government shall have waived or declined to exercise the same, or if at the expiration of the further period of twelve months thereafter the said company and the Government shall have been unable to agree upon the terms of sale and purchase as aforesaid, then and thereafter it shall be lawful for the said company to remove and carry away all plant and material from the said tramway or railway.
- Company may dispose of its rights with sanction of Governor 7. It shall be lawful for the said company, with the previous sanction of the Governor, at any time to sell, dispose of, and transfer all their right, title, and interest in and to the said tramway or railway, and other property acquired or erected for the purposes of the said tramway or railway under the provisions of this Act, to any other company or companis or private individuals desirous of purchasing the same; subject, nevertheless, to the provisions, terms, and conditions of this Act, as if the purchaser or purchasers thereof had been herein expressly made liable thereto.
-



No. 4—1869.]

[October 18, 1869.

## ACT

To Authorize the Cape Copper Mining Company (Limited) to construct a Tramway or Railway between Port Nolloth and Nonams, and to build a Jetty at Port Nolloth.

WHEREAS it is desirable and expedient that greater facilities should be afforded for the transport of minerals from the mines in Namaqualand to Port Nolloth, and the shipment of the same at the said port, and also for the shipping and landing of passengers, goods, merchandize, and other articles at, and their transport to and from, the said port: And whereas such facilities would be greatly promoted and the resources of the country developed by the construction of a tramway or railway between the said port and Nonams, and by the building of a jetty at the said port: And whereas the Cape Copper Mining Company (Limited), a company duly registered in England, and having a subscribed capital of one hundred and fifty thousand pounds sterling, is willing to undertake the construction and working of the said tramway or railway and the building of the said jetty, on being empowered for that purpose in manner hereinafter mentioned and provided: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Preamble.

1. The Cape Copper Mining Company (Limited) shall be, and they are hereby authorized and empowered to construct and work a tramway or railway between Port Nolloth and Nonams or any part thereof, and to build a jetty at Port Nolloth, as shown by the plans duly lodged with the Clerks of the Legislative Council and of the House of Assembly and with the Civil Commissioner for the Division of Namaqualand, on the terms and conditions hereinafter contained.

Cape Copper Mining Company empowered to construct tramway or railway, and to build jetty according to certain plans.

2. It shall and may be lawful for the said company, and they are hereby authorized, to enter upon and to take possession of all such lands within the limits of deviation as shown by the said plans, and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway and jetty: Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for slopes, drainage, stations, stopping places, approach-roads, and all other works, matters, and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: And provided, further,

Powers granted to company to enter upon adjoining lands for purposes of excavation, &c.

Extent to which such excavation, &c., may be carried on.

No. 4—1869.

Materials not to be removed from Crown or private lands within limits of village of Port Nolloth, without consent previously obtained.

Company empowered to take possession of certain beach lands, &c.

Compensation to proprietors or lessees

Disputes regarding compensation, how to be settled.

Mode of proceeding in case of arbitration

that no such materials shall be taken for the purpose of constructing or maintaining the said tramway or railway and jetty from any Crown land within the limits of the village of Port Nolloth, as the same are now or may hereafter be defined by Government, without the previous consent of the Government, nor from any private lands within the same limits without the previous consent of the owner thereof. And, further, it shall and may be lawful for the said company, and they are hereby authorized, to enter upon and take possession of all such beach and other lands lying above and below high-water mark, and as may be required for approaches to and site of the said jetty, as shown on the said plan, and also in like manner to enter upon and take possession of forfeited erf 1,799, marked 8 on the said plan, in block C, and also the road lying between blocks B and C, marked or numbered 14 on the said plan, and also the Government ground adjoining blocks B and C to the east, north, and west, as shown within the limits marked by a dotted line on the said plan: Provided that the proprietor or person holding by lease from the Crown the lands so taken possession of and of the materials so carried away and used shall be paid by the said directors the just value, by way of recompense or compensation for the interest of the said proprietors or lessees in such land or materials, or for any damage which may be done by reason thereof.

3. In the event of the said company and any such proprietor or the person claiming compensation not being able to agree upon the sum to be paid by the said company and accepted by such proprietor or person claiming compensation, then the said company shall cause to be served upon such proprietor or person claiming compensation a written notice offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor or person claiming compensation to state in writing to the said company within thirty days, to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not; and in case he shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said company shall, by another notice in writing call upon such proprietor or person claiming compensation to refer to arbitration the amount of recompense or compensation to be paid to him by the said company, and for that purpose to transmit to the said company within thirty days to be specified in the said last mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said company, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall, before proceeding in the arbitration, choose a third arbitrator; and the said company shall cause a deed of submission to be prepared, which shall be signed by the agent, general manager, or representative of the said company in this Colony, and by

the said proprietor or person claiming such recompense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators. And the said arbitrators, or any two of them, shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall conceive fair and reasonable; and the award of the said arbitrators, or any two of them, may be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter referred to arbitration; and in case such proprietor or person as aforesaid claiming compensation or recompense shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said company, and they are hereby authorized, to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid, for or on account and at the risk of such proprietor or person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property. And the said company, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and had been paid accordingly. And thereupon, or upon payment of any sum which may be awarded, or which may be agreed to be accepted as and for recompense or compensation as aforesaid, the said land shall be held and taken to be vested in the said company as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors thereof or parties interested therein, in favour of the said company, according to the law and custom of this Colony, or as if all acts by law required for vesting in the said company a sufficient title thereto had been duly done and performed; and the said materials shall be held and taken to be, and shall be, the free and absolute property of the said company: Provided that the cost of the arbitration as aforesaid shall be in the discretion of the arbitrators.

4. It shall and may be lawful for the said company to enter upon and take possession of, and to hold and retain for all the purposes of this Act, free of any charges, so much of any Crown lands as shall be required for the construction and maintaining of the said tramway or railway and jetty, or for any other purposes relating to the execution of this Act, and also to enter upon all Crown lands not previously leased by the Government to any lessee lying convenient to the said tramway or railway and jetty, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway and jetty: Provided that nothing in this Act contained shall

No. 4—1869.

Award may be made rule of court.

How, where proprietor refuses or neglects to proceed to arbitration.

On settlement by arbitration, or otherwise, lands to become absolute property of company.

Costs of arbitration.

Crown lands may be used for tramway or railway and jetty.

Materials may be taken from unleased Crown lands.

But not to establish servitude.

iiii

- No. 4 1869. establish any servitude in favour of the said company for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.
- Company to construct and maintain public road to jetty. 5. The company shall be bound to construct and maintain, and at all times to keep in good repair, a sufficient and convenient road not less than twenty feet in width for public use, from the public street at Port Nolloth to the said jetty; but in constructing the same, or the said jetty, or any other works at the shore at Port Nolloth, no stonework or embankment shall project or be carried further seaward than low-water mark at spring tide.
- Extent to which works may be carried. 6. The said tramway or railway shall commence from the said jetty at Port Nolloth, and shall proceed thence to Jules Hoogte, thence to the Kama River, thence to Oograbis, thence to Anna Poort, thence along the plain by Muishondfontein: <sup>(1)</sup> Provided, however, that it shall be lawful for the said company to deviate from and vary the said line within the limits of deviation shown by the said plans; and, further, that it shall and may be lawful for the said company to terminate the line at any point between
- Route of tramway or railway. Port Nolloth and Nonams: Provided such terminal point shall be at a distance of not less than twenty miles from Port Nolloth.
- Certain deviation allowed. 7. At all places where the line of the said tramway or railway, or any deviation thereof within the limits of deviation hereinbefore provided, shall intersect or cross the line of any street or road, it shall be lawful for the said company to make and carry the said tramway or railway across such street or road, either by means of a level crossing or by a convenient and sufficient bridge or viaduct over or under the said street or road. And the said company shall be bound and obliged to make all such cuttings, embankments, and approaches, with all such culverts and drains as may be requisite to make good the said street or road across, or over, or under the said tramway or railway, at gradients not exceeding one foot in twenty feet. And the said company shall be bound and obliged to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains, as aforesaid. And in all cases where any street or road shall cross the said tramway or railway, no engines, carriages, trucks, or other vehicles shall be allowed to remain athwart such crossing, but shall pass such crossing without unnecessary delay, so as to interrupt as little as possible the free use of such road.
- Terminus of line. 8. Nothing in this Act contained shall hinder or prevent any public roads hereafter to be constructed under Act of Parliament or proclamation lawfully issued under Act of Parliament, from being made and carried across the said tramway or railway at all requisite and convenient points: Provided that as little damage as possible shall be caused to the said tramway or railway by such crossings.
- Line may cross streets or roads. Company to make and keep in repair all necessary crossings, &c.
- Free use of road not to be unnecessarily interrupted.
- Right to construct road across line reserved.

<sup>1</sup> Printed as amended by Act No. 3, 1871.

9. All damage which may be caused by the construction of the said tramway or railway and jetty to any roads or streets shall be repaired and made good by the said company, so soon as practicable, at the cost and charge of the said company.

No. 4—1869.  
Damage to roads, &c., to be made good.

10. The said company shall be bound, and are hereby required, to finish and complete the said jetty, and not less than twenty miles of the said tramway or railway, extending from Port Nolloth towards Nonams, and to open the same for public traffic within three years from the taking effect of this Act, failing which all and singular the powers, rights, and authorities conferred by this Act shall cease and determine.

Jetty and twenty miles of line to be completed within three years.

11. So soon as the line of tramway or railway, or any section thereof, or the said jetty, shall have been finished and in a fit condition for work, the said company shall frame terms and conditions and a tariff of charges for wharfage and for the landing or embarking of passengers, and another such tariff for the conveyance of passengers and goods; and such terms, conditions, and tariffs shall be submitted to the Governor for approval, and if approved, shall be published in the *Government Gazette* for general information; and the said tariffs, terms, and conditions shall be thenceforth binding upon the said company for such period as shall be fixed and determined by the Governor, and specified in his approval of the same respectively. And upon the publication of any such

Terms, conditions, and tariffs of charges to be framed, submitted for approval, and published in Gazette.

tariff, terms, and conditions in manner aforesaid, the company shall, and are hereby authorized and required to open for traffic the said jetty or the said tramway or railway, or so much thereof as is so completed, or both, as the case may be: Provided, always, that the said terms and conditions and the rates so chargeable may from time to time be altered by the said company, with consent of the Governor; and the said company shall be entitled to recover by legal process all such charges as shall be in force for the time being from all passengers landed at or embarked from the said jetty or conveyed on the said tramway or railway and the owner of, or the person liable to pay such charges on goods, merchandize, articles, or things landed on or shipped from the said jetty, or conveyed by the company on their said tramway or railway; and, further, shall have the right of retaining such goods, merchandize, articles, or things, until the rates or charges due or payable for or in respect of the wharfage or carriage or conveyance thereof shall have been duly paid; and, further, on his or their failing to pay on demand such charges, it shall and may be lawful for the said company to sell by public auction at Port Nolloth such goods, merchandize, articles, or things, and out of the money arising from such sale to retain the charges payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, and such goods as shall remain unsold, to the person entitled thereto: Provided that fourteen days' notice of such sale shall have been previously given in the *Government Gazette*, and in any

And on such publication, jetty or tramway or railway to be opened for traffic.

Terms, charges, &c., may be altered.

Charges, how recoverable.

No. 4—1869.

Plan of jetty to be submitted for approval of Government.

Company not to enjoy exclusive right of landing or shipping thereon.

Governor to regulate number of stopping places, goods stations, &c.

Facilities for receiving, forwarding, &c., without undue preference, to be provided.

Tolls, fares, &c., to be charged equally to all persons without distinction.

one or more newspapers published in Cape Town; and such notice shall be also affixed on some conspicuous part of the office of Customs at Port Nolloth.

12. The said jetty shall be erected and constructed upon plans to be previously submitted to and approved of by the Government. Nothing in this Act contained shall be construed as conferring upon the said company any exclusive right to landing and shipping goods or passengers at the jetty to be erected by them under the provisions of this Act, or to prevent the use by the public of all such portions of the beach at Port Nolloth as are not appropriated to the use of the said company by virtue of this Act, or the erection of a jetty or other works at such place or places on the said beach as shall be deemed expedient.

13. The said company shall be bound and obliged to establish and permit to be used so many stations or stopping-places upon the said line of tramway or railway for taking up and setting down passengers, and for receiving and delivering goods, merchandize, minerals, or other articles to be conveyed upon the said tramway or railway and any portion thereof, as the Governor shall from time to time direct to be established for public use, or for the use of any passengers or any proprietors or lessees of mines or minerals requiring to use the said tramway or railway. And the said company shall at all times thereafter allow to the public, and to proprietors and lessees aforesaid, free and convenient way-leave and access to all such stations or stopping-places over all lands belonging to or in the possession or occupation of the said company, with all cattle and vehicles to be used for conveying passengers, goods, merchandize, minerals, or other articles, to and from such stations.

14. The said company shall afford all reasonable facilities for the receiving, storing, forwarding, and delivering of goods upon and from the said tramway or railway and jetty, and no undue or unreasonable preference or advantage to or in favour of any particular person or any particular description of traffic, in any respect whatsoever, shall be given; nor shall the said company subject any particular person or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

15. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods of the same description and conveyed or propelled in a like carriage and by a like power, passing only over the same portion of the line of tramway or railway, under the same circumstances; and no reduction or advance in any such tolls, fares, or rates shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the tramway or railway.

16. No steam power shall be used for the conveyance of passengers upon the said tramway or railway, or any section thereof, until the certificate of the Colonial Engineer or other officer appointed by the Governor shall have been obtained, at the expense of the company, that the said tramway or railway or such section thereof is in a fit and proper condition for the safe conveyance of goods or passengers by means of such steam power.

No. 4—1869.  
Steam power not to be used for passenger traffic before obtaining certificate of proper officer.

17. Such and so many of the provisions of the "Regulation of Railways Act, 1861," as the Governor, with the advice of the Executive Council, shall by any proclamation to be published in the *Government Gazette* specify and determine, shall come into force, and apply to the said tramway or railway hereby authorized to be constructed and made, as if the said provisions were herein separately set forth and made applicable to the same: Provided, however, and it is hereby declared, that sections 29 and 30 of the said Act shall not be made applicable to the said tramway or railway, save and except the proper and necessary fencing which the said company shall be bound to erect and maintain in and through the limits of the village of Port Nolloth.

Provisions of Regulation of "Railways Act, 1861," may, by proclamation, be made applicable to line.

Sections 29 and 30 excepted.

18. The Colonial Government shall have the right of sanctioning any junction of branch lines communicating with the said line of tramway or railway and jetty, from or for the use of any mines which may be opened in Namaqualand, upon such terms and conditions as may be agreed upon between the person desiring to have and maintain such branch line and junction and the said company; and in case of any question or controversy as to such terms and conditions, such question shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the said company, and the other to be nominated by the person seeking to establish such junction; and the decision of any two or more of such three persons shall be final. The costs of every such arbitration to be in the discretion of the arbitrators.

Right of sanctioning junction of branchlines reserved

Disputes as to terms to be settled by arbitration.

Decision final.  
Costs of arbitration.

19. At any time after the expiration of ten years from the date of opening for traffic of the said jetty, or of any section of the line of tramway or railway from Port Nolloth to Nonams, the Colonial Government shall have the right, if so disposed, to purchase from the said company, and the said company shall, if required thereto, be bound to sell to the Colonial Government, the said tramway or railway and jetty, together with all fixed property of the said company lying within the limits of deviation aforesaid, at the cost price of the construction and equipment of the said tramway or railway and jetty and of the purchase and erection of land and buildings, or at any less sum that may be agreed upon between the said company and the Colonial Government.

Right of Government to purchase line and jetty at cost price.

20. If at any time after the said right of pre-emption in the last section contained shall have accrued to the Government, the Government shall have waived or declined to exercise the same, or

If Government waive right or decline to purchase, company may remove all

- No. 4—1869. if at the expiration of the further period of twelve months there-  
 plant and materia after the said company and the Government shall have been unable  
 of line. to agree upon the terms of sale and purchase as aforesaid, then  
 and thereafter it shall be lawful for the said company to remove  
 and carry away all plant and material from the said tramway or  
 railway, but not to remove the said jetty or any part thereof.
- But may not re- 21. It shall be lawful for the said company with the previous  
 move jetty. sanction of the Governor at any time to sell, dispose of, and  
 transfer all their right, title, and interest in and to the said tram-  
 way or railway and jetty, and other property acquired or erected,  
 for the purposes of the said tramway or railway and jetty under  
 the provisions of this Act, to any other company or companies or  
 private individuals desirous of purchasing the same; subject,  
 nevertheless, to the provisions, terms, and conditions of this Act,  
 as if the purchaser or purchasers thereof had been herein expressly  
 made liable thereto.
- Company may dis- 22. It shall be lawful for the said company to exercise all and  
 pose of its rights, singular the powers and authorities by this Act conferred upon the  
 &c., subject to sanc- said company by or through the instrumentality of any agent in  
 tion of Governor. this Colony appointed under the seal of the said company to be  
 the agent of the said company in this Colony: Provided that  
 notice of every appointment of any such agent, and of his name  
 and address in this Colony, shall be from time to time published  
 in the *Government Gazette*.
- Act to apply to 23. The said company shall and may sue and be sued within  
 purchasers. this Colony by the name or style of the "Cape Copper Mining  
 Company (Limited)," and service of process and of all notices or  
 matters of the like nature required by this Act upon the said  
 company, at any office or place of business of the said company in  
 this Colony, shall be good service of such process, notices, and  
 other matters.
- Powers of company 24. This Act may be cited for all purposes as "The Port  
 may be exercised Nolloth Tramway or Railway and Jetty Act."  
 through an agent.
- Name and address 25. This Act may be cited for all purposes as "The Port  
 of agent to be pub- Nolloth Tramway or Railway and Jetty Act."  
 lished in Gazette.
- How company may 26. This Act may be cited for all purposes as "The Port  
 sue and be sued. Nolloth Tramway or Railway and Jetty Act."
- Short title.

No. 3—1871.]

[August 11, 1871.

## ACT

To Authorize the Cape Copper Mining Company (Limited)  
 to extend the Line of Tramway or Railway authorized  
 by Act No. 4 of 1869; "The Port Nolloth Tramway  
 or Railway and Jetty Act."

Preamble:

WHEREAS greater facilities than at present exist for the  
 transport of minerals from the mines in Namaqualand to Port  
 Nolloth, and also for the transport of passengers, goods, merchan-  
 dize, and other articles to and from the said port would be afforded



and the resources of the country be still further developed, by the extension of the line authorized by the said Act No. 4 of 1869, and the construction of the portion of tramway or railway hereinafter mentioned and described : And whereas the said company is willing to undertake the construction and working of the said portion of tramway or railway upon being empowered for that purpose in manner hereinafter mentioned and provided : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

No. 3—1871.

1. So much of the sixth section of the aforesaid Act as empowers the said company to continue the construction of the said tramway or railway beyond the point hereinafter mentioned, distant from Port Nolloth forty-eight miles, “to foot of mountain at Nonams,” is hereby repealed.

Part of section 6 of Act 4, 1869, repealed.

2. The Cape Copper Mining Company (Limited) is hereby empowered to extend the line of tramway authorized by the aforesaid Act, and to construct, maintain, and work a portion of tramway or railway for a distance of twelve miles, or thereabouts diverging from the present existing line at a point near Muishondfontein, distant from Port Nolloth forty-eight miles, and extending from such point along and up the mountain side in a north-easterly direction, by Klipfontein, and terminating at a point to the north of the Mission Station at Kookfontein, or Steinkopff, in accordance with plans and sections deposited in the office of the Clerk of the House of Assembly.

Direction and terminus of extension.

3. The said company is hereby authorized to enter upon and to take possession of and retain all such land within the limits of deviation, as shown by the said plans ; and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway free of charge : Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for terminus, slopes, drainage, stations, stopping-places, approach-roads, and all other works, matters and things which may be requisite or necessary for the efficient construction and working of the said portion of tramway or railway : Provided, also, that the proprietor, lessee, or other person holding from and under the Crown any lands so taken possession of, or of the materials so carried away and used, shall be paid by the said directors the just value, by way of recompense or compensation, for the interest of the said proprietor or lessees, or others holding land under the Crown as aforesaid, in such land or materials, or for any damage which may be done by reason thereof.

Powers granted to company to enter upon lands for purposes of excavation, &c.

Extent to which excavation may be carried on.

Compensation to proprietors or lessees

4. The said company is hereby authorized to enter upon and take possession of, and to hold and retain, for all the purposes of

Crown lands may be used for purposes of extension.

No. 3—1871.

this Act, free of any charges, so much of any Crown lands as shall be required for the construction and maintaining of the said portion of tramway or railway or for any other purpose relating to the execution of this Act, and also to enter upon all Crown lands, not previously leased by the Government to any lessee, lying convenient to the said portion of tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said portion of tramway or railway; and, further, to allow the horses, mules, or cattle required for the purpose of working the said tramway or railway to graze on any Crown lands adjoining the line between Port Nolloth and the terminus near Kookfontein, and also to obtain water from any part of such lands where it can be found: Provided that nothing in this Act contained shall establish any servitude in favour of the said company for such privilege, or for procuring materials for the said tramway or railway upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Materials and water may be taken from, and animals grazed on, unleased Crown lands.

But not to establish servitude.

Certain sections of Act No. 4, 1869, to apply.

5. All and singular the provisions contained in the third, seventh, eighth, ninth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twenty-first, twenty-second, and twenty-third sections of the said Act No. 4 of 1869 shall apply to the said portion of tramway or railway hereby authorized, precisely as if the said sections were, *mutatis mutandis*, herein again set forth, and word for word repeated.

Provisions of Regulation of Railways Act, 1861, may by proclamation be made applicable to extension.

6. Such and so many of the provisions of the Regulation of Railways Act, 1861, as the Governor, with the advice of the Executive Council, shall, by any proclamation to be published in the *Government Gazette*, specify and determine, shall come into force, and apply to the said extended railway or tramway hereby authorized to be extended or made as if the said provisions were herein separately set forth and made applicable to the same: Provided, however, and it is hereby declared that sections twenty-nine and thirty of the said Act shall not be made applicable to the said tramway or railway, save and except the necessary and proper fencing, which the said company shall be bound to erect and maintain, in and through the limits of the village of the Missionary Station of Steinkopff, whenever thereto required by the Governor.

Sections 29 and 30 excepted.

Extension to be completed within three years.

7. The said company shall be bound to complete the said portion of tramway or railway within three years from the taking effect of this Act, failing which the powers and authorities hereby conferred shall cease and determine.

Short title.

8. This Act may be cited for all purposes as "The Port Nolloth Tramway or Railway Extension Act, 1871."

No. 30—1879.]

[Sept. 11, 1879.

## ACT

To Incorporate the Port Elizabeth Tramway Company  
(Limited).

WHEREAS it is desirable and expedient that a company should be formed and incorporated for the purpose of constructing, maintaining, and working a line or lines of tramway in Port Elizabeth, the first line to be laid down from Market-square, through Main-street, Queen-street, Prince's-street, and Adderley-street, to the north-end of Adderley-street: And whereas it is deemed desirable that the liability of shareholders in the proposed company should be limited to the amount of their respective shares: Be it therefore enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The several persons who are, or shall become shareholders in the said company, their respective executors, administrators, successors, and assigns, shall be, and are hereby constituted, a body corporate under the name and title of "The Port Elizabeth Tramway Company (Limited)," for the purpose of constructing and working a tramway, with all necessary sidings and appurtenances, from Market-square, Port Elizabeth, through Main-street, Queen-street, and Prince's-street, and through Adderley-street, to the northern extremity thereof, and the company hereby incorporated shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued, implead and be impleaded, answer and be answered unto, in any competent Court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, possessions, and also all other property, chattels, and effects whatsoever; and such lands, whether freehold or leasehold, and other property subject to any engagements affecting the same shall be vested in the company in its corporate name without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, leases, or conveyances thereof.

Constitution of  
Port Elizabeth  
Tramway Company  
(Limited).

2. The capital of the company shall be fifteen thousand pounds, in three thousand shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

Capital.

3. Subscription lists for shares in the said company shall be opened and headed as follows:

Subscription lists  
for shares.

"We, whose names are hereunder written, hereby agree with each other to become shareholders in the 'Port Elizabeth Tramway Company (Limited),' incorporated by Act of Parliament, and to take each of us the number of shares set opposite to our respective names."

No. 30—1879.

And every such list shall be signed by each of the shareholders therein mentioned, personally or by his lawfully authorized attorney, and all such lists and the powers of attorney, if any, authorizing the signatures thereto, shall be preserved by the directors of the said company; and the shareholders signing such lists shall, from that time, be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders of the said company as fully and effectually as if every shareholder had executed a trust deed containing all and singular the provisions and stipulations of this Act: Provided always, that no person shall, by reason merely of his signing any such list, be entitled to the number of shares, therein subscribed for, or to any number of shares, unless the same shall have been allotted to him by the provisional committee of the said company, consisting of James Brister, Andrew Gloag, Alexander Wilmot, John Alfred Holland, Benjamin D'Urban Godlonton, George Duncan, James Kemsley, and Robert Thompson, and unless he shall have paid the deposit on subscription hereinafter mentioned.

Shares limited to  
£5 each.

4. No more than five pounds in all shall be due or payable in respect of any share in the said company, and the liability of each shareholder shall be, and is hereby, limited to the payment of that amount, in instalments as hereinafter mentioned.

Mode of paying in-  
stalments.

5. The amount of the shares in the said company shall be paid in manner following, namely: a deposit of one pound per share in cash on allotment; a second instalment of one pound per share three months thereafter; a third instalment of one pound per share six months after allotment; and the remaining two pounds in instalments not exceeding one pound per share, and at intervals of not less than three months, which instalments it shall be lawful for the directors to call up upon giving a notice to that effect of not less than three months, in the *Government Gazette*, and one or more of the local newspapers.

Calls with interest  
at 6 per cent. may be  
sued for.

6. If at the time appointed for the payment of the deposit or any instalment, or call, as aforesaid, any shareholder shall fail to pay such deposit, instalment or call, it shall be lawful for the company to sue such shareholder for the amount thereof in any Court having competent jurisdiction, and to recover the same, with interest at the rate of six per cent. per annum from the day on which the same shall have become due and payable.

How shares for-  
feited.

7. If any shareholder shall fail to pay any instalment or call, payable as aforesaid, within one month from the time appointed for the payment thereof, the directors may, at a meeting duly convened, by a resolution in writing, signed by not less than three of their number, declare the share or shares in respect of which such default shall have been committed, forfeited, whether the company shall have sued for the amount of such instalment or call or not. And the directors may forthwith dispose of such share or shares to any other person or persons, and, if needful, issue fresh

certificates of shares to the person or persons purchasing such forfeited shares.

No. 30—1879.

8. The general management of the affairs of the company shall be vested in a board of not more than seven and not less than five directors: Provided that no person shall be competent to be a director who shall not possess in his own right fifty shares or more in the capital stock of the said company.

Directors.

9. The following persons, to wit, Andrew Gloag, James Brister, George Duncan, Robert Thompson, Benjamin D'Urban Godlonton, Alexander Wilmot, and William Wilson, shall be the first directors of the said company, and shall so continue until other directors are appointed in their place, or they or any of them shall die, resign, be removed, or become incapacitated as hereinafter mentioned.

Names of first directors.

10. Two of the directors shall go out of office annually in the following rotation, namely: The two directors whose names stand lowest on the above list shall go out of office at the annual general meeting, to be held in July, 1880, and two directors shall be elected at the said meeting, whose names shall be placed at the head of the list; and in like manner at each succeeding annual general meeting the two directors whose names then stand at the bottom of the list shall retire, and two directors shall be elected in their place, whose names shall be placed at the head of the list: Provided always, that the retiring directors shall, unless otherwise disqualified, be eligible for re-election: Provided also, that if from any cause whatever no election should take place at the time appointed, the outgoing directors shall remain in office until such time as other directors shall be elected and shall consent to act.

Directors to go out by rotation.

11. Any director becoming insolvent, or being absent from Port Elizabeth for six months, or ceasing to be the holder in his own right of fifty shares shall become disqualified and his seat declared vacant.

Disqualifications.

12. In case the conduct of any director shall at any time be such that his continuance in office would, in the opinion of at least twenty shareholders, holding in the aggregate not less than two hundred shares, be prejudicial to the interests of the company, and notice thereof in writing, signed by such shareholders, shall have been given to the directors, the directors shall forthwith call a general meeting of shareholders in manner hereinafter described, and it shall thereupon be lawful for the shareholders voting at such meeting by a majority of votes to remove such director from his office.

How if conduct of a director prejudicial to interests of company.

13. Upon any vacancy in the board of directors occurring by any such means as above mentioned six months or more before the annual general meeting, the remaining directors shall forthwith call a special general meeting of shareholders, in manner hereinafter provided, to elect a director or directors to fill such vacancy.

How vacancies to be filled up.

14. The directors shall appoint from amongst themselves a

Chairman.

No. 30—1879.

chairman of the board, who shall preside at all meetings of the directors; and in case of his absence from any meetings, the directors present shall elect from among themselves a chairman for the meeting. And in all matters brought forward at every meeting of directors the chairman shall, in case of an equality of votes, have a casting vote, in addition to his deliberative vote. Three directors shall form a quorum, and shall be competent to perform all acts which the directors are empowered to do and perform, and all acts done by such quorum shall be valid, notwithstanding the existence of any vacancy or vacancies in the board.

Register of shareholders.

15. A full and complete register of the shareholders in the company shall be kept, and shall be open for the inspection of the public at all reasonable times on payment of a fee of one shilling for each inspection.

Certificate of shares.

16. Each shareholder shall be entitled to receive from the secretary of the company for the time being a certificate of the shares held by such shareholder, which certificates shall at all times be deemed sufficient evidence of the interest held in the company by the persons therein named, and the certificates so to be granted shall be signed by any two of the directors of the company, and shall be in the following form, to wit:

Certificate of Share in the "Port Elizabeth Tramway Company (Limited)."

This is to certify that A. B., of \_\_\_\_\_, is proprietor of \_\_\_\_\_ shares, numbered \_\_\_\_\_, in the "Port Elizabeth Tramway Company (Limited)," incorporated by Act of Parliament, subject to the provisions and regulations of the Act of Incorporation of the said company.

Given under the common seal of the said company, and under the hand of two of the directors thereof, at Port Elizabeth, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_  
\_\_\_\_\_  
} Directors.

How shares may be transferred.

17. Any shareholder may transfer his share or shares by indorsement upon the certificate, and by letter to the directors, or other writing signed by the shareholder or his agent, specifying the person or persons to whom the share or shares are to be transferred; but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been made in the books of the company and three directors shall have certified their consent in writing to such transfer, and until the assignee or transferee shall, either in person or by attorney, have acknowledged his proprietorship in writing, in substance as follows:

I, C. D., of \_\_\_\_\_, do hereby acknowledge to have received by transfer from A. B. \_\_\_\_\_ shares, Nos \_\_\_\_\_,

in the "Port Elizabeth Tramway Company (Limited)," subject to the conditions, regulations, and provisions of the Act of Incorporation of the said company.

No. 30—1879.

Port Elizabeth, —————, 18—.

C. D.

18. Any shareholder transferring his share or shares as aforesaid shall, from the date of the registration of the transfer thereof, be wholly released and discharged from all liability in respect of such share or shares, and the person to whom the same is or are transferred shall be subject to all and singular the same liabilities in respect thereof as if such person had been the original shareholder.

Release from liability after transfer of shares.

19. The annual general meeting of shareholders of the said company shall be held at Port Elizabeth on the last Wednesday of the month of July in each year, and the directors shall submit to every such annual general meeting a report setting forth the position and prospects of the company, together with an account of receipts and expenditure during the year ending on the 30th of June preceding.

Annual general meeting.

20. In addition to the annual general meetings, general meetings of the shareholders may be held for special purposes whenever the directors shall consider it necessary or desirable. And the directors shall be bound to convene such special general meetings, whenever called upon so to do by requisition in writing setting forth the purpose or object of such meeting signed by not less than twenty shareholders, holding collectively not less than one hundred shares, and sent in to the chairman of directors: Provided that no business shall be transacted at any special general meeting except that described in the notice of the meeting, to be given as hereinafter provided.

Special meetings.

21. All meetings of shareholders, whether the annual general meeting or any special general meetings, to be convened as hereinbefore mentioned, shall be called by advertisement addressed to the shareholders of the said company, to be published twice at least in any two of the local papers, not less than fourteen days before the day appointed for such meeting; and such notice shall, in every case, fully and clearly set forth the object or purpose for which the meeting is called.

How to call meetings.

22. At all meetings of the company the shareholders present, in person or by proxy, shall have the right of voting according to the following scale, namely:

Rights of voting.

Each shareholder possessed of five shares or more, but less than twenty, shall have one vote only.

Each shareholder possessed of twenty shares or more, but less than fifty, shall have two votes.

And each shareholder possessed of fifty shares or more, shall have three votes, and no more:

No. 30—1879. Provided that no shareholder shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof for a period of at least three months previous to such meeting.

Who may not vote  
by proxy.

23. No shareholder residing within ten miles of Port Elizabeth, unless he shall be absent from his residence beyond that distance, except females holding shares in their own right, and persons unable, from sickness, to attend any meeting, shall be allowed to vote by proxy; and the proxy of such females or shareholders suffering from sickness or resident beyond ten miles from Port Elizabeth, shall be in the form or to the effect following:

I, A. B., of \_\_\_\_\_, one of the shareholders of the "Port Elizabeth Tramway Company (Limited)," do hereby authorize and appoint C. D., of \_\_\_\_\_, also a shareholder in the said company, to be my proxy at all meetings of the shareholders of the said company (or at a meeting of the shareholders of the said company, to be held on the \_\_\_\_\_), and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 —.

A. B.

Chairman of meet-  
ing.

24. At all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside; and all resolutions of shareholders at such meetings shall be determined by a show of hands, as declared by the chairman, but any shareholder feeling dissatisfied with such decision may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing duly signed and reckoned according to the rule in that behalf hereinbefore provided; and in the event of the votes being equally divided, the chairman of the meeting shall decide the question by his casting vote.

Rules for election  
of directors.

25. In all elections of directors, whether at the annual general meeting, or at any special general meeting, to fill a vacancy or vacancies, the following rules shall be observed:

- (a) No person shall be eligible as a director unless he shall have been nominated for that purpose by written notice, signed by two shareholders, as proposer and seconder respectively, and left with the directors at least fourteen days before the day appointed for the election.
- (b) If the person or persons duly nominated as candidates shall not exceed in number the vacancies in the direction requiring to be filled up, such person or persons shall, at the meeting, be declared by the chairman duly elected.
- (c) If there shall be more candidates for the election than required to fill the vacancy or vacancies, the election



shall take place by ballot, for which purpose a poll shall commence at the close of the other business, if any, before the meeting, and shall be kept open for at least two hours, and the result of such poll as declared by scrutineers appointed by the meeting shall be deemed to be a resolution of the company in the general meeting.

No. 30—1879.

26. The directors shall cause proper books of account to be provided and kept under their superintendence, and shall cause full and sufficient entries to be made in such books of all payments and receipts by or on account of the company, and all other the transactions thereof, and shall, prior to each annual general meeting, cause the books of the company to be balanced, and a full and fair balance-sheet to be made up therefrom up to the thirtieth day of June immediately preceding such meeting, to be laid before the meeting as provided by section 19 of this Act. And the said balance-sheet and the said books shall be open to the inspection of any of the shareholders for three days before every annual general meeting and during such meeting.

Books to be kept.

27. The accounts of the company shall be audited annually by two auditors, to be annually elected, not being directors, such auditors to be nominated and elected in like manner as the directors provided for in the twenty-fifth section of this Act: Provided, however, that no person shall be eligible to act as auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

Annual audit.

28. The directors of the said company are hereby authorized to construct and lay down a single or double line of tramway from Market-square, Port Elizabeth, along the whole length of Main-street, Queen-street, Prince's-street, and Adderley-street, with such sidings and stations as may from time to time be agreed upon by the said company and the council of the municipality of Port Elizabeth: Provided that in constructing and laying down the said line of tramway, or any extension thereof, as aftermentioned, the said company shall be bound to ballast between the rails with good ironstone gravel, and where necessary to pave with stone, and shall also be bound to pave a space of eighteen inches wide on each outer side of the tramway; all which works shall be done and thereafter kept in good repair by the said company, at their own exclusive cost and charges, to the satisfaction of the said council or some person duly appointed to act on their behalf. Provided that the said company pay the annual rent of ten pounds agreed upon between the said company and the said council, and comply with all regulations of the said municipality with regard to licences for their drivers or servants, to the number and safety of passengers carried, or concerning any other matter or thing whatsoever having reference in that behalf to the provisions of this Act: And provided further, that it shall be lawful for the said company, upon the consent of the said council being first

Particulars of the line of tramway to be constructed.

No. 30—1879.

properly had and obtained, to extend, deviate from, and vary the said line, and to carry the said tramway along any other streets or roads within the said municipality.

Extension to be  
made if required by  
the municipality.

29. The said company shall, whenever thereto required by the council of the municipality of Port Elizabeth construct and lay down any extension or extensions of the said tramway over any other street or streets within the said municipality in like manner as to construction, and upon the same conditions, as are contained in the last preceding section: Provided that if the said company, on such request being made to them, shall refuse or decline to comply therewith, which they are hereby declared entitled to do, it shall be lawful for the said council to apply to any other company or individual to construct and lay down such extension or extensions, and for that purpose the said council shall have the right, and they are hereby authorized, to concede and grant to such other company or individual running powers over the tramway of the said company upon payment, by way of compensation, of such a sum as shall be agreed upon between the said company and such other company or individual, or, in case of difference of opinion between them, of such sum as shall be decided by arbitrators, to be chosen in manner hereinafter provided, and provided further, that in case the said line of tramway, or any extension thereof, or any portion or portions of the same, shall not be used for a period of six consecutive months, the company or individual whose line of tramway or extension shall not have been so used, shall be bound to remove the rails and to restore the street or road to the same order and condition in which it was prior to the laying down of the said rails, upon a written notice to that effect of six months being given to them or him by the council of the municipality of Port Elizabeth: And in the event of the said company or individual failing so to do after receipt of such notice, the said council shall be empowered and are hereby authorized, to cause the same to be done for account, and at the cost of, the said company or individual, and the money so expended by the said council shall be immediately claimable and recoverable from the said company or individual as a first charge upon the plant and stock of the said company or individual: And provided also, that in case the said line of tramway, or any extension thereof, or any portion of the same shall not be completed within three years after the commencement thereof, the concession hereby given to the said company or individual for laying down the said line of tramway shall be null and void in respect to the said line, or any extension thereof, or any incomplete part of the same, and the street or road which shall have been used by the said company or individual shall be restored to its original state and condition at the cost of the said company or individual.

Company to have  
exclusive use of

30. Until the council of the municipality of Port Elizabeth shall have given running powers over the said line of tramway, under the

powers conferred upon them in section 29, the said company shall have the exclusive use of the said tramway for carriages with flange wheels, or other wheels suitable only to run on the prescribed rail: Provided, however, that the public shall have the right of passing along or across any part of a road in which a tramway is laid, whether on or off the tramway, with carriages not having flange wheels.

No. 30—1879.  
tramway with flange wheels.

31. The said tramway, and any extension thereof, shall be laid down and executed to the satisfaction and subject to the approval of the said council of the municipality of Port Elizabeth, and subject also to the existing contract between the gas company and the said municipality, and the roadway between the rails of the said tramway shall be maintained in good and efficient repair at the costs and charges of the said tramway company or individual, and all damage done to the said streets, or to any of the streets, roads, bridges, drains, and other property of the said municipality by reason of any work or works performed and executed by the said company or individual shall, in like manner, immediately, or as soon as practicable, be made good at the sole costs and charges of the said company or individual: Provided always, that the council of the municipality of Port Elizabeth shall have the right at all times, at the costs and charges of the said company, to take up any part of the said tramway or extension thereof which it shall be found necessary to take up for the purpose of constructing, repairing, or cleaning drains or sewers, or laying down or replacing water pipes, or for any other municipal or public purpose; and all such part or parts of the said tramway or extension thereof, so taken up as aforesaid, shall be again properly relaid as speedily as possible at the cost and expense of the said company or individual: And provided also, that if, at any time, the said line of tramway or any extension, or any part thereof, shall be found to be injurious to the said municipality by prejudicially interfering with the public, the company or individual shall, upon twelve months' notice having been given by the council of the said municipality, take up the line of tramway, or such portion thereof as may be objected to.

Tramway to be laid down to the satisfaction of the municipality.

32. Every person who shall wilfully do, or cause to be done, anything in such manner as to improperly obstruct any car or conveyance, using the said tramway, or the horses drawing the same, or to endanger the safety of persons conveyed in and upon the same, or who shall aid and assist therein, shall, on being convicted thereof, be liable to pay a fine of not more than five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not exceeding one month, unless such fine shall be sooner paid.

Penalties for obstructing use of tramway.

33. If any person or persons shall drive or lead any wagon, cart, carriage, or other vehicle, or any horse or other animal, upon the line of the said tramway in such manner as to improperly

Power to tramway officers to remove obstructions.

*kkkk*

No. 30—1879.

obstruct or hinder any car or conveyance belonging to the said company, or shall refuse to remove such obstruction, it shall be lawful for any officer of the said company, or any person whom he may call to his assistance, to remove such obstruction.

Ordinary street traffic not to be hindered.

34. Nothing in this Act contained shall authorize the said company, in any manner, to obstruct or hinder the safe passage or crossing of the ordinary traffic on the now existing roads and streets, but in all cases a sufficient space shall be left on both sides of the said roads or streets to allow all carriages, cattle, and passengers to pass the cars on the said tramway in a safe and convenient manner.

Power of directors to make contracts.

35. The board of directors of the said company is hereby empowered to enter into contracts for the supply of work or materials necessary for constructing, maintaining, and working the said tramway, and may also appoint and employ engineers, overseers, masons, carpenters, navvies, and such other workmen as it may deem necessary for carrying out the provisions in that behalf of this Act, and also a secretary or manager, car-drivers, conductors, grooms, and other servants, and may remove or dismiss any such persons and employ others in their stead; and shall be authorized to fix the duties and salaries of such persons, and generally to do all matters and things necessary for the due and effective management of the affairs of the company.

When money may be borrowed on security of plant.

36. So soon as the whole of the capital of the company shall have been subscribed, and not less than one-third thereof shall have been paid up and expended, it shall be lawful for the directors from time to time (when duly authorized thereto by the shareholders by a special meeting convened for that purpose) to borrow money on the security of the tramway and plant, and the future calls on the shareholders, and of the expected earnings of the line; the interest on such loan to be a first charge on the net profits of the working of the tramway.

Tariff of charges to be made.

37. So soon as the line of tramway is in a fit condition for traffic, the directors for the time being shall frame a tariff of charges for the conveyance of passengers and goods, and such tariff shall be published in two of the local newspapers for general information: Provided always that the rates so chargeable may from time to time be altered by the directors; and the directors shall be entitled to recover by legal process, all such charges as shall be in force for the time being from passengers and from the owners of goods, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, articles, and things until the charges thereon shall have been duly paid.

Property to vest in two trustees.

38. The right to and property in all and singular the earth works, bridges, culverts, materials, rolling stock, horses, and everything appertaining to the said tramway to be constructed under this Act, as also all immovable or landed property which may be

acquired by the company, shall be vested in two trustees, to be chosen by the directors for the time being from among their number.

No. 30--1879.

39. In any action or other proceeding at law which may be brought by or against the said company, it shall and may be lawful for the company to sue and be sued by the corporate name of "The Port Elizabeth Tramway Company (Limited)," and all process of law which shall require to be served on the company in any such action or other proceeding may be served at the office of the company.

How company to sue or be sued.

40. All contracts, agreements, powers of attorney, warrants to sue or to defend, bonds, debentures, and other documents which shall require to be signed by the directors on behalf of the company shall be deemed to be duly and sufficiently executed if signed by two of the said directors.

How contracts, &c. to be signed.

41. The chairman and directors and auditors for the time being may receive out of the clear profits of the said company such sum or sums of money, by way of remuneration for their trouble, as the majority of the shareholders shall determine at the annual general meeting.

Remuneration of directors and auditors.

42. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, at least one-tenth of the clear profits in each year shall be set aside to form a protecting fund to meet wear and tear, and depreciation of stock, and that such funds shall be applied to no other purpose but the purchase of new stock.

Dividends.

43. It shall be lawful for the said company at any time hereafter, by a resolution duly passed by a majority of two-thirds of the votes of the shareholders present at a special general meeting properly convened, after notice given in manner as hereinbefore provided, of the purpose of such meeting, to increase the capital of the said company to such further sum as may be required for the purpose of extending the said tramway in such manner as the said meeting shall decide.

Power to increase the capital.

44. Such additional capital shall be raised either by creating and issuing additional shares of five pounds each, or by increasing the value of the original shares, as the shareholders present at such meeting as last aforesaid shall decide.

How additional capital to be raised.

45. No more than five pounds in all shall be due by way of additional capital in respect of any additional share or any increase of the value of the original shares; and the future liability of any shareholder arising out of any extension of the said tramway shall be and is hereby limited, in case of such extension, to the payment of a sum not exceeding five pounds per additional share, or the amount of the increased value of the original shares, as the case may be: Provided, however, that the issue of any additional shares may be made subject to such terms, as to bonus or premium thereon, as the shareholders may determine.

Limitation of shares and of shareholders' liability.

- No. 30—1879. 46. The amount of the additional shares, or of the increased value of the original shares, shall be paid in manner as provided in the fifth section of this Act, and may be recovered in manner as provided in the sixth and seventh sections of this Act.
- Additional shares to be paid for as in section 5. Definition of terms 47. In the construction of this Act, the words “the company” shall be held to mean the company hereby incorporated; “directors” and “shareholders” to mean respectively the directors and shareholders for the time being of the said company; “local newspapers” to mean any of the public newspapers from time to time published in Port Elizabeth.
- Provisions for winding up company. 48. If at any time the company shall meet with such losses, or if the business thereof shall be so unsuccessful as to exhaust, by such losses or by the expenses of the business, the reserve fund, and also one-fourth of the paid-up capital, then the directors shall forthwith call a special general meeting in manner hereinbefore provided, and shall submit to such meeting a full and complete statement of the affairs and concerns of the company, and thereupon the company shall be dissolved, unless a majority in votes of two-thirds of the shareholders present personally or by proxy shall resolve to continue and carry on the company, and shall undertake in writing to indemnify the dissentient shareholders against all the existing and future debts and engagements of the company, and to purchase the shares of such dissentient shareholders at such amount or price per share as shall be determined by the arbitrators to be chosen as in manner hereinafter provided.
- Arbitration provided for. 49. In case it should be necessary to submit to arbitration any of the matters referred to in the twenty-ninth and forty-eighth sections in this Act, the question in dispute shall be submitted to the arbitrament and award of three impartial persons one to be appointed by the company or the majority of the shareholders, and the other by the council or other parties interested, or the dissentient shareholders, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said company or majority of shareholders, shall cause a deed of submission to be prepared, which shall be signed by both parties interested, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators, or a majority of them, shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought before a Court of the matter referred to arbitration.
- Power to extend duration of company 50. At the annual general meeting of shareholders, which shall be holden in the year 1899, it shall be lawful for the shareholders at such meeting, by resolution passed by a majority of votes, to extend the continuation of the company for a further period not exceeding twenty-one years, and it shall in like manner be lawful for the shareholders afterwards, from time to time, to extend the continuance of the company for a period or periods not exceeding twenty-one years.

51. This Act shall continue in force until the 1st August, 1900, and may be cited for all purposes as the "Port Elizabeth Tramway Company Act, 1879."

No. 5—1884.

Act to be in force till 1st August, 1900.

No. 5—1884.]

[July 18, 1884.

### ACT

To Consolidate and Amend the Law relating to the Payment of Transfer Duty.

WHEREAS it is expedient to consolidate and amend the law relating to the payment of transfer duty: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the first schedule to this Act, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed, except as to the recovery of any duty, interest, or penalty due or incurred before the taking effect of this Act.

Laws repealed.

#### PAYMENT OF TRANSFER DUTY.

2. Except as in this Act is excepted, a duty (hereinafter called transfer duty) of four pounds per centum upon the purchase price or value of any freehold property or property held from Government upon quitrent or other leasehold tenure sold or otherwise alienated or transferred after the taking effect of this Act, shall be payable and paid

Transfer duty imposed upon sale or other alienation of property.

- (1) By the purchaser of any such property.
- (2) By every person becoming entitled to any such property by way of exchange, donation, legacy, testamentary or other inheritance, or in any manner otherwise than through the medium or by means of purchase and sale.
- (3) By every person into whose name any such property registered in the Deeds Registry of this Colony in the name of any other person shall be registered or transferred.

All persons acquiring the right to the limited enjoyment of property burthened with the entail of *fidei-commissum*, and all persons acquiring a life usufruct only in any property, shall (save as in this Act excepted) be chargeable with and liable to pay the duty applicable to the species of property in question, upon the value of their estates or interests in such property, to be calculated with reference to the value of the property and the duration or extent of their interest therein, and such duty shall be recoverable whether such persons shall or shall not seek to have their said estates or interests registered in their names in the Deeds Registry office.

Mode of calculation of duty on property entailed or held for life only.

No. 5—1884.

Cost and charges excluded from being reckoned as part of purchase price.

3. As often as by the contract of sale of any immovable property liable to the payment of transfer duty, the purchaser of such property shall become liable to pay, over and above the sum payable to the seller, all or any of the following charges or expenses arising out of or connected with the said sale, that is to say :

1. The cost of any survey of the said property which shall have been made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and sub-divisions, and of the plan of the property exhibited at the time of sale ;
2. The charge made by the auctioneer for the conditions of the said sale ;
3. The commission, if any, paid by the purchaser to any auctioneer, broker, or agent, by or through whom the sale of the property may have been effected, not exceeding two pounds and ten shillings per centum upon the amount of the purchase money ;
4. The auction duty payable upon the said sale ;
5. The transfer duty payable thereon ;
6. The cost of all deeds necessary for effecting transfer of such property, and of the mortgage deed, if any, and of all necessary stamps ;
7. The charges of conveyancers, and agents, incurred in effecting the transfer of the said property ;
8. The quitrent, if any, payable to Government upon the property sold ;
9. The quitrent, if any, which shall be payable upon the property sold to any committee, consistory, or any other body, for religious, educational, or charitable purposes, not being rent already due and in arrear at the time of such sale ;

Then such charges or expenses shall not, nor shall any of them, be deemed or taken to form part of the purchase money of such property, so as to be liable to the payment of transfer duty :

Arrear rent to be added to purchase price.

Provided that as often as the purchaser shall agree or undertake to pay any such quitrent as is in the ninth sub-division of this section mentioned, which shall, at the time of the sale to such purchaser be already due and in arrear, the amount of such arrear rent shall in the solemn declarations to be made by the seller and the purchaser, respectively, be added to the sum paid or to be paid to the seller in stating the amount of purchase money upon which transfer duty is to be paid.

Other sums payable by purchaser in addition to purchase price to be added to amount of purchase money.

4. In case the purchaser of any such property shall have undertaken, agreed, or in any manner become liable for, or in respect of, or in connection with, the purchase by him of the said property, to pay to any person whomsoever any sum of money over and above the sum paid or to be paid to the seller, such sum not being



No. 5—1884.

one or more of the items of charges or expenses in the last preceding section mentioned, then such sum must be added to the sum paid or to be paid to the seller in stating, in the solemn declarations to be made by the seller and purchaser respectively, the amount of purchase money upon which transfer duty is to be paid.

5. The transfer duty upon or in respect of every sale, exchange, or donation of any such property, shall be payable within six months from the day of the date of the sale, exchange, or donation, as the case may be, and from and after the expiration of such six months, and until payment or deposit of the amount of such duty, interest thereupon at the rate of twelve pounds per centum per annum shall be payable and paid. When duty is payable.

6. As often as any contract of sale of any immovable property shall be entered into, by which contract it is stipulated that possession of such property shall not be given or that the said sale shall not take effect until some future date, the date at which such contract was entered into, and not such future date, shall be the date from which the space or term of six months mentioned in the last preceding section shall be reckoned. Date when payable in cases of deferred possession.

7. As often as any sale of immovable property shall be a conditional sale, then the said space or term of six months shall begin to be reckoned from the day on which such contract of sale was first entered into: Provided that in case any such contract of sale shall become dissolved by reason of the happening of any dissolving condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned. When duty payable in cases of conditional sale.

8. Whenever any such property as aforesaid shall be registered in the name of more persons than one, as joint owners, all the said persons shall be deemed and taken, for the purpose of payment of duty upon or in respect of any sale or alienation by any of them to any other or others of them, to have equal shares and interest in the said property, unless the particular share or interest of each shall be declared and set forth in the title deed or other instrument recorded in the Deeds Registry Office. Liability to duty in cases of joint ownership.

#### RECEIPTS FOR DUTY AND DECLARATIONS.

9. All duties and interest payable under the provisions of this Act shall be paid to the Civil Commissioner of the division in which the property to be transferred is situate, who shall give a receipt for the same; and no transfer of any such property shall be made unless such receipt shall have been produced to, and deposited with, the Registrar of Deeds. To whom duty payable.

10. No Civil Commissioner shall grant a receipt (except as in this Act is excepted and except a receipt for money deposited) for the amount of any such duty as aforesaid, payable upon or in respect of any sale and purchase of any such property as aforesaid, until the seller shall have taken and subscribed the form of solemn declaration marked A, and until the purchaser shall have taken Solemn declaration of sale.

No. 5—1884.

and subscribed the form of solemn declaration marked B, in the second schedule.

Solemn declaration  
in case of death or  
absence from Colony  
of seller or purchaser.

11. As often as it shall appear to the Civil Commissioner that any agent, auctioneer, broker, or other person acting for or on behalf of any such seller or purchaser of any such property as aforesaid, has himself, in his said capacity, made and entered into the contract of sale or purchase, then it shall be lawful for such Civil Commissioner to demand and receive the solemn declaration of such agent, auctioneer, broker, or other person as aforesaid, either in lieu of, or in addition to, that of his principal, according as such Civil Commissioner shall, under the circumstances of the case, deem fit; and the solemn declaration to be taken as aforesaid shall, as nearly as may be, be in the form C in the second schedule.

Solemn declaration  
in case of death or  
absence from Colony  
of seller or purchaser.

12. If, in any case, it shall be made to appear that the seller or the purchaser of any such property has died, or departed from the Colony, without having taken and subscribed the necessary solemn declaration, the Civil Commissioner may either dispense with such solemn declaration altogether, or receive, in lieu thereof, the solemn declaration of such other person as may, under the circumstances of the case, be in a position to testify to the particular matters to be set forth in such declaration.

#### VALUATIONS FOR PAYMENT OF TRANSFER DUTY.

Valuation for pur-  
poses of computing  
duty.

13. For the purposes of ascertaining the value of property changing proprietors otherwise than through the medium, or by means of sale and purchase, and chargeable with duty under the provisions of this Act, it shall be the duty of the Civil Commissioner of the division in which the property shall be situated, at his discretion, either to claim duty upon the amount for which such property is valued for Divisional Council purposes, or to appoint some competent and disinterested person to ascertain, upon solemn declaration, the just and fair value of such property; and the reasonable expenses of such valuation shall be payable by the person chargeable with the payment of the duty; and the amount of such Divisional Council valuation or the amount at which such valuator shall value the said property, as the case may be, shall be the amount upon which duty shall be chargeable: Provided that nothing herein contained shall be held or taken to prevent any person who shall conceive himself aggrieved from bringing in review before any Court having jurisdiction, the valuation upon which duty has been claimed.

Valuation in case  
in which purchase  
price appears to be  
less than true value.

14. When in any case of sale and purchase of such property as aforesaid (not being a sale or purchase by public auction made *bonâ fide* and without collusion), it shall appear to the Civil Commissioner who is to receive the duty that the price or purchase money of the same is considerably less than its just and fair value, and in case the said Civil Commissioner and the purchaser shall not agree to accept the Divisional Council valuation of such

property as representing the fair value thereof, it shall be competent for the said Civil Commissioner to cause a valuation of the said property to be made in manner and form as in the last preceding section mentioned: and in case the value, ascertained as aforesaid, shall exceed the amount of the said price or purchase money by one-third of the amount of such price or purchase money, then the amount of such valuation shall, for the purposes of this Act, be deemed and taken to be the price or purchase money of such property; and duty thereupon, together with the reasonable expenses of such valuation, shall be paid by the purchaser, but in case such value shall not exceed the said price or purchase money to the extent of one-third thereof, then duty shall be received upon such price or purchase money, and the expense of the valuation shall be borne by Government: Provided that nothing herein contained shall be held or taken to prevent any purchaser who shall conceive himself aggrieved from bringing such valuation in review before any Court having jurisdiction.

15. If, in any case, some additional valuable consideration, other than money, shall be given or promised, or agreed to be given by the purchaser to the seller or to any other person, for or in respect of or in connection with the alienation of any immovable property, then the seller and the purchaser shall be respectively at liberty to put, by way of solemn declaration, a value in money upon such additional consideration, and such value shall be added to the sum of money paid, or to be paid, and transfer duty shall be paid upon the conjoint amount; and in case the said seller and purchaser shall not put the same value upon such additional consideration, then duty shall be paid upon the higher of the two values so put: Provided that the provisions of the two last preceding sections respectively of this Act shall apply to the value or values so put, in case it or they shall appear to the Civil Commissioner who is to receive the transfer duty to be considerably less than the just and fair value of such additional consideration, or in case the said seller and purchaser shall not, each of them, put a value thereupon.

Valuation of consideration other than money.

16. No valuation of any property, for the purpose of the payment of transfer duty, shall be capable of being made at any time after any sum of money shall have been received, except money received by way of deposit for securing the payment of any amount of transfer duty to be afterwards fixed and ascertained, as being the transfer duty payable upon such property, and after a final receipt shall have been granted for such duty.

Valuation not competent after duty paid.

#### EXEMPTIONS FROM TRANSFER DUTY.

17. No transfer duty shall be remitted upon any sales whatever, except as specially in this Act provided, and except upon sales in regard to which the transfer duty, if paid, would be paid directly from and out of the colonial revenue.

Remission of duty forbidden.

No. 5—1884.  
 Return of duty when sale declared void.

18. As often as any contract of sale, upon which transfer duty shall be payable, shall be set aside, or cancelled, or declared or made void by the judgment of any competent Court, the transfer duty upon such sale, if unpaid, shall not be payable: and if paid, shall be returned.

Exemptions from obligation to pay duty.

19. Exemptions from the obligation to pay transfer duty under the provisions of this Act shall be allowed in the cases and to the extent hereinafter set forth, that is to say:

1. When any person appearing upon the records of the Deeds Registry to be a joint owner of any property shall purchase that property, he shall not be charged with duty upon that proportion of the purchase money which represents his individual share or interest.
2. Any person being a descendant of any deceased person, and who would be the heir, or one of the heirs, *ab intestato*, of such deceased person, who shall, being entitled as an heir or legatee in the estate, purchase or take over the immovable property in the estate, or any part thereof, shall not be chargeable with duty upon so much of the purchase money or value of such property as represents his share in the property so purchased or taken over, considered as, or as if, an heir *ab intestato*; and the husband of any such heir or legatee, or the tutor, curator, or trustee of any such heir or legatee, purchasing for and in the name of such heir or legatee, shall be deemed and taken to be such heir for the purpose of this exemption.
3. Any heir or legatee of any deceased person, being such a person as has been above described under No. 2, who shall require to have any of the immovable property inherited by him from the deceased, or by the deceased legated or pre-legated to him, removed from the name of the deceased into his own name, shall not be chargeable with duty upon the amount of his share in the property so to be transferred, in case or supposing that the deceased died intestate.
4. No surviving spouse who had been married to his or her deceased spouse in community of property, shall be chargeable with any transfer duty upon any purchase, or other mode of taking over, from and out of the joint estate of the deceased and such surviving spouse, of the immovable property of the said estate, or of any part of such immovable property, or upon any immovable property or share in such property inherited by such surviving spouse from his or her deceased spouse as the heir or one of the heirs of such spouse—or upon any immovable property legated or pre-legated by the deceased spouse to such surviving spouse; nor shall any such duty become payable upon any property inherited from, or legated

- or pre-legated by such deceased spouse, by reason that the survivor has been charged by the will or other testamentary disposition of such deceased spouse with the payment of portions to children, or others, or with the payment of some amount of money into the joint estate.
5. Every purchase or other contract concluded by any surviving spouse with any heir or legatee of the deceased spouse, whereby such surviving spouse shall acquire from such heir or legatee his or her share or portion of any of the immovable property of, or which had been of, the joint estate, shall be exempt from duty, in like manner as if such purchase or contract had been concluded by such surviving spouse with the administrators of the joint estate, so long as such heir or legatee shall not have received transfer from or out of the joint estate of the property so sold, or otherwise disposed of, to such surviving spouse, but no longer.
  6. When any surviving spouse shall have been instituted as sole and universal heir of the first dying spouse subject to the obligation of making provision at some future time for the children of the marriage out of the estate of such first dying spouse, such children shall respectively be entitled, should occasion arise, to claim the exemptions provided in sub-sections No. 2 and No. 3 of this section, precisely as if they had been, jointly with the surviving spouse, instituted heirs of the first dying spouse.
  7. The husband of any woman to whom he shall be married in community of property may have any property standing in the Deeds Registry Office in her name removed into his own name without the payment of transfer duty.
  8. As often as the owner of any immovable property, being a husband or intended husband, or being a wife or an intended wife, or being the parent of a husband or wife, or of an intended husband or wife, shall agree or determine to vest such property in trustees, for the purpose of thereby making a provision for the support of the marriage, or for the wife or intended wife, or for the children of the marriage, transfer of such property may be made to such trustees without the payment of transfer duty: Provided that this exemption shall only extend to cases in which no consideration in money or property shall be given or promised to the owner of the property proposed to be vested in trustees, upon the trusts aforesaid, or upon trusts of the like nature.

No. 5—1884.

9. In every case in which any one person shall, by the records in the Deeds Registry Office, appear to be merely a trustee for any other person, whether the latter shall be a minor or a major, or under coverture or not, the property so held in trust may be removed from the name of the trustee to that of such other person being entitled to have it so removed, without the payment of transfer duty.
10. In every case of voluntary or compulsory partition between joint owners of immovable property, all changes in the records of the Deeds Registry required for the due registration of the separate shares, to be held by each in severalty, shall be made without payment of transfer duty in case the person claiming exemption from such payment shall make and deposit with the officer authorized to receive transfer duty, or with the Registrar of Deeds, a solemn declaration as nearly as is material in the form D in the second schedule, that he has not given, nor is to give, any money or other valuable consideration to his late co-proprietors, or any of them, for or in regard to the share assigned to him, and which he desires to have registered in his name: Provided that if for the equalising of partition, or for any other reason, such person shall have given or agreed to give to his late co-proprietors, or any of them, any money or other valuable consideration for the said share so assigned to him, he shall, by solemn declaration as aforesaid, state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount: Provided that the provisions of the fourteenth section of this Act shall apply to the value of any consideration other than money given, or to be given, in case it shall appear to the Civil Commissioner who is to receive the transfer duty that such value is considerably less than the just and fair value of such consideration.
11. Any person, being a descendant or a surviving spouse of any person who shall, by will or otherwise, have burthened any immovable property with the entail of *fidei-commissum* or other similar restriction, in regard to such descendant or surviving spouse, so that the latter shall be entitled only to a life or other limited interest in such property, may have his title to such limited interest recorded in the Deeds Registry Office, without the payment of transfer duty.
12. Any person claiming free property in remainder after the expiration or extinction of any previous *fidei-commissum*, or other similar limited interest, burthening such property, may, in case such person be a descendant within the fourth degree of the person imposing such *fidei-*

- commissum* or other similar burthen, have the said property registered as his own in the Deeds Registry Office without the payment of transfer duty.
13. As often as any immovable property shall by the will of a deceased spouse be so limited and settled that it is, upon the death of the surviving spouse who is by such will entitled to a life interest therein, to go and belong to some child or other descendant of the deceased spouse, who would under or according to No. 3, of these subsections, or by any other law be entitled, in case such surviving spouse were dead, to obtain transfer of such property free of duty, then, in case such survivor shall during life see fit to waive and give up his or her life interest, in favour of the child or other descendant in remainder, such child or other descendant shall be entitled to take during the life of such survivor transfer of such property free of transfer duty.
  14. As often as the trustee of any insolvent estate, in the exercise of the powers by law possessed by him as such trustee, shall refuse to fulfil any contract for the sale of fixed property made by the insolvent before sequestration, no transfer duty upon such sale shall be payable by the purchaser from such insolvent, and such duty if paid before the sequestration shall be returned; and in case of the subsequent sale of such property out of the insolvent estate the declaration of the seller may be altered so as to set forth the fact of such previous sale and of such cancellation thereof.
  15. As often as the trustee of any insolvent estate shall elect to abandon any agreement which shall have been entered into by the insolvent for the purchase or exchange of any immovable property, no transfer duty shall be payable upon such sale: Provided that such duty, if it has been paid by the insolvent, shall not be returned; and provided that the solemn declaration to be made by the vendor, in case he shall make any second or subsequent sale, shall be as nearly as is material in the form marked E in the second schedule.
  16. As often as any insolvent shall, by agreement with his creditors, be permitted to retain or take over any of the immovable property which belonged to such insolvent at the date of the order of sequestration and still remaining unregistered in the name of such insolvent, no transfer duty shall be payable upon such transaction.
  17. It shall be lawful for the Governor, upon proof made to his satisfaction, that any person, acting *bonâ fide*, has made a mistake in regard to the enregisterment of any transfer, to permit such transfers as may be necessary

No. 5—1884.

for the correction, in the deeds registry, of the said mistake to be passed free of transfer duty.

18. If in any case any person who having become surety for the payment by the purchaser of the purchase money of any property shall have paid such purchase money, and by reason of insolvency, absence from the Colony or other cause, such surety shall be unable to recover the money so paid, and shall be willing or desirous of taking transfer of the property into his own name, the Governor may, if he shall see fit, upon proof by solemn declaration of the facts, authorize the passing of the property direct from the vendor to such surety upon payment of single duty, whether paid by the purchaser or by the surety, as if the sale had been made *ab initio* to such surety: Provided that nothing herein contained shall affect the respective rights and remedies of such vendor and such purchaser in regard to such first or original sale.

Remission of duty when sale rescinded.

20. As often as any contract of sale upon which transfer duty shall be payable, shall be cancelled and rescinded by mutual consent of the vendor and the purchaser, before transfer made, without any part of the purchase money having been paid, or any valuable consideration given or promised by or on behalf of the purchaser, for the purpose of obtaining the consent of the vendor to such cancellation, the transfer duty upon such sale shall be remitted, in case such sale shall have been so cancelled and rescinded within six months from the day of sale, but not otherwise: Provided

- (1) That the vendor and the purchaser shall make, in reference to such cancellation, solemn declarations, which shall be, in substance, in the forms marked F and G in the second schedule:
- (2) That the Governor may, in case any vendor or purchaser shall from any cause be unable to make such declaration, dispense with the declaration of such vendor or purchaser, and may should he see fit require or accept the declaration of any agent or person acquainted with the circumstances.

Partial remission when sale rescinded after part consideration has passed.

21. As often as any contract of sale upon which transfer duty shall be payable, shall be by mutual consent of the vendor and purchaser cancelled and rescinded before transfer made, then, in case any part of the purchase price shall have been paid, or any valuable consideration shall have been given or promised by either party to the other, for or in respect of such cancellation, transfer duty shall be payable only upon the sum so paid or the value of any consideration other than money so given, such value to be ascertained in manner in the thirteenth section of this Act provided; and the vendor may, on a second sale of the said property, amend the declaration to be made by him by setting forth the circumstances of such previous sale and of the cancellation thereof.



22. Whenever any person requiring to have any transfer or change of name effected in the Deeds Registry Office of this Colony, shall claim to be exempted from the payment of transfer duty under and by virtue of any of the exemptions mentioned and contained in this Act, it shall be the duty of the Registrar of Deeds to require due proof by solemn declaration if need be of all facts and circumstances by reason or on account of which such exemption is demanded, and he may also require the production of any deeds or instruments connected with the case and tending to show whether or not such exemption ought by law to be allowed.

No. 5—1884.  
Inquiry by Registrar of Deeds when exemption sought.

23. As often as any question shall arise between the Registrar of Deeds and any person claiming to be entitled to any such exemption as aforesaid, regarding the right to such exemption, or the extent of that right, or, generally, any matter concerning the amount upon which any such person shall justly and legally be chargeable with transfer duty, it shall and may be lawful for any Judge of the Supreme Court sitting in Chambers, to hear the said Registrar of Deeds and the said person (or any person or persons representing each respectively) as to the matter in question, and to examine the proofs, if any, which shall have been offered in support of the claim to exemption, and to call for such further proofs as may be necessary, and, in a summary manner, to make, if he shall so think fit, such order in the premises as shall to justice appertain: Provided that such Judge may direct any such question to be brought, by way of motion, before any Court having jurisdiction, in order that the same may be heard and determined by such Court.

Hearing by a Judge of dispute between Registrar of Deeds and claimant for exemption.

#### AS TO SALES TO AGENTS FOR ALLEGED PRINCIPALS.

24. As often as any immovable property shall be sold by public sale, the auctioneer shall, before or at, or forthwith after, the closing of the bidding, ascertain from the bidder for whom he purchases, and if such bidder shall profess to purchase for some person other than himself, then the auctioneer, or his assistant, shall, in case the purchaser so disclosed shall be approved of, take down, in writing, the name of such bidder and of the purchaser for whom he purchases, and until the name of the purchaser, whether the bidder himself or some one else for whom he purchases, shall have been taken down, in writing, there shall be no sale to any person; and the property may be again put up to competition: Provided that it shall not be necessary that the name of the person, for whom any bidder shall be purchasing, shall be announced publicly to the bystanders, if it be made known to the auctioneer, and be by him or his assistant taken down in writing as aforesaid.

Person bidding as an agent to disclose name of principal.

25. Should any bidder, whose bid shall have been accepted by the auctioneer, refuse to declare, when called upon so to do by the auctioneer, for whom such bidder purchases, it shall be lawful for

Proceeding where bidder refuses to disclose name of principal.

No. 5—1884.

the auctioneer to treat and consider such bidder as being himself the purchaser, and such bidder shall, in such case, be deemed and taken to be, to all intents and purposes, the purchaser; or the auctioneer, at his election, may treat such bidding as null and void, and proceed afresh as if it never had been made: Provided that the auctioneer, having once made his election either to treat such bidder as the purchaser, or to proceed to sell afresh, shall not be at liberty afterwards to alter such election.

Proceeding where  
principal repudiates  
purchase.

26. If, in any case, any bidder should declare, as aforesaid, the name of some person as his principal, who shall be taken down as the purchaser, and who shall afterwards refuse to accept the property purchased in his name, then, unless the bidder shall produce a sufficient authority, in writing, from such alleged principal, authorizing such bidder to make such purchase for such principal, the bidder shall himself (without prejudice to other questions between the parties) be liable to pay transfer duty: Provided that such bidder, paying transfer duty, shall be entitled to recover the same from his principal, in case he shall succeed in proving that such principal did, in fact, give him authority to make the purchase in dispute.

Provisions of § 26  
to apply *mutatis mu-*  
*tandis* to purchases  
by agents at sales  
not being public  
sales.

27. The provisions of the last preceding section relative to purchases at public sales by agents for alleged principals, shall extend and apply, *mutatis mutandis*, to purchases made by agents for alleged principals, at sales not being public sales.

Auctioneer forbid-  
den to sell to undis-  
closed principal.

28. No auctioneer, broker, or agent shall take down or receive in regard to any purchase, the name of any purchaser as purchasing in the manner commonly called and written "q.q." or receive, in any other form, the name of any person as purchasing for an unnamed principal; and any auctioneer, broker, or agent contravening this section of this Act shall incur and be liable to any penalty not exceeding fifty pounds.

Calculation of duty  
when property is  
taken over by agent  
bidder.

29. If, in any case, the person whose name shall have been declared and taken down as the purchaser of any property, shall deny that he gave authority for the making of such purchase, or if, for any other reason, such person shall decline to accept such purchase, and the agent, or alleged agent, shall be willing to take such property for his own individual account, and the vendor shall consent thereto, no transfer duty shall be payable upon the sale or alleged sale to the alleged principal; but only a single transfer duty, as if the sale had been made, *ab initio*, to the alleged agent, in his individual capacity; and the solemn declarations by law required to be made, shall be altered in the manner indicated in the forms marked H and I in the second schedule.

Private sales to  
undisclosed princi-  
pals.

30. Every private sale or sale made otherwise than by auction, in regard to which the purchaser shall not profess to purchase for himself, in his individual capacity, shall be wholly null and void, unless, at the time of the making and completion thereof, the name of the principal for whom the purchase is made shall be

disclosed, and inserted in the note or memorandum, in writing, if any, which may be made in regard to such sale.

No. 5—1884.

MISCELLANEOUS.

31. As often as any dispute or question shall arise between a supposed seller and a supposed purchaser, the supposed seller alleging that a sale of immovable property by the one of them to the other of them was actually completed, and the supposed purchaser on the other hand denying the fact that such a sale took place, it shall be lawful for the Governor, at any time within six months next after such supposed sale, upon the application of such supposed seller, and upon proof made to his satisfaction that no collusion exists between the supposed seller and the supposed buyer, to authorize such supposed seller, in case of a future sale of the same property to a different person, to alter the ordinary form of solemn declaration to be made in reference to such future sale by stating in such declaration that he never sold the said property to any person except the person named in such declaration as the purchaser, if not to one A B, who, however, disputed and denied the fact of such sale, whereupon the said sale was given up and abandoned by the person making such declaration, and the Governor's authority obtained for altering the form of the said declaration so as to make it conformable to the fact.

Proceeding when fact of sale disputed.

32. As often as it shall be made to appear to the Governor by any person who shall have sold any property, upon which sale transfer duty shall be payable, that the purchaser of such property cannot be discovered within the Colony, or has left the Colony without taking transfer, and without paying any part of the purchase money, and that such vendor is unable to obtain, or enforce, the fulfilment of the contract, it shall be lawful for the Governor to permit the vendor aforesaid, in case he shall sell the said property again, to make the necessary alteration in the form of the solemn declaration to be made by him in reference to such second sale: Provided that nothing herein contained shall alter or affect the law in reference to the respective rights or remedies of such vendor and such purchaser, in regard to such first or original sale.

Re-sale when vendor fails to enforce contract of purchase.

33. In the case of a second or subsequent sale of any property previously sold, the solemn declaration to be made by the vendor, in regard to such second or subsequent sale, may, subject to the provisions of this Act, be altered in the manner indicated in the form marked J in the second schedule.

Form of declaration on re-sale.

34. In any case in which transfer duty shall have become payable upon any contract of sale, and such contract shall not have been completed, it shall be lawful for the vendor, if he shall make a subsequent sale of the said property to another purchaser to pay the amount of any such duty for which the first purchaser may have become liable by law, if such first purchaser shall have

Payment of first transfer duty on second sale.

llll

No. 5—1884.

neglected or refused to pay the same; and such vendor shall be entitled to recover the sum so paid from the first purchaser as so much money paid for his use; provided that the solemn declaration to be made by the vendor, in regard to such first sale, shall be in the ordinary form of a vendor's declaration, and no declaration shall be necessary from the first purchaser.

Declarations in sales completed before passing of this Act.

35. In case any sale and purchase or other transaction upon which transfer duty is chargeable shall have been perfected before the passing of this Act, and the solemn declaration required by the law existing at the time of the completion of such sale and purchase or other transaction shall have been made, no further declarations under the provisions of this Act shall be necessary, but in all cases, where no such declarations shall have yet been made, the declarations to be made and subscribed shall be those directed by this Act and none other.

Before whom declarations are to be made.

36. The several declarations mentioned in or required by this Act shall be made before such persons respectively as are or shall be by law entitled to administer oaths, and any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall upon conviction thereof, suffer such punishment as shall be by law provided for the crime of perjury.

Short title.

37. This Act may be cited as the "Transfer Duty Consolidation and Amendment Act, 1884."

### FIRST SCHEDULE.

#### LAWS REPEALED.

Laws repealed.

Number and Year.	Title.	Extent of Repeal.
1. Ord. No. 18 of 1844.	Ordinance for regulating the payment of Transfer Duty in this Colony.	So much as has not already been repealed.
2. Act 15 of 1855.	Act to amend the Ordinance No. 18 of 1844, for regulating the payment of Transfer Duty in this Colony.	So much as has not already been repealed.
3. Act 7 of 1858.	Act for amending the Law relative to the payment of Transfer Duty.	The whole.
4. Act 8 of 1861.	The Transfer Duty Amendment Act, 1861.	The whole.

FIRST SCHEDULE (*continued*).

No. 5—1884.

Number and Year.	Title.	Extent of Repeal.
5. Act 11 of 1863.	Act to amend the Law relative to the payment of penalties for neglect to pay Transfer Duty.	So much as has not already been repealed.
6. Act 7 of 1864.	The Transfer Duty Amendment Act, 1864.	The whole.
7. Act 4 of 1872.	The Transfer Duty Amendment Act, 1872.	The whole.
8. Act 3 of 1876.	Act to transfer to certain other Officers certain duties performed by the Treasurer-General and other Officers, under the Ordinances relating to Auctioneers and Transfer Duty.	So much as refers to the functions of certain Officers in connection with transfer duty.
9. Act 3 of 1877.	The Transfer Duty Amendment Act, 1877.	The whole.

## SECOND SCHEDULE.

## FORM A.

I, A, B, do solemnly and sincerely declare that the sum of £ \_\_\_\_\_ is the full and entire purchase money for which I have sold to C D the following property, that is to say: [Here describe the property.] And I declare that I sold the same to the said C D on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and not before; and that there is not any agreement, condition, or understanding between me and the said C D, whereby he has paid or is to pay to me or to any other person whomsoever, for, or in respect of, or in connection with the purchase by him of the said property. any sum of money over and above the said sum of £ \_\_\_\_\_, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following:

1. The costs of any survey of the said property which shall have been made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and sub-divisions, and of the plan of the property exhibited at the time of sale;
2. The charge made by the auctioneer for the conditions of the said sale;

III 2

No. 5—1884.

3. The commission, if any, paid by the purchaser to any auctioneer, broker, or agent, by or through whom the sale of the property may have been effected, not exceeding two pounds and ten shillings per centum upon the amount of the purchase money ;
4. The auction duty payable upon the said sale ;
5. The transfer duty payable thereon ;
6. The cost of all deeds necessary for effecting transfer of such property, and of the mortgage deed, if any, and of all necessary stamps ;
7. The charges of conveyancers and agents, incurred in effecting the transfer of the said property ;
8. The quitrent, if any, payable to Government upon the property sold ;
9. The quitrent, if any, which shall be payable upon the property sold to any committee, consistory, or any other body, for religious, educational, or charitable purposes, not being rent already due and in arrear at the time of such sale ;

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £ —, save and except in so far as any of the charges above specified, and to be paid by the said C D, might be held or taken to be payable for me or on my behalf. And I further declare that the said C D is the only person who has ever purchased the said property from me, and that I never sold the same to any other person.

And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A. B.

Declared before me this — day of —, 18—.

FORM B.

Declaration of purchaser.

I, C D, do solemnly and sincerely declare that the sum of £ — is the full and entire purchase money given, or to be given, by me to A B for the property following, bought by me from him, that is to say: [Here describe the property]. And I declare that I bought the same from the said A B on the — day of —, 18—, and not before, and that I have not, nor has any person to my knowledge, on my account, given, nor is there by me or on my behalf, to be given, any other valuable consideration for, or in respect of, or in connection with the alienation to me of the said property, save and except certain charges or payments which fall under, or come within, some one or more of the heads or items of charges or payments following: [Here set forth in order from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A]. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) C D.

Declared before me this — day of —, 18—.

## C.

No. 5—1884.

## DECLARATION OF SALE BY AN AGENT.

I,  
do solemnly and sincerely declare, that I have acted as the agent <sup>Declaration of sale by Agent.</sup>  
(auctioneer or broker, as the case may be)  
in making the sale (or purchase) of certain  
sold by  
to  
and that I know, of my own knowledge, the amount of the purchase  
money thereof: And I do further declare that the said sale was made  
on the  
and not before; and that the sum of  
to be paid by the said  
to the said  
is, to the best of my knowledge and belief, the full and entire  
purchase money to be given and received by the said persons, respec-  
tively, in regard to the alienation of the said property by the one of  
them to the other of them; and that, to the best of my knowledge  
and belief, no further or other valuable consideration has been given  
or is to be given, by or on behalf of the said  
to or on behalf of the said  
for or in respect of the said property, save and except certain charges  
or payments (insert as in form A.);—And I make this solemn  
declaration, conscientiously believing the same to be true.

Declared at \_\_\_\_\_, this \_\_\_\_\_  
day of \_\_\_\_\_ 18\_\_\_\_

Before me

Justice of the Peace.

## FORM D.

## DECLARATION

ON PARTITION OF LANDED PROPERTY.

[Section \_\_\_\_\_, Act No. \_\_\_\_\_, \_\_\_\_\_.]

We, the Undersigned  
joint proprietors of the Quit-rent Farm or Land called \_\_\_\_\_ in \_\_\_\_\_  
extent \_\_\_\_\_ morgen and \_\_\_\_\_ square roods, situated in the Division \_\_\_\_\_  
of \_\_\_\_\_, Field-cornetcy of \_\_\_\_\_ Registered Folio \_\_\_\_\_ do  
severally solemnly and sincerely declare that we have mutually agreed  
with each other to the following partition of the said land so as to  
give to each party a defined portion as his separate and exclusive  
property;—namely,

And we declare that we have not, nor has any person to our know-  
ledge, on our account given, or received, nor is there by us, or on our  
behalf, to be given or received, by the one, to or from the other of us,

No. 5—1884.

any money or other valuable consideration for or in respect of the partition and mutual transfer of the aforesaid land.

And we make this solemn declaration conscientiously believing the same to be true.

Declared at

this

day

of

18

Before me,

Justice of the Peace.

---

FORM E.

Declaration of re-sale of property sold to insolvent and abandoned by trustee.

I, A. B., do solemnly and sincerely declare that the sum of £—— is the full and entire purchase money for which I have sold to C. D., the following property, that is to say: [here describe the property.] And I declare that I sold the same to the said C. D., on the —— day of ——, 18 —, and not before, and that there is not any agreement, condition, or understanding between me and the said C. D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £ ——, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £ ——, save and except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or on my behalf. And I further declare that the only person, other than the said C. D., to whom I ever sold the said property, or who at any time purchased the said property from me, was E. F., to whom I sold the same on the —— day of ——, 18 —, for the sum of £——. And I further declare that since the said sale to the said E. F., he has become insolvent, and that the trustee of his insolvent estate has elected to abandon the said sale. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A. B.

Declared before me this —— day of —— 18 —.

---

FORM F.

Declaration by seller of cancellation of sale.

I, A. B., do solemnly and sincerely declare that I sold to C. D. on the —— day of ——, 18 —, the property following, namely: [Here describe the property], for the sum of £——; and I declare that I have never received any sum of money, or other valuable consideration, on account of the said purchase.\* And I further declare that I have consented and agreed with the said C. D., to



cancel, by mutual consent, the said sale, which sale was, on the — day of —, 18 —, cancelled accordingly. And I further declare that I have not received, nor am I to receive, from the said C. D., or any other person, any money or other valuable consideration, for or in reference to my consent to the cancellation of the said sale. And I make this solemn declaration, conscientiously believing the same to be true.

No. 5—1884.

(Signed) A. B.

Declared before me this — day of —, 18—.

\* Should any interest have been received upon the purchase money, add the words, "except certain interest upon the said sum."

## FORM G.

I, C. D., do solemnly and sincerely declare that I bought from A. B., on the — day of —, 18—, the property following, namely: [here describe the property], for the sum of £—; and I declare that I have never given to the said A. B., any sum of money or other valuable consideration, on account of the said purchase.\* And I further declare that I have applied to the said A. B., to consent to cancel the said sale, which sale hath accordingly been cancelled by mutual consent. And I further declare that I have not given, nor am I to give, nor has any person, on my behalf, to my knowledge, given, nor is any person to my knowledge to give, any money or other valuable consideration for or in reference to the cancellation of the said sale. And I make this solemn declaration, conscientiously believing the same to be true.

Declaration by purchaser of cancellation of sale.

(Signed) C. D.

Declared before me this — day of — 18—.

\* Should any interest have been paid upon the purchase money, add the words, "except certain interest upon the said sum."

## FORM H.

I, A. B., do solemnly and sincerely declare that I sold to C. D., as the agent, or alleged agent, of E. F., on the — day of —, 18—, and not before, the property following, namely: [here describe the property], for the sum of £—. And I declare that the said E. F. has declined to accept the property, and that the said C. D. has signified his willingness to take the same to and for his own individual account, for the said sum of £—, neither more nor less. And I further declare that there is not any agreement, condition, or understanding between me and the said C. D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £—, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration

Declaration of sale to agent of purchaser who refuses to ratify purchase.

No. 5—1884.

besides the said sum of £——, save and except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or in my behalf. And I further declare that the said C. D., as the agent or alleged agent of the said E. F., is the only person who has ever purchased the said property, and that I never sold the same to any other person than, in manner aforesaid, to the said C D, who with my consent and by virtue of the Act in that behalf provided, takes over the property aforesaid as his own. And I make this solemn declaration, conscientiously believing the same to be true.

(Signed) A B.

Declared before me, this —— day of ——, 18—.

## FORM I.

Declaration of  
agent who takes over  
property bought for  
his principal.

I, C D, do solemnly and sincerely declare that I did, in the name of E F. purchase from A B, on the —— day of ——, 18—, and not before, the property following, namely: [here describe the property], for the sum of £——; and I declare that the said E F has declined to accept the said property, and that the said A B has consented and agreed that I shall take over the said property as the purchaser thereof, for the sum of £——. And I further declare that I have not, nor has any person to my knowledge, on my account given nor is there by me, or on my behalf, to be given, any other valuable consideration of any kind whatever, for or in respect of the alienation to me of the said property, save and except certain charges or payments which fall under, or come within, some one or more of the heads or items of charges or payments following: [here set forth in order from No. 1 to No 9, both inclusive, the heads or items of charges or payments as in form A.] And I make this solemn declaration, conscientiously believing the same to be true.

(Signed) C. D.

Declared before me, this —— day of ——, 18—.

## FORM J.

Declaration of  
seller of property re-  
sold after cancella-  
tion of first sale by  
mutual consent, or  
order of Court, or other  
cause.

I, A B, do solemnly and sincerely declare that the sum of £—— is the full and entire purchase money for which I have sold to C D the following property, that is to say: [here describe the property]. And I declare that I sold the same to the said C D, on the —— day of —— 18—, and not before; and that there is not any agreement, condition, or understanding between me and the said C D, whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £——, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to

receive for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £——, save and except in so far as any of the charges above specified, and to be paid by the said C D, might be held or taken to be payable for me or in my behalf. And I do further declare that the only person other than the said C D to whom I ever sold the said property, or who at any time purchased the said property from me, was E F, to whom I sold the same on the —— day of ——, 18—. And I further declare that the said sale to the said E F has been cancelled by mutual consent, and that the transfer duty thereupon has been remitted

(Or, “and I further declare that the said sale has been set aside by a judgment of the Supreme Court bearing date the —— day of ——, 18—, pronounced in a suit wherein —— was the plaintiff, and —— was the defendant;”

(Or “and I further declare that the said E F has, to the best of my knowledge and belief, left the Colony, or, ‘cannot be discovered within it’ (as the case may be), and that he has not paid me any part of the purchase money agreed to be paid, and that I have received from the Governor the permission herewith annexed to make this special declaration.)”

And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A B.

Declared before me this —— day of ——, 18—.

In cases falling under the twenty-first section of this Act the above form must be altered so as to set forth the amount of the money or the value of the consideration upon which transfer duty is by such section made payable, and to state that such transfer duty has been paid.

No. 4—1876.]

[July 4, 1876.]

## ACT

### To Encourage the Planting and Cultivation of Trees.

WHEREAS it is desirable that the planting of trees and the formation of plantations should be encouraged: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything to the contrary in the forty-third section of the Act No. 9 of 1858 or in other law contained, it shall be lawful for any Divisional Council or the Commissioners of any Municipality or Town Council to apply such portion of their funds as may seem to them expedient to the encouragement of tree-planting, either by formation of plantations or by offering rewards to successful cultivators of trees, or by such other means as may appear best suited for the purpose.

Divisional Councils may apply funds to encouragement of tree-planting.

2. Every Divisional Council or the Commissioners of any Municipality or Town Council who shall expend any portion of their revenue for any of the purposes mentioned in the first section

Separate accounts of moneys expended to be rendered on 1st January each year.

No. 4—1876.

hereof shall cause a separate account of the moneys so expended to be kept, and such account shall be sent in on or before the first day of January in every year to the Commissioner of Crown Lands and Public Works, or to such other officer as the Governor may, with the advice of the Executive Council, from time to time appoint to receive the same.

Half of expense incurred may be refunded from general revenue.

3. Upon the certificate of such officer as the Governor may from time to time appoint for that purpose, that the sums so accounted for have been duly and properly applied to the specified purpose, the Governor may, with the advice of the Executive Council, cause to be paid to such Divisional Council or the Commissioners of any Municipality or Town Council as aforesaid, from and out of the public revenue of the Colony, such sum, not exceeding two hundred and fifty pounds sterling in any one year, as shall amount to one-half the sum actually expended for any such purpose by such Divisional Council or the Commissioners of any Municipality or Town Council, as mentioned in the first section hereof.

No. 20—1882.]

[June 22, 1882.

## ACT

To Empower the Governor to Grant Land for a Race-course and purposes connected therewith, and to provide for the Management and Regulation of the Club to which such Land shall be granted, and for other purposes. (1)

Preamble.

WHEREAS it is expedient to encourage efforts to improve the breed of horses within the Colony: Be it enacted by the Governor of the said Colony, acting by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation clause.

1. In this Act the term club shall mean the club to which the land hereinafter mentioned shall be granted; the term committee shall mean the committee for the time being of the club; and the term "chairman" shall mean the person who shall be chairman for the time being of such committee.

Power to Governor to grant land for a race-course, &amp;c.

2. It shall and may be lawful for the Governor to grant to any club now established, or hereafter to be established, for the control and management of matters connected with the racing of horses, such piece or parcel of land as to him may seem fit, for the purposes hereinafter described, that is to say, firstly, as a course upon which horse races may be run with the consent or under the direction and control of the said club; secondly, as a training ground for the purpose of training horses intended to race, and

<sup>1</sup> See Act 9, 1886, *infra*.

also for the erection of training stables and dwellings for the use of persons engaged in training race horses; thirdly, for any other public amusement, or purpose which the Governor may upon the application of the said club, declare to be a public amusement or purpose for which the said land may be used.

No. 20—1882.

3. All actions, suits, and proceedings at law for any cause, matter, or things to be commenced, instituted, prosecuted or carried on by or on behalf of the said club, or wherein the said club shall be concerned in any way against any person or persons, body or bodies, whether a member or members of the said club or otherwise, shall be commenced, instituted and prosecuted or carried on in the name of the chairman at the time such action, suit, or proceeding shall be commenced or instituted for or on behalf of the club, and all actions, suits, and proceedings as aforesaid to be commenced, instituted, or prosecuted against the club shall be commenced, instituted and prosecuted against the chairman, for and on behalf of the club, and in all indictments and informations it shall be sufficient to state the property of the club to be the property of the chairman, and any offence committed with intent to injure or defraud the club may, in any prosecution for the same, be stated or laid to have been committed with intent to injure or defraud the said chairman, and any offender or offenders may thereupon be lawfully convicted of any such offence, and the death, resignation, or removal, or other act of such chairman shall not abate any such action, suit, or prosecution, but the same may be continued, prosecuted, and concluded in the name of any person who may be or may become chairman.

Chairman to prosecute and defend the club in actions civil and criminal.

4. Upon the election or appointment of any person to be chairman, notice of such election or appointment shall be forthwith given in the *Government Gazette* and such notice shall be sufficient proof of such election or appointment.

Notice of election of chairman to be published in *Gazette*.

5. Every judgment and every decree or order which shall be at any time obtained against the chairman on behalf of the club shall take effect and be enforced and execution thereon be issued against the property and effects of the club.

Judgment to be enforced against property of the club.

6. It shall be lawful for the chairman, for the time being, to purchase or to lease on behalf of the club any lands or buildings which may be required for the purposes of the club, and to sell or relet the same or any part thereof as occasion may require, and transfers or leases thereof shall be passed or made to or by the said chairman on behalf of the said club.

Power of chairman to purchase or hire lands, &c., required by the club.

7. The land, by the second section of this Act authorized to be granted to the club, shall be held, enjoyed, and used only for the purposes authorized by this Act or by any bye-law to be made under and by virtue thereof.

Land granted to be used only for specified purposes.

8. The committee, or an absolute majority in number of such committee present at any meeting, may from time to time make such bye-laws as they may think fit for regulating all matters

Committee may make bye-laws.

No 20-1882.

concerned or connected with any lands, buildings, or other property belonging to the said club, and the admission thereto and expulsion therefrom of members of the club or any persons respectively, and the rates or charges to be paid for such admission and for the general management of the said race-course, and may from time to time by any other bye-laws amend, alter, or repeal any such bye-laws: provided that no such bye-laws be repugnant to the laws for the time being in force in this Colony.

When bye-laws to take effect.

9. No bye-law made under the authority of this Act shall be of any force or effect until the expiration of one month after such bye-law shall have been sent to the Colonial Secretary, and until publication in the *Government Gazette*, and at any time within one month the Governor may disallow any such bye-law, and if disallowed such bye-law shall not come into operation.

If bye-laws not disallowed to be published in *Gazette*.

10. Every bye-law shall, if not disallowed within one month after the same shall have been sent as aforesaid to the Colonial Secretary, be published in the *Government Gazette*, together with a notice stating when such bye-law was sent to the Colonial Secretary, and that such bye-law has not been disallowed, and such bye-law shall come into operation upon such publication.

Bye-laws may be repealed by Governor.

11. The Governor may at any time, by proclamation in the *Government Gazette*, declare that, from a time to be named in such proclamation, any bye-law made under this Act shall be repealed and from and after the time so named such bye-law shall, unless previously repealed under the provisions in this Act contained, be absolutely repealed, and of no effect: Provided always that such repeal shall not affect any suit, prosecution, or other proceeding, commenced before the time of such repeal, but the same shall be continued as if no such repeal had taken place.

*Gazette* to be evidence of bye-law.

12. The production of a copy of the *Government Gazette*, containing any such bye-law and notice as aforesaid shall be conclusive evidence that such bye-law was duly made.

Copies of bye-laws to be posted.

13. A copy of all bye-laws made under this Act for the time being in force shall be painted on boards or printed on paper and affixed on boards and hung up or otherwise placed at or near the principal entrance to the said race-course, and also in a conspicuous place at or adjacent to the grand stand on the said race-course so as to give public notice thereof, and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

Bye-laws to be binding.

14. Such bye-laws when so published as aforesaid shall be binding upon and be observed by all persons, and shall be sufficient to justify persons acting under the same; and for proof of publication of any such bye-laws, it shall be sufficient to prove that a painted board or a printed paper affixed to a board, containing a copy of such bye-laws was hung up or otherwise placed in manner by this Act directed.

Proof of bye-laws.

Penalties for infringement.

15. Any person offending against any bye-law made under this

Act shall for any such offence be liable on conviction before the Resident Magistrate of the district to a fine not exceeding five pounds, and if the infraction or non-observance of any of such bye-laws be attended with danger or annoyance to the public, or hindrance to the committee or any of the officers of the said club, or the public in the lawful use of the said race-course, it shall be lawful for the committee, or any member, officer, or servant thereof, summarily to interfere to obviate, or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

16. Whoever shall wilfully obstruct or impede any officer, servant or agent of the committee in the execution of his duty upon any land owned or leased by the club under this Act, or upon or in any building or premises connected therewith, or wilfully trespass upon any such land, building, or premises, or remove or wilfully injure any building, enclosure, post, fence, tree, or shrub, upon any such land, shall, upon conviction thereof before the said Resident Magistrate, be liable to a penalty of not exceeding ten pounds over and above the amount of the injury done.

Penalties for offences, trespasses, &c.

17. Any member, officer, or servant, of the committee, and all persons called by him to his assistance, may seize and detain any person who shall have committed any offence against the provisions of this Act, or of the bye-laws made under this Act, and whose name and residence shall not be given to such member, officer or servant, upon his requiring the same to be given, and give such offender in charge to a police officer or constable for the purpose of conveying him before the said Resident Magistrate, in order that the complaint against the offender may be dealt with according to law.

Offenders may be arrested.

18. Notwithstanding the liability of any person to any penalty under this Act, or the bye-laws made under this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

Liabilities under bye-laws not to affect other liabilities.

19. The committee may, by any bye-law duly made according to the provisions of this Act, from time to time prescribe and vary at pleasure the scale of rates or charges to be levied or taken for admission to any land owned or leased by the said club for the purposes of this Act, or to any building standing or being thereon, and may demand and recover and receive such rates or charges from any person coming upon such land or any part thereof, or into or upon any such building.

Rates of charges for admission to the club's land.

20. The chairman may let for any particular race meeting or meetings, or for any other amusement or sport, any portion of the land or buildings owned or leased as in this Act mentioned, or all or any of the rates or charges demandable and payable under and by virtue of this Act, or the bye-laws made under this Act, and the lessee, his collectors, servants or agents, shall have the same power of demanding, recovering, and receiving the said rates or charges as are hereby given to the committee.

Power to chairman to lease lands for races and other sports.

No. 20—1882.

Committee may borrow on security of club's property.

21. It shall be lawful for the committee in the name of the chairman, from time to time, as they shall see fit, on behalf of the club, for any purpose connected with the said club, to procure advances and to borrow money by way of cash credit, mortgage, bond, debentures, or otherwise, and to pay off and discharge such advances in such manner as may be agreed on, but the said committee shall not have power to pledge the credit of any member of the club nor shall any member be responsible for any debts incurred on behalf of the club beyond the amount of his subscription either annual or for life.

Commissioner of Crown Lands may authorize inspection of land and buildings

22. The Commissioner of Crown Lands and Public Works may authorize any person to inspect the whole or any part of the land and buildings owned or leased by the club, according to the provisions of this Act, and such person shall have power at all reasonable times, to enter upon and examine the said lands and buildings.

If report of inspector unfavourable, Commissioner may call on committee to make repairs.

23. If the person so authorized as in the last section mentioned shall certify in writing to the Commissioner of Crown Lands and Public Works that in his opinion the surface of the said land or any part thereof, is imperfectly kept in order, for the purpose of a public race-course, or that any building thereon is in want of repair, or is unsafe to the public, or in any other respect improper or unfit for use, and which certificate shall contain a detailed statement of all such defects and want of repairs, the said Commissioner of Crown Lands and Public Works may, by notice in writing addressed to the chairman, call upon the committee, who are thereupon required so to do within a reasonable time after receipt of such notice, well and sufficiently to repair and make good all or any of such defects and want of repair.

If land not properly dealt with, may be dealt with under Act 14 of 1878, &c.

24. In case the land granted in pursuance of this Act shall not at any time have been used *bona fide* for the purposes of such grant for a period of three years, the said land shall be and become waste Crown lands, and may be dealt with in accordance with the provisions of the Crown Lands Act, No. 14 of 1878, or in any other manner by law provided.

Land granted to be fenced in within 12 months.

25. It shall be further incumbent upon the said club to fence in the ground so granted them within twelve months from the time when such ground shall have been granted, and until such ground shall be securely fenced it shall not be lawful to impound any cattle or other animals found trespassing on the said ground.

Act only to apply to club declared by Governor within 42 days of taking effect of Act.

26. (1) This Act shall apply only to such club as the Governor may, by notice in the *Government Gazette* under the hand of the Colonial Secretary, declare within forty-two days from the taking effect of the said Act to be the club to which this Act shall apply.

---

Act applied to S. A. Jockey Club, by Proc. in Gazette 20th Oct., 1882.



No. 9—1886.]

[July 6, 1886.

## ACT

## To Alter and Amend Act 20 of 1882.

WHEREAS the Club existing under Act 20 of 1882, known as the South African Jockey Club, has amalgamated with another Club, also connected with the racing of horses, called the South African Turf Club, and it is desirable that the latter name should be the one by which the Club under said Act should in future be known: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The grant of the piece of land made by the Governor to the South African Jockey Club, under the second section of Act 20 of 1882, is hereby vested in the South African Turf Club, for all and several the purposes of said Act.

Land granted to South African Jockey Club by Act No. 20 of 1882, to be vested in South African Turf Club.

2. All and singular the provisions of the Act No. 20 of 1882, and the rights, privileges, duties, and liabilities conferred, assigned, and created thereby, shall apply to the South African Turf Club as if that had been the club to which the said Act had been declared to apply under the twenty-sixth section thereof, and the South African Turf Club and the committee for the time being of the said club and the chairman thereof, are hereby vested with all the rights and powers and charged with all the duties and liabilities of, and are substituted for, the said South African Jockey Club and the committee and chairman thereof.

The Provisions of Act No. 20 of 1882 to apply to the South African Turf Club instead of to the South African Jockey Club.

No. 23—1879.]

[September 11, 1879.

## ACT

## For the Prevention of Vagrancy and Squatting.

WHEREAS it is expedient, as far as possible, to suppress idleness and vagrancy, and whereas serious losses of stock by thefts are experienced by the farmers of this Colony, and there is reason to believe that the same are in a great measure traceable to the facilities afforded to unemployed persons, and persons without sufficient means of support, of residing upon Crown and other lands, and of roaming about without proper control, and it is expedient that such facilities as aforesaid should be restricted: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The eleventh section of the Act No. 22 of 1867, and so much of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Repeal of section 11 of Act 22 of 1867.

- No. 23—1879.  
Who shall be deemed to be vagrants.
2. Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or owner or occupier of land, or who having been duly summoned for such purpose, or brought before a Resident Magistrate or Special Justice of the Peace in pursuance of this Act, shall not give a good and satisfactory account of himself, shall be deemed and taken to be an idle and disorderly person, and on conviction thereof before any Special Justice of the Peace shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days, or upon conviction before any Court of Resident Magistrate shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months.
- Punishment of vagrants.
3. Every person who shall wilfully or knowingly harbour, or suffer or permit to reside on land or premises owned or occupied by him, any idle and disorderly person as aforesaid, shall, on conviction before the Court of Resident Magistrate or Special Justice of the Peace for his district, be liable, in case of conviction before a Court of Resident Magistrate, to a penalty of not exceeding five pounds for every such offence, and in default of payment of such penalty, to be imprisoned, with or without hard labour, for any period not exceeding two months, unless such fine be sooner paid; and in case of conviction before a Special Justice of the Peace as aforesaid, to a penalty of not exceeding twenty shillings, and in default of payment of such penalty to be imprisoned, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid.
- Penalties for harbouring disorderly persons.
4. Every person found without lawful excuse (the proof of which excuse shall lie on such person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, out-house, garden, vineyard, kraal, or other enclosed place, shall be deemed and taken to be an idle and disorderly person; and, upon conviction thereof before any Special Justice of the Peace, shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days; or upon conviction before a Court of Resident Magistrate shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months in the case of the first conviction, and to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding six months, in the case of any subsequent conviction for the same offence.
- Persons loitering and wandering about
- Penalties.

5. Every person hereinbefore declared to be idle and disorderly as aforesaid may be apprehended with or without warrant by any Resident Magistrate, Justice of the Peace, field-cornet, police officer, or police constable, or by the owner or occupier of the land or premises on which such idle or disorderly person may be, or by anybody acting under the orders of such Resident Magistrate, Justice of the Peace, field-cornet, or owner or occupier, and upon apprehension, may be conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law: Provided that no such person shall be apprehended without warrant upon the land or premises of any private person without the consent of such private person, except by such private person or somebody acting by his orders, or by some Resident Magistrate, Justice of the Peace, or the field-cornet of the ward, or by somebody acting under the orders of such Resident Magistrate, Justice of the Peace, or the field-cornet.

No. 23-1879.  
Apprehension of idle and disorderly persons.

Not to be apprehended on private property without owner's consent.

6. In case it shall be made to appear to the satisfaction of the Resident Magistrate of the district, or some Justice of the Peace therein, by information in writing upon oath that there is reason to believe that any idle and disorderly person as aforesaid is upon the land or premises of any private person, such Resident Magistrate or Justice of the Peace shall grant a general warrant authorizing some person or persons named therein for the purpose, to enter upon the land or premises of such private person, in order to ascertain whether any idle and disorderly person as aforesaid is upon such land or premises; and in case any idle and disorderly person as aforesaid shall, upon the execution of such warrant, be found upon such land or premises, he may be forthwith apprehended by the person or persons so named in the said warrant as aforesaid, and conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law.

Warrant to search for idle and disorderly persons on private property.

7. It shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or the owner or occupier of the land or premises whereon or wherein any person as hereafter mentioned may be, to stop any person whom he shall find driving any live-stock, and to interrogate such person; and if he shall not account satisfactorily for the possession of the live-stock so being driven by him, or if there shall be reasonable grounds for suspecting that such live-stock have been criminally procured, then it shall be further lawful for such Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or owner or occupier, to conduct or cause to be conducted, the said live-stock, and the person so driving the same, to the nearest public prison or

Persons driving stock may be interrogated, and, not giving satisfactory account, may be arrested and detained in custody.

*mmmm*

No. 23—1879.

police station, so that such person so driving the said live-stock may be detained in custody until the then next sitting of the Resident Magistrate or a Special Justice of the Peace of the district in which such prison or police station is situated, who shall inquire into the circumstances, and make such determination in conformity with law as shall to him seem fit and proper.

Penalties for resisting persons authorized to arrest, &c.

8. Every one who shall assault or resist any person authorized as aforesaid to make an arrest, or to enter upon any land or premises while in the execution of such authority, or who shall aid or incite any person so to assault or resist, shall, for every such offence, be liable, upon conviction before any Court of Resident Magistrate, to a penalty of not exceeding ten pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for not exceeding three months, unless such penalty be sooner paid, or to such imprisonment, without the option of paying a penalty; or in case of conviction before a Special Justice of the Peace, to a penalty not exceeding twenty shillings, and in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days, unless such penalty be sooner paid, or to such imprisonment without the option of paying a penalty.

Squatters how to be dealt with.

9. All squatters trespassing upon waste Crown land, or upon land occupied by any missionary institution, or upon land set apart as a Native Location may be summarily directed to remove therefrom by order in writing, signed by the Resident Magistrate of the district in which such land is situated, such trespassers having been first summoned before the Court of such Resident Magistrate to show cause why they should not remove from such land, and no sufficient cause to the contrary having been proved to the satisfaction of such Court: Provided that no person shall be deemed to be a trespasser within the meaning of this section unless he shall originally have entered upon, and shall be upon, such land, without lawful authority; and any person who may be ordered to remove as aforesaid, who shall disobey such order, shall be liable to be dealt with as an idle and disorderly person as aforesaid, and shall be subject to the penalties provided by the second section of this Act.

Persons insufficiently clothed.

10. Every person found wandering or being in any street or road ordinarily used by the public, or in any place of public resort, or in view thereof respectively, without sufficient clothing for the purposes of decency, shall be deemed and taken to be a disorderly person, and to be guilty of an offence against the true intent and meaning of this Act, and may be arrested without warrant and conveyed before the nearest Resident Magistrate or Special Justice of the Peace to be dealt with according to law, and upon conviction, as in the second section of this Act is provided, shall be liable to the penalties imposed by that section.

Power to make convicted persons work.

11. It shall be lawful for any Resident Magistrate or Special Justice of the Peace, to adjudge any person convicted under the

second and fourth sections of this Act, to a term of service on the public works of the Colony, or to employment under any Divisional Council, or municipality, or private person, other than the said Resident Magistrate or Special Justice by whom such person shall have been convicted, or the person at whose instance such prosecution shall have taken place, who may be willing to employ such person, for any term not exceeding that for which he is liable to imprisonment under this Act on that behalf provided, and at such rate of wages as shall, in the judgment of the Resident Magistrate or Justice of the Peace be sufficient for his maintenance: Provided always, that if any person so adjudged to service shall escape, or attempt to escape, or otherwise be guilty of any offence under the Masters and Servants Act, he shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months.

12. When and as often as any Special Justice of the Peace shall convict any person of any offence under the provisions of this Act, such Justice of the Peace shall forthwith transmit to the Registrar of the Supreme Court, or in case the said conviction shall have been had within the jurisdiction of the Court of the Eastern Districts, to the Registrar of the said Court of the Eastern Districts, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth and forty-ninth sections of the Act No. 20 of 1856, shall, *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said section for the convicting Resident Magistrate, and all matters required to be done in the said section by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Special justices of the peace to transmit record of their proceedings under this Act to Registrar of Supreme Court.

13. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding five pounds sterling, and to pay to the arrested person such amount, not exceeding the sum of five pounds sterling, as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid. And, if such arrested person is brought to trial before some Special Justice of the Peace, such Justice of the Peace may impose upon any person who may wrongfully and maliciously, or without probable cause, act as aforesaid, the payment of such fine or damages or both as he may think proper: Provided that such fine and damages shall not exceed the sum of twenty shillings respectively, and in default of payment of such fine, the person upon whom such fine has been imposed shall be liable to be imprisoned, with or without hard labour for any period not exceeding fourteen

Penalties for wrongfully putting in force the provisions of this Act.

mmmm 2

No. 29—1881.

days, unless such fine shall be sooner paid : Provided, further, that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Short title.

14. This Act may be cited for all purposes as the "Vagrancy Act, 1879."

No. 29—1881.]

[June 25, 1881.

## ACT

To Provide for the Management of Villages and other Communities, not being Municipalities.

Preamble.

WHEREAS it is expedient to provide for the better government of certain Towns, Villages, and Communities not being Municipal Corporations: Be it therefore enacted by the Governor, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. The Act No. 10 of 1870, and every other Ordinance, Act, or other statutory enactment in conflict with, or repugnant to, the provisions of this Act, are hereby repealed so far as such conflict or repugnancy may exist, but not further or otherwise.

Act to apply to communities proclaimed by Governor.

2. The provisions of this Act shall apply to all such communities not being municipalities as the Governor may, by any proclamation in that behalf, published in the *Government Gazette*, declare to be subject thereto.

Proclamation to fix limits of communities.

3. Every such proclamation as in the last preceding section mentioned shall fix and determine the local limits within which the provisions of this Act shall be in force, and such limits may from time to time be altered by the Governor by proclamation published as aforesaid.

Resident Magistrate to frame list of voters.

4. As soon as any such proclamation as aforesaid shall have been issued, the Resident Magistrate of the division in which the locality named in such proclamation shall be situate shall from the list of registered voters of the division, frame a list of all such voters as shall be resident within the limits defined by such proclamation, and shall thereafter as often as any fresh registration of voters within the said division shall take place, frame from the new list of such voters a revised list of such voters who are resident as aforesaid.

And to call meeting of voters to elect Board of Managers.

5. As soon as possible after the promulgation of this Act, and the issuing of the proclamation in the second section hereinbefore mentioned, the Resident Magistrate shall issue a notice, by publishing the same in some local newspaper (if any) and by affixing the same to the door of the Court-house and such other

public place or places within the limits aforesaid, as he shall deem convenient, calling, at some specified date, within a reasonable time to be mentioned in such notice, a public meeting of the registered voters enrolled upon the list framed by him, as hereinbefore provided, at some place within the limits aforesaid, to be also mentioned in the said notice, for the purpose of electing a Board of Management for the community: and in each succeeding year after the year in which the notice aforesaid shall have been given, the said Magistrate shall give a similar notice, published in a similar manner, calling a meeting of the registered voters aforesaid, to be held on the first Wednesday of the month of July in every such year for the purpose of electing a new Board of Management for the twelve months commencing from the first day of August after the date of such meeting.

6. <sup>(1)</sup> At every such meeting as in the last preceding section mentioned, the said Resident Magistrate shall attend at the time and place named in the notice thereof, and shall preside at such meeting.

Magistrate to preside at meeting.

7. It shall be lawful for any such registered voter enrolled as aforesaid present at such meeting to nominate some person who shall be either such registered voter resident within the said limits, or duly qualified to be such, and every such nomination shall, before it is submitted to the meeting, be seconded by some other such registered voter present. From the persons so nominated and seconded such meeting shall elect three who shall form and be called the "board of management" for the community resident within the said limits. In case three persons only shall be so nominated and seconded, such three persons shall be declared to be duly elected as such board of management; but in case more than three persons shall be so nominated and seconded, the said Resident Magistrate shall then and there proceed to take a poll of the registered voters present enrolled as aforesaid (either by ballot or by open voting, as he may decide), and such three persons duly nominated and seconded as shall gain the greatest number of votes at such poll shall then be declared to be duly elected, and shall form the board of management of the community: Provided that if two or more persons who have received the greatest number of votes, and who cannot be both or all elected shall each have received the same number of votes, then the question between such persons shall be decided by lot, to be drawn in presence of the Resident Magistrate; and provided, further, that every registered voter shall be entitled to give one vote for each of any number of candidates not exceeding the number to be elected.

Qualification of members of board.

How to be elected.

8. The Resident Magistrate shall, as soon as may be after such election, publish in the *Government Gazette* the names of the persons so elected, and such persons shall form the board of manage-

Magistrate to publish names of persons elected.

<sup>1</sup> See § 2 Act 28, 1882 and § 4, Act 7, 1884, *infra*.

No. 29—1881.

ment of the community until a new board shall be elected in like manner as in the last preceding section provided, on the first Wednesday in the month of July in the following year.

In case member becomes disqualified, fresh election.

9. In case any member of the said board shall leave the limits of the community for the space of three calendar months, or shall fail to attend three consecutive meetings of the board or shall become insolvent or assign his estate for the benefit of his creditors, or die or be incapacitated from acting by reason of mental or bodily disease, such member's seat shall be *ipso facto*, vacated; and it shall be the duty of the remaining members of the said board to report such vacancy to the Resident Magistrate, who shall forthwith call a meeting of the registered voters aforesaid, for the purpose of electing another member of the said board; and the proceedings at such meeting shall *mutatis mutandis*, be the same as those provided for in the seventh section of this Act.

Governor may appoint members if voters fail to elect.

10. If the voters aforesaid shall at any time fail or neglect or refuse to elect such board of management, or to elect a sufficient number of members to form such board, it shall be lawful for the Governor by proclamation to appoint from among the persons qualified to be elected to sit upon such board as aforesaid, three members to constitute such board, or such member or members as shall, together with any members or member duly elected as hereinbefore provided, make up the full number of members of such board; and any board or members so appointed shall be invested with the same powers and be in all respects in the same position as if such board or such members had been duly elected under the provisions of this Act.

Meetings of the board.

11. Such board of management shall meet as soon as practicable after election, and shall continue to meet from time to time, not being less than once a month, at such time and place as they shall determine.

Chairman to be chosen.

12. At the first meeting of the said board the members shall elect a chairman, who shall preside at the meetings of the board (of which two members shall form a quorum) if he be present, and in case of his absence the other two members shall either agree or decide by lot which of them shall, at and with respect to such meeting, perform the duties of chairman.

Quorum.

Questions to be decided by a majority of those present.

13. The proceedings at the meetings of the said board shall be public, and all questions coming before the meeting shall be decided by the majority of votes of the members present, which votes shall be given openly. But in case two members only shall be present at any meeting and they shall not agree in the decision of any question before them, such question shall stand over until there shall be a full meeting of the said board to decide the same.

Minutes to be kept.

14. Minutes of the proceedings of every meeting of such board shall be regularly entered in a book to be kept for that purpose, and shall be read and confirmed at the next succeeding meeting and signed by the person presiding thereat. All such minutes,



shall be deemed and taken to be original minutes, and such book shall and may be produced and read as *prima facie* evidence of all the proceedings therein recorded, in any Court, civil or criminal.

No. 29—1881.

15. The said board of management shall appoint, during pleasure, such fit and proper officers as it shall find necessary for carrying out the purposes of this Act, and shall pay to them such salaries and assign to them such duties as they may think fit.

Officers to be appointed.

16. It shall be lawful for the Divisional Council of the division in which such community is situated, and such Divisional Council is hereby required, upon the application in writing of the chairman of the board of management, to levy a rate upon all the rateable property within the limits of such community, but no such rate shall exceed threepence in the pound sterling for any one year; and such rate shall be levied and collected by the said Divisional Council in all respects as if it were a rate lawfully levied by such council for its own purposes; and the proceeds of the rate so levied after deducting ten per cent. for the expenses of levying and collecting such rate shall be paid over as soon as may be after collection thereof at the end of each month by such council to the chairman of the said board of management, who shall grant a receipt for the same; and the amount so received shall be held by the said board of management and devoted to the carrying out of the purposes of this Act.

Divisional Council to levy rate at the request of board.

Limit of rate.

Application of rates.

17. Every board of management shall cause proper accounts to be kept of all moneys received and expended under the provisions of this Act, which accounts shall be opened, at all reasonable times, to the inspection of all persons interested therein: and at the end of his term of office the chairman of the board shall render to the Resident Magistrate of the district a statement of the accounts of the board, which statement shall be certified as correct by a solemn declaration of such chairman made before a Justice of the Peace; and all the assets, accounts, books, and other property of the said board shall be handed over to the new board so soon as such new board shall have been elected.

Accounts to be kept and rendered to Magistrate.

18. No member of any board of management shall receive any salary, fee, or reward of any kind for the performance of the duties of his office, and any member contravening this provision shall, *ipso facto*, vacate his seat on such board; and no member of any board shall contract with such board to perform any of the services which such board may require to be done, and any member so contracting shall, *ipso facto*, vacate his seat on such board; but nothing herein contained shall be construed so as to prevent any member of the board from gratuitously rendering any service, or doing any work which the said board may require to be done.

Members of the board to receive no pay.

Nor to be contractors.

19. It shall and may be lawful for every board of management to cause all public streets, roads, and places within the limits before-mentioned to be at all times kept in good and sufficient

Duties of the board.

No. 29—1881.

order and repair ; and to make all necessary furrows, watercourses, drains, sewers, culverts, and bridges within the said limits ; and to construct such works and take such lawful measures as to them shall appear necessary for the purpose of providing a proper supply of water for the inhabitants residing within such limits ; and it shall further be lawful for such board to frame such regulations as may be required in order to prevent the obstruction of any road, street, highway, or other public place within the said limits ; or to prevent vehicles from being kept in any such road, street, or other public place for an unreasonable time ; or to prevent any inconvenience to the public from animals being allowed to wander about within such limits ; or to provide for the isolation of persons or animals suffering from any dangerous contagious disease, and for the prevention or suppression of such disease ; or to provide for the removal and disposal of all night soil, stable litter, excrement, and other refuse and filth from public and private premises and from all streets, roads and thoroughfares ; or to prevent the dangerous or mischievous use of gunpowder or other combustibles within the said limits ; or to prevent the making of noises in any street or public place with trumpets or drums, or whips, or by other means ; or to prevent or impose restrictions upon the keeping of ferocious or troublesome dogs or other animals within the said limits <sup>(1)</sup> ; or to prevent any building or other structure within the said limits from being kept in a condition dangerous to the public or to the personal safety of any individual ; or to provide against the pollution of any water which the inhabitants living within the said limits have a right to use ; or to provide for the distribution of water among such inhabitants for purposes of irrigation or for domestic use or otherwise ; or to provide for the prevention and extinguishing of fires within such limits ; or to provide for the granting of licences or permits for the making of bricks, or the digging or getting of clay or gravel, or the quarrying of stone, or the cutting of firewood, brushwood, or grass upon the common lands, and for the payment of reasonable fees or dues for such licences or permits ; or to provide for the management and protection of all common pasture lands and the preservation of all vegetation thereon, and the fixing of the number and description of live-stock any inhabitant shall be allowed to keep and depasture thereon or on any part thereof ; or to provide for the granting of temporary grazing rights over the said lands to travellers or carriers or other persons frequenting or passing through the said locality, and for the payment of reasonable dues in consideration thereof ; or to provide for the impounding of all animals trespassing on such common lands ; or to prevent damage to any property to which the said inhabitants may have a common right, or to recover compensation for such damage ; or to provide for the prevention, removal, or abatement of all nuisances within the said limits which

<sup>1</sup> See preamble to Act 14, 1884.

may tend either to injure the health, destroy the comfort, or affect the rights of the said inhabitants at large.

No. 29—1881.

20. All regulations framed under the provisions of this Act shall be submitted to the Governor for approval, or alteration or amendment, and shall together with such alterations or amendments as the Governor may have seen fit to make therein be published in the *Government Gazette*, and shall thenceforth have the force of law: Provided, however, that it shall be competent for any such board from time to time to alter or amend any regulations made and published as aforesaid, and thereupon such amended regulations shall be transmitted to the Governor, who may deal with the same in manner hereinbefore in this section mentioned, and such amended regulations after the same shall have been published in the *Government Gazette*, shall also have the force of law.

Regulations under this Act to be submitted to Governor.

21. Any person contravening any of the regulations made and published as in the two last preceding sections mentioned, shall be liable to pay a fine not exceeding five pounds or to be imprisoned with or without hard labour for a period not exceeding thirty days, unless such fine be sooner paid: And all prosecutions for any such contravention may be instituted in the Court of the Resident Magistrate of the district in which the offence was committed, or before any Special Justice of the Peace in respect of any contravention within his jurisdiction, provided that no fine imposed, and no term of imprisonment awarded by any Special Justice shall exceed the amount and term respectively mentioned in the second section of the Act No. 10 of 1876. And all fines which shall be recovered by means of any such prosecution together with all moneys which shall become payable under and by virtue of the regulations duly framed under the authority of this Act, shall be paid to the said board of management and be applied by them in carrying out the purposes of this Act.

Penalty for contravention of regulations.

Prosecutions under the Act.

22. It shall be the duty of every board of management to enforce all regulations made under the authority of this Act and to prosecute all breaches and contraventions of the same, and to use all diligence in carrying out the several provisions and objects of this Act generally.

Board to enforce regulations.

23. It shall be lawful for every board of management to enter into contracts, and to employ labour for the purpose of carrying out any work required to be done, or for doing anything which such board is, by the provisions of this Act, authorized to undertake or to do.

Board may enter into necessary contracts.

24. In any action or suit, civil or criminal, which may be brought by or against any such board as aforesaid, it shall be sufficient to describe such board as "The Board of Management of \_\_\_\_\_," without mentioning the names of any of the members comprising such board.

How board to sue and be sued

25. All necessary costs, charges and expenses incurred in the carrying out of the provisions of this Act and the regulations made

Expenses incurred under the Act to be

No. 28--1882. thereunder, may be lawfully paid out of any of the funds which shall come into the possession of the board of management.

paid out of board's funds.  
Provision in case any community becomes a municipality.

26. (1) As often as any town, village, or community to which this Act has been made applicable (by any such proclamation as in the second section mentioned) shall become a municipality, then this Act and any regulations made in pursuance thereof shall continue to apply only until the first set of municipal regulations for such municipality shall be promulgated and no longer.

Short title.

27. This Act may be cited as the "Villages Management Act, 1881."

No. 28—1882.]

[June 29, 1882.

### ACT

To Amend the "Villages Management Act, 1881."

Preamble.

WHEREAS it is expedient to amend the "Villages Management Act, 1881": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. So much of the "Villages Management Act, 1881," as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Justice of Peace may preside in absence of Magistrate.

2. At any such meeting as is mentioned in the fifth section of the said Act any Justice of the Peace may preside when the Resident Magistrate is not present thereat; and the Justice of the Peace so presiding shall have and may exercise all the powers which the Resident Magistrate would have and exercise if present.

Board of Management may defray half the cost of necessary police.

3. It shall be lawful for the board of management of any town, village, or community to which the provisions of the said Act have been applied, from and out of any funds at the disposal of such board, to defray the cost to the extent of one-half of such number of policemen or constables as may be necessary to maintain order, and as may from time to time be agreed upon between such board and the Resident Magistrate of the district on behalf of the Government.

Onpayment of such moiety into Treasury, Resident Magistrate to appoint policemen.

4. When and as soon as the board of management shall have paid into the Colonial Treasury one-half of the estimated cost of such policemen or constables for one year, the Resident Magistrate shall appoint the policemen or constables agreed to by the board and approved of by the Governor, and such policemen or constables shall possess all the powers and perform all the duties appertaining to policemen or constables.

<sup>1</sup> See Act 7, 1884, *infra*.

5. The provisions of the eighth, ninth, tenth, and eleventh sections of the Act No. 15 of 1857, intituled "An Act for enabling Municipalities to obtain additional Police by contributing towards the expense thereof," shall, *mutatis mutandis*, extend and apply to any board of management obtaining police under the provisions of this Act as if such board were a municipality.

No. 7—1884.  
Certain provisions of Act 15 of 1857 to apply.

6. This Act may be cited for all purposes as "The Villages Management Amendment Act, 1882."

Short title.

No. 7—1884.]

[July 18, 1884.]

ACT

To Amend the Law relating to Boards of Management.

WHEREAS no provision has been made by law with regard to the liquidation of the liabilities and the fulfilment of the obligations or the disposal of the assets of boards of management, established under the provisions of the "Villages Management Act, 1881," which by virtue of the twenty-sixth section of the said Act may have ceased or may cease to exist; and whereas it is expedient that due provision should be made by law with reference to the said matters: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. In every municipality by or upon the establishment of which any board of management has ceased or shall hereafter by virtue of the twenty-sixth section of the said Act cease to exist, the commissioners or the municipal council of such municipality shall be subject to all and singular the liabilities and obligations to which such board was or shall be subject at the time of the establishment of such municipality, and shall be entitled to all the moneys or other assets or property or things whatsoever, and to all the books, accounts, or other documents which belonged or shall belong to such board or to which such board was or shall be in any way entitled upon the taking effect of the said section of the said Act.

Municipalities to succeed to all assets and liabilities of Boards of Management.

2. Whenever any proclamation declaring a community to be subject to the provisions of the "Villages Management Act, 1881," shall be repealed, and the board of management of such community shall for that reason cease to exist, all moneys or other assets or property or things whatsoever, and all books, accounts, or other documents belonging to the said board shall be vested in the Divisional Council of the division wherein the said community is situated, and such Divisional Council shall liquidate all valid claims which may be brought against the said board out of the moneys or other assets of the board, and should such moneys or other assets prove to be deficient in amount, the Divisional Council

When Village Management Act repealed, Board of Management to pay assets to the Divisional Council.

Claims—mode of settlement by levy of rate.

- No. 9—1876. may levy a rate on the landed property situate within the limits of the said community sufficient to make good such deficiency, such rate to be levied and collected in all respects as if it were a rate levied by such council for its own purposes.
- Powers of board in connection with Native Locations. 3. Whenever a board of management under the provisions of the "Villages Management Act, 1881," has been or shall be established in any Native Location or community to which the provisions of Act No. 10 of 1870 applied, and there are or shall be any funds received or receivable under the first section of the last mentioned Act still remaining to be administered, the said board of management shall be entitled to all such funds, and shall be invested with and subject to all and singular the rights, liabilities and obligations attaching to such funds, and shall be entitled to all books, accounts, and other documents relating to such funds.
- Disposal of funds. 4. In the event of no Resident Magistrate or Justice of the Peace being present at any such meeting as is mentioned in the fifth section of "The Villages Management Act, 1881," any registered voter enrolled upon the list of registered voters referred to in the said section may be elected by a majority of the registered voters present at such meeting to preside thereat, and the person so presiding shall have and may exercise all the powers and shall discharge all the duties which any Resident Magistrate or Justice of the Peace would have and exercise and would be bound to discharge if present.
- Who to preside at meetings in absence of Resident Magistrate. 5. This Act may be cited as the "Villages Management Act Amendment Act, 1884."
- Short title.

---

No. 9—1876.]

[July 4, 1876.

### ACT

To Regulate the Introduction into this Colony of Articles or Things which by reason of Disease or otherwise might be injurious to the Interests thereof.

Preamble.

WHEREAS certain cuttings of vines were lately introduced into this Colony, from places beyond the limits of the Colony where disease seriously affecting vines existed, or was supposed to exist, and there is no law prohibiting or regulating the introduction of such things, and it is necessary that some greater power than now by law exists should be given to meet such a case, and to prevent or regulate the introduction into this Colony of articles or things which are either actually affected with or are supposed to be affected with some disease, which it would be prejudicial to this Colony to allow to be introduced, or come from places where any such disease affecting them exists or is supposed to exist: Be it

enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 9—1876.

1. If at any time there shall be reason to believe that any articles or things are about or likely to be introduced into this Colony, which by reason of being affected or supposed to be affected with any disease, it would be detrimental to the interests of this Colony to be allowed to be introduced at all, or without conditions or restrictions, or if by reason of any such disease existing or supposed to exist at any place beyond the limits of this Colony, it may be thought expedient to prevent or regulate the introduction into this Colony of any articles or things from such places, it shall be lawful for the Governor, with the advice of the Executive Council by proclamation to be published in the *Government Gazette*, either to prohibit absolutely the introduction into this Colony of any such articles or things, or to make such regulations concerning the introduction thereof as may be deemed expedient.

Governor may, by proclamation, prohibit or make regulations concerning the introduction into this Colony of articles or things affected, or supposed to be affected, with disease.

2. It shall be lawful for the Governor, from time to time, to revoke or alter any such proclamation, as aforesaid, and also in and by any such proclamation as aforesaid to provide that persons contravening the same or anything therein or in any schedule thereto contained, shall on conviction, forfeit any sum not exceeding five hundred pounds sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding two years, unless the fine be sooner paid.

Governor may alter or revoke such proclamation and provide penalty for contravening it.

3. It shall be lawful for any person duly authorized in that behalf under the hand of the principal officer of Customs at any port, or the Resident Magistrate of any district, after the publication of any such proclamation as aforesaid, to inspect any article or thing in this Colony mentioned or referred to in such proclamation, and supposed to be affected with any disease as aforesaid, for the purpose of ascertaining whether it is so affected, and any person who shall obstruct or impede any person so authorized in and about such inspection, shall, on conviction, forfeit any sum not exceeding fifty pounds, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding six months, unless the fine be sooner paid.

Prohibited articles or things may be inspected.

4. Any article or thing introduced into this Colony after the publication of any such proclamation as aforesaid, and in contravention thereof, may be seized and detained, and, if necessary, destroyed by any order under the hand of the principal officer of Customs at the port, or the Resident Magistrate of the district where such article or thing may be found.

Penalty for obstructing or impeding such inspection.

5. If during the time any such proclamation as in the first section mentioned shall be in the force, any articles or thing whereof the introduction shall be so prohibited as aforesaid, or concerning the introduction of which regulations shall have been so made as aforesaid, shall arrive in this Colony, having been dispatched from any

Articles or things introduced into Colony in contravention of proclamation may be seized, &c.

Owners of prohibited articles or things shipped before publication of proclamation to be indemnified.

No. 27—1880.

place beyond this Colony, before the publication in the Government or public *Gazette*, of such place of any such proclamation as aforesaid, it shall be lawful for the Governor to indemnify from and out of the public revenue the owner of any such article or thing by paying to him or his agent the first cost of every such article or thing, together with freight, carriage, insurance, and any other charge which shall have been reasonably and properly incurred upon or about the same, whereupon such article or thing shall become the property of Her Majesty the Queen; but it shall not be incumbent on any owner of such article or thing, not absolutely prohibited to be introduced as aforesaid, to accept such terms if he shall be willing to submit and carry out at his own expense the regulations under which by any such proclamation as aforesaid such article or thing may be introduced as aforesaid: Provided also that no compensation shall be made in respect of any such article or thing as aforesaid which shall have been dispatched from any place at any time after the publication of such proclamation as aforesaid, in the Government or public *Gazette* there, or in respect of any such article or thing as shall be found to be actually affected with any such disease as aforesaid, at the time of the arrival thereof in the Colony.

No. 27—1880.]

[July 30, 1880.

## ACT

To prevent the Introduction of the *Phylloxera Vastatrix* into the Vineyards of this Colony.

Preamble.

WHEREAS serious and destructive ravages have been committed in the vineyards of various parts of Europe, America, and elsewhere, by the insect known by the name of *Phylloxera Vastatrix*: And whereas there is reason to fear the introduction into this Colony of this said insect, and it is desirable to prevent by every possible means the occurrence of such a calamity; Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to Governor to prevent importation of grapes, vines, &c.

1. (1) It shall be lawful for the Governor, with the advice of the Executive Council, by proclamation to be published in the *Government Gazette*, either to prohibit absolutely the introduction, or to make such regulations as may, from time to time, be deemed expedient, concerning the introduction into this Colony, from places beyond the boundaries thereof, of all grapes, vines, or cuttings, or portions of vines, trees, plants, tubers, roots, bulbs, or any portion or portions thereof respectively; and also, at the discretion of the

<sup>1</sup> See Act 6, 1886, § 9, *infra*.



said Governor, of all articles or things of any sort or description whatsoever, by means of which the said insect might be introduced into this Colony.

No. 27—1880.

2. It shall be lawful for the Governor from time to time to revoke or alter any such proclamation as aforesaid, and also in and by any such proclamation as aforesaid to provide that persons contravening the same or anything therein contained shall on conviction forfeit any sum not exceeding £500 sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any term not exceeding two years, unless the fine be sooner paid.

To impose penalty for contravention of proclamation.

3. It shall be lawful for any person duly authorized in that behalf under the hand of the principal officer of Customs at any port, or the Resident Magistrate of any district, to seize and detain, and, if necessary, to destroy, any article or thing introduced or attempted to be introduced into this Colony after the publication of any such proclamation as aforesaid, and in contravention thereof; and any person who shall obstruct or impede any person so authorized in or about such seizure, detention, or destruction shall, on conviction, forfeit any sum not exceeding one hundred pounds sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding six months, unless the fine be sooner paid.

Articles attempted to be introduced to be seized and destroyed.

Persons obstructing liable to penalty of £100.

4. [Repealed by Act 6, 1886, *infra*, and § 5 of that Act substituted.]

5. In case the said insect shall be suspected to have made its appearance in any vineyard in this Colony, it shall be lawful for any person or persons authorized in that behalf, by writing under the hand of the Colonial Secretary or Under Colonial Secretary for the time being, to enter into and inspect such vineyard, and to adopt all necessary means to ascertain the existence or non-existence of such insect in the said vineyard, and any one obstructing or preventing the person or persons so authorized from entering into and inspecting such vineyard, or in any way interfering with such person or persons in the prosecution of their investigations, shall be liable, on conviction, to pay a fine not exceeding one hundred pounds sterling, or to imprisonment for a term not exceeding six months, unless such fine be sooner paid.

Power to inspect vineyards.

Penalty for obstructing inspector.

6. And whereas the Governor of this Colony, by a certain proclamation, published in the *Government Gazette*, numbered 14 of 1880, and bearing date the 26th day of January, 1880, and purporting to be issued by virtue of the powers vested in him by Act No. 9 of 1876, did absolutely prohibit the introduction into this Colony of all grapes, vines, or cuttings, or portions of vines, plants, tubers, roots, bulbs, or any portion or portions thereof respectively, from any places beyond the limits of the said Colony whatsoever: And whereas doubts have arisen, or may hereafter arise, as to the legal authority of such proclamation or the power

Indemnity for proclamation already published, and proceedings thereunder.

No. 6—1886.

of the Governor to issue the same, and it is expedient to remove such doubts: Be it therefore further enacted by the authority aforesaid :

The proclamation of the Governor, published in the *Government Gazette*, being No. 14 of 1880, and bearing date the 26th of January, 1880, shall be taken and deemed, and is hereby declared to be of the same legal force and effect, and all acts done by any officers of the Government under and by virtue of the same shall be taken, and are hereby declared to have been as lawfully and properly done as if the said proclamation had been issued, and such acts done thereunder, after the passing of this Act and in pursuance of the provisions hereinbefore contained.

Short title.

7. This Act may be cited as the "Vineyards Protection Act, 1880."

No. 6—1886.]

[June 11, 1886.

## ACT

## To Add to and Amend the Provisions of "The Vineyards Protection Act, 1880."

Preamble.

WHEREAS it is desirable to make further and more effectual provision to prevent the introduction and spread of the insect known as *Phylloxera Vastatrix*, and to amend in certain respects the law relating thereto : Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Owner, &c., of vineyards & gardens to notify to Field-cornet the appearance of disease or decay therein.

1. Every owner, occupier, or person in charge of the culture or care of a vineyard, nursery, garden, or any land or place wherein vines may be, shall notify immediately to the field-cornet of any ward wherein such vineyard, nursery, garden, land or place, shall be situate, every case of decay or disease therein other than ordinary and well known cases of vine decay or disease, and every symptom of such decay or disease which may show itself amongst the vines in such vineyard, nursery, garden, land, or place.

Course to be pursued by Field-cornet on receiving such notification.

2. On receipt of such notification the said Field-cornet shall call to his assistance any two farmers, being landowners, not having any pecuniary interest in the subject of the inquiry, who are hereby authorized and required, when so called upon, to render such assistance, and thereupon an inquiry shall be held into the nature of the said decay or disease, and, if it shall appear to a majority of the said body, consisting of the said field-cornet and farmers, that there is good cause to suspect that such decay or disease is due to the existence of the said insect known as *Phylloxera Vastatrix*, and

that it is necessary to take immediate steps to destroy any vines, plants, or other things infected thereby, or any vines, plants, or other things, in the neighbourhood of such infection, or to do any other act which may be necessary to prevent the spread of the ravages of such insect, the said Field-cornet shall be at liberty, upon being authorized thereto by the Government, to proceed accordingly, provided he shall first serve a written notice of his intention upon the owner or person in charge of the culture or care of the said decayed or diseased vines, plants, or things.

No. 6—1886.

3. In case the said decay, disease, or symptoms thereof shall not appear to the said Field-cornet or to the majority of the said body to be such as to require urgent and exceptional measures, the said Field-cornet shall forthwith give notice to the Under Colonial Secretary of the nature and extent of the said decay or disease, and the general result of his inquiries for the purpose, if necessary, of further inquiry and of enabling the services of experts to be obtained.

Where no urgency appears report to be made from Field-cornet to Colonial Secretary.

4. If it shall be necessary to destroy any vines, plants, or things whatsoever for the purposes of preventing the spread of the said insect or to declare any area to be so infected that the removal therefrom of any grapes, vines, plants or agricultural or horticultural products or other matters or things whatsoever should be prohibited, the Governor is hereby authorized as occasion may require, to grant reasonable compensation as to him shall seem fit to any person for any loss sustained by him by reason of such destruction or prohibition, not to exceed the value of the net yield for two years, calculated at an average of the last three crops of the vines eradicated or destroyed to prevent the spread of the said insect, together with such reasonable sum as to the Governor may seem fit to cover any loss sustained by reason of any prohibition against the removal of any farm or other produce or any other matter or thing from the property of such person under any proclamation issued for the prevention of the spread of the said insect: Provided that under no circumstances shall any compensation be granted to any person who may have contravened the provisions of this Act, or of Act No. 27 of 1880, or who may have introduced upon his property grapes, vines, plants or agricultural or horticultural products, or any other matter or thing forbidden to be imported by Act No. 27 of 1880.

In case of destruction of vines, &c., Governor may grant reasonable compensation to owner.

No compensation to persons who have contravened this Act or Act 27 of 1880.

5. The fourth section of Act No. 27 of 1880 is hereby repealed, and the following substituted: In case the said Phylloxera Vastatrix shall at any time make, or shall be suspected to have made its appearance in any vineyard in this Colony, it shall be lawful for the Governor to take such steps as he may deem expedient to have the vines upon which such insects shall have appeared, or be supposed to have appeared, rooted up and destroyed, and to use all such other means as he may be advised for the purpose of eradicating such insect, and preventing the

Section 4 of such Act repealed and present one substituted.

mmmm

No. 6—1886.  
Fresh powers given  
to Governor.

spread of disease though its ravages, and for this purpose the Governor is authorized in addition to the above and all other necessary powers,—

- (a) To declare any area to be an area infected by the said insect, such area to comprise, first, vineyard, nurseries, gardens, land, and other places known to be infected; secondly, vineyards, nurseries, gardens, land, and other places in the neighbourhood of infected vineyards, nurseries, gardens, land, or places; and thirdly, a protecting zone.
- (b) To take measures to disinfect the soil within such area.
- (c) To prohibit all fresh planting of vines for such period as to him may seem fit.
- (d) To give directions for the preventive treatment of the said protecting zone.
- (e) To prohibit the removal from any such area of any grapes, vines, or cuttings, or portions of vines, trees, plants, tubers, roots, bulbs, or any portions thereof respectively, or any soil, leaves, or objects or things likely to spread the said insect.
- (f) To take such measures generally as may be requisite to prevent the further introduction or spread of the said disease.

Penalties for con-  
travention of this  
Act.

6. Any person failing to give the notification in the first section required or any person obstructing or interfering with any Field-cornet or farmer in the said section mentioned in making any inspection or inquiry, or any person contravening or disobeying any proclamation, order, or direction of the Governor issued, made, or given in pursuance of this Act shall, on conviction, be liable to the penalty provided by the fifth section of Act No. 27 of 1880.

Recoverable in  
Magistrate's Court.

7. All penalties under this Act and under Act No. 27 of 1880 shall be recoverable in the Court of the Resident Magistrate of the district.

Penalty for trans-  
porting or removing  
living Phylloxera.

8. Any person wilfully transporting or removing in a living state the said insect, its eggs, or larvæ, from any place to any other place, except for scientific purposes under a written order of the Under Colonial Secretary, shall be liable, on conviction, to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding three months, unless such fine be sooner paid, or to such imprisonment without the option of a fine.

Burden of proof  
on persons receiving  
grapes, &c., &c., in  
contravention of Act  
27 of 1880.

9. If any grapes, vines, or cuttings, or portions of vines, trees, plants, tubers, roots, bulbs, or any portions thereof respectively, or any articles or things whatsoever, shall be imported or introduced into this Colony in contravention of the provisions of the first section of Act No. 27 of 1880, it shall be sufficient *prima facie* proof of such importation or introduction by the person to whom they are addressed to give proof of such address, and thereupon

the onus shall be upon the addressee to show that he did not order, import, or direct the importation: Provided that in any prosecution to which this section shall be applicable it shall be lawful for the defendant or accused person to give his own evidence in the case upon oath.

No. 26—1882.

10. The provisions of the fourth section of this Act shall be in force until the 30th June, 1887, and no longer.

Fourth section in force till 30th June, 1887.

11. This Act may be cited as "The Vineyards Protection Act Amendment Act, 1886."

Short title.

No. 26—1882.]

[June 29, 1882.

## ACT

To Afford greater Facilities to Persons having a right to Water, to convey the same across the Lands of other Persons.

WHEREAS it has been found that the existing law enabling persons having a right to water to convey the same across the lands of other persons is insufficient for the purpose, and leads to much litigation: and whereas it is desirable to amend and improve such law:

Preamble.

Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council the House of Assembly thereof, as follows:—

1. The Act No. 24 of 1876, being "The Right of Passage for Water Act, 1876," is hereby repealed, except as to things done or proceedings pending at the time of the taking effect of this Act.

Repeal of Act 24 of 1876.

2. Every person having a legal right to any water in any stream or river, or derived from any spring, dam or reservoir, and wishing to employ it for irrigation or hydraulic works, or any other useful purpose, shall be entitled to claim the right, temporarily or in perpetuity as he may elect, to convey such water from or over any land belonging to, or in the occupation of any other person (upon payment of compensation to such last mentioned person in manner hereinafter provided), in every case in which such right is necessary to enable the person claiming the right to use the water for any of the purposes hereinbefore mentioned, or to make a more beneficial use of it than such claimant would otherwise have.

Person with right to water may convey it over lands of others, subject to compensation.

3. Every person desiring to acquire the right to convey water as in the last section mentioned shall give notice thereof in writing to the person owning or occupying the land over which he desires to acquire the same, describing in such notice the line of passage along which he proposes to convey the water, the mode in which he wishes to convey it, the works which he proposes to construct upon such land in order to give effect to his purpose, the amount of compensation which he offers, and the period of time during which he wishes to possess the said right.

Notice of desire to acquire such right.

No. 26—1882.

In case of no private agreement, arbitration to take place.

4. In case the person from whom such right is claimed and the person claiming such right shall not within one month after the service of such notice as aforesaid agree as to the line of passage to be adopted, the mode of conveying the water, the works, or the construction of the works, necessary for such conveyance, or the compensation to be paid in respect thereof, the person claiming the right shall be at liberty, by another notice in writing, to call upon the party from whom the right is claimed to refer to arbitration all the several matters in dispute between them.

Powers and duties of arbitrators.

5. The arbitrators shall, in any matter referred to them under the provisions of this Act have power to do all or any of the following things:

- (1) To give the party claiming the right aforesaid, the line of passage chosen by him, or such other line as may be deemed most beneficial to such party, and as little injurious as possible to the other party.
- (2) To specify the manner in which the water shall be conveyed, and the nature of the works to be constructed for conveying it.
- (3) To award the amount of compensation to be paid for the possession and exercise of the right of passage of water, in one sum, or in different sums at different times, or by way of annual rent.
- (4) In case the land over which the right of passage is claimed shall be under lease, to determine the amount of compensation to be paid to the lessee for any injury which such lessee may sustain by reason of the exercise of such right.

Provided that:

- (1) The arbitrators shall set off against and deduct from the amount of such compensation as would otherwise be claimable, the amount which such arbitrators shall estimate the benefit and advantages to be derived by the owner, or lessee, or owner and lessee respectively, as the case may be, of the property by reason of the construction of irrigation works over such property.
- (2) It shall not be competent for the arbitrators to award any right of passage for water in any case in which it shall appear to such arbitrators that such water is insufficient in quantity for any useful purpose.
- (3) The power to award compensation to a lessee may be exercised whether such lessee shall or shall not be a party to the arbitration, if in the course of proceedings under the reference such lessee shall claim compensation.

Mortgagees to be made parties to arbitration.

6. If any mortgage bond shall be existing on the said property the mortgagee shall be made a party to the said arbitration, and shall receive the like notices as are required to be given to the proprietor; and any compensation to be paid under this Act shall

be made to the mortgagee in reduction of the mortgage: Provided that if the land is owned by more than one person, and only the share of one or more such persons is mortgaged, a *pro rata* portion only of such compensation shall be paid to the mortgagee.

No. 26—1882.

7. If at any time the Government shall require or deem it expedient to take or use any land, or the bed of any river, stream or river tributary, for the purpose of irrigating any land, or of constructing thereon any dam, reservoir, or other irrigation work, and there may not be any right or power by law to take or use such land or property without the consent of the proprietor thereof, it shall be lawful for the Governor to take or use such land or property for the purpose aforesaid, and the proprietor thereof shall thereupon be entitled to compensation, to be settled in case of difference by arbitration.

In case Government require lands, streams, &amp;c.

8. All channels and other works required for the conveyance of water under the provisions of this Act shall be constructed and maintained solely at the cost of the person claiming the right of passage for such water.

Works to be constructed at cost of party claiming right of passage.

9. In carrying water across any public roads, such works shall be constructed by the person exercising the right of passage as the Divisional Council of the division, or as to roads within a municipality the commissioners of the municipality, or the Town or Borough Council, as the case may be, in which the proposed crossing is situated, may consider necessary for the purpose of preventing danger or inconvenience to persons using the said road, and any works so constructed shall thereafter be maintained in repair by the person using the same.

In case of roads being crossed by such passage.

10. No such proceedings as are authorized by this Act shall be taken in any case where the right to the water for which a passage is claimed is in dispute until such dispute shall have been settled by the judgment of some competent Court.

In case right to water disputed.

11. Every person who shall have acquired, under the provisions of this Act, a temporary right to the passage of water, shall be entitled at any time to have such temporary right converted into a permanent one on paying to the person against whom he enjoys the said right such amount as compensation for such conversion as may be agreed upon between them; and in case no such amount shall be agreed upon, the difference between the said parties shall be referred to arbitration.

Persons having temporary right of passage.

12. All servitudes, which shall arise from or be created by the provisions of this Act shall be duly registered on the title deeds of the dominant and servient properties in the Deeds Registry Office of this Colony.

Servitudes to be registered.

13. In the event of any channel constructed under this Act across the land of another person being out of repair or in want of cleaning, the person having or claiming the right of passage of water through such channel shall be bound, upon receipt of a notice in writing from the proprietor of such land requiring him

Person having right of passage bound to repair watercourses, &amp;c.

No. 26—1882.

so to do, to repair or clean, as the case may be, such channel within a reasonable time, and in the event of his failing so to do, it shall be lawful for such proprietor to cause all necessary repairs or works to the said channel to be done, and to recover the cost thereof from the person having or claiming such right of passage as aforesaid and any person having or claiming such right of passage as aforesaid who shall knowingly allow or suffer any such channel to be out of repair or foul, shall be liable for all damage which may arise therefrom.

In what cases bridges, culverts, &c., must be constructed.

14. In cases where the waters flowing in any channel made under this Act for the benefit of individuals prevent the adjoining proprietors from passing freely to their property, or check the circulation of water in the irrigation or drainage of the same, the parties benefiting by the water shall be bound to construct and maintain in good order all bridges and other works necessary for intercommunication in a sure and convenient manner, and shall be further bound to construct and maintain such culverts, aqueducts, and other like works, as are required for the free progress of irrigation or drainage, except there shall be some agreement or legitimate title to the contrary.

Servitude under this Act only to involve everything necessary to its use.

15. The establishment of a servitude such as before mentioned shall involve the right of everything necessary to its use, including the right to clean and repair; but the right of passage for water shall not give the party exercising it the right of property either in the land at the sides or forming the bed of the channel, and all burdens attached to the land shall be borne by the proprietor of the land.

"Lands and Arbitration Clauses Act, 1882," incorporated.

16. For the purposes of any arbitration under the provisions of this Act, the provisions of "The Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

Interpretation clause.

17. The word "person" and the word "party" in this Act shall include government, divisional council, municipality, corporation, and joint-stock company.

Short title.

18. This Act may be cited as the "Right of Passage of Water Act, 1882."

No. 11—1858.]

[June 5, 1858.]

## AN ACT

For Regulating Weights and Measures in the Colony of the Cape of Good Hope.

Preamble.

WHEREAS it is necessary for the security of commerce and the good of the community that weights and measures should be just and uniform and that true standards should exist, by means of which the accuracy of the weights and measures in public use may be tested and ascertained: And whereas in regard to certain of the weights and measures in general use in this Colony, no



standard thereof exists, either in this Colony or in any other part of the world, and the same, or many of them, are inconsistent with each other, and obviously erroneous, which is the cause of great confusion and manifest frauds: And whereas such evils will be best remedied and the recurrence thereof will be best prevented by establishing in this Colony standard weights, in accordance with the standard pound weight now established in and for the United Kingdom of Great Britain and Ireland and the standard of certain of the measures now established in the said United Kingdom, commonly called the imperial weights and measures: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

No. 11—1858.

1. The Ordinance No. 13 of 1848, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled “An Ordinance for regulating Weights and Measures,” and bearing date the 11th day of July, 1848, and the Ordinance No. 1, 1849, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled “An Ordinance to postpone the time of the taking effect of the Ordinance No. 13 of 1848,” and all former laws, customs, or usages repugnant to or inconsistent with any of the provisions of this Act shall be repealed and the same are hereby declared to be repealed accordingly.

Previous laws repealed.

2. It shall and may be lawful for the Governor of this Colony to procure as soon as may be after the taking effect of this Act a copy or model of the standard pound avoirdupois, of the standard yard, and of the standard gallon, as respectively defined in and for the United Kingdom of Great Britain and Ireland, by an Act of the Parliament thereof made in the fifth year of his late Majesty King George the Fourth, entitled “An Act for ascertaining and establishing Uniformity of Weights and Measures,” together with a copy or model of every multiple or sub-multiple of such standard pound specified in the schedule to this Act annexed, and also a copy or model of every multiple or sub-multiple of such standard yard and standard gallon, made and verified under the direction of the Lord High Treasurer or the Commissioners of the Treasury, or any three of them, and deposited in the office of the Chamberlains of the Exchequer at Westminster, as in the said Act of the Parliament of the United Kingdom provided; and all copies or models procured under this Act shall be made of such metal or materials as shall be best calculated to resist the action of the atmosphere and wear and tear.

Governor to procure copies of the standard weights and measures used in the United Kingdom.

Such copies to be made of most durable materials.

3. It shall and may also be lawful for the said Governor to cause to be made of such metal or material as shall be deemed best fitted for the purpose, a measure of capacity for a standard or model bushel, to contain or consist of two thousand two hundred and

Standard or model bushel.

No. 11—1858.

Copies or models to be deposited with the Treasurer-General or other officer; and to be standards for this Colony.

And may be produced for inspection, &c.

Such copies or models, if lost or injured, to be replaced.

Several sets of standards may be obtained and deposited with the respective resident magistrates.

eighteen cubic inches, and one hundred and ninety-one thousandth parts of a cubic inch, equal to eight imperial gallons.

4. The several copies and models aforesaid, so procured or caused to be made as aforesaid, shall be deposited and carefully preserved, for custody and inspection, in the office of the Treasurer-General of this Colony, or of such other officer as the said Governor may appoint, and be kept by him in a chest, whereto there shall be two locks, with separate and distinct keys, whereof one shall remain with the Governor, and the other with the Treasurer-General, or such other officer as aforesaid; and such copies and models shall be, and the same are hereby declared to be, the original and genuine standards, in and for this Colony, of all weights and measures by this Act established and made necessary. And the said Treasurer-General, or other officer as aforesaid, shall, with the permission of the Governor, upon reasonable notice, and at all reasonable times, produce or cause to be produced, for inspection, or for testing the correctness of any measure of weight, extension, or capacity, such one or more of the said copies or models as any Resident Magistrate shall, in writing, desire him to produce.

5. If any copy, model, or standard, for the time being, so deposited as aforesaid, shall be lost or destroyed, or if the same shall be injured, or supposed or suspected so to be, it shall and may be lawful for the Governor aforesaid to procure and substitute a fresh copy, model, or standard, in place and stead thereof; and, thereupon, such fresh copy, model, or standard shall be deemed and taken to be the same standard of weight or measure (as the case may be) which the copy, model, or standard that it replaced would have been deemed and taken to have been, had the same been duly preserved and none other substituted for it.

6. <sup>(1)</sup> It shall and may be lawful for the Governor aforesaid to provide, from time to time, such and so many sets of standard weights and measures, verified as in the second section of this Act mentioned, or otherwise verified by comparison with the copies or models deposited as aforesaid, as the said Governor shall deem to be required for the comparison and adjustment of the weights and measures to be in use in the several districts of this Colony; and the said Governor shall cause one or more of such sets to be deposited with and be preserved by the Resident Magistrates respectively of the several districts of this Colony, or by such other person or persons as he shall direct and appoint; and every weight and measure so provided and preserved, as in this section set forth, shall, until the contrary be proved, be deemed and taken to conform to and correspond with the copy or model of the standard weight or measure of the same description or denomination deposited, as aforesaid, in the office of the Treasurer-General, or other officer as aforesaid, and to be fit and proper for testing and

<sup>1</sup> See Act 15, 1876, § 2, *infra*.

ascertaining the correctness of other weights and measures, as the case may be: Provided, always, that such standard weights and measures, so to be provided as aforesaid, shall not be deemed or taken to be unfit for the purposes aforesaid, by reason that they, or any of them, are not made of the same materials as the copies or models deposited, as aforesaid, in the office of the Treasurer-General, or other officer as aforesaid.

No. 11—1858.

Such standards need not be of the same material as the original copies.

7. Every Resident Magistrate, or other person entrusted with the preservation of the said copies or models in the sixth section of this Act mentioned, shall, upon reasonable notice, and at all reasonable times, cause such of them to be produced for inspection, or for testing the correctness of any measure of weight, extension, or capacity, as any person shall, in writing, request him to produce for that purpose; such person paying, in respect of every such copy or model produced, the sum of sixpence, which shall be paid over by such Resident Magistrate or other person into the Colonial Treasury.

Resident magistrate shall, upon notice, and payment of fee, produce standard for inspection or comparison.

8. From and after the date of the taking effect of this Act, the use of all weights, commonly called "Dutch weights," as also of the lineal measure called the "ell," and the measure of capacity known as the "old gallon," and the measures of capacity called "schepel" and the "muid" shall be abolished; and if any person shall, after the said date, sell by or according to any standard of weight other than the standard pound as hereinbefore described, and deposited in the office of the Resident Magistrate, or other person as aforesaid, or some multiple or sub-multiple thereof, or by or according to any measure of extension other than the standard yard aforesaid, deposited as aforesaid, or some multiple or sub-multiple thereof, or by or according to any measure of capacity other than either the standard bushel aforesaid, so deposited as aforesaid, or some multiple or sub-multiple thereof,—or the standard gallon aforesaid, so deposited, as aforesaid, or some part or multiple thereof,—such person shall, upon conviction, be liable to a penalty not exceeding forty shillings: Provided that all bargains, sales, and other contracts, *bonâ fide* made before the day of the taking effect of this Act, shall be performed and judged of in like manner as if this Act had never been passed; and provided, also, that nothing herein contained in regard to the measures of extension shall apply to any land or any sale thereof; and provided, further, that nothing in this Act contained shall apply to the use of any weights in the sale of gold, silver, or precious stones, or in the sale of drugs by retail.

Dutch weights and measures abolished.

Penalty for using weights and measures not in accordance with standards hereby declared.

Except in transactions previous to the passing of this Act; or relating to lands, precious metals, or minerals, or the sale of drugs.

9. All bargains, sales, or contracts concerning any goods, wares, or merchandize, which shall, after the taking effect of this Act be made with reference to weight, and which shall specify a price or sum for or by "the hundred," or for or by the "hundred pounds," or any multiple or sub-multiple thereof, shall be deemed and taken to be for or by one hundred pounds, or the multiple or sub-multiple

Sales by "the hundred," or "hundred pounds," to be judged of with reference to the standard weights hereby established, unless under special agreement to the contrary

No. 11 --1858.

named thereof, of the standard weight by this Act established; unless there shall be a special agreement to the contrary, in which the proportion of the weight or measure agreed upon to the standard weight or measure ascertained by this Act shall be mentioned.

Resident magistrates, or other officers may enter any place to compare the weights and measures in use, with the standards.

10. (1) From and after the taking effect of this Act, it shall and may be lawful for any Resident Magistrate, Justice of the Peace, or chief constable of police, at all reasonable times, to enter any place, within the limits of his district, wherein goods shall be exposed and kept for sale, or wherein any trade or dealing by weight or measure shall be carried on, and therein to examine all weights, measures, balances, steelyards, or other weighing machines there being, and to compare and try such weights and measures with the copies of the standard weights and measures authorized to be provided, as in the second and third sections of this Act mentioned.

Penalty if found to be at variance with the standards.

11. If, upon such examination as in the preceding section mentioned, it shall appear that any weight or measure is not formed according to the standard weights and measures by this Act established, and is not of some one of the denominations in the schedule to this Act annexed, or is light or otherwise unjust, the same shall be liable to be seized, and the person or persons in whose possession the same shall be found, shall upon conviction, incur the forfeiture thereof, and also a penalty not exceeding five pounds.

Penalty for obstructing officers in their examination of weights, measures, &c.

12. Any person who shall have in his possession any balance, steelyard, or other weighing machine, which shall, on such examination, as in the tenth section mentioned, be found incorrect, or otherwise unjust, or who shall refuse or neglect to produce for such examination, when thereto required, all weights, measures, balances, steelyards, or other weighing machines, which shall be in his possession, or shall otherwise obstruct or hinder such examination, shall incur the forfeiture of such balance, steelyard, or other weighing machine, as shall have been found to be incorrect or unjust, or of such of them as he shall have refused or neglected to produce for such examination, or have hindered or obstructed the examination of, and also a penalty of any sum not exceeding five pounds.

Nothing in this Act to bar action for fraud by false weights, balances, &c.

13. Nothing in this Act contained shall be deemed or taken to prevent any person from being prosecuted, in ordinary course of law, for any fraud or other crime, punishable by law, committed by means of false weights, balances, or measures.

How penalties and forfeitures to be recovered and disposed of.

14. All penalties and forfeitures imposed by any of the provisions of this Act shall be recoverable in the Court of the Resident Magistrate within whose jurisdiction the act or omission entailing such penalty or forfeiture shall have been done or committed, and may be proceeded for by any person who shall sue for the same;

<sup>1</sup> See Act 15, 1876, §§ 5 and 6, *infra*.

and one moiety of every penalty or forfeiture recovered shall be paid to the party suing for the same; together with his costs, as hereinafter mentioned,—and the other moiety to the Colonial Treasury: and it shall be lawful for such Magistrate to commit the offender to prison for any term not exceeding one month, in case the party convicted shall not forthwith pay the amount of the penalty imposed, together with the reasonable costs incurred by the party suing for the same or secure such payment to the satisfaction of such Resident Magistrate: Provided, always, that such costs shall not exceed the amount of costs which, by the rules of the said Court, for the time being, would have been payable to the party suing, had the prosecution by him instituted been a civil action or proceeding for the recovery of an amount equal to the penalty so recovered: Provided, always, that whether such offender shall be committed to prison or not, it shall and may be lawful for the party who shall have prosecuted such offender to sue out, but at his own expense, a warrant under the hand of such Magistrate, authorizing the levy, by distress and sale of the movable property of such offender, of the amount of such penalty and costs, together with the expense of such distress and sale: Provided, also, that any such offender, if committed to prison, shall be forthwith discharged therefrom, in case he shall pay, or cause to be paid, the amount of such penalty and costs, or in case such amount, together with such expenses as aforesaid, shall have been fully levied and made by force or virtue of the said distress and sale.

No. 11—1858.

If penalty and costs of suit not paid, offender may be imprisoned.

Limitation as to amount of costs.

Goods may be attached to satisfy costs.

Offender to be released if penalty and other expenses are paid.

15. Any weight, measure, balance, steelyard, or weighing machine, adjudged under any of the provisions of this Act to be forfeited, shall be broken up, and, if saleable, sold, and the proceeds thereof, after deducting the expenses of breaking up and selling the same, shall be paid, one moiety to the party who shall have proceeded for such forfeiture, and the other half to the Colonial Treasury.

Weights, &c., when forfeited to be destroyed or sold.

16. Every weight used under this Act shall have upon its upper part, and in legible figures, cast or stamped, the number of pounds, multiple, or sub-multiple of a pound, which it is intended to represent.

Denomination and value of weight to be stamped upon it.

17. It shall not be lawful, except as hereinafter is excepted, to make use of weights, in the manufacture of which lead or pewter shall have been used: Provided, always, that nothing herein contained shall prevent the insertion of such plug of lead or pewter into weights as shall be *bona fide* necessary for the purpose of adjusting them: Provided, however, that no lead, pewter, or other soft metal, shall be allowed to be used for the purpose of adjustment to a greater extent than as follows, namely: In weights from 10 lbs. to 50 lbs., to the extent of a two-hundredth part of such weight so to be adjusted; and in weights under 10 lbs., to the extent of one-hundredth part of such weight so to be adjusted;

Lead or pewter not to be used for purposes of adjustment.

In what proportions

No. 15—1876.

and any person contravening this section, shall incur and be liable to a penalty not exceeding five pounds.

When this Act shall come into operation.

18. As soon as the standard weights and measures ordered to be obtained for the purposes of this Act shall have been obtained and be in this Colony, the Governor shall, by proclamation to be published in the *Government Gazette*, give notice thereof, and of the several descriptions and denominations of the same, and fix the day upon which this Act shall come into operation and have effect, which day shall be not earlier than twelve nor later than eighteen months from the date of such proclamation; and this Act shall come into operation and take effect from and after the day so fixed accordingly.

Schedule of multiples and sub-multiples of the pound weight.

SCHEDULE of Weights referred to in the second section of this Act.

Weight	50 lb.	Weight	1 lb.
	25 "	$\frac{1}{2}$	"
	15 "	$\frac{1}{4}$	"
	10 "	$\frac{1}{8}$	"
	5 "	$\frac{1}{16}$	"
	4 "	$\frac{1}{32}$	"
	3 "	$\frac{1}{64}$	"
	2 "		

and every decimal fraction of a pound.

No. 15—1876.]

[July 4, 1876.

## ACT

To Amend the Law relating to Weights and Measures.

Preamble.

WHEREAS it is expedient that there should be uniformity in the law relating to weights and measures, and that the town assizers or other persons employed in cities, towns, and villages, should be invested with certain powers under the Act No. 11 of 1858, intituled "An Act for regulating Weights and Measures in the Colony of the Cape of Good Hope:" Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sections 4 to 10 of Act 2, 1855, repealed

1. The sections of the Act No. 2 of 1855, <sup>(1)</sup> intituled "An Act for Abating Public Nuisances and other Mischiefs of a Public Nature in certain Towns and Villages, not being Municipalities," and numbered four to ten inclusive, are hereby repealed as well as all municipal regulations and bye-laws relating to the assizing of weights and measures.

Sets of standard weights and measures may be supplied to municipalities.

2. It shall be lawful for the Governor, upon the application of the commissioners of any municipality, to cause one or more sets of

<sup>1</sup> Act 2, 1855, repealed by Act 27, 1882.

standard weights and measures, verified as in the sixth section of the said Act No. 11 of 1858 is mentioned, to be supplied to and deposited with and preserved by the Town Clerk of the municipality or such other person or persons on behalf of the said municipality as he shall direct and appoint; and every weight and measure so provided shall, until the contrary be proved, be deemed and taken to conform to and correspond with the copy or model of the standard weight or measure of the same description or denomination, deposited in the office of the Treasurer-General or other officer as in the said last mentioned Act mentioned, and to be fit and proper for testing and ascertaining the correctness of other weights and measures (as the case may be), provided always that such standard weights and measures so to be provided as aforesaid, shall not be deemed or taken to be unfit for the purposes aforesaid, by reason that they or any of them are not made of the same material as the copies or models deposited as aforesaid in the office of the Treasurer-General or other officer as aforesaid.

No. 15--1876.

Such standards need not be of the same material as original copies.

3. The commissioners of the municipality where copies or models aforesaid are deposited shall, upon reasonable notice, and at all reasonable times, cause such of them to be produced for inspection or for testing the correctness of any measure of weight, extension or capacity, as any person shall, in writing, request them to produce for that purpose, such person paying in respect of every such copy or model produced any sum to be fixed by the commissioners, not exceeding sixpence, which sum shall be paid to the treasury of the municipality.

Standards to be available for inspection or comparison upon notice and payment of fee.

4. It shall be lawful for the commissioners of every municipality to appoint a town assizer or other person to assize and mark weights and measures within the limits of such municipality, and for the Resident Magistrate of the district to appoint an assizer or other person to assize and mark weights and measures within the limits of any town or village not being a municipality, the limits of such town or village being for the purposes of this Act such as shall from time to time be fixed by proclamation issued by the Governor and published in the *Government Gazette*. Provided that when limits have been or shall be fixed for any town or village under the said Act No. 2 of 1855 such limits shall, until altered as aforesaid, be the limits of such town or village for the purposes of this Act.

Municipalities may appoint town assizers.

5. The town assizer or other person so appointed as in the last preceding section mentioned shall be considered as mentioned and included in the tenth section of the said Act No. 11 of 1858 as well as a Resident Magistrate, Justice of the Peace and chief constable.

Assizers vested with powers under section 10 of Act 11 of 1858.

6. An examination as in the said tenth section mentioned of all weights and measures shall take place at least once in every year at such time or times, and at such place or places within their respective jurisdictions as may be fixed for that purpose by the

An examination of weights and measures under section 10 of Act 11 of 1858 to take place at least once a year.

No. 15--1876.

Resident Magistrate of the district, or by the commissioners of the municipality as the case may be, of which time or times and place or places, at least ten days' public notice shall be given by advertisement in some local newspaper, or, if none, by posting a notice on the court-house, market-house, or other public building or buildings; and all persons using within such district, city, town, or village, as the case may be, weights or measures for the purpose of trade or dealing, shall attend at the time and place so fixed to have their weights and measures assized, and in default of so attending shall be liable to a penalty of not exceeding five pounds sterling.

Charge for assizing

7. The charge for assizing each weight or measure shall be fixed from time to time by the Resident Magistrate or commissioners of the municipality as the case may be, but shall not exceed three-pence sterling for each weight or measure, exclusive of any expense for repairing the same, and the charge for all weights and measures assized by the town assizer or other person appointed by the municipality shall be paid to the Treasurer of the municipality.

Application of penalties.

8. All penalties and proceeds of forfeitures which by the said last mentioned Act are directed to be paid to the Colonial Treasury, shall, when the proceedings producing the same have been taken by any officer or person acting for any municipality, be paid to the Treasurer of such municipality.

Interpretation clause.

9. In the construction of this Act the word "municipality" shall be taken to include the municipal corporation of King William's Town, and the terms "commissioners of the municipality" and "commissioners" to include Town Council, Borough Council, and council of a municipality, and the term "Town Clerk" to include secretary of a municipality.

Short title.

10. This Act may be cited for all purposes as "The Weights and Measures Act, 1876," and shall be read as one with the said Act No. 11 of 1858, which may for all purposes be cited as "The Weights and Measures Act, 1858."



## WILLS.

- |  |  |
|--|--|
| 1. Procln. 12 July, 1822, (Wills of Natural Born Subjects).                      | 3. Act 22—1876, (Execution, Witnesses to). |
| 2. Ord. 15—1845, (Execution).<br>For Registration of Wills, see under "Estates." | 4. ,, 3—1878, do.                          |

Testamentary Dispositions of Natural-born Subjects of the United Kingdom of Great Britain and Ireland resident within this Settlement. <sup>(1)</sup>

[July 12, 1822.

## PROCLAMATION.

By His Excellency General the Right Hon. Lord Charles Henry Somerset, &c. &c.

WHEREAS it has appeared to His Majesty's Government that the laws in force in this Colony relating to testamentary dispositions of property may, in their operation, defeat the expectations of those individuals who have emigrated and become settlers within the jurisdiction of this Government; and I have in consequence thereof received His Majesty's most gracious commands to make provision in the premises according to circumstances: I do therefore, in pursuance thereof, and by virtue of the authority in me vested, hereby make known, declare, and order that it shall be hereafter considered lawful, regular, and of full force, for all residents and settlers in this Colony of the Cape of Good Hope, being natural-born subjects of the United Kingdom of Great Britain and Ireland, to enjoy the same rights of devising their property, both real and personal, as they would be entitled to exercise under the laws and customs of England; provided, however, that in case any such natural-born subject of the United Kingdom of Great Britain and Ireland shall enter into the marriage state within this settlement, without making a previous marriage settlement (called, in the colonial law term, antenuptial contract), his property, in such case, both real and personal, shall be administered and divided according to Colonial law, notwithstanding any subsequent testamentary devise, unless such subsequent testamentary devise be made in conjunction with the wife of the party, according to the Colonial law on this head.

Preamble.

All natural-born subjects of the United Kingdom entitled to devise their property as in England.

In case of marriage in this colony without previous marriage settlement, property to be administered according to colonial law, unless a testamentary devise be made by the testator in conjunction with his wife.

And it is hereby further made known and ordered that the original will or testament of any person dying in this Colony shall be deposited, as usual, in the Orphan Chamber, at Cape Town, in order to legalize the administration of the estate by the executor or administrator thereof.

Wills to be deposited in the Orphan Chamber.

<sup>1</sup> See Acts 26 of 1873 and 23 of 1874 printed under "Inheritance."

Ord. 15—1845.

The tenor of this proclamation to be explained by matrimonial courts.

And I do hereby further order and direct the president, or acting president, of any of the Matrimonial Courts of this Government, to explain clearly, to every natural-born subject of the United Kingdom of Great Britain and Ireland who shall be about to enter into matrimonial engagements, and appear for that purpose before such Court, the tenor of this my proclamation,—noting on their record their having so done, that no man may justly plead ignorance of this provision.

And in order still further to obviate the plea of not knowing the law on this head, I have caused this proclamation to be published and affixed as usual, and to appear in three successive *Gazettes*.

No. 15.—Sd. P. Maitland.] [December 1, 1845.

Ordinance for repealing Ordinances No. 4, 1843, and No. 11, 1845, and for making other Provisions in their stead. <sup>(1)</sup>

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony bearing date the 4th day of May, 1843, and numbered 4, 1843, entitled “ Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney executed without being witnessed as by law required and for other purposes.” And whereas a certain other Ordinance was made and passed in this Colony bearing date the 14th day of May, 1845, and numbered 11, 1845, entitled “ Ordinance for repealing the first section of Ordinance No. 4, 1843 :” And whereas it is expedient to repeal both of the said Ordinances and to make other provisions in their room and stead : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the two certain Ordinances aforesaid shall be repealed and the same are hereby repealed accordingly.

Repeal of former ordinances.

Repeal of law requiring seven witnesses to execution of will.

2. And be it enacted that every law and usage in force within this Colony before and down to the first day of January, 1844, by reason whereof any wills or other testamentary writings, or any powers of attorney were or might have been deemed or taken to be inoperative or defective unless the execution of the same were duly witnessed by seven or some other number of competent witnesses shall be and the same are hereby declared to be repealed in regard to all wills or other testamentary writings or powers of attorney made or executed upon or after the said first day of January, 1844.

Manner of attestation and number of witnesses.

3. And be it enacted that no will or other testamentary writing and no power of attorney made or executed upon or after the said first day of January, 1844, which will or other testamentary writing

<sup>1</sup> This Ord. is repealed so far as it relates to Powers of Attorney by Act 10 of 1879.

or power of attorney if made before the said first day of January, 1844, would in order to be valid have required to be witnessed by seven or some other number of competent <sup>(2)</sup> witnesses shall be valid unless it shall be or shall have been executed in the manner hereinafter mentioned: that is to say, it shall be or shall have been signed at the foot or end thereof if a will or other testamentary writing by the testator or by some other person in his presence and by his direction, and if a power of attorney, by the person executing the same, or by some other in his presence and by his direction, and such signature shall be or shall have been made or acknowledged by the testator or person executing the power of attorney, as the case may be, in the presence of two or more competent witnesses present at the same time, and such witnesses shall attest and subscribe or shall have attested and subscribed the will or power of attorney as the case may be in the presence of the person executing the same; and where the instrument shall be or shall have been written upon more leaves than one the party executing the same and also the witnesses shall sign or shall have signed their names upon at least one side of every leaf upon which the instrument shall be or shall have been written.

No. 22—1876.

Signatures on each leaf.

4. And be it enacted that nothing in this Ordinance contained shall be deemed or taken to extend to or affect any will or other testamentary writing or power of attorney made or passed or to be made or passed before any notary and witnesses, or to any codicil made by virtue or in pursuance of any power reserved in that behalf in any such last mentioned will or testamentary writing, nor to any instrument whatever, testamentary or otherwise, made and executed at any time before the said 1st day of January, 1844.

Exemption as to notarial instruments and instruments executed before 1844.

5. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Time of taking effect.

No. 22—1876.]

ACT

[July 4, 1876.

To Amend the Law relating to Attesting Witnesses.

WHEREAS by the Attesting Witnesses Act, 1874, certain amendments were made in the law relating to attesting witnesses, and it is expedient that further amendments be made in such law so as to make the same more in conformity with the law of England, and whereas it will be more convenient that for the purpose of such amendments the said Act should be repealed so that the remaining provisions thereof with the amendments thereto may appear in one Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the taking effect of this Act, the Act No. 16 of 1874, entitled "An Act to amend the Law relating to Attesting Witnesses" is hereby repealed.

Act No. 16 of 1874 repealed.

<sup>2</sup> See Act 22, 1876, *infra*.

No. 3—1878.

Who are competent to attest execution of a will or other instrument.

2. Every person, except as hereinafter excepted, above the age of fourteen years, who is or may be competent to give evidence in any Court of law in this Colony, shall be competent and qualified to attest the execution of a will or other instrument; provided that no person shall be qualified to attest any power of attorney, whereby he shall be appointed an attorney or agent, or under which he shall derive any benefit.

Persons attesting execution of a will to forfeit any interest they may have conferred upon them in such will.

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, interests, gift, or appointment of or affecting any property (other than and except charges and directions 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 appointment made as executor, guardian, &c., 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.

Short title.

5. This Act may for all purposes be cited as the "Attesting Witnesses Act, 1876."

No. 3—1878.]

[August 2, 1878.

### AN ACT

For the Amendment of the Law relating to Wills and other Testamentary Dispositions.

Preamble.

WHEREAS some doubts have arisen with respect to the law relating to Wills and other Testamentary Dispositions and the execution and attestation thereof.

Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Notarial wills to be valid though not read over in presence of witnesses.

1. From and after the taking effect of this Act no notarial will, whether made before or after the passing of this Act, shall be deemed or 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: Provided that nothing herein contained shall alter or affect any judgment or sentence in regard to any notarial will, pronounced by any competent Court before the taking effect of this Act.

2. Every existing Law, Ordinance, or Act of Parliament, in conflict or inconsistent with the provisions of this Act, shall be, and the same is hereby, repealed, so far as such conflict or inconsistency may exist, but not further or otherwise.

No. 12—1886.  
Repeal of inconsistent laws.

3. This Act may be cited for all purposes as the "Wills Attestation Amendment Act, 1878."

Short title.

WITNESSES.

- |  |   |
|--|---|
| <p>1. Act 12—1886, (Attendance before Courts of Neighbouring States).<br/>2. Ord. 59—1829, (Expenses, Criminal Cases).</p> | <p>3. Ord. 69—1830, (Expenses, Criminal Cases, Cape Town).<br/>4. ,, 26—1847, §§ 3 and 4, do do.<br/>5. ,, 7—1857, (do. Public Officers).</p> |
|--|---|
- For Witnesses Attesting, see "Wills."

No. 12—1886.]

[July, 6, 1886.

ACT

To Compel the Attendance, as Witnesses, of Persons residing in this Colony before the Courts of Neighbouring States and Colonies.

WHEREAS the testimony of persons residing in this Colony is frequently required in the Courts of neighbouring States and Colonies: And whereas there exists no power to compel the attendance of such persons before the said Courts, in consequence whereof the ends of justice are sometimes defeated: And whereas it is desirable to make the attendance of such persons before such Courts compulsory: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. Whenever a subpoena, purporting to be issued by the proper officer of any competent Court in any neighbouring State or Colony to which this Act shall apply for the purpose of securing the attendance of any person resident in this Colony as a witness before such Court, shall be transmitted by such officer to the Resident Magistrate of the district within which the person whose attendance is so required shall be residing, it shall be the duty of the said Resident Magistrate to endorse on such subpoena his order that the same shall be served on the person therein named; and the subpoena so endorsed shall thereupon be handed to the messenger of the said Magistrate's Court, or such other person as the said Magistrate shall specially appoint for the purpose, whose duty it shall be to serve the same as soon as practicable on the person designated therein: Provided always that the necessary expenses of such service, and the necessary expenses to be incurred by the person subpoenaed in going to and returning from the

Subpoena issued by court or neighbouring State or Colony and transmitted to any resident magistrate of the colony for service in his district, to be endorsed by resident magistrate and served by his messenger.

Expenses of service and expenses of witness to be transmitted with the subpoena.

2800 WITNESSES' ATTENDANCE IN NEIGHBOURING STATES.

No. 12—1886.

Court named in such subpoena and to be incurred during his detention at the place where his evidence has to be given, according to such tariff as may from time to time be framed by the Governor, shall be transmitted to the said Resident Magistrate together with the said subpoena, and the portion of such expenses assigned to the person named in the said subpoena shall be paid to him by the officer serving the same.

Penalty for non-attendance of the person summoned by such subpoena and how recoverable.

2. Every person who shall have been served with a subpoena as in the previous section mentioned shall be bound to attend on the day and at the place therein named; and in case he shall fail so to do and shall also fail to prove any lawful and valid excuse for such non-attendance, he shall be liable to a penalty not exceeding one hundred pounds sterling, which shall be recoverable in the Court of the Resident Magistrate of the district in which he shall be residing at the instance of the Attorney-General of the Colony, or the Solicitor-General and Crown Prosecutor for Griqualand West within their respective jurisdictions.

How non-attendance of subpoenaed person to be proved.

3. The return of the person authorized to serve such subpoena, as in the first section of this Act provided, showing that such service has been duly made, and a certificate under the hand and seal of the presiding Judge or Magistrate of the Court from which the said subpoena was issued, that the person so served did not attend when called thereon and did not establish any valid or legal excuse for his default, shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty in the last preceding section mentioned.

No person compulsorily attending as a witness in this colony shall be liable to arrest for any debt contracted or offence committed here.

4. No person resident in any neighbouring State or Colony to which this Act shall apply who may be summoned as a witness before any Court of this Colony and whose attendance before such Court shall be enforced by any Legislative enactment of such State or Colony shall be liable, while so attending, to be arrested upon any civil or criminal process for any debt formerly due or any offence formerly committed by him in this Colony.

Act to take effect when reciprocal legislation passed.

5. This Act shall take effect so far as concerns any such State or Colony as soon as the Governor shall by proclamation in the *Gazette*, declare and make known that such State or Colony has made due provision to compel the attendance as witnesses before the Courts of this Colony of persons resident in such State or Colony.

Short title.

6. This Act may be cited as the "Neighbouring States and Colonies Witnesses Compulsory Attendance Act, 1886."

No. 59.—Sd. G. Lowry Cole.] [April 2, 1829.

Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations.

WHEREAS it is expedient and necessary that regulations should be made for the payment of the expenses of witnesses attending to give evidence in criminal cases: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, expenses shall be allowed to witnesses summoned at the instance of the Public Prosecutor, and who have duly appeared, in compliance with the summons, at any criminal trial, holden before the Supreme or Circuit Courts, or Resident Magistrates' Courts, or at any preparatory examination taken before a Resident Magistrate or Justice of the Peace, unless such Court shall, for sufficient cause, disallow the expenses of any witnesses.

Preamble.

Allowance of expenses to witness summoned on behalf of the prosecution.

2. And be it further enacted that expenses shall also be allowed to necessary witnesses summoned at the instance of the prisoner or party accused, and appearing as hereinbefore mentioned, upon a certificate of the Magistrate who presides, or of the Registrar of the Court, under the direction of the Judge, that the prisoner or accused party is unable, from poverty, to pay such expenses; or that, by reason of his full acquittal, such expenses ought to be allowed; and that the witnesses were or might have been necessary for the defence.

Allowance of expenses to witnesses summoned at the instance of the accused, on the inability of the latter to pay them:—or in case of full acquittal of the accused.

3. And be further enacted that the expenses to be allowed to witnesses, for subsistence and travelling to and from the Court, or other place to which they shall be summoned, and during the necessary attendance, these shall in no case exceed four shillings and six pence per diem of six hours if the witnesses have travelled in a carriage or on horseback, and one shilling and six pence per diem of six hours if on foot; and in cases where a witness resides within five miles of the place to which he is summoned, the expenses to be allowed shall not exceed one shilling and six pence per diem; and in cases where a witness shall reside within one mile of such place where any preparatory examination is taken, no expenses shall be allowed for attending such examination.

Rates of allowance for witnesses' expenses.

4. And be it further enacted, that the Clerk of the Peace shall, on all criminal trials at the instance of the Public Prosecutor, make out bills of expenses for the witnesses in each case, one of which bills shall be for the witnesses summoned and appearing on the part of the Public Prosecutor, and the other for the witnesses summoned and appearing for the accused party, in cases where such certificates have been obtained as aforesaid, each of which bills shall be made out in duplicate, and the Clerk of the Peace shall certify that the distance and time charged in the said bills

Bills of expenses on criminal trials, how made out and certified.

2802 WITNESSES' EXPENSES (CRIMINAL CASES).

Ord. 69—1830.

are correct, and submit them to the Magistrate or Registrar of the Court before which the trial has been holden, who shall, unless the Court or Magistrate disallow to any witness his expenses on account of improper conduct, insert the rate of allowances (in no case exceeding the rate hereinbefore set forth), and the sum due to each witness, and shall certify the amount of each several bill of expenses so allowed. <sup>(1)</sup>

Bills of expenses in preparatory examinations, how made out and certified.

5. <sup>(2)</sup> And be it further enacted that in cases of preparatory examinations, the Clerk of the Peace shall make out and certify similar bills of expenses; and in his absence, the presiding Magistrate or Justice of the Peace shall make out, certify, and allow the same, and make out and sign cheques on the Civil Commissioner for the amount allowed to each witness.

Payment by cheque on the civil commissioner.

6. And be it further enacted that the Clerk of the Peace, or in his absence the presiding Magistrate or Justice of the Peace, shall, on a bill being so prepared, certified, and allowed, and on the witness signing on the said bill a receipt for the sum due to him for his expenses, make out, sign, and deliver to each witness a cheque on the Civil Commissioner of the district within which the trial or examination took place for the amount due to him; and shall further transmit every bill, so signed forthwith, to the said Civil Commissioner, who shall make payment of the amount of every cheque so drawn on him, to the holder thereof, if presented for payment within three calendar months after its date, and not afterwards. And if any Civil Commissioner shall not pay the amount of such cheque when duly presented to him, the party entitled to the same may sue the recovery thereof in any competent Court. <sup>(3)</sup>

No. 69—Sd. G. Lowry Cole.]

[January 13, 1830.

Ordinance for altering and amending so much of the Ordinance No. 59 as regards the Payment of Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations held in Cape Town.

Preamble.

WHEREAS it is expedient to provide for the more ready and regular payment of witnesses attending to give evidence on criminal trials held before the Supreme Court, and on criminal trials or preparatory examinations held before the Court of the Resident Magistrate for Cape Town and the district thereof, and the Cape

<sup>1</sup> See § 3, Ord. 26 of 1847. See also Government Notice No 670, 22 July, 1885.

<sup>2</sup> See also Ord. 26 of 1847, § 4.

<sup>3</sup> Payment of witnesses' expenses is now made by Treasury Drafts drawn in accordance with regulations framed under Act 30 of 1875.



district : Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance all cheques to be issued under the provisions of the Ordinance No. 59, for payment of witnesses attending either of the aforesaid Courts, shall be addressed to the Treasurer and Accountant-General, and shall be presented for payment at the Treasury in Cape Town within seven days after the date thereof, and not afterwards ; anything contained in the 5th and 6th sections of the said Ordinance No. 59 to the contrary notwithstanding ; and if the Treasurer and Accountant-General shall not pay the amount of such cheque when duly presented to him the party entitled to the same may sue for the recovery thereof in any competent Court. (1)

Ord. 26—1847.

Cheques for witnesses' expenses in criminal trials and preparatory examinations in Cape Town and the Cape district to be addressed to the Treasurer-General, and to be paid by him.

No. 26.—Sd. H. G. Smith.] [December 28, 1847.

Ordinance to provide for the performance in certain Places of certain Duties now performed by Clerks of the Peace. (2)

3. And be (3) it enacted that in regard to all criminal trials in any Court of Resident Magistrate in any district for which there shall not be a Clerk of the Peace the duties touching bills for the expenses of witnesses by the fourth section of the Ordinance No. 59, bearing date the 2nd of April, 1829, entitled "Ordinance for Regulating the Payment of Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations," imposed upon the said Clerk of the Peace shall be and the same are hereby imposed upon and shall and may be discharged by the clerk of the said Court. Provided that in any summary cases before the said Court such witnesses, whether against or in favour of the party accused, as shall have been summoned with the previous approbation or consent of the said clerk as being in the his judgment necessary and proper to be summoned, shall be deemed to be summoned at the instance of the Public Prosecutor within the meaning of the said Ordinance, and all other witnesses summoned shall be deemed for the purposes of the said Ordinance, to be so summoned by a private prosecutor or by the party accused as the case may be, and shall be treated accordingly.

Witness' expenses under Ordinance 59 of 1829.

4. And be it enacted that in the cases of all preparatory examinations before the Resident Magistrate or any Justice of the Peace of any district for which there shall not be a Clerk of the Peace the Clerk of the Peace of such district shall for the purposes of the fifth and sixth sections of the said Ordinance No. 59 be deemed and taken to be absent.

Preparatory examinations.

<sup>1</sup> See note to § 6, Ord. 59, *supra*.

<sup>2</sup> Obsolete except as to §§ 3 and 4.

<sup>3</sup> See also § 7, Ord. 8 of 1852.

No. 7—1857.]

[June 29, 1857.

## AN ACT

For Regulating the Payment of the Expenses of Field-cornets and other Public Officers attending to give Evidence in certain Criminal Cases.

Preamble.

WHEREAS Field-cornets and other public officers are occasionally summoned to attend as witnesses in criminal cases, for the purpose of giving evidence regarding matters with which they have been concerned solely in their official capacity: And whereas doubts exist whether, when so attending, they can lawfully be allowed any expenses other than the ordinary expenses provided by Ordinance No. 59, entitled "Ordinance for Regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations:" And whereas it is proper to remove such doubts, and to provide that such witnesses shall be considered, when so attending to give evidence, as officially engaged in the public service, and be paid accordingly: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:—

Field-cornet, field-commandant, or justice of the peace, summoned to give evidence in regard to matters with which they have been officially concerned, to be remunerated under Ordinance No. 9, 1848.

1. As often as any Field-cornet, Field-commandant, Assistant Field-cornet, or Justice of the Peace, shall attend as a witness before any Court or Justice of the Peace, in this Colony, under such circumstances that he would, if an ordinary witness, be entitled to be allowed expenses under the Ordinance aforesaid, No. 59, at and after the rate therein provided, he shall, in case he shall have been summoned to give evidence regarding matters with which he has been concerned solely in his official capacity, receive and be allowed expenses at and after the rate of remuneration for Field-cornets, when from home on service, set forth in the Ordinance No. 9, 1848, entitled "Ordinance for Regulating the Duties and Remuneration of Field-cornets"; that is to say, he shall receive, as and for his expenses, an allowance for horse-hire at the rate of one shilling and sixpence per hour, together with a further allowance at the rate of seven shillings and sixpence per day.

No. 27—1864.]

[July 26, 1864.

## AN ACT

For Promoting the Extirpation of the Burr Weed, called  
Xanthium Spinosum.

WHEREAS the growth of the noxious plant known as the Xanthium Spinosum, or Burr Weed, has increased to an alarming extent in various parts of the Colony, and whereas the presence of this burr will be most detrimental to the value of the wool fleece, and highly prejudicial to the wool-growing interests of the Colony : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. It shall be the duty of the Civil Commissioner of each division, in his capacity of chairman of the Divisional Council of such division, to cause a public notice in the English and Dutch languages, warning all occupiers of landed property of the liability they will incur by neglecting to eradicate or burn any of the burr weed called Xanthium Spinosum which may have sprung up upon their lands or ground, to be posted at or near the Court-house of every Resident Magistrate in such division, at or near all places of public worship within such division, at the place in any town or village within such division as may be used by the inhabitants for posting public notices, and at all other places within such division at which the Civil Commissioner shall deem it desirable to post the same.

Chairman of divisional council to publish notices warning persons against neglecting to extirpate weed.

2. All Field-cornets in any division and occupiers of landed property in such division are hereby authorized and required to give or cause to be given to the Divisional Council of such division notice in writing that any occupier of landed property within such division has neglected for a period of thirty days or upwards, reckoned from the day of posting at the Court-house aforesaid of the notice aforesaid, to eradicate and burn certain of the said weed growing upon the farm or ground by him occupied.

Field-cornets and landed proprietors to report to divisional council any disregard of notice.

3. Every Divisional Council receiving any such notice as aforesaid, shall, by notice in writing call upon the occupier in regard to whose alleged neglect such notice shall have been given, to show cause why the said council should not at his expense take immediate measures for eradicating and burning the weed aforesaid so growing as aforesaid ; and unless such occupier shall give security to the said council that he will, within a reasonable time to be fixed by such council, eradicate and burn all of the said weed so growing as aforesaid, then it shall be lawful for such council, and it is hereby required, to employ all labourers necessary for eradicating and burning the said weed so growing as aforesaid, and all the charges thereby incurred shall, from the said occupier be

Duty of divisional council on receiving such report.

No. 27—1864.

Council may employ means for destroying weed at proprietor's expense.

recoverable with costs in the Court of the Resident Magistrate by action at the suit of the secretary to the Divisional Council: Provided that, as often as the said council shall grant time as aforesaid to eradicate and burn the said weed, the said council shall reserve to itself sufficient time before the next seeding time of the said weed to enable the said council to cause the said weed to be eradicated and burnt in the event of the neglect of the occupier aforesaid so to do.

Council to cause weed growing on public roads, lands, or outspans to be destroyed.

4. It shall be lawful for the Divisional Council of any division, and it is hereby required, to employ through the instrumentality of the field-cornets or otherwise, labourers to eradicate and burn the said weed wherever it may be found growing on public roads or Crown lands, or on public outspan-places within such division, and to pay the charge so incurred out of any Divisional Council funds at the time, or thereafter, in the hands of the said council.

Council may levy rate for purposes of this Act.

5. It shall and may be lawful for the Divisional Council of any and every division, and they are hereby empowered, to levy a special rate upon the fixed property of the division in which any such council is situated, sufficient to defray the costs and charges incurred under and in consequence of the provisions of the fourth section of this Act: Provided, also, that if in one year the costs and charges thereby incurred in any division by the Divisional Council thereof, for the eradication and destruction of the said weed shall exceed the sum of one hundred pounds sterling (£100), then one-half of the expense incurred over and above that sum shall be paid from and out of the public revenues of the Colony, and shall be recoverable by the Divisional Council in the usual manner of recovering claims for expenses incurred for and on behalf of the Government: And provided that the valuation for the time being of the fixed property of any division for road purposes shall be the valuation thereof for the purpose of the rate by this section authorized.

When Government to contribute.

Valuation for road purposes to be taken as valuation for rate under this Act.

Municipal commissioners to cause weed growing on municipal lands to be destroyed.

6. Whenever the said weed shall be found growing on municipal lands, the commissioners of the municipality within the limits of which it shall be found are hereby required to cause the said weed to be destroyed, and in default it shall be lawful for the Divisional Council of the division to cause the same to be destroyed as by the third section provided.

Road inspectors and road parties similarly charged with destruction of weed.

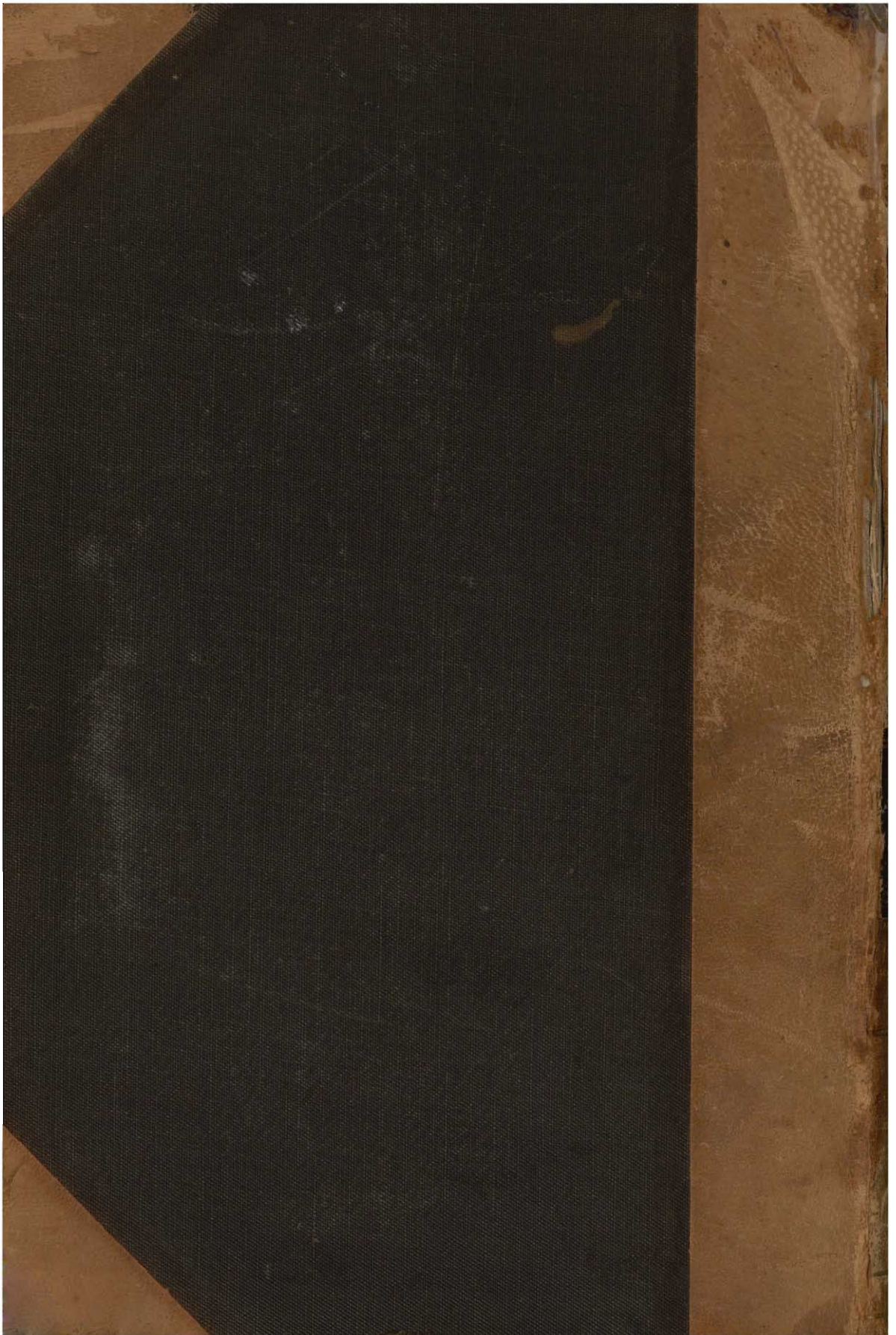
7. All road inspectors and overseers of free road parties or convicts are hereby required to cause the working parties under their direction to eradicate and burn all plants of the said weed whenever they may be found growing within the limits of their respective works.

---

CAPE TOWN :

W. A. RICHARDS AND SONS, CASTLE STREET.

---



CAPE OF GOOD HOPE.  
STATUTES

.....  
1652-1886

VOL. II.

L<sup>o</sup> — Z